

COMMISSION OF THE EUROPEAN COMMUNITIES

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Second Report on the implementation

- of Council Regulation (EEC) No 1191/69 of 26 June 1969, relating to the action by Member States concerning the obligations inherent in the concept of a public service in transports by rail, road and inland waterway, and
- of Council Regulation (EEC) No 1192/69 of 26 June 1969, relating to the normalization of the accounts of railway undertakings

INTRODUCTION

FIRST PART : Regulation (EEC) 1191/69

A. De facto situation

Belgium	3
Germany	6
France	8
Italy	10
Luxembourg	12
Netherlands	14
Denmark, Ireland, United Kingdom	16

B. Catalogue of the main problems

I. General aims of the regulation	17
II. Definition of public service obligations	19
III. Procedure to be followed for the introduction of a request for termination	20
IV. Determination of the economic disadvantages and calculation of compensation	21
V. Possibility of appeal by undertakings against authority decisions	23
VI. Field of application of the regulation	23
Table	25

PART TWO : Regulation (EEC) 1192/69

A. <u>General consideration</u>	26
Table	28
B. <u>Catalogue of the main problems</u>	30
Payments for retirement and other pensions	30

PART THREE : Conclusions

Public service obligations	32
Normalization of accounts	34

INTRODUCTION

On 16 February 1973 the Commission, acting under Article 6(6) of Council Regulation (EEC) 1191/69 of 26 June 1969 (1), sent the Council a report on the present situation in each Member State as regards implementation of the Regulation (2).

On 30 May the Transport Group considered the report and wished the Commission

- to contact the experts from each Member State, with a view to amplifying the information available to it and considering in greater detail the problems of implementing Regulation (EEC) 1191/69;
- to convene government experts to consider how the implementing measures taken by the Member States might be harmonized;
- to draw up a new document on the problems of implementing the Regulation and on the opportunities for making progress on harmonizing the implementing measures?

On 25 October 1972 the Commission had sent the Council a report on the normalization of the accounts of railway undertakings regarding payments in respect of retirement and other pensions (3) as provided for in Annex III B (4) of Council Regulation 1192/69 of 26 June 1969 (4).

(1) OJ L 156 of 28.6.1969, p. 1

(2) Doc. SEC (73) 519 final, 16.2.1973

(3) Doc. SEC (72) 3510 final, 25.10.1972

(4) OJ L 156, 28.6.1969, p. 8

The Transport Group examined this document on 16 October 1973 and asked that the whole question of normalization of accounts should be included in the examination which the Commission was to undertake with the national experts.

In conformity with the wishes thus expressed by the Group, the Commission's departments organized meetings with the experts of the various Member States in which the Regulations in question were already in force and with experts from all the Member States. These exchanges of views made it possible to draw up the present supplementary report which includes, for each regulation :

- i. A complete summary of the de facto situation as it appears in the Member States.
- ii. A review of the chief problems which the application of the Regulation appears to raise at present.
- iii. Certain conclusions and suggestions on which the Council is invited to express an opinion.

In actual fact, it must be stressed that the present report does not establish an exhaustive list of all public service obligations that exist in Member States but is limited to examine those which, in applying Regulation (EEC) 1191/69, have been made subject to a decision as well as the compensations given under Regulation (EEC) No 1192/69 relative to the normalization of accounts.

FIRST PART - REGULATION (EEC° No 1191/69 - PUBLIC SERVICE OBLIGATIONS

A. De facto situation

Belgium

I. IMPLEMENTING PROVISIONS

On 18 February 1970 the Belgian Government submitted to the Commission, for consultation, a draft communication to the Société Nationale des Chemins de fer Belges (SNCB) concerning the implementation of Regulation (EEC) No 1191/69. On 15 May 1970 the Commission expressed a favourable opinion on this draft (1).

This communication has not been the subject of an official publication.

II. SCOPE AND DATE OF EFFECT

The Regulation came into force within the SNCB on 1 January 1971. The Belgian Government thinks that the undertakings providing other forms of transport are engaged mainly in local or regional traffic and that therefore Regulation (EEC) No 1191/69 does not apply to them.

(1) OJ L 126, 10 June 1970, p. 24

III. PARTIAL OR TOTAL TERMINATION OF PUBLIC SERVICE OBLIGATIONS

With a view to reducing public service obligations, the government is at present studying measures for the termination of certain tariff obligations upon the public administrations.

Certain obligations had already been terminated by the closure of non-profitable railway lines before the entry into force of Regulation (EEC) 1191/69. In addition, a law of 1964 had restricted the obligation to transport by prescribing that the transport to be provided must be compatible with the normal technical resources of the railways; from the same date, the turn-round for wagon loading has had to be based on what was feasible for the railway.

Since the introduction of Regulation (EEC) 1191/69, the SNCB has closed certain goods stations. No formal request for the closure of lines has been submitted to date. However, the railways have transferred to road passenger services previously provided on lines of secondary importance.

IV. MAINTENANCE OF OBLIGATIONS WITH COMPENSATION FOR THE RESULTING COSTS AND METHODS OF CALCULATION

For the financial years 1971 and 1972 the Belgian Government has granted the SNCB the amounts of compensation appearing in the following table, which also includes the provisional figures for the financial year 1973.

(Millions of BF)

	1971	1972	1973
<u>1. Passenger traffic</u>			
(a) School season tickets	553,-	766,-	867,-
(b) Social welfare season tickets	1 941,-	2 660,-	3 090,-
(c) Individual rate reductions	381,-	444,-	521,-
(d) Abstention from or postponement of rate increases for full-price tickets (1)	654,-	1 326,-	1 362,-
(f) non-application of the rate increase for travellers from 1 April 1971	98,-	-	-
(g) Loss of income owing to the introduction of VAT without rate increase	234,-	-	-

- (1) In March 1973 the government decided to freeze the prices of the public services. The SNCB intimated that it would refrain from asking for rate increases on condition that this abstention was considered to derive from an obligation imposed by Regulation (EEC) No 1191/69. This proposal was rejected. But the government considered full-rate tickets and season tickets to be special measures and granted compensation in the sense of the Regulation.

2. Goods traffic

(a) Belgium-Luxemburg BL 1 rates

14,5

16,-

20,-

(b) "Flanders-Zeeland" rates

1,-

1,-

1,-

(c) Non-application of a rate increase for individual traffic from 1 April 1971

70,-

-

-

(d) Grants for public administrations

498,-

-

-

(e) Non-application or partial application of the 1972 rate increase

-

138,-

-

(f) supplementary grant for 1973 rate obligations

-

-

799,-

Totals

4 872,5

6 123,-

7 434,-

These compensations relate only to the rate obligations for both passenger and goods traffic.

The method of calculation of compensation for the maintenance of rate obligations is that set out in Article 11(2) of the Regulation, based on the total cost.

Germany

I. IMPLEMENTING PROVISIONS

By its verbal note of 8 October 1970, the German Government informed the Commission that it did not think it necessary to take any special steps to implement Regulation (EEC) No. 1191/69 on German territory, since this regulation was applied directly and since certain implementing procedures, including publication of the decisions of the competent authorities and the procedure for appeal against these decisions, had already been introduced by previous national rules.

II. FIELD OF APPLICATION

Regulation (EEC) No 1191/69 has applied to the Deutsche Bundesbahn (DB) (Federal Railways) since 1 January 1971. Up to the present it has not applied to other transport undertakings.

III. TOTAL OR PARTIAL TERMINATION OF OBLIGATIONS

The German Government has not terminated any public service obligations. On the other hand, before 1 November 1973 it authorized the closure of 3 500 km of lines out of the 6 500 km proposed in a government programme for the years 1967/71.

IV. MAINTENANCE OF OBLIGATIONS WITH COMPENSATION FOR THE RESULTING COSTS AND METHODS OF CALCULATION

For the financial years 1971 and 1972 the German Government granted the Deutsche Bundesbahn for the maintenance of public service obligations, the amounts of compensation figuring in the following table, which also includes the estimated figures for the financial year 1973.

(Millions of DM)

	1971	1972	1973
- maintenance of short-distance traffic	860,-	1 692,-	1 542,-
- maintenance of lines the closure of which has been refused	5,-	3,6	0,7
- compensation for loss of income due to Saarland rates for the transport of ECSC products	20,-	20,6	16,-
Totals	885,-	1 716,2	1 558,7

(a) Short-distance passenger transport

Owing to budgetary and administrative difficulties, the amounts of compensation awarded for 1971 were fixed at a standard rate. As from 1972, the amounts of compensation have been fixed in accordance with Article 10(1) sub para. 2 and Article 12 of Regulation (EEC) No 1191/69. The costs are determined on the basis of the operating costs of the DB. From these costs are deducted the financial grants made by the state on other grounds than that of Regulation (EEC) No 1191/69. No heading is provided for book interest relating to the capital itself. A sum is deducted to allow for the effects which the termination of the obligation to operate and to transport would have on the activity of the DB as a whole (Article 10 para. 2 of Regulation (EEC) No 1191/69). This deduction includes the partial costs for which the DB would remain responsible in the event of the termination of the obligations in question, together with a lump sum representing 5 % of the cost of the passenger traffic by railroad over a short distance corresponding to the value to the undertaking of the maintenance of the traffic (e.g. feeder service to a main line).

(b) Compensation for the maintenance in service of lines which the State has refused to close down

The proportion of the operating costs of such a line (but without book interest) which is not covered by revenue, is repaid to the DB under Articles 10(1) sub para. 2 and 12 of Regulation (EEC) No 1191/69. A deduction of 10 % is then made from the repayment to allow for income from the passenger and goods traffic line towards the main network. The investment costs for the fixed installations are repaid directly by the State in each individual case.

(c) Compensation for loss of income following the introduction of the Saarland rates for the transport of ECSC goods

Compensation is determined by applying Article 11(1) of Regulation (EEC) No 1191/69 on the basis of a comparison of the prices on two hypotheses. The prices used for the comparison are the normal rates and, insofar as they are generally applicable, also the special rates used by the DB for commercial reasons. According to the declarations made by the DB and according to the findings of the inspection services, the tonnages transported are not modified. Owing to the special features of the transport of ECSC goods from and to the Saar a cost comparison under the terms of Article 11 (1) (b) cannot be taken into consideration.

France

I. IMPLEMENTING PROCEDURE

The French Government has made the necessary implementing arrangements in the following texts :

- supplement of 27 January 1971 to the modified agreement of 31 August 1937 annexed to the Decree of the same date reorganizing the conditions for the French Railways approved by Decree of 7 April 1971 (Journal Officiel de la République Française No. 89 of 16 April 1971);
- Decree No 71-1024 of 23 December 1971 approving the new SNCF specifications (Journal Officiel de la République Française No. 299 of 24 December 1971).

The Commission had expressed itself on the drafts for these texts in its opinions of 27 July 1970 (OJ L 189, 25 August 1970, p. 10) and of 29 January 1971 (OJ L 32, 9 February 1971, p. 19).

II. FIELD OF APPLICATION

The Regulation has been applied to the SNCF since 1 January 1971. The new conditions drawn up to implement it no longer require equality of treatment for users either in respect of the provision of transport or

the levying of taxes.

III. TOTAL OR PARTIAL TERMINATION OF PUBLIC SERVICE OBLIGATIONS

The termination of obligations to operate or to transport is governed by Article 18 (4) of the Agreement of 31 August 1937 on the railways modified by the supplement of 27 January 1971. The programme contract concluded in 1969 between the SNCF and the State provided that the State should each year take over responsibility for a definite number of kilometers of line which the SNCF proposes to close. In 1969-72 about 7 500 km of line were closed to slow passenger trains, the greater part of the traffic being transferred to road.

IV. MAINTENANCE OF OBLIGATIONS WITH COMPENSATION FOR THE RESULTING COSTS AND METHODS OF CALCULATION

For the maintenance of public service obligations, the French Government has granted the following sums of compensation to the SNCF for the financial years 1971 and 1972, and proposes to do so for 1973:

in millions of FF

	1971	1972	1973
1. obligatory rate reduction or refusal of permission for increase :			
a) Paris suburbs	39.25	90.00	145.00
b) reduced passenger rates distributed as follows :			
- military personnel	296.00	318.87	356.80
- escorted prisoners	3.20	3.20	3.50
- husbands/wives & children of retired persons	6.80	7.40	8.30
- local groups and Paris transport	82.20	318.16	316.40
- other reduced rates	604.40	448.57	465.00
c) reduced rates for goods and newspapers	38.50	28.00	32.00
2. Maintenance, in the general interest, of deficit lines :			
a) maintenance of deficit slow services	274.664	438.90	695.00
b) lines maintained for defence reasons	3.000	3.00	3.00
Total	1 348.014	1 656.10	2 025.00

The methods of calculation used for compensation are as follows :

- passenger traffic : that of Article 11(2) of the Regulation which takes total costs into account;
- goods traffic : that of Article 11(1) of the Regulation.

Italy

I. IMPLEMENTING PROVISIONS

With a view to the application of the Regulation, the Italian Government on 10 February 1970 submitted to the Commission for consultation two draft Decrees concerning the "Azienda Autonoma delle Ferrovie dello Stato" (FS) (State Railways), on which the Commission expressed a favourable opinion (OJ L 126, 10 June 1970, p. 20) on 15 May 1970.

These two decrees were published in the "Gazzetta ufficiale della Repubblica Italiana" No. 74 and 79 of 24 March and 20 April 1970.

II. FIELD OF APPLICATION

The Italian Government has made use of Article 6(4) of the Regulation in order to defer to 1 January 1972 the application of the Regulation (EEC) No 1191/69 to the FS.

As regards the application of the Regulation to passenger road transport undertakings not engaged mainly in local or regional transport, the Council, on the Commission's proposal, authorized the Italian Government by a decision of 6 November 1972 :

- (a) to defer to 1 January 1972 the date from which compensation is due in the sense of Article 9(2) of the said Regulation;
- (b) to defer to 1 January 1973 the final date envisaged in Article 6(4) 1st sub paragraph of this Regulation by which the competent authorities must make a decision about the requests submitted by undertakings owing to special difficulties resulting from the effects of regional reform on the transport in question.

III. TOTAL OR PARTIAL TERMINATION OF PUBLIC SERVICE OBLIGATIONS

No measure of total or partial termination of public service obligations has been taken by the Italian Government although requests for termination have been submitted by the FS (State Railways).

IV. MAINTENANCE OF OBLIGATIONS WITH COMPENSATION FOR RESULTING COSTS AND METHODS OF CALCULATION

The final figures for the amounts allocated under Regulation (EEC) 1191/69 for the financial year 1972 are not yet available. The estimates for this year and for the financial year 1973 are as follows :

(millions of lire)

	1972	1973
A. The termination or, in the event of maintenance of obligations, compensation for the following:		
(a) the obligation to operate low-traffic lines	58 722,80	72 920,80
(b) the obligation to operate links between the Continent and Sardinia	1 033,90	1 652,70
(c) the obligation to operate small stations running at a heavy loss situated on lines other than those dealt with under heading (a)	335,30	375,80
(d) the obligation to provide transport cost-free or at a reduced rate	84 943,10	92 004,00
	145 035,10	166 953,30

In calculating amounts of compensation, the Italian Government made joint use of the two methods proposed in Article 10, declaring that the method set out in paragraph 1 sub. 1 already contains the correcting factors provided for in paragraph 2, and that the use of the method of paragraph 1 sub para 2 in conjunction with the correcting factor of paragraph 2 leads to fairly equal results.

Luxembourg

I. IMPLEMENTING PROVISIONS

With a view to the implementation of the Regulation, on 14 January 1970 the Luxembourg Government submitted to the Commission for consultation a draft regulation of the Grand Duchy on which the Commission gave a favourable opinion dated 27 February 1970 (OJ L 63, 19 March 1970, p. 14).

The Grand Duchy regulation of 12 April 1970 on the implementation of Regulation (EEC) No. 1191/69 of 26 June 1969, was published on 30 April 1970 in the "Mémorial luxembourgeois".

II. FIELD OF APPLICATION

The Community Regulation has been applied to the Société Nationale des Chemins de Fer Luxembourgeois (CFL) (Luxembourg State Railways) from 1 January 1971; the other forms of transport do not come under the regulation.

III. PARTIAL OR TOTAL TERMINATION OF OBLIGATIONS

Since the entry into force of Regulation (EEC) No 1191/69 no line has been closed, although a transfer to road of the passenger service on a line south of Luxembourg is under study.

IV. MAINTENANCE OF OBLIGATIONS WITH COMPENSATION FOR RESULTING LOSSES AND METHODS OF CALCULATION

On 15 October 1970 the CFL asked for the termination of the obligation to operate the passenger and baggage transport service, and secondarily, if it were decided to maintain the obligation, for compensation for the resulting costs.

The Government Commission for the termination or maintenance of public service obligations, by a decision of 5 February 1971, declared itself incompetent on the grounds that the international passenger traffic also covered by this request derives from agreements concluded with the railways of the adjacent countries and is consequently not controlled by the Luxembourg State, even if the rates for this traffic are subject to authorization. It has, however, left the CFL the option of submitting a fresh request concerned exclusively with internal passenger traffic. The Ministry of Economics, having received an appeal by the CFL against this decision, confirmed the decision on 28 June 1972. The CFL then submitted on 12 April 1973 four requests for termination or compensation relating to the years 1971-74. By a decision of 7 December 1973, the Government Commission decided to maintain the obligation in question and to grant compensation for costs from 1 January 1974, allotting for this year a sum of 364 734 000 francs. On the other hand it refused compensation for the previous years, taking its stand on Article 6 (3) subparagraph 2 of Regulation 1191/69, according to which the right to compensation begins on the day of the decision by the competent authorities and at the earliest on 1 January 1971. In order to offset this lack of compensation, however, the Government is granting to the CFL - in the form of aid for internal passenger traffic - subsidies calculated on the basis of Article 10(1) subpara. 1 of Regulation 1191/69. The sums of money concerned would be as follows :

(millions of Luxembourg francs)

1971	1972	1973
261,-	286,1	320,4

Netherlands

I. IMPLEMENTING PROVISIONS

With a view to the implementation of Council Regulation (EEC) No 1191/69 of the 26 June 1969, on 30 June 1969 the Netherlands Government submitted to the Commission for consultation a draft communication on which the Commission expressed a favourable opinion on 30 July 1969 (OJ L 220, 1 September 1969, p. 20). The communication was published in the "Nederlandse Staatscourant", No 178, 15 September 1969.

II. FIELD OF APPLICATION

The Netherlands are applying the Regulation to the Nederlandse Spoorwegen (N.S.) (Netherlands Railways). The other forms of transport are not affected by the Regulation.

III. TOTAL OR PARTIAL TERMINATION OF PUBLIC SERVICE OBLIGATIONS

Following a request by the NS dated 24 June 1970, the Minister for Transport and Navigable Waterways by a decision of 30 December 1971 terminated the obligation to operate and to provide transport of goods in full wagon-loads with effect from 1 January 1972. He commented, however, that Articles 1, 5 and 59 of the International Convention on the transport of goods by railway (CIM) permit the NS to designate certain routes which will remain subject to the clauses of this Convention, i.e. the NS will agree with the other networks to provide transport on these routes.

As regards traffic in small consignments, the obligations to operate and to transport have been terminated from 1 January 1973. As from this date, this transport service is provided by a subsidiary of the NS effecting some road transports.

IV. MAINTENANCE OF OBLIGATIONS WITH COMPENSATION FOR RESULTING COSTS
AND METHODS OF CALCULATION

On 30 September 1971 the Ministry decided to maintain the obligations to operate and to transport relating to passenger services, in order to guarantee the provision of sufficient transport services, and to provide compensation from 1 January 1972. For the financial year 1972 the Netherlands Government decided to grant the NS compensation amounting to Fl. 230.8 million.

The method of calculation used is that indicated in Article 10(1) second paragraph. The allocation of total costs to the various categories of traffic depends on the degree of use of the installations and the number of trains.

The ratio between passenger and goods trains was determined by comparing the peak passenger-train traffic for one hour with the number of goods trains for a whole day divided by 24. The calculation shows that the railway infrastructure has been designed principally as a function of passenger traffic, and that the goods traffic uses these infrastructures only at off-peak hours.

The Government decision has been the subject of an appeal to the Council of State, the NS contending that the obligation to operate and transport having been terminated for goods, compensation for the maintenance of these obligations as regards passenger traffic should cover all the common costs which would not disappear in the event of the termination of the goods traffic. The Council of State put an interlocutory question to the Court of Justice on the interpretation of Article 10(1) subpara 2 of Regulation 1191/69. By a decree of 27 November 1973, the Court of Justice handed down a decision on this question (1) in the following terms :

(1) Case 36/73

"Article 10 of Regulation No 1191/69 must be interpreted in the sense that, in the event of a partial termination of public service obligations 'the total costs' should be distributed, in the sense of the Regulation, between the transport activities for which these obligations are maintained and for those for which the same obligations are terminated, with due regard to the characteristics and volume of the activities in question. The Regulation does not exclude the application for this purpose of flat-rate distribution procedures".

For the Financial Year 1973 the proposed compensation is 280.5 million florins.

Denmark, Ireland, United Kingdom

In conformity with Articles 133 and 150 of the Act of Accession to the European Economic Community and the European Atomic Energy Community of the new Member States - together with its Annexes VII - Council Regulation (EEC) No 1191/69 does not apply to Ireland and the United Kingdom until 1 January 1974. In these two countries the right to compensation laid down in Article 6 (3) second subparagraph and Article 9 (2) first subparagraph takes effect on this same date.

Since the Treaty of Accession does not contain any special stipulation concerning Denmark, the Regulation becomes applicable on this country on 1 January 1973 and the right to compensation takes effect on the same date.

The Danish and Irish Governments will shortly submit for consultation to the Commission their draft provisions for the application of Regulation (EEC) 1191/69.

In the United Kingdom, British Railways have introduced a request for the termination of public service obligations in June 1973. But, owing to the economic situation, the date of application will no doubt have to be deferred. No implementing measures have as yet been drawn up.

B. Catalogue of the main problems

An examination of the de facto situations described up to now leads to the following reflections :

I. GENERAL AIMS OF THE REGULATION

Article 1(1) of the Regulation envisages the principle of the termination of public service obligations. It appears, however, that the Member States have maintained most of these obligations, as it is permitted by paragraph 2 of this same article, in order to guarantee the provision of adequate transport services, and that the States have compensated the undertakings for the resulting costs.

One Member State only has totally terminated the obligation to operate and to transport in the sector concerned with goods traffic by whole truck-loads.

The action undertaken by certain Member States in the matter of the closure of lines and stations before the entry into force of the Regulation has indeed been continued. Railway undertakings have been authorized to close sections of line and to replace them by road services operated by themselves or by sub-contractors. But the scale of these technical adjustments has been too limited to modify the general tendency to maintain the obligations.

The application of the Regulation should be a permanent operation developing as a function of the requests made by the undertakings and of the profitability of their various kinds of traffic. Other measures of termination of obligations may yet be taken by the Member States. But as things are at present, there is every prospect that the scale of termination of public service obligations will be much smaller than had been foreseen, particularly in respect of passenger traffic.

It seems indeed that in practice governments have sometimes maintained obligations to operate or transport when there were other ways of meeting the requirements. It must therefore be asked whether governments have respected the provisions of Article 1(2) of the Regulation in question, according to which public service obligations may be maintained in so

far as they are indispensable in order to guarantee the provision of adequate transport services. More precisely Article 3(2) states that the provision of adequate transport services is to be assessed in terms of general interest, the possibilities of using other techniques and the prices and conditions which can be offered to users. Thus the reasons for maintenance may be manifold and may result from the exigencies of regional, social or environmental policy; it would, however, be interesting to know what criteria the Member States have used to justify their decisions to maintain obligations. It may also be asked whether in all circumstances the maintenance of the public service obligations has been justified as fully as possible by quantified analyses, and whether, when a choice has had to be made between various techniques, the solution has always been that which entailed the least cost for the collectivity.

The criteria in terms of which the maintenance of a public service obligation must be assessed are notably vague, and it may be asked whether it would not be advisable to try to define them on a common basis.

While not ignoring the importance of these problems, the government experts consulted have adopted a cautious stance. While in general terms they think it would be useful to define the notion of least cost for the collectivity contained in Article 3(1), some of them think it would not be easy to define more precisely the criteria enumerated in Article 3(2), which probably vary from one country to another.

In these conditions the Commission proposed to obtain information from the Member States about the methods and criteria adopted as a basis for decisions taken on the termination or maintenance of public service obligations. With the help of the national experts a comparison could thus be made with a view to determining whether an alignment or a clearer definition of systems is possible.

II. DEFINITION OF PUBLIC SERVICE OBLIGATIONS

The definitions of Article 2 of the Regulation have not given rise to any major difficulties of application. However, two problems are worth mentioning.

The question of whether the obligatory approval of rates constitutes a rate obligation in the sense of Article 2(5) of (EEC) Regulation 1191/69, raised in litigation between the Netherlands' government and the NS, was decided by the Court of Justice in the following terms (1).

"Article 2 (5) of Regulation (EEC) 1191/69 must be interpreted in the sense that a legal obligation of general scope, submitting transport rates to approval by the public authority, cannot be considered as constituting in itself a "rate obligation" in the sense of the Regulation".

In addition, the question has also been raised whether the refusal to increase normal passenger rates constitutes a rate obligation in the sense of Article 2 (5) of the Regulation.

It is necessary, however, to bear in mind that the notion of rate obligation in the Regulation has been deliberately restricted by the Council while awaiting a final solution to be incorporated in the measures implementing Article 8 of the harmonization decision of 13 May 1965 (2). In addition several Member States have solved this problem by way of the obligations to operate and to transport, which do not raise the same difficulties. Lastly, the Member States concerned can always solve this problem by granting an equivalent aid to the railway.

In these conditions and as far as no other arrangements concerning them will have been made, it will be preferable that compensation for such tariff obligations be given by applying Article 3(2) of Regulation (EEC) 1107/70 relative to aids in the transport sphere (3).

(1) Judgement of the Court of Justice - 27.11.1973 - case 36/73

(2) OJ 88 - 24.5.1965, p. 1473/65

(3) OJ L 130 - 15.6.1970, p. 1

III. PROCEDURE TO BE FOLLOWED FOR THE INTRODUCTION OF A REQUEST FOR TERMINATION

According to the text of Article 4, it "shall be for transport undertakings to apply for the termination of any public service obligation" where such obligation entails economic disadvantages for them".

Strictly speaking, this text does not appear to entail an obligation upon undertakings to supply as soon as the prerequisite condition of economic disadvantage is satisfied. It appears rather to indicate that the initiative of applying must be taken by the undertaking.

Only the Dutch text, as now formulated, appears to impose upon the undertaking a formal obligation to apply when there is an economic disadvantage.

For its own account, the Commission considers that the aims of the Regulation will be difficult to achieve if the undertakings are not obliged to apply for termination when a public service obligation entails "economic disadvantages" for them.

But this last concept need not be interpreted narrowly. According to the ruling of the Court already quoted in the interlocutory Netherlands case, the Member States have the right "to take into consideration, when assessing these disadvantages, the general economic situation of a transport undertaking in a longer term view".

It follows that the railway undertakings must themselves weigh the longer term economic disadvantages. It may also be deduced that these economic disadvantages must be assessed in the light of the activities of the undertaking as a whole and among other things take into account the effects which the traffic in question may have on other sectors.

IV. DETERMINATION OF THE ECONOMIC DISADVANTAGES AND CALCULATION OF
COMPENSATION

The Regulation provides for two methods of determining the economic disadvantages of an obligation to operate or to transport (Article 5 (1)) and also two methods of calculating the appropriate amounts of compensation (Article 10).

In order to determine the amount of compensation for the maintenance of certain obligations to operate or to transport in respect of passenger traffic, one Member State applies the method of avoidable costs envisaged in Article 10 (1) subparagraph 1, while others have used the method of total costs envisaged in Article 10 (1) subparagraph 2, sometimes applying to the total costs the correcting factor proposed in Article 10 (2) to allow for the effects which termination of the obligation would have upon the undertakings' activities as a whole.

The different application procedures are certainly justified by the choice offered by the text of the Regulation. One may however wonder whether, in the light of experience, such a diversity still remains desirable.

As regards Article 10(1), it appears from a consultation with government experts that at least two Member States wish to maintain the method of avoidable costs envisaged in paragraph 1. Furthermore, all the experts consider that the criteria for the choice of one or the other of the methods are precise enough. But it is a matter of observation that the application of the texts gives rise to varying interpretations.

The decree of the Court of Justice already quoted has given useful details of the method used for the allocation of costs, envisaged in subparagraph 2. However, the information which the Commission has been able to obtain up to the present from Member States on the methods used is insufficient. The experts have agreed to supply more exact data.

Article 10 (2) which lays down that in determining the compensation to be granted in the event of the maintenance of an obligation, account must be taken of the effects of the termination of the obligation on the undertaking's activities as a whole, appears to apply both to the avoidable costs method and to the distribution of total costs. One may, however, wonder whether the procedure followed by certain Member States whereby this correction factor is applied to the method of calculation based on the total costs in order to reduce, in flat-rate fashion, the amount of these costs, is not in contradiction with the spirit of the approach in Article 10(1) subparagraph 2 which is based on the costs actually borne by the railway undertakings.

It may be emphasized in this connection that in the calculation of compensation for a tariff obligation, the similar correction factor envisaged in Article 11(3) applies only to the method of differential calculation in paragraph 1 of this Article and not to that of paragraph 2 based on the total costs. It appears necessary, however, to encourage a greater degree of harmonization of the methods of calculation used and thus to arrive at comparable results.

V. POSSIBILITY OF APPEAL BY UNDERTAKINGS AGAINST AUTHORITY DECISIONS

The real position varies very much from one Member State to another. This is due mainly to the different legal situations of the railway undertakings, which should be harmonized on the lines of the decision proposed by the Commission on the basis of Article 8 of the Council Decision of 13 May 1965.

The only appeals recorded since the entry into force of the Regulation are those lodged by the NS with the Netherlands Council of State, which was the subject of the interlocutory question put to the Court of Justice, another addressed by the CFL to the Luxembourg Minister of Economics and a third lodged by the FS with the President of the Council in Italy.

VI. FIELD OF APPLICATION OF THE REGULATION

(a) The Regulation is applicable to "rail transport operations" of the national railway undertakings. However, certain Member States interpret this provision as also covering road services operated by railway undertakings, or even ferry services, provided they are covered by the same concession.

This wide interpretation is not in conformity with the terms of the Regulation in question. Undoubtedly Regulation (EEC) 1107/70 on aids makes it possible to grant such compensation for transport not covered by Regulation (EEC) 1191/69 - which leads to the same financial results. But such subsidies granted in implementation of Regulation (EEC) 1107/70 should be the subject of a preliminary and specific notification to the Commission.

This situation, however, would be regularized if the Council adopts the 18 December 1972⁽¹⁾ proposal for a regulation supplementing Regulation (EEC) 1191/69 at present under discussion, which proposes to extend the field of application to certain road transport services provided by the railways. It is the reason why the Commission has not judged, up to now, it necessary to take measures in this respect.

(b) As regards the undertakings providing the other transport services envisaged in paragraph 2 of Article 19 of the Regulation, Italy is applying the Regulation to certain international passenger services by road and is considering as such any transport which crosses the frontier between two administrative regions, whatever the distance covered.

The fact that Italy is the only Member State to apply the Regulation to road transport undertakings could be explained by this divergence of view on the definition of interregional transport. Other members use different criteria, particularly that of distance covered.

In order to avoid distortions in the application of the Regulation a uniform definition of inter-regional transport should be sought.

(1) Doc R/2868/72 (Trans 164) 20.12.1972

FINANCIAL COMPENSATIONS GRANTED BY REASON OF THE MAINTENANCE OF PUBLIC SERVICE OBLIGATIONS
 COUNCIL REGULATION (EEC) 1191/69 OF 26 JUNE 1969

(in millions national currency)

Purpose	Germany			Belgium			France				
	1971	1972	1973 (1)	Purpose	1971	1972	1973 (1)	Purpose	1971	1972	1973 (1)
1. short distance passenger transport	86.-	1692.-	1542.-	1. school season tickets	553.-	807.3	870.-	1. Parisian suburban traffic reductions	39.25	90.-	145.-
2. maintenance of sections	5.-	3.6	0.7	2. social season tickets	1041.-	2827.5	3092.-	2. reduction soldiers and sailors	296.-	318.87	356.80
3. decrease in value on Saar-tariffs	20.-	20.6	16.-	3. ordinary season tickets	428.-	677.9	791.-	3. reduction prisoners under escort	3.20	3.20	3.50
				4. individual reductions	381.-	471.2	540.-	4. reductions for wives & families of retired persons	6.80	7.40	8.30
				5. full price tickets (refusal of tariff increase)	654.-	1613.1	1487.-	5. reductions local authorities and Paris City traffic	82.20	318.16	316.40
				6. ECSC tariffs (2)	410.1	-	-	6. other tariff reductions	604.40	448.57	465.-
				7. Belgian-Luxemburg tariff	14.5	20.8	20.-	7. transport of newspapers	38.5	28.-	32.-
				8. Flanders-Zeeland tariff	1.-	1.-	1.-	8. unprofitable ordinary train service	274.66	438.90	695.-
								9. sections for national defence	3.-	3.-	3.-
	885.-	1716.2	1558.7		4382.6	6418.8	6801.-		1348.01	1656.1	2025.-

(1) previsions
 (2) from 1972 under aids

25 a

Purpose	Italy				Luxembourg				Netherlands			
	1971	1972	1973 (1)	Purpose	1971	1972	1973	1974 (1)	Purpose	1971	1972	1973 (1)
1. Operation of sections with low traffic volumes		58722.8	72920.8	for the years 1971 to 1973 subsidies have been accorded in the form of aids which the responsible government Commission considered outside its scope of reference					passenger traffic application of EEC Regulation 1191/69 carried forward to 1.1.1972			
2. operation of non-profitable facilities on air lines		335.3	375.8									
3. regular service to Sardinia		1033.9	1652.7	1. maintenance of passenger traffic								
4. other mandatory charges (not including postal services)		71296.0	78204.0						freight traffic discontinuance of the public service obligation and according of the subsidy			
5. postal service		13647.0	13800.0									
6. road transport to replace rail transport		217.0	214.4									
7. social tariffs		45719.2	50918.8						1. maintenance of passenger traffic		230.8	280.5
		19971.2	218086.5								230.8	280.5

(1) forecasts

PART TWO : REGULATION (EEC) No 1192/69 ON THE STANDARDIZATION OF ACCOUNTS

A. General consideration

The following table gives the amount of compensation granted by the various Member States under Council Regulation (EEC) 1192/69 of 26 June 1969, on the normalization of the accounts of railway undertakings (1) for the financial years 1971 and 1972 together with the estimates for 1973 and where appropriate for 1974 for the financial years 1971 and 1972. From this table the following facts can be deduced :

1. Among the classes of obligatory normalization (classes I-IV), all the Member States have granted substantial compensation for costs of retirement and other pensions (class III) and also for the costs of crossing facilities (class IV). On the other hand Class I (special indemnities) has been adopted by only two of the Member States and Class II (social expenditure) by three Member States.
2. Classes V - VII have, wherein necessity existed, been abolished by all the Member States before the limiting date of 1 January 1971 proposed by the regulations.
3. Class VIII (war damages) has also been abolished from 1 January 1973. Italy, however, will continue to pay compensation under this heading to the FS for the financial year 1973 in conformity with Article 4(3) subpara 3 which states that the capital and interest burden of loans granted under this head shall be the subject of normalization of accounts until liability ceases.
4. The financial effect of the Classes of optional normalization (IX-XX) has been somewhat reduced. It must be remembered, however, that on 18 August 1971 (2) the Commission presented a proposal for an amendment which envisages either the abolition of these Classes or obligatory compensation for the resulting costs.

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

(2) OJ C 106, 23 October 1971, p. 48

It does not appear necessary to give details of the de facto situation in the various Member States. Moreover this can be seen clearly from the attached table. In addition, the costs for retirement and other pensions (Class III) which constitute by far the most important class, may be ascertained from the "Report on the Normalization of the Accounts of Railway Undertakings as regards Payments in respect of Retirement and Other Pensions" presented by the Commission to the Council on 25 October 1972 (1) in application of Annex III, point B, para 4 of the regulation in question. The most recent figures reported to the Commission since then also appear in the table.

(1) Doc. SEC (72) 3510 final of 25.10.1972

FINANCIAL COMPENSATION RESULTING FROM THE NORMALIZATION OF ACCOUNTS OF RAILWAY UNDERTAKINGS - REGULATION (EEC) No. 1192/69 of THE COUNCIL OF 26 JUNE 1969 - (in millions national currency)

	MEMBER STATES																
	Germany		Belgium		B.Fr.		France		Italy		Luxemburg		Netherlands		F1		
	1971	1972	1971	1972	1973	1974	1971	1972	1971	1972	1971	1972	1971	1972	1971	1973	
I	63.-	113.-	15,2														
II			113.-														
III	1400.-	1608,5	5328.-	6370,6	6973.-	6733.-	2376,2	2552,5	2843.-	5659.-	5082.-	23,6	24,4	28,4			
IV	180.-	275.-	139,3	173,9	182.-	203.-	313.-	303.-	340.-	4086.-	7964.-	13,7	19,6	17,3	117,4	127,2	23,6
V																	
VI																	
VII																	
VIII				15,8	16.-	16.-											
IX																	
X			28,5	34,5	32.-	41.-				4337.-	4338.-	0,2	0,2	0,2			
XI				118,2	126.-	120.-											
XII	4.-	3,4	614,6	700,7	708.-	814.-											
XIII				47,4	50.-	52.-											
XIV																	
XV			589,9	151,6	171.-	169.-						4,8	10,4	10,4			
	1647.-	1999,9	6828,5	8287,6	8724.-	8650.-	2689,2	2855,5	3133.-	14082.-	31482.-	641.-	808,8	852,3	135,9	130,9	150,8

(1) Provisions
(2) 23.7 millions on 1973 budget

Denmark, Ireland and the
United Kingdom

Under Article 150 of the Treaty of Accession and its Annex X, Council Regulation (EEC) No. 1192/69 does not apply to Ireland and the United Kingdom until 1 October 1973. The Treaty makes no special arrangements for Denmark, and the regulation therefore applies to this country from 1 January 1973.

The implementing measures to be taken by these three States are the same as those already given in respect of Regulation (EEC) No. 1191/69.

B. Catalogue of the main problems

I. PAYMENTS FOR RETIREMENT AND OTHER PENSIONS

- (a) In calculating the indemnities due in order to compensate for the costs arising from the fact that the railways have to pay existing pensions entirely and directly, whereas the undertakings providing other forms of transport pay a contribution to an organization depending on the number and salary level of the staff on the books a certain disparity may result from the possibility of determining this compensation by using in conformity with point B (3) different national rules having the same purpose and producing the same result as the direct calculation envisaged under point B 1. Only Germany has used this method. It is difficult to check whether the results obtained are really comparable. However, the German Government points out that this method, which enables it to use as a reference basis the system applied to other public services, is the only suitable method, owing to the fact that normalization concerns only the officials of the DB; the workers are affiliated to the general scheme. The method of comparison with the general scheme would no doubt give a higher gross normalization sum but this would then have to be reduced at a standard rate to take into account the advantages which the DB can derive from existence of the Staff Regulation Manual for its official. The method of calculation would thus be more complicated without leading to appreciably different results.
- (b) A second disparity arises from the fact that in determining the compensation to be paid in respect of the financial burdens and benefits resulting from the special arrangements for railway staff specified in point A.2, Member States may chose between the method specified in point B.2 (a), which takes account of direct or indirect benefits which the undertaking enjoys by comparison with the

other modes of transport by reason of the fact that the undertaking bears certain specific burdens (point B.2 a) or the method specified in point B.2 (b), which takes no account of these benefits and fixes the compensation without any deduction. Thus if a burden entails direct or indirect benefits for the undertaking, it does not appear justifiable to pay compensation for the full figure of this burden. This consideration should lead to the abolition of the principle of calculation laid down in point B.2 (b) but at the present moment only two Member States use the other method which includes a correction factor.

When the Council adopted Regulation (EEC) 1192/69, and more particularly Annex III, it stated that it would decide what action to take on the basis of the Commission's report and at the latest when adopting measures for the implementation of Article 8 of the Council Decision of 13 May 1965.

- (c) Certain Member States have independent special pension funds operated by the railway companies which sometimes receive directly from the State equalization subsidies which are not included in the amounts of compensation notified to the Commission. Such payments increase the financial burden of the State in respect of retirement and pension expenditure.

Even if the State payments to independent special pension funds do not strictly speaking come within the field of application of Regulation (EEC) 1192/69, it nonetheless appears desirable that these sums should be known in order that a complete picture of the situation may be obtained.

PART THREE : CONCLUSIONS

An examination of the present report on the implementation of Regulations (EEC) 1191/69 and 1192/69, leads the Commission to conclude that the action taken by the Member States in the matter of public service obligations and normalization of the accounts of railway undertakings constitutes a first step towards regularization and clarification of the financial situation of the railway undertakings.

However, the Commission considers that in order to make further progress and more fully to attain the aims of these regulations, certain implementing procedures should be further harmonized.

For this purpose the Commission thinks the following action advisable:

Public service obligations

I. GENERAL AIMS OF THE REGULATION

With the help of experts from the Member States, the Commission will make a comparative examination of the methods and criteria adopted by the Member States as a basis for the decisions on the termination or maintenance of public service obligations, in order to ascertain whether it is possible to harmonize the criteria for determining the "least cost to the collectivity" and "the provision of adequate transport services". If appropriate, it will submit the necessary proposals to the Council.

II. PROCEDURE TO BE FOLLOWED

It is for the Member States to ensure that undertakings apply for the termination of any public service obligation which entails economic disadvantages for them. The disadvantages must be assessed in conformity with the criteria defined by the Court of Justice in its Decree of 27 November 1973 (Case 36/73), the disadvantages must be considered over the medium term and in respect of the operations of the undertaking as a whole.

III. CALCULATION OF COMPENSATION

1. The Commission will try to obtain more detailed information from Member States on the methods of allocation of total cost which they use to calculate the amount of compensation for major parts of an undertaking's activities (Article 10 (1) subpara 2).

It will then consider with the aid from the Member States experts whether it is possible to harmonize these methods, and if appropriate will submit whatever proposals it considers necessary to the Council.

2. For the reasons stated in the catalogue of the main problems, the Commission thinks that when compensation for the maintenance of a public service obligation is calculated on the basis of the total costs (Article 10(1) subpara 2), there is no need to take into account the effects which the termination of this obligation would have on the activities of the undertaking as a whole (Article 10 (2)).

The Commission plans to present the necessary proposals to this effect.

IV. FIELD OF APPLICATION OF THE REGULATION

1. The fact that several Member States, when implementing Regulation (EEC) 1191/69, grant compensation for road transport provided by railway undertakings is not in conformity with the provisions of this Regulation.

Such compensation could be, should the occasion arise, lodged for transports not covered by Regulation (EEC) 1191/69 by applying the provisions of Regulation (EEC) 1107/70 on aids. But in such cases, these subsidies should be first notified. This matter could, however, be regulated by the adoption of the 18 December 1972 (1) proposed regulation supplementing Council Regulation (EEC) 1191/69 of 26 June 1969.

(1) Doc: R/2868/72 (Trans 164) - 20.12.1972

It is the reason why the Commission has not judged it necessary, until now, to intervene in this respect.

However, if no modification of this situation arises within a reasonable time, the Commission will not be able to indefinitely refrain to take adequate measures.

2. The application of the Regulation to road transport undertakings shows that the concept of transport "not having a local and regional character" (Article 19(2)) is not interpreted uniformly by all the Member States.

With the aid of Member State experts the Commission will consider the possibility of harmonizing these criteria of application of the Regulation.

NORMALIZATION OF ACCOUNTS

Annex III point B 4 of Council Regulation (EEC) 1192/69 of 26 June 1969 provides that, on the basis of a report submitted by the Commission on the application of the principles of normalization of payments in respect of retirement and other pensions, the Council should decide what action to undertake in the matter at the latest when adopting measures for the implementation of Article 8 of the Council Decision of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterways.

The Commission's report was submitted to the Council on 25 October 1972 and the proposal on the implementation of Article 8 is at present being discussed by the Council.

The choice left to the Member States between three essentially different methods leads to non-comparable results which the Commission cannot consider as satisfactory in the light of the general aim of harmonization pursued by the provisions in question.

The government experts consulted were unable to agree on any alignment of the methods used. In these circumstances the Commission intends to examine the question further and to present proposals in due course.

In conclusion, the Commission reserves the right to make all useful proposals and to take, should the occasion arise, the necessary action to ensure the respect of community provisions.

On the other hand, it will draw up a new general report on the application of these regulations in the Member States and include in it data relative to new Member States to whom the Regulations were not yet applicable during the period covered by the present document.