

COMMISSION OF THE EUROPEAN COMMUNITIES

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FIFTH BIENNIAL REPORT

on the implementation of Council Decision No 65/271/EEC
of 13 May 1965 on the harmonization of certain provisions
affecting competition in transport by rail, road and inland
waterway

(1 June 1973 - 31 May 1975)

(submitted to the Council by the Commission)

This document constitutes the Fifth Biennial Report on the implementation of Council Decision No 65/271/EEC of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway⁽¹⁾. It has been drawn up in implementation of Article 15 of the above Decision.

It covers the period 1 June 1973 to 31 May 1975.

The greatest step forward during this period was the adoption by the Council of a Decision taken in implementation of Article 8 of the Decision of 13 May 1965 providing for the progressive harmonization of the rules governing financial relations between railway undertakings and the Member States. This Decision, which was supplemented by an amendment to Regulation No 1107/70 on the granting of aid for transport by rail, road and inland waterway, is analyzed in this report (pages 7 and 8). Its implementation will make it possible for long-term action to be taken in the Community to enable the railway undertakings to improve their financial situation and play their full role in the Community transport system.

Section II of the Decision of 13 May 1965 which deals with provisions concerning certain kinds of State intervention has therefore been fully implemented. Some of the measures adopted in implementation of the Articles contained in Section II should undoubtedly be improved and perfected in the light of experience, but it is clear that the objectives laid down by the Council in the Section have been achieved.

Less progress has been made with regard to the other two Sections.

(1) OJ No 88, 24 May 1965, p. 1500

The objectives laid down in Articles 3 and 4 of Section I (Taxation) have been achieved, but not those in Articles 1 and 2 : proposals made by the Commission in this connection are still being examined by the Council.

A large part of Section III (Social provisions) has been implemented by Regulation (EEC) No 543/69 on the harmonization of certain social legislation relating to road transport and Regulation (EEC) no 1463/70 on the introduction of recording equipment in road transport. The harmonization of social legislation, however, has still to be extended to other forms of transport, and other provisions are yet to be adopted in respect of road transport.

Much has still to be done before the Decision of 13 May 1965 is fully implemented. Taking into account the complexity of the problems involved and the enlargement of the Community during the period in question, the Fifth Biennial Report is positive in its conclusions.

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Situation as at 1 June 1975

SECTION I

Taxation

1. Article 1 (a) - Abolition of double taxation on motor vehicles

The Council did not, during the reference period, resume examination of the proposal for a Council Regulation on the abolition of double taxation on motor vehicles in the field of international transport.

The comments made in the Fourth Biennial Report are still valid in that there is a general tendency on the part of delegations of the Member States to solve the problem in question, at least provisionally, by changing the national taxation systems for commercial vehicles.

2. Article 1 (b) - Duty-free admission of fuel contained in the fuel tanks of commercial motor vehicles

The Council Directive of 19 July 1968⁽¹⁾ imposes a minimal limit of 50 litres of fuel for duty-free admission. In an Order of 12 October 1973 the French Government decided to allow duty-free importation of 100 litres of fuel. Since then only Germany has respected the limit of 50 litres. As it was found that the changes in the taxes on fuel oil resulted in a concentration of the various national taxes around the Community average in contrast to the situation on 1 February 1969, the Commission, in implementation of the above Directive, presented to the Council a proposal for a Directive⁽²⁾ amending the above Directive by raising the limit to

(1) OJ L 175, 23 July 1968, p. 15

(2) OJ C 104, 13 September 1974, p. 96

100 litres. The European Parliament⁽¹⁾ and the Economic and Social Committee⁽²⁾ approved this proposal.

At its meeting on 11 December 1974 the Council discussed this matter. As no agreement was reached it agreed to include the item on the agenda for its next meeting on transport.

3. Article 1 (c) - Duty-free admission of fuel contained in the fuel tanks of inland waterway vessels

The comments made in the Fourth Biennial Report are still valid in that the absence of Community provisions on this subject does not present any difficulties, since the importation of fuel contained in the fuel tanks of vessels is not subject to taxation in any of the Member States except under certain special conditions.

4. Article 2 - Adoption of a uniform basis for the calculation of tax on motor vehicles

The proposal for the first Directive concerning changes to the national taxation systems for commercial vehicles, which meets the requirements of this Article, is still being examined by the relevant Council departments. The methods to be used for the calculation of the marginal cost of using road infrastructures, which leave the Member States a certain amount of choice, have been worked out and approved in principle by the majority of the delegations. They will appear in the Annex to the Directive, of which they are an important and integral part. At the beginning of 1975, those Member States who considered it necessary did a series of calculations on the basis of the above methods and the draft Directive to establish the marginal costs of use and the minimum taxes on vehicles. This work was coordinated at Community level by the Commission, assisted by a Committee of experts. The Council instructed its departments to act on the Directive and its Annex at its next meeting.

(1) OJ C 155, 9 December 1974, p. 77

(2) OJ C 142, 16 November 1974, p. 11

5. Article 2 - Adoption of a uniform basis for the calculation of tax on inland waterway vessels

The comments made in the Third Biennial Report are still valid.

6. Article 3 - Alignment of the taxation systems for the carriage of goods by transport undertakings and carriage of goods by other undertakings for their own requirements

In the Fourth Biennial Report it was stated that the Commission had asked the Belgian Government to abolish unfair treatment of transport undertakings carrying goods for their own requirements which had resulted from certain provisions of the law of 26 February 1969 on taxes equivalent to income tax. It should be added that the Belgian Government said it would remedy the situation once the Council acted on the proposal for a Directive on changes in the national taxation systems for commercial vehicles.

7. Article 4 - Application of value added tax on the carriage of goods
Value added tax on the carriage of goods is charged in nearly all the Member States be it on transport or the finished produce.

SECTION II

Provisions concerning certain kinds of State intervention

1. Articles 5, 6 and 7 - Abolishing or maintaining obligations inherent in the public service concept imposed on transport undertakings, compensation to offset the costs entailed and normalization of accounts of railway undertakings

- A. Application of Council Regulations (EEC) Nos 1191/69 and 1192/69 of 26 June 1969⁽¹⁾ by Member States

Pursuant the above two Regulations the Commission sent a report⁽²⁾ to the Council on 21 February 1973 concerning the implementation of Council Regulation (EEC) No 1191/69, and forwarded another report⁽³⁾ to the latter on 30 October 1972 on the normalization of the accounts of railway undertakings with respect to expenditure on retirement benefits and pensions. These two reports, which are referred to in the Fourth Biennial Report, were examined by the Working Party on Transport and the Commission was asked to draw up a second report on the implementation of the above two Regulations by 30 May 1973. The report was transmitted to the Council on 24 June 1974⁽⁴⁾.

In this report the Commission stated that the action taken by the Member States had consisted largely of maintaining the majority of the obligations in particular for passenger traffic, and granting compensation to offset the costs entailed. It also found that certain procedures for the implementation of the two Regulations should be harmonized further and outlined the steps it intended to take in this connection.

The Working Party on Transport approved these measures and hoped that information on the implementation of the two Regulations would be included in the report to be drawn up under Article 14 of the Council

(1) OJ L 156, 28 June 1969, pp. 1 and 8

(2) Doc. SEC(73) 519 final

(3) Doc. SEC(72) 3510 final

(4) Doc. SEC(74) 2219 final, 18 June 1974

Decision of . 21 May.1975 on the improvement of the financial situation of the railway undertakings ⁽¹⁾ .

The three new Member States have informed the Commission of their arrangements for the implementation of the Regulations and the provisional amounts granted by way of compensation under the two Regulations in question. On 24 April 1975 . . . the Commission issued a favourable opinion on Ireland's arrangements for implementing Regulations Nos 1191/69 and 1192/69. The arrangements envisaged by the United Kingdom and Denmark are being studied.

B. Extention of the field of application of Regulations Nos 1191/69 and 1192/69

As indicated in the Fourth Biennial Report the Commission presented proposals to the Council on 18 and 19 December 1972 extending the field of application of the above Regulations.

However, the Council has not yet reached agreement on these proposals. Articles 5 and 6 of the Decision of 13 May 1965 ⁽²⁾ cover all transport undertakings and Article 7 all railway undertakings.

2. Article 8 - Financial relations between the railway undertakings and Member States

As indicated in the Fourth Biennial Report the Commission, in implementation of this article, presented to the Council on 18 August 1971 a proposal for a Decision concerning the establishment on a sounder footing of the financial situation of railway undertakings and the harmonization of the rules governing financial relations between these undertakings and the Member States ⁽³⁾.

(1) OJ

(2) OJ 88, 24 May 1965, p. 1500/65

(3) OJ C 106, 23 October 1971, p. 42

The Council felt that in view of the major difficulties which had arisen during examination of the proposal, it was necessary to settle a number of important issues in order to establish guidelines for further study of the proposal. On 27 June 1974 the Council adopted a resolution as a result of which it was able to reach agreement in principle on the draft decision at its meeting of 11 December 1974. The decision was formally adopted on 21 May 1975. (2).

The main points of the decision, which applies only to the major national railway undertakings, are set out below : -

- (a) The undertaking must have sufficient independence in respect of management, administration and internal administrative, economic and financial control to achieve financial equilibrium. This means that its assets, budget and accounts must be separated from those of the State. The undertaking must be managed in accordance with business principles. This applies also to their public service activities.
- (b) The undertaking and the State shall cooperate in drawing up a programme of activity aimed at achieving the financial equilibrium of the undertaking. They shall determine the arrangements for borrowing and for financing investment and also prepare a financial plan under which the State may grant the undertaking temporary subsidies to help it to achieve financial equilibrium.
- (c) The State shall decide on the presentation of the budget and annual accounts and the procedure and conditions for their approval.
- (d) The undertaking may be authorized to carry out or to participate directly or indirectly in operations or ventures outside the scope of its normal activities or to make use of other types of transport.

(1) OJ C 111 of 23 September 1974, p. 1

(2)

- (e) The Member State and the Commission shall jointly seek ways of promoting cooperation between the railway undertakings.

In addition to promoting cooperation the Commission will also : -

- (a) prepare a biennial progress report on the financial situation of the railway undertakings;
- (b) draft proposals (to be adopted by the Council by 1 February 1978) to make the accounts and balance sheets of the various railway undertakings mutually comparable and lay down uniform principles for costings;
- (c) prepare a report by 1 January 1979 on the long-term objectives and ways to promote the integration of the railway undertakings at Community level;
- (d) forward detached proposals to the Council by 1 January 1978 on compensation in respect of tariff obligations not covered by Regulation (EEC) No 1191/69;
- (e) forward proposals to the Council by 1 January 1980 on : -
- 1) the timetable and conditions for the railway undertakings to achieve financial equilibrium,
 - 2) possible amendments to Regulations 1191/69 and 1107/70⁽¹⁾ to take account of changes in the concept of public service.

(1) OJ L 130 of 15 June 1970

3. Article 9 - Aid to the transport undertakings

A. The adoption by the Council of the above-mentioned decision on the improvement establishment on a sounder footing of the financial situation of railway undertakings has made it necessary to amend Article 4 of Regulation 1107/70 in order to : -

- (a) provide a legal base for the financial intervention permitted under Articles 5 § 1 and 13 of the above-mentioned Council Decision provided it takes the form of aid;
- (b) apply to them the simplified procedure for informing the Commission, laid down in Article 5 § 2 of Regulation 1107/70.

The Commission forwarded the appropriate proposal for a regulation amending Regulation 1107/70 on 25 November 1974⁽¹⁾. The Economic and Social Committee and the European Parliament delivered favourable opinions on 30 January 1975⁽²⁾ and 21 March 1975⁽³⁾ respectively.

The Council adopted the Regulation on 21 May 1975 at the same time as it adopted the Decision on establishing the financial situation of railway undertakings on a sounder footing.

B. The advisory committee set up under Article 6 of Regulation 1107/70 was enlarged to include delegates from the new Member States.

(1) OJ C 158 of 17 December 1974, p. 19

(2) OJ C 62 of 15 March 1975, p. 27

(3) OJ C 76 of 7 April 1975, p. 43

SECTION III

Provisions on social matters

1. Road Transport

An amendment⁽¹⁾ designed to take account of the wishes of the European Parliament and of the Economic and Social Committee to the proposal for a Council Regulation⁽²⁾ amending Regulation (EEC) No 543/69 concerning certain social legislation relating to road transport (2nd Regulation) was sent to the Council on 1 October 1974.

Under the terms of Article 5 of Regulation (EEC) No 543/69, a draft directive laying down a minimum level of professional training for road passenger transport drivers over 21 years of age was discussed in the Transport Group of the Council on 23 October 1973. The opinion was expressed that the proposal went beyond the requirements of Article 5. For that reason the services of the Commission are now drawing up a new simplified proposal which will be submitted to the Council in due course.

Discussions have taken place with national administrations on the application of Regulation (EEC) No 543/69 and the Commission's Services have heard suggestions for possible amendments to the Regulation which are intended to ensure greater ease of application of its provisions.

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The Commission has also submitted to the Council a proposed regulation which provides for the simultaneous ratification of AETR before the 15 June 1975.

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(1) COM (74) 1529 final

(2) COM (72) 846 final

(3) COM (75) 183 final

Regulation (EEC) No 1463/70 of 20 July 1970 on the introduction of recording equipment in road transport⁽¹⁾ has made it compulsory since 1 January 1975 to install and use recording equipment in vehicles first registered after this date, except for certain categories of vehicle, and in vehicles used for the carriage of dangerous goods irrespective of the date of registration.

Regulation (EEC) No 1787/73 of 25 January 1973 amended the above-mentioned regulation by postponing compulsory installation and use of recording equipment in the new Member States until 1 January 1976.

The Commission staff, in conjunction with national experts, have re-examined the text of Regulation (EEC) No 1463/70 since its adoption in order to establish a uniform, correct interpretation of this text and to take account of practical considerations concerning the construction and use of recording equipment.

When this work has been completed the Commission will propose a number of amendments which will not, however, substantially change the conditions for the manufacture and the technical specifications of the recording equipment as defined at present in the Regulation.

2. Inland Navigation

A draft proposal for a Regulation of the Council harmonizing certain social provisions in the field of Inland Navigation will be submitted soon by the Commission to the Council. This draft proposal covers: working time and rest breaks : duty time at the wheel and at the radar screen : daily rest periods : periodic rest periods : annual leave and public holidays : make-up of crews : and methods of control over the provisions of the regulation.

(1) OJ L 164/1 of 27 July 1970

3. Railways

Contact took place with the two sides of the industry within the framework of ad hoc meetings preparatory to establishing a joint advisory committee. In all, four meetings were held during which discussion took place on a document on working conditions prepared by the railway employers.