

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 907 final

Brussels, 9 January 1981

Proposal for a

COUNCIL REGULATION (EEC)

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

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(submitted to the Council by the Commission)

COM(80) 907 final

EXPLANATORY MEMORANDUM

1. Article 15(2) of the Council Decision of 20 May 1975 on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and the States<sup>1</sup> lays down that the Commission "shall submit proposals to the Council concerning in particular the adaptation of Regulations (EEC) No 1191/69 and (EEC) No 1107/70 in order, to take account, within the framework of the links which exist between transport and other economic and social sectors, of the obligations inherent in the concept of a public service to which railways could be subject".
2. The first paragraph of Article 15 lays down that the Commission shall submit proposals to fix the time limit and conditions for achieving the financial balance of the railway undertakings. Such a proposal was submitted recently to the Council. This proposal is the second part of the action proposed for implementing Article 15 of the 1975 Decision.
3. Quite apart from the Commission's obligation to submit proposals in this field, the present situation demands that action be taken. It is true that on the basis of Council Regulation (EEC) No 1191/69 on action by Member States concerning the obligations inherent in the concept of a public service<sup>2</sup> and Council Regulation (EEC) No 1107/70 on aids granted in the sector of transport by rail, road and inland waterway<sup>3</sup> the Member States were enabled to subject to public service obligations a huge sector of railway activity, mainly in the passenger carriage sector. The way in which such obligations are imposed may vary from one Member State to another, but for the sake of the Community as a whole and so as to preserve the harmonization of the rules of competition, they must not be imposed in such a way as to create distortions or discriminations between the Member States. Furthermore, it must be pointed out that the prime aim of Regulation (EEC) No 1191/69 is to terminate these obligations, while their maintenance is envisaged only in so far as they are considered indispensable for ensuring adequate transport services.

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<sup>1</sup> OJ L 152 of 12.6.1975, p. 3

<sup>2</sup> OJ L 156 of 28.6.1969, p. 1

<sup>3</sup> OJ L 130 of 15.6.1970, p. 1

It is precisely this provision of adequate transport services which must be assessed, taking account of the situation as regards the scarcity and cost of public resources.

This is why - as was stated in the two biennial reports<sup>1</sup> on the economic and financial development of the railways' situation - the Commission proposes to spell out in greater detail the criteria for terminating or maintaining public service obligations.

4. HOWEVER, the Commission does not propose to amend existing legislation; moreover, the consultations it has had with the Advisory Committee on Transport, with government and railway experts and with the trade unions have confirmed that the regulations now in force may be regarded, overall, as satisfactory.

The addition of criteria for maintaining or terminating public service obligations would therefore seem to suffice at the present time.

5. Such criteria would place us in a better position to assess decisions on maintaining or terminating a public service obligation, since they would take into account not only transport requirements but also those linked to the implementation of certain economic and social policies. The way in which an analysis of the various solutions in question should be made is set out in an Annex to Regulation (EEC) No 1191/69.
6. This Annex is divided into two parts. The first provides a yardstick by which the provision of adequate transport services may be measured, while the second lays down the principles according to which the least cost to the general public may, as far as possible, be determined.
7. The second paragraph of Article 3 of the abovementioned Regulation lays down that the adequacy of transport services shall be assessed having regard to the public interest, the possibility of using other forms of transport and the transport rates and conditions which can be quoted to users.

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<sup>1</sup>COM(77) 295 final and COM(79) 447 final

The essential purpose of the Annex is to list the main factors which may be regarded as constituting public interest, i.e. the interest of the user and interests linked to regional policy, energy, employment and the environment.

8. The second part of the Annex lays down guidelines for determining the least cost to the general public. These may be summed up as follows :

8.1. Where possible, an analysis must be made of the costs and advantages of the various solutions providing adequate transport services.

8.2. The competent authorities may choose their own methods of analysis, but it must be possible to sum up the findings in outline form

8.3. This outline distinguishes between transport and non-transport factors and makes it possible to take into account factors which are quantifiable (whether in cash terms or not) and those which are not quantifiable.

8.4. The analysis is thus divided into two phases, the first being an accounting phase, while the second is more qualitative in nature. Both phases must be of equal importance.

9. Comparison of the various approaches makes it possible to identify the one which is the most advantageous for the general public.

10. It must be added that while this proposal is made within the framework of the 1975 Decision, which concerns national railway undertakings, it is also applicable to the various transport modes referred to in Regulation (EEC) No. 1191/69.

So far, this Regulation has not been applied in this field, but, if necessary, these guidelines should be applied there.

11. This proposal for an amendment follows others already submitted, namely :

(i) the aim of the proposal made in 1972<sup>1</sup> was to achieve greater harmonization by including within the scope of Regulation (EEC) No. 1191/69 transport undertakings and services the situation of which is comparable to that already covered by the Regulation, i.e. in the main, non-national railway undertakings, substitute services and some road and inland waterway transports. This proposal is still before the Council;

(ii) the proposal made in 1978<sup>2</sup> that tariff obligations should include the obligation of undertakings to observe a general tariff level which is contrary to their commercial interests.

This proposal was discussed in the Council working Party on Transport Questions which asked that it be taken into account in the proposals which the Commission is required to make pursuant to Article 15(1)(2) of the 1975 Decision, restricting it to the railways and making it optional. This request was met and the proposal on financial balance provided for compensation to the railways for tariff obligations; the 1978 proposal was therefore withdrawn when the proposal on financial balance was adopted.

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<sup>1</sup>COM(72) 1516 final

<sup>2</sup>OJ C 139 of 14.6.1978

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 75 and 94 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

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

Whereas it is necessary to adapt Council Regulation (EEC) No 1191/69<sup>1</sup>; whereas, in the context of existing links between transport and other economic and social sectors, such adaptation must, in particular, take account of the obligations inherent in the concept of a public service to which railway undertakings could be subject, as set out in Article 15(2) of Council Decision 75/327/EEC of 20 May 1975 on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States<sup>2</sup>;

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<sup>1</sup>OJ No L 156, 28.6.1969, p. 1.

<sup>2</sup>OJ No L 152, 12.6.1975, p. 3.

Whereas, to this end, the scope of Article 3 of the said Regulation must be clearly defined by adopting criteria under which the competent authorities or the Member States, in their decisions maintaining, in whole or in part, a public service obligation, must assess whether there is more than one way of ensuring the provision of adequate transport services and, if this is so, which involves the least cost to the general public,

HAS ADOPTED THIS REGULATION :

#### Article 1

Regulation (EEC) No 1191/69 is hereby amended as follows:

1. Article 3(2) is replaced by the following:

"2. In making the decisions referred to in paragraph 1, the competent" "authorities of the Member States, taking account of the criteria" "set out in the Annex, shall assess whether there is more than one" "way of ensuring, under similar conditions, the provision of adequate" "transport services and shall choose the public service obligation" "involving the least cost to the general public."

2. The Annex to the present Regulation is added thereto.

#### Article 2

This Regulation shall enter into force on 1 July 1981.

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

Done at Brussels

For the Council,

The President

Criteria for assessing whether there is more than one way of ensuring, under similar conditions, the provision of adequate transport services and for choosing a public service obligation involving the least cost to the general public

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Initially, the competent authority of the Member State shall assess, having regard to the case in question, the level of adequacy of the transport services and shall subsequently choose from among the forms of transport which meet this standard the one which involves the least cost to the general public.

#### I. PROVISION OF ADEQUATE TRANSPORT SERVICES

The adequacy of transport services shall be assessed in the light of :

- (i) the public interest;
- (ii) the possibility of having recourse to other forms of transport and the ability of such forms to meet the transport needs under consideration;
- (iii) the transport rates and conditions which can be quoted to users.

##### 1. The public interest

This assessment must take account of the following factors, which are the main components of public interest :

- 1.1. Public interest from the user's point of view : mainly, average speed, reliability, safety and comfort.
- 1.2. Public interest from the viewpoint of the public at large shall be assessed in particular in terms of regional policy, employment, energy and the environment. Where applicable, the following factors shall be examined in these fields :

### Energy

- (i) total energy consumption in relation to the efficiency of the forms of transport under consideration;
- (ii) the suitability of all the types of energy considered whatever forms of transport are used;
- (iii) the effect of the use of a specific type of energy on the balance of payments;
- (iv) the degree of energy dependence.

### Regional policy

- (i) regional planning (including town planning);
- (ii) impact on regional growth (including the promotion of rural tourism);
- (iii) effect on regional employment (including seasonal employment);
- (iv) influence on the siting of industrial or commercial activities;
- (v) links with other economic centres;
- (vi) depopulation.

### Employment

Relation between the provision of adequate transport services and the level of employment in specific economic activities and areas.

### Environment

- (i) consumption of space;
- (ii) pollution;
- (iii) nuisances
- (iv) ecological changes;
- (v) congestion (including waiting time at crossings);
- (vi) safety of non-users.

## 2. Possibilities of using other forms of transport

The possibility of using other forms of transport and the ability of such forms to meet the transport needs under consideration must be examined in the light of the following factors :

- (i) existence of forms of transport already in operation, and the expense of obtaining provision of adequate transport services;
- (ii) - availability, where the forms of transport have not yet been set up :
  - of undertakings willing to provide the services;
  - of appropriate transport infrastructure;
  - of appropriate equipment;
  - of qualified staff;
- (iv) rate of carownership of the population concerned;
- (v) social and demographic structure of the population concerned.

## 3. Transport rates and conditions

The transport rates and conditions which must be taken into account in the assessment are the rates and conditions offered to the user and laid down on the basis of operating conditions and the market situation, taking no account of any compensation for public service obligations.

## II. THE LEAST COST TO THE GENERAL PUBLIC

1. The form of transport chosen must, while providing adequate transport services, be the least costly and the most advantageous for the general public.
2. To assess with maximum accuracy the least cost and the greatest benefit to the general public, an analysis will have to be made of the costs and advantages of each form of transport considered. The choice of the method of analysis (cost/benefit analysis, multi-criteria analysis) shall be left to the competent authority of the Member State and determined by the nature of the study to be carried out.

3. The cost/benefit analysis shall take account of national transport plans. The costs and benefits shall be classified as "transport", i.e. coming under the management of the undertakings in question, and "non-transport", i.e. falling within the competence of the public authorities. These factors may be quantifiable (in terms of money or not) or non-quantifiable.
4. The analysis should be divided into two phases : an accounting phase which would include an analysis of all the factors which can be expressed in terms of money and an economic analysis which would include the factors which cannot be quantified or which can be quantified and the factors which cannot be expressed in terms of money. Equal importance shall be given to both phases.
5. The following outline shows the factors to be taken into account in the cost/benefit analysis of the alternatives, namely :
  - (i) maintenance of the form of transport considered;
  - (ii) setting up of a new form of transport;
  - (iii) maintenance of the form of transport considered with adaptations;
  - (iv) termination of the form of transport in question without replacement.

OUTLINE FOR COST/BENEFIT ANALYSIS  
FOR EACH FORM OF TRANSPORT CONSIDERED

COSTS

BENEFITS

Internal  
(Transport)

Operating costs

- movement costs\*
  - equipment costs\*
  - running and infrastructure costs\*
- \* including amortization and renewal

Capital costs

- investment costs (setting up or adaptation of the form of transport in question)
- investment costs in the light of the future use of resources now committed (adaptation or termination of alternatives)

Specific to the traffic in question

- financial yield
- speed
- adherence to timetable
- comfort
- safety
- accessibility
- rate offered to the user

Specific to the network

- influence of the maintenance of the form of transport in question on running costs and the traffic of the network as a whole

External  
(Non-transport)

Consideration of factors relating to :

- regional policy
- energy
- employment
- environment