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Report

drawn up on behalf of the Committee on Regional Policy, Regional Planning and
Transport

on the proposal from the Commission of the European Communities to the
Council (Doc. 324/75/V) for a regulation concerning the fixing of rates for
international goods transport by rail

Rapporteur: Mr H. MURSCH

PE 44.173/fin.

By letter of 21 October 1975 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 75 of the EEC Treaty, to deliver an opinion on the communication from the Commission of the European Communities to the Council on the operation of the markets in surface goods transport within the Community (road, rail and inland waterway) (Doc. COM (75) 490 final 3), and on the eight proposals for regulations and directives attached to this communication.

The President of the European Parliament referred these proposals (Doc. 324/75) to the Committee on Regional Policy and Transport on 4 November 1975.

On 10 December 1975 the committee appointed Mr Mursch rapporteur for part V: proposal for a Council regulation concerning the fixing of rates for international goods transport by rail.

On 16 March 1976 the newly constituted Committee on Regional Policy, Regional Planning and Transport instructed Mr Mursch to include in his report an opinion on the introductory communication from the Commission.

The committee considered the communication and the proposal at its meetings of 16 March 1976, 13 July 1976 and 1 October 1976.

On 1 October 1976 the committee unanimously adopted the motion for a resolution and the explanatory statement.

Present: Mr Evans, chairman; Mr Meintz and Mr Nyborg, vice-chairmen; Mr Mursch, rapporteur; Mr Albers, Mr Delmotte, Mr De Clecq, Mr Ellis, Mr Gerlach, Mr Giraud, Mrs Kellett-Bowman and Mr Noè.

The opinion of the Committee on Economic and Monetary Affairs is attached.

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The Committee on Regional Policy, Regional Planning and Transport hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a regulation concerning the fixing of rates for international goods transport by rail.

The European Parliament,

- having regard to the proposal from the Commission of the European Communities¹,
 - having been consulted by the Council pursuant to Article 75 of the EEC Treaty, (Doc. 324/75),
 - having regard to the report of the Committee on Regional Policy, Regional Planning and Transport and the opinion of the Committee on Economic and Monetary Affairs (Doc. 349/76),
1. Refers to its resolution of 25 September 1974²;
 2. Welcomes the fact that the Commission submitted on 18 November 1975 eight proposals for regulations and directives together with a communication on the operation of the markets in the transport sector, and on 10 December 1975 a further proposal (Doc. 472/75), in which, for the first time, some of the features of the proposed common transport policy are discernible;
 3. Welcomes the Commission's proposal that action should be taken simultaneously in the various sectors of the common transport policy, and suggests that the Council adopt these proposals with the proviso that it simultaneously issues a policy statement which makes the aim of parallel progress credible to the parties directly concerned and to the public;
 4. Approves the principle of orientating the common transport policy towards a market economy;

¹ OJ No. C 1, 5.1.1976, p. 28.

² OJ No. C 127, 18.10.1974, p. 24.

5. Points out that limiting action to the introduction of market economy principles and extensive liberalization may cause structural difficulties for international transport if national and international transport systems are too divergent;
6. Urges, therefore, that common provisions for national transport be introduced as soon as possible so that the discrepancies between national and international arrangements are but a transitional feature;
7. Points out that liberalization of transfrontier transport will increase competition between the transport undertakings of the various countries and that this competition can only be fair if costs are sufficiently harmonized, which is not the case at present;
8. Points out that if the proposed measures are to operate satisfactorily, it is essential to convince those concerned that a coherent common transport policy will be established and to eliminate the impression that Community measures are disconnected experiments;
9. Approves the Commission's proposal for a Council regulation concerning the fixing of rates for international goods transport by rail (Doc. 324/75, Part V);
10. Urges, therefore, that even when the railways take commercial responsibility for their tariffs, an arrangement be maintained to enable a reversion to tariffs fixed by the state in times of crisis without further legislation being necessary;
11. Urges, further, that Community law be extended to include rules against unfair competition, such as the deliberate harm caused to their competitors by transport undertakings charging prices which do not cover the additional cost to them of the transport operation concerned;
12. Urges that if the rules against unfair competition and the precautionary measures to deal with crisis situations cannot be implemented as part of a general regulation, along with the regulation on reference tariffs, they should be included in the regulation on tariffs;
13. Calls for greater emphasis to be placed on the Community's interest in the setting up of through international tariffs;
14. Requests the Commission, therefore, to make the following amendments to its proposals, pursuant to the second paragraph of Article 149 of the EEC Treaty.

PROPOSAL FOR A COUNCIL REGULATION (EEC)

No. ... of ...

on the fixing of rates for international goods transport by rail
within the Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing
the European Economic Community and in
particular Article 75 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 the organization of the freight
transport market has to be conceived on
the basis of a market economy in order
to ensure the optimum allocation of
resources; whereas this conception
extends, in particular, to the system
of rates and conditions of transport
which form an important element of
the common transport policy required
by the Treaty;

Whereas, in consequence, the fixing of
rates and conditions of transport should
be freely done by the transport under-
takings themselves and not by the author-
ities imposing compulsory tariffs;

1. unchanged

2. Whereas, in consequence, the
fixing of rates and conditions
of transport should be freely
done by the transport under-
takings themselves and not by
the authorities imposing com-
pulsory tariffs, except in an
obvious crisis situation or
in the circumstances provided
for in Regulation No. 1191/69;

¹OJ No. C1, 5 January 1976, p. 28

Whereas this concept has to be reached in stages beginning with the present situation and, in the first place, with international goods transport;

Whereas the achievement of this concept in the railway sector depends upon the principles of the commercial management of international traffic in the undertakings;

Whereas, as a result, the railway administrations must achieve a balance between receipts and costs for corresponding services; this obligation does not exclude the possibility of medium term cross-subsidization within the sector;

Whereas the conversion of international railway tariffs towards a free market situation should allow a more flexible adaptation by the undertakings concerned both of rates to costs and to the market situation and that because of this, the intervention of the public authorities in the drawing up of transport rates should be ended subject to the proviso that Member States may

3. Whereas this concept has to be reached in stages beginning with the present situation and, in the first place, with international goods transport; whereas during this stage further progress must be made towards the harmonization of cost factors in the social, technical and fiscal fields; whereas in a second stage the concept of this regulation will be extended to cover transport within the Member States, with account to be taken of progress achieved towards harmonization;

4. unchanged

5. Whereas, as a result, the railway administrations must achieve a balance between receipts and costs for corresponding services; this obligation does not exclude the possibility of medium-term cross-subsidization within the international transport sector;

6. Whereas the conversion of international railway tariffs towards a free market situation should allow a more flexible adaptation by the undertakings concerned both of rates to costs and to the market situation and that because of this, the intervention of the public authorities in the drawing up of transport rates

impose compulsory tariffs in conformity with Regulation (EEC) No. 1191/69 of 26 June 1969;

Whereas, henceforth, it will be necessary to modify the national legislative or administrative procedures which still involve the interference of public authorities in the tariff policy of the railways;

Whereas the range of measures envisaged is likely to contribute, within the framework established by Article 9.1 of the Council Decision of 20 May 1975, to the improvement of the railways' financial position in a sector of activity to which, owing to its characteristics, commercial management is particularly suitable;

Whereas the drawing up of through tariffs for goods transport between Member States is likely on the one hand to strengthen the competitive position of the railways and, on the other hand, to increase the attractiveness of the railways' services to the customer;

should be ended subject to the proviso that Member States may impose compulsory tariffs in conformity with Regulation (EEC) No. 1191/69 of 26 June 1969 and to the occurrence of an obvious crisis situation;

7. unchanged

8. Whereas the range of measures envisaged should contribute, within the framework established by Article 9(1) of the Council Decision of 20 May 1975, to the improvement of the railways' financial position in a sector of activity in which, in view of the long-term increase in long-distance transport in Europe, this objection is most likely to be achieved;

9. Whereas the drawing up of through tariffs for goods transport between Member States is likely on the one hand to strengthen the competitive position of the railways and, on the other hand, to increase the attractiveness of the railways' services to the customer; whereas, in addition, through tariffs will help to reduce the economic significance of national frontiers and so to improve trade between the Member States as called for in the European Treaties;

Recitals 10-13 unchanged

Article 1 unchanged

Article 2

Article 2

- | | |
|---|--|
| 1. The railway undertakings will themselves establish tariffs and conditions for international freight transport taking into account their obligations under the EEC and ECSC Treaties. | 1. unchanged |
| 2. In conformity with the objectives set out in the provisions of Article 9, paragraph 1 of the Council Decision of 20 May 1975 ¹ , the railways must ensure that receipts for international freight transport are equal to the corresponding costs. | 2. unchanged |
| 3. The provisions of this Article do not affect the right of Member States to impose compulsory tariffs in accordance with Council Regulation (EEC) No. 1191/69 of 26 June 1969 ² . | 2 b. <u>In the event of an obvious crisis situation, compulsory rail tariffs may be fixed.</u>
3. unchanged |
| 4. When supplying the information provided for in Article 8 of the Council Decision of 20 May 1975 ³ , the railways will also supply states with detailed information on the obligation provided for in paragraph 2. | 4. unchanged |

¹ OJ No. L 152, 12.6.1975, p. 3

² OJ No. L 156, 28.6.1969, p. 1

³ OJ No. L 152, 12.6.1975, p. 3

Article 3

The governments of the Member States will take all the steps necessary to remove from their national legislation any provisions which are incompatible with commercial management of international freight transport by rail and especially those provisions referring to a priori or a posteriori approval of rates and conditions of transport by the governing authorities.

Article 4

1. The transport of goods between Member States shall be controlled by a system of through reference tariffs which take account of the needs of the markets concerned and the interests of the railway undertakings.
2. Through tariffs are established for freight consignments on the basis of a single transport contract which conforms with the provision of the international convention concerning the transport of freight by rail (CIM) on the lines figuring in the list given in Article 59 of that Convention.

Article 3

1. The governments of the Member States will take all the steps necessary to remove from their national legislation any provisions which are incompatible with commercial management of international freight transport by rail and especially those provisions referring to a priori or a posteriori approval of rates and conditions of transport by the governing authorities.
2. However, the Member States will retain existing provisions or introduce new provisions which enable them to comply with the second paragraph of Article 2 without delay and without further legislation.

Article 4

1. The transport of goods between Member States shall be controlled by a system of through reference tariffs set up by the railways for all transport services where the market situation and the interests of the railway undertakings justify such a system.
2. unchanged

3. Through tariffs are established either on the basis of general tariffs, or on the basis of special tariffs. They may be differentiated according to any of the criteria which contribute to their reference function.

3. Through tariffs are established either on the basis of general tariffs, or on the basis of special tariffs. As far as possible, they should be differentiated to take account of the characteristics of individual transport operations and to avoid an excessively high or low freight tariff in individual cases.

Articles 5-11 unchanged

EXPLANATORY STATEMENT

Introduction

1. The Commission's proposal for a Council regulation concerning the fixing of rates for international goods transport by rail is contained in the communication from the Commission to the Council on the operation of the markets in goods transport within the Community (road, rail and inland waterway)¹.

2. The Commission has put forward a package of proposals which goes a long way towards establishing common provisions for the transport market.

3. In addition to the proposal concerning the fixing of rates for international goods transport by rail, with which this report is concerned, the package includes the following proposals:

- Proposal for a Council directive on the establishment of common rules for certain types of carriage of goods by road between Member States
(This concerns the liberalization of a number of special transport services - transport operations in frontier zones, transport in small vehicles, international own-account transport operations and certain through traffic, and thus rounds off the existing provisions. Although this provision will greatly ease the situation of those concerned, the quota system and other restrictions on international transport still remain.) Mr Giraud is to draw up a report on this question.
- Proposal for a Council regulation on the Community quota for the carriage of goods by road between Member States
(This seeks to replace the existing provisional and experimental system of Community quotas by a permanent regulation. Since the Council was reluctant to approve an extension of the provisional system before the end of each year, the number of quotas for 1977 was, if no Council decision was taken, to remain the same and then be increased automatically by 20% every year. This would have resulted in the Community quota being so high in a few years that bilateral quotas would have become meaningless. Parliament approved this proposal on the basis of a report by Mr Giraud (Doc. 350/75 of 5 November 1975).)

¹ Commission Document COM(75) 490 final/3 of 18.11.1975

Unfortunately, at its meeting of 10/11 December 1975, the Council merely extended the Community quota, without adopting the proposed increase in the quota for 1976 and the abovementioned automatic yearly increase.

Your committee deeply regrets this situation. In particular, there is still uncertainty over the future development of the international road transport policy. This again raises the question of majority decisions in the Council. It is understood that the Council's ability to take a decision was again thwarted by the unanimity clause.

- Proposal for a Council directive on access to the occupation of carrier of goods or of passengers by waterway in national and international transport (This proposal concerns the harmonization of the legislation of the Member States on access to the occupation of carrier in an important transport sector which features fierce international competition between Member State undertakings. A similar proposal from the Commission dating back to 1967/68 has been withdrawn.) Parliament has delivered an opinion on this proposal on the basis of a report by Mr De Clercq (Doc. 90/76 of 10 May 1976).

- Proposal for a Council directive aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for road or waterway passenger transport and goods haulage operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment
(This also concerns the conditions governing access to the occupation of carrier, which must be established at Community level in order to guarantee free movement as laid down in the Treaty. The proposal replaces three Commission proposals put forward in 1970.) Parliament has delivered an opinion on this proposal on the basis of a report by Mr Albers (Doc. 91/76 of 10 May 1976).

- Proposal for a Council regulation amending Council Regulation (EEC) No. 3255 of 19 December 1974 extending and amending Council Regulation (EEC) No. 1174/68 of 30 July 1968 on the introduction of a system of bracket tariffs for the carriage of goods by road between Member States.
(On 10/11 December 1975 the Council extended until 31 December 1976 the system of bracket tariffs for the carriage of goods by road between Member States, after the proposal had been discussed by the European Parliament on the basis of a report by Mr Schwabe (Doc. 349/75). The subsequent proposal calls for a new and definitive ruling so as to eliminate the inconvenience caused to carriers by constant last-minute extensions.)

- Proposal for a Council regulation for a system of reference tariffs for the carriage of goods by road between Member States
(This proposal aims at introducing almost total price freedom in international road transport and abolishing the existing unsatisfactory system of bracket tariffs. In assessing the proposal concerning rail tariffs it is particularly important to make a comparison with this proposal for road transport tariffs.) Mr Schwabe is drawing up a report on this proposal on behalf of your committee.
- Proposal for a Council regulation concerning a system for monitoring the markets for the carriage of goods by rail, road and inland waterways between the Member States
(The Commission intends to use this system in the elaboration and subsequent implementation of the common transport policy.) Mr Mitterdorfer is drawing up a report on this proposal on behalf of your committee.

4. On 10 December 1975 the Commission of the European Communities submitted a ninth proposal which may be included in the 'package', although it was published separately (Doc. 472/75). It concerns a regulation on a system of reference tariffs for the carriage of goods by inland waterway between Member States. Your committee has appointed Mr Albers rapporteur on this matter.

5. This report will also contain an opinion on the communication from the Commission to the Council on the operation of the markets in surface goods transport within the Community (road, rail and inland waterway), since it outlines the Commission's 'overall concept' for the transport sector. In particular, it will have to be decided whether this outline permits an adequate assessment of the individual proposals.

I. The general section of the communication

6. In its communication the Commission states (point 5) that its proposals are intended to form one of the elements of the common transport system, which is to consist of:

- the organization of the market,
- the coordination of infrastructure investments,
- charging for the utilization of infrastructures,
- the harmonization of conditions of competition, particularly in the social, technical and fiscal sectors.

7. The Commission also states (point 6) that all the proposed measures must take account of the other Community structural policies. Happily, it refers to 'interrelationships', as advocated by Parliament¹, and not to the unilateral orientation of the transport policy towards objectives which lie outside the transport sector.

¹ Doc. 215/74

8. The Commission further states (point 6) that it intends to make progress by parallel stages in the various sectors, in order that the individual measures complement one another. The Commission intends to use the work programme set out in the 1973 communication as the basis for this.

In its opinion on the 1973 communication¹ the European Parliament made it clear, however, that the work programme it contained was inadequate for assessing and determining the type of transport policy that the Community should adopt. Parliament therefore called on the Commission and Council to expand the work programme - which after all consisted of little more than a collection of proposals from the Commission, which were in any case already before the Council - into an action programme for the years 1977-83 to be adopted as a concept of the objectives of the common transport policy. This has not been done. Even the Commission's programme for 1974/76, as contained in the communication has merely been the subject of non-binding discussions in the Council.

9. To assess whether the parallel implementation of the various measures is being sufficiently observed, the only available criteria are the decisions already taken by the Council and the Commission's declaration of intent.

However, this does not appear adequate for an assessment of the far-reaching proposals contained in the communication.

10. In point 7 the Commission states that it is

- 'attempting' to bring about a comparison of national investment programmes,
- 'seeking to obtain' agreement on the harmonization of tax structures for lorries,
- 'contemplating' action on the harmonization of rates of taxes for lorries,
- 'preparing the next Council deliberations' on charging for the utilization of the infrastructure,
- 'trying to achieve' the harmonization of the conditions of competition.

This is to be welcomed, but an assessment of the proposals basically depends on whether, and when, all these measures are actually implemented.

The Council legislation outlined by the Commission in point 8, is inadequate. The Council is not bound in any way and, without a Council decision, or at least a statement on further measures to be introduced in these sectors and the relevant timetable, it is difficult to assess the proposals in isolation.

¹ Doc. 215/74

11. Point 9 of the communication outlines the principles which should result in the organization of the Community transport sector along market economy lines. These are acceptable, but the Commission's declaration of intent is of little value if it does not lead to a Council decision. Your committee still feels that the Council should take a decision of principle on the course to be followed in future work on the common transport policy.
12. In points 10 and 11 the Commission emphasizes the need to take progressive, balanced action. The same objection applies here: a balanced approach can only exist and be assessed if the Council gives binding force to the objectives contained in all the proposals.
13. As regards access to the market, point 11 speaks of making the present restrictions 'more flexible'. However, this means that gradual liberalization and the abolition of quotas are planned for international road transport - and for this form of transport alone - whereas the further question of quotas for road transport within the Member States is not mentioned. For practical reasons, a fair assessment of whether international road transport should be liberalized, and when this could be done, obviously depends on what is to happen to transport within the Member States and when.
14. The proposed provisions concerning rates are also restricted to international transport. Unless the Council of Ministers outlines the long-term price policy within the Member States at the same time, it is to be feared that two different systems might develop - the liberal Community international transport system, and the national systems, which in some countries involve rigid price control - which would run counter to the concept of the Common Market.
15. It is also debatable whether the proposals take sufficient account of the problems connected with competition between seaports in that they restrict liberalization initially to international transport. This would create an advantage for ports whose main hinterland is supplied by international transport.
- This fact is scarcely altered by the Commission's proposal that the railways should keep separate accounts of their international transport operations and that the tariffs must cover the costs of such operations. There is always a mass of administrative costs, which, by altering the method of allocation, can be attributed to one form of transport or the other.
16. In point 13 the Commission states that, in its opinion, a balance exists between its proposals for the organization of the market along market economy lines and the existing measures taken to achieve harmonization.

This corresponds to Parliament's call for the liberalization of the markets in transport between Member States and the harmonization of the conditions of competition to proceed in a uniform and balanced manner.

However, before it can be decided whether this balance really exists, as the Commission claims, a detailed examination will be required.

On the one hand, the proposals provide for the gradual abolition of quotas from international transport and almost total price freedom. This should be accompanied by a corresponding degree of harmonization of the conditions of competition in international transport. Your committee feels that the level of harmonization so far achieved is insufficient to justify the proposed measures. Greater freedom of movement can only be justified if further decisive steps towards harmonization are taken.

There is no need for the two series of measures to be linked, but the Council should adopt a timetable which provides for balanced, parallel progress. The prospect of the factors of competition being approximated in the near future would also render the measures more acceptable to those who fear that the lifting of price and capacity restrictions will put them at a competitive disadvantage.

17. The Commission's comments in point 14 of its communication should therefore be firmly underlined. However, they apply not only to the sectors of market organization with which the current proposals are concerned, but also to the harmonization measures which are now before the Council and those which have yet to be proposed:

All the proposed measures form part of a coherent transport system and 'should enter into force following a balanced programme which takes account of their interdependence'.

However, this programme should be proposed by the Commission and adopted by the Council.

Mere declarations of intent by the Commission are not likely to restore the confidence of those concerned in the realization of a common transport policy. This confidence is needed if they are to be asked to make the efforts which will undoubtedly accompany the implementation of the far-reaching reforms which the common transport policy will entail in most countries.

II. The proposal for a Council regulation concerning the fixing of rates for international goods transport by rail (Part V of the proposals)

Explanatory memorandum

18. Point 1: The concept of a market economy as the basis of the proposal is approved.

It is regrettable that the Commission is only working on the basis of the three-year action programme it proposed in 1973, and despite Parliament's request, has not sought to define the ultimate objectives of the common transport policy, which would make it possible to see the current proposals in better perspective; the few remarks made under point 9 of the introduction are not sufficient.

19. Point 2: The principle of the management of transport undertakings on commercial lines and of independent profitability is approved, as is the principle of the flexible adaptation of rates to costs and market conditions.

20. Point 3: The Commission's desire to avoid 'too sudden a break' with the present tariff system and therefore to proceed in stages is to be welcomed. However, it is important to consider whether the restriction of these measures to international transport may not cause an equally 'sudden break', i.e. between the national and international transport markets.

The wording used by the Commission is therefore inadequate in that it refers only to 'reserving' the extension of this scheme to internal markets. It is in fact essential to develop a practical concept for this extension, so as to avoid the disadvantages which may arise during the transitional period as a result of the discrepancy between national and international price systems.

21. Point 4: The Commission requires of the railway companies neither more nor less than separate cost accounting and profit and loss accounts for their international transport services. It rightly calls for a balance to be attained between costs and receipts for these services. However, there are certain dangers here: firstly, the close economic interrelationship between international and internal goods transport by rail is ignored; secondly, the extremely difficult problem, mentioned above, of the breakdown of general costs is complicated by the fact that an internal balance can also be achieved over and above the international transport sector. Free rate-fixing in international transport and the introduction of through international tariffs might tend to reduce international transport rates. The balance should therefore be that required by the Commission, i.e. between costs and receipts.

22. Points 5 and 6: The aims which are proposed in conformity with the regulation already adopted by the Council - greater commercial freedom for the railways and attaining a financial balance - are to be welcomed.

23. Point 7: Since national frontiers are considered as the beginning of a new fare stage in the calculation of rail tariffs, international tariffs rise sharply in relation to domestic tariffs. This greatly increases the economic significance of national frontiers, since this system affects all freight like a variable customs duty. The railways have so far hesitated to apply the existing ECSC transport system to other operations. Where heavy freight is concerned, this question is, however, just as important for the common markets as it is for ECSC freight. The railways simply fear the loss of income which will result from through, as opposed to cumulative, tariffs.

In fact, the Commission's calculations could be correct: the railways may, in their own interests, introduce the through tariffs which market theory recommends, if they can use them as a means of competing with the other forms of transport (above all the inland waterways).

24. Point 8: The Commission envisages the railways in future negotiating international tariffs in a form of joint system. These will only be reference tariffs, without binding force, and the railways and their customers may agree on different rates for individual transport operations. The regulation can leave open the question as to which railway will be responsible for agreeing a tariff with a customer and how the receipts will be shared among the railways involved, since the latter are to be allowed commercial freedom and they have sufficient means of cooperation at their disposal. At all events, the difficulties which could arise from this situation indicate that an arbitration procedure will be required.

25. Point 9: The ECSC through international tariffs form a basic part of the existing common transport policy and also of the organization of the coal and steel markets. Even though the railways have always objected to the imposition of these tariffs, for reasons which seem to them justifiable, the revision of the basic agreement must be approached with extreme care so as not to destroy an essential part of the ECSC common market without replacing it with a better system.

The recitals¹

26. Recital 1: No amendments proposed.

27. Recital 2: In line with Parliament's proposals², compulsory tariffs fixed by the state should not suddenly be replaced by tariffs freely fixed by the railways without allowing the state the possibility of intervening in times of crisis. The following should therefore be added to the second paragraph of the proposal:

'except in an obvious crisis situation or in the circumstances provided for in Regulation No. 1191/69'.

28. Recital 3: The division of the price system into an international and national system is only acceptable as a temporary solution. This should be laid down in the recitals in a form that is binding on the Council by adding to Recital 3 that in a second stage the concept of this regulation is to be extended to cover transport within the Member States.

However, as is the case with international transport, the progress made towards harmonization must be taken into account.

29. Recital 4: No amendments proposed.

30. Recital 5: To make this paragraph clearer, the following should be added to the second sentence:

'this obligation does not exclude the possibility of medium-term cross-subsidization within the international transport sector'.

31. Recital 6: In line with the comments on Recital 2, the following should be added to this recital:

'and to the occurrence of an obvious crisis situation'.

32. Recital 7: This could also contain the proposed additions to Recitals 2 and 6.

33. Recital 8: 'will' should be replaced by 'should' since the recitals can specify certain objectives, but it cannot make predictions. The second half of the sentence should be amended to read as follows:

'in a sector of activity in which, in view of the long-term increase in long-distance transport in Europe, this objective is most likely to be achieved'.

¹ For the purposes of this analysis, the recitals have been numbered from 1 to 13.

² Doc. 215/74

34. Recital 9: An addition could be made to the effect that the organization of the freight markets also renders the establishment of through international tariffs a desirable aim:

'whereas, in addition, through tariffs will help to reduce the economic significance of national frontiers and so to improve trade between the Member States as called for in the European Treaties'.

35. Recitals 10-13: No amendments proposed.

The articles

36. Article 1:

Since there appear to be very few railways involved in international transport other than those mentioned, and since most of the smaller railway undertakings have agreements on through tariffs with the large state railways, the regulation should cover practically all international transport operations of the Member States, despite the limitations implied by the list in Article 1.

37. Article 2:

Reference is made to Article 9(1) of the Council Decision 75/327/EEC which reads:

'Within the framework of general policy on prices and taking into account both national and Community rules on transport rates and conditions, railway undertakings shall determine their own rates with the aim of achieving optimum financial results and financial balance'.

38. Article 1 of Regulation (EEC) No. 1191/69, referred to in Article 2(3) of the proposed regulation, reads:

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.

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 ...'

These provisions do not seem likely to ensure protection for the proposed commercial rate-fixing system for the railways in times of crisis.

As the European Parliament proposes, the transition to complete price freedom should not be made without a 'safety net'. It has already been pointed out that it would probably be best for safeguards to be incorporated in, or after, Article 2(2), possibly as follows:

'In the event of an obvious crisis situation, compulsory rail tariffs may be fixed'.

Your committee would like to leave open the question of who declares a situation to be a crisis situation and who then fixes the compulsory tariffs that may then become necessary. An appropriate procedure should be laid down in a set of implementing provisions. The machinery for establishing cooperation between the Commission, the Council and the Member States must be activated as quickly as possible, and the system for monitoring the market must also play an important role in identifying a crisis situation.

The Commission has stated that it approves in principle Parliament's proposal on crisis legislation. However, it intends to submit a regulation concerning crisis measures for all forms of transport, which will cover not only price policy, but also policy on capacity and other aspects of the common transport policy. The Commission therefore considers it unnecessary to extend Article 2, as Parliament has proposed.

Your committee would nevertheless prefer to adhere to its proposal, since it has not yet seen the Commission's proposal for comprehensive crisis legislation, and it is impossible to foresee whether this proposal will be submitted in time for the Council to discuss it along with the current regulation. If not, then your committee feels that the Council should make the proposed amendment to Article 2. If a comprehensive regulation to deal with crisis situations is adopted at a later date, the proposed new second subparagraph of Article 2(2) can obviously be dropped.

Furthermore, your committee feels that the wording of Article 2, as proposed by the Commission, is not sufficient to prevent unfair competition. As regards prices, unfair competition can arise when transport undertakings harm their competitors by charging prices which do not cover the additional cost to them of the transport operation concerned. When the competitor has thus been priced out of the market, prices can be increased even further ('cut-throat competition'). The Commission has stated that it is currently making enquiries as to how Community law could be extended to include rules against unfair competition which would also cover price competition. Your committee hopes that these rules against unfair competition will enter into

force at the same time as the regulations on the system of reference tariffs for the transport sector. If not, the rules relating to price competition between transport undertakings should be incorporated in the regulation on reference tariffs.

Along with the precautionary measures to deal with crisis situations, such rules against unfair competition would make it easier for many of the parties concerned to accept a more liberal tariff system.

39. Paragraph 4 of Article 8 of Decision 75/327/EEC referred to in Article 2(4) reads: 'The railway undertakings must provide the State with the necessary data to enable a detailed assessment to be made of the financial results....' Your committee has nothing to add to this.

40. The railways themselves, however, proposed that Article 2(2) and (4) be deleted.¹

Their reasons for this are that the stipulation of a balance between receipts and costs does not fall within the scope of a regulation on tariffs. The corresponding provisions on road transport (Article 4 of Part VII of the package) only require this balance for the published reference tariffs and not for the tariffs actually charged. In addition, they claim that the need to attain a balance is a natural consequence of Decision 75/327/EEC, which approaches the whole problem in a more flexible way.

However, the railways' objection cannot be upheld. A balance between receipts and costs in the international rail transport sector is particularly important precisely because price freedom is to be granted only to this form of transport. Cross-subsidization between international transport, with its free rate-fixing, and national transport, with its compulsory state-fixed tariffs, would be undesirable.

The reference to the fact that there is no corresponding provision in the proposals concerning road transport also carried no weight, since every road transport undertaking, as an independent economic unit, must strive to balance receipts and costs to avoid bankruptcy, whereas the application of such a provision to the railways, which, as state undertakings, can count on the state to balance their losses, is fully justified. (Losses incurred by inland waterway shipping combines can also be balanced.)

¹ The nine railway administrations of the European Communities:
'Opinion on the communication from the Commission to the Council on the operation of the markets in surface goods transport within the Community', 8.12.1975

These provisions do not seem likely to ensure protection for the proposed commercial rate-fixing system for the railways in times of crisis.

As the European Parliament proposes, the transition to complete price freedom should not be made without a 'safety net'. It has already been pointed out that it would probably be best for safeguards to be incorporated in, or after, Article 2(2), possibly as follows:

'In the event of an obvious crisis situation, compulsory rail tariffs may be fixed'.

Your committee would like to leave open the question of who declares a situation to be a crisis situation and who then fixes the compulsory tariffs that may then become necessary. An appropriate procedure should be laid down in a set of implementing provisions. The machinery for establishing cooperation between the Commission, the Council and the Member States must be activated as quickly as possible, and the system for monitoring the market must also play an important role in identifying a crisis situation.

The Commission has stated that it approves in principle Parliament's proposal on crisis legislation. However, it intends to submit a regulation concerning crisis measures for all forms of transport, which will cover not only price policy, but also policy on capacity and other aspects of the common transport policy. The Commission therefore considers it unnecessary to extend Article 2, as Parliament has proposed.

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'Opinion on the communication from the Commission to the Council on the operation of the markets in surface goods transport within the Community', 8.12.1975

41. Article 3:

The removal from national legislation of provisions which are incompatible with the Commission's proposal must be effected with extreme caution. In granting the railways free rate-fixing, the Member States must retain the necessary legal powers to revert to a system of state-imposed tariffs if the Council declares a state of crisis.

Article 3 should therefore be amended or extended accordingly.

42. Article 4:

As the railways rightly point out in their opinion, there is a difference between the wording of Article 4(1) and that used in point 7 of the explanatory memorandum. Whereas the latter proposes that through international tariffs should be introduced wherever justified by the interests of the carrier or of the market situation, Article 4(1) seems to imply that through tariffs must be introduced in all cases, and that the market situation and the interests of the railways must only be 'taken into account'.

The text should therefore be reworded as follows:

'1. The transport of goods between Member States shall be controlled by a system of through reference tariffs set up by the railways for all transport services where the market situation and the interests of the railway undertakings justify such a system.

Article 4(2): No comment.

Article 4(3) does not make it clear what criteria, according to which the tariffs may be differentiated, contribute to their reference function. For example, are bracket tariffs excluded? This paragraph must be worded more clearly.

43. Article 5:

No comment.

44. Article 6:

No comment.

45. Article 7:

This article provides for an arbitration procedure to be used when the railway administrations are themselves unable to reach agreement during negotiations on the establishment of through tariffs. In their above-

mentioned opinion, the railways call for the whole of Article 7 to be deleted on the grounds that an arbitration procedure is superfluous, since if negotiations fail, the interests of the two railways, referred to in Article 4, are evidently not sufficient for the difficulties to be overcome and a through tariff is not therefore required. They deny that this would create a situation where there was no tariff at all, since in the absence of a through tariff, the fixed national tariffs can always be applied.

However, it must be said that for the reasons outlined above, it is in the interests of the Community as a whole to establish as many through tariffs as possible, since this will reduce the economic significance of national frontiers and encourage trade between the Community countries.

Discussions could therefore be held on the possibility of giving the Commission a right of initiative in this matter, or at least a right to take this if requested by one of the interested parties (not only the railways but possibly also a customer). Otherwise a stalemate situation might often be reached, in which the railway administrations concerned could not agree on a tariff, but with neither of them willing to institute the Commission's arbitration procedure through fear that the Commission might fix the tariff at the level desired by the other administration. In any case, the railways should not be obliged to act contrary to their commercial interests.

The procedure laid down in Article 7(3) for the second stage of the arbitration procedure seems rather cumbersome. It is debatable whether the Council should deal with such matters of day-to-day Community administration.

46. Article 8:

This article requires the railways to provide the Commission and the Member States with information.

In their opinion, the railways doubt the usefulness of such a far-reaching obligation to provide information. They propose a less complicated procedure, in which the railways would submit only the reference tariffs (which are published anyway). Information on the tariffs actually in force would only be supplied if they were outside the limits of any bracket tariffs, or if they differed from the published fixed prices by more than 25%.

This proposal seems acceptable, but Articles 8(2) makes provision for the Commission to establish a standard outline for the submission of this information. If the purely administrative work involved proves too complicated, the Commission could consider the railways' proposals when drawing up this outline. At all events, every unnecessary increase in bureaucracy and in the accumulation of meaningless statistics should be avoided.

47. Articles 9, 10 and 11:

No comment.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Letter from the chairman of the committee to Mr J. Evans, chairman of the Committee on Regional Policy, Regional Planning and Transport

24 June 1976

Dear Mr Evans.

At its meeting of 24 June 1976, the Committee on Economic and Monetary Affairs considered the second group of proposals¹ contained in the series of eight proposals on the operation of the markets in surface goods transport within the Community (Doc. 324/75).

In the main, these proposals are designed to facilitate the progressive introduction of a common goods transport market based on a market economy.

Aware that the common transport policy can make a decisive contribution to the economic integration of the Community, the Committee on Economic and Monetary Affairs approved these initial progressive measures contemplated by the Commission as regards the establishment of through tariffs in international goods transport by rail and reference tariffs in international goods transport by road. It also recognized the need to set up a system for the observation of these markets at Community level.

However, the committee stressed that there is little point in envisaging a transport market organized as closely as possible on the principles of the market economy unless effective and parallel progress is made in coordinating infrastructure investments and the allocation of costs for the use of infrastructures and, in general, harmonizing the conditions of competition in the social, technical and fiscal fields.

With these reservations, the committee unanimously approved the proposals submitted to it.

Please accept this letter as the committee's opinion on the proposals mentioned above (Doc. 324/75).

(sgd) Arie van der HEK

¹ Doc. 324/75 (I-V-VII and VIII)

Present: Mr van der Hek, chairman; Mr Achenbach, Mr Albertsen, Lord Ardwick, Mr Artzinger, Mr De Broglie, Mr Cifarelli, Mr Cousté, Mr Dykes, Mr Guldberg, Mr Lange, Mr Mitchell (deputizing for Lord Gordon Walker), Mr Mitterdorfer, Mr Normanton and Mr Nyborg.

