

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(78) 202 final

Brussels, 23 May 1978

Proposal for a COUNCIL REGULATION

amending Regulation (EEC) No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway and Regulation (EEC) No 1107/70 on the granting of aids for transport by rail, road and inland waterway

(submitted to the Council by the Commission)

COM(78) 202 final

EXPLANATORY MEMORANDUM

1. The present proposal arises out of the provision of Article 9(2) of the Decision of 20 May 1975¹ which states that "pursuant to Article 3(2) of Regulation (EEC) No 1107/70, compensation may be made in respect of tariff obligations imposed on railway undertakings as not covered by Regulation (EEC) No 1191/69. Acting on a proposal from the Commission to be submitted not later than 1 January 1978, the Council shall harmonize the procedures for granting such compensation".
2. The primary objective of this proposal is therefore to harmonize the procedure for granting compensation in respect of the tariff obligations in question; this would be achieved under the conditions and in the manner described in paragraphs 5 to 11.
3. The Commission has carefully examined the question whether the proposed harmonization of compensation procedures will be sufficient to achieve the general objectives of policy for railways within the Community. For this measures must form part of a wider action based on the Council Decision of 20 May 1975 which aims at improving, among other things, the transparency of State interventions and the financial situation of the railway undertakings.

It is why, the Commission considers that a simple formal harmonization will not by itself attain this objective and it is essential to deal with the basic problem which exists.

4. Indeed, if compensation for the tariff obligations in question continues to be treated as optional aid, the rules determining the "compensation procedures" in respect of tariff obligations within the meaning of Article 3(2) of Regulation (EEC) No 1107/70² might be evaded, either by the granting of the amounts in question as part of the balancing subsidy within the meaning of Article 4 of this Regulation or by no aid being granted whatsoever.

¹ OJ L 152 of 12 June 1975

² OJ L 130 of 15 June 1970

The maintenance of this optional system would equally jeopardize the transparency desired, that is a clear distinction, by mandatory provisions, between the compensations granted under prescribed rules and the block balancing subsidies. This transparency will progressively permit the "real deficit" of railway companies to be isolated, which is in the interest of the railway undertakings as well as the government and community bodies.

5. In addition, the mere fact of regulating the procedure for reimbursing aid under the Council's terms of reference would not impart intelligibility to the material content of "tariff obligations not covered by Regulation 1191/69". Under Article 3(2) of Regulation No 1107/70 this provision should be no more than provisional "until adoption of Community provisions" concerning the tariff obligations in question.

The Commission has therefore deemed it necessary to put forward regulations which define comprehensively the content of tariff obligations not covered by Regulation (EEC) No 1191/69 and lay down the procedure for calculating the related compensation.

6. The Commission has considered the question whether this rulemaking should be embodied in a separate legal instrument or be incorporated into existing regulations.

In an attempt to achieve consistency and legal certainty and to simplify the content of its proposal, the Commission has opted for the second approach.

Regulation 1191/69 is indeed the most suitable framework for the proposed arrangements since it already contains

(a) a partial definition of tariff obligations inherent in the concept of a public service; and

- (b) the procedure for calculating the compensation to be granted where such obligations are maintained or introduced.

The provisions of this Regulation may therefore be extended to those tariff obligations which had hitherto not been covered, without the need for any major revision.

7. The Commission is aware that, under Article 15(2) of the Decision of 20 May 1975, it is required to submit proposals for major amendments to Regulation 1191/69, before 1 January 1978, and also considered whether these amendments could not be incorporated into this proposal. The amendments do, however, raise fairly complex questions requiring further studies and consultations. They must also take account of the proposals which the Commission is to submit pursuant to Article 15(1) regarding the time limit and conditions for achieving financial balance which are themselves conditional on the measures and financial programmes which the Member States have yet to submit to the Commission. Further, the Commission considers that it should move forward in stages.
8. This proposal is therefore aimed solely at amending Article 2(5) of Regulation (EEC) No 1191/69 concerning the definition of tariff obligations. It widens this definition by including the obligation to apply a tariff level imposed by the authorities which is contrary to an enterprise's commercial interest. This obligation was at the centre of the Commission's proposal of 24 May 1967¹, on which Regulation (EEC) No 1191/69 was based. It is also mentioned in the declaration which the Council adopted at the same time as the Regulation.

The Commission, like the railway and the government experts, thinks that the constraint of an imposed tariff level which has unfavourable repercussions on the entire management of the enterprise which is subjected to it, is the only type of tariff obligation which can be added to the other forms of obligation contained in the Regulation (EEC) No 1191/69.

¹ Doc. COM (67) 246 final of 24 May 1967

9. With regard to the obligation to respect, in the tariffs, the principles of perequation in time and space and equality of treatment for users, an obligation ^{which had} figured in the above-mentioned Commission proposal but which has not been retained as tariff obligations in this proposal for the following reasons : -

The principle of perequation in space and time (even price per kilometre for all links and periods of traffic) which dates from the time of railway monopoly, is no longer imposed on transport undertakings by the public authorities. The undertakings, faced with competition, can establish tariffs and prices taking account of the market situation and their costs. Where certain undertakings still apply perequated tariffs (e.g. passenger traffic) this practice responds to their own interests and to the needs for the simplification of tariff computation.

It also appears excluded that this principles will be reintroduced in future. Wanting to regulate the ways and means in this proposal would be very theoretical and far from useful and would go against the general orientation of the common transport policy which aims at the reduction of state interventions in price formation.

As regards the principle of equal treatment, it is a question of applying the community rules of non-discrimination, national and international which do not constitute a public service obligation.

10. The new definition of tariff obligation does not modify the present provision according to which price freezing measures applicable to all economic sectors does not raise the notion of tariff obligations in the sense of the present regulation.

On the contrary, it suppresses the second exception concerning "the measures taken regarding price and general conditions of transport in view of the organization of the market or a part thereof."

In fact, the maintenance of this provision, which has never had used in practice, would risk giving rise to different interpretations because of its imprecise wording and could permit evasion of the new proposed regulation.

11. Amendment of the definition of tariff obligation does not necessitate the amending of other provisions of the Regulation because :

- (i) the principle of terminating obligations laid down in Article 1 applies in a special way, to tariff obligations involving the imposition of a tariff level. The common transport policy aims to eliminate such intervention by States particularly in the goods traffic sector¹;
- (ii) The criterion for the maintenance of a public service obligation referred to in Article 3 - namely the guarantee to supply adequate transport services - may also be applied to the imposition of a tariff level on the grounds that this criterion must be seen essentially in terms of the "public interest" and in terms of the "transport rates and conditions which can be quoted to users". The Commission also intends to clarify this criterion in the proposals it is to submit pursuant to Article 15(2) of the Council Decision of 20 May 1975;
- (iii) The method of calculating compensation for tariff obligations provided for in Article 11 of Regulation 1191/69 may also be applied to the widened concept of tariff obligation; the Commission proposal of 24 May 1967, too, made no provision for special methods in this context. The provisions of Article 11 ensure that the undertaking does not derive more benefit from a tariff amendment being turned down than from it being accepted;
- (iv) The same is true for the provisions of the Regulation relating to procedure; Article 14 is of particular importance in this respect where a tariff level is imposed.

¹ See proposal of 10 October 1975, as amended on 13 April 1977, for a Council Regulation (EEC) concerning the fixing of rates for international goods transport by rail within the Community. (OJ C 1 of 5.1.1976 and OJ C 185 of 3.8.1977)

12. The extension of the concept of tariff obligation applies to all the undertakings referred to in Article 19(1) and (2) of the Regulation and thus guarantees equality of treatment in this respect.

13. The amendment of the definition of tariff obligation contained in this proposal is of a comprehensive nature and thus requires the simultaneous amendment of Article 3(2) of Regulation 1107/70, the first sub-paragraph of which should be deleted.

Proposal for a
COUNCIL REGULATION

amending Regulation (EEC) No 1191/69 on action by
Member States concerning the obligations inherent in the concept of a public
service in transport by rail, road and inland waterway
and
Regulation (EEC) No 1107/70 on the granting of
aids for transport by rail, road and inland waterway.

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 Parliament¹,

Having regard to the Opinion of the Economic and Social Committee²,

Whereas the definition of tariff obligation set out in Article 2(5) of Council
Regulation (EEC) No 1191/69 of 26 June 1969 on action by the Member States
concerning the obligations inherent in the concept of a public service in transport
by rail, road and inland waterway³ does not include all the elements which could
be termed tariff obligations inherent in the concept of a public service,

Whereas Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of
aids for transport by rail, road and inland waterway⁴, as amended by Regulation
(EEC) No 1473/75⁵,

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³ OJ No L 156, 28.6.1979, p.1.

⁴ OJ No C 130, 15.6.1970, p.1.

⁵ OJ No L 152, 12.6.1969, p.1.

lays down provisional arrangements pending the adoption of Community regulations in respect of tariff obligations not covered by Regulation (EEC) No 1191/69;

Whereas the adoption of comprehensive and definitive rules regarding tariff obligations within the meaning of Regulation (EEC) No 1191/69 arises in particular from the need to improve the transparency of financial intervention by States in favour of the railway undertakings within the meaning 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;

Whereas the tariff obligation referred to in Article 2(5) of Regulation (EEC) No 1191/69 should therefore be widened to include the obligation for undertakings to comply with a general level of tariffs, contrary to their commercial interests, fixed or approved by any public authority;

Whereas, the first indent of Article 3(2) of Regulation (EEC) No 1107/70 is consequently no longer material,

HAS ADOPTED THIS REGULATION :

Article 1

Article 2(5) of Regulation (EEC) No 1191/69 is hereby amended to read as follows:

"5. For the purposes of this Regulation, 'tariff obligations' means any obligation imposed upon transport undertakings to apply rates fixed or approved by any public authority which are contrary to the commercial interests of the undertaking and which result from the imposition of or refusal to, modify:

¹OJ No L 152 12.6.1975, p.3.

- (a) special tariff measures, especially for certain categories of passenger, certain categories of goods on certain routes;
- (b) the general level of tariffs.

The provisions of the foregoing subparagraph shall not apply to obligations arising from general measures of price policy applying to the economy as a whole".

Article 2

Article 3(2) of Regulation (EEC) No 1107/70 is hereby amended to read as follows:

"2. As regards reimbursement for the discharge of obligations inherent in the concept of a public service :

until the entry into force of relevant Community rules, where payments are made to rail, road and inland waterway transport undertakings as compensation for public service obligations imposed upon them by the State or public authorities and covering the transport undertakings or activities to which Regulation (EEC) No 1191/69 does not apply."

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

Done at Brussels,

For the Council,

The President.

