

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 637 final

Brussels, 5 December 1977

Proposal for a
COUNCIL REGULATION (EEC)

amending Regulation (EEC) No 1192/69 on common rules for
the normalization of the accounts of railway undertakings

(submitted to the Council by the Commission)

COM(77) 637 final

EXPLANATORY MEMORANDUM

GENERAL

1. On 26 June 1969 the Council adopted Regulation (EEC) N° 1192/69 on common rules for the normalization of the accounts of railway undertakings¹. This Regulation applies to the major national railway undertakings. In the words of Article 1(2) of the Regulation, any financial compensation resulting from the normalization of accounts shall be effected from 1 January 1971 and in accordance with the common procedures set out in the Regulation.

2. Article 3(2) of the Regulation provides : "The Commission shall, by 1. January 1973 at the latest, submit to the Council the measures it considers to be necessary for the purpose of extending the application of this Regulation to other undertakings effecting carriage by rail".

Pursuant to these provisions the Commission, on 20 December 1972, sent to the Council a proposal for a Regulation providing for the extension of that Regulation to subsidiary railway undertakings². Generally favourable opinions have been delivered by the European Parliament³ and by the Economic and Social Committee⁴, the latter nevertheless considering that the scope of the Regulation should be extended even further. So far the Council has been unable to reach agreement on the proposal, examination of which has been suspended for some years.

It is true that Article 3(1)(a) of Council Regulation (EEC) N° 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway⁵ allows Member States to grant aid to railways not covered by Regulation

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

(2) Doc. R/2889/72 (TRANS 167)

(3) OJ C 37 of 4 June 1973

(4) OJ C 86 of 16 October 1973

(5) OJ L 130 of 15 June 1970, p. 1

(EEC) N° 1192/69. But, pursuant to Article 5(1) of Regulation (EEC) N° 1107/70, these aids are subject to the procedure provided for in Article 93(3) of the EEC Treaty and the Commission must therefore receive notification in time to be able to make its comments.

Railway undertakings other than national undertakings may nevertheless be subject to laws, regulations or administrative provisions laid down by public authorities and likely to result in burdens or benefits for the railways not unlike the situations covered by Regulation (EEC) N° 1192/69. Generally speaking, the activities of such undertakings will only in exceptional cases be such as to affect trade between the Member States at the present stage of integration of the transport market, particularly those which effect international transport operations. It should therefore be possible to limit the extension of Regulation (EEC) N° 1192/69 to exceptional cases.

3. Article 4 of the Regulation provides for 15 classes of burden or benefit to be normalized :

- four classes in respect of which financial compensation is obligatory (Classes I to IV);
- three classes which existed when the Regulation came into force and were to be abolished by 1 January 1971 at the latest (Classes V to VII);
- one class which existed when the Regulation came into force and was to be abolished by 1 January 1973 at the latest, in respect of which the financial burdens were to be the subject of normalization until liability ceased (Class VIII);
- seven classes in respect of which financial compensation is optional (Classes IX to XV).

The three classes in the second group should have been abolished by 1 January 1971. However, it has been found that, because of exceptional economic and social circumstances, burdens of this type could/placed upon railway undertakings, particularly the obligation to recruit staff surplus to the requirements of the undertaking (Class V) and the delay with regard to renewals and maintenance (Class VII). Therefore, both to achieve the objective of financial equilibrium and to limit the imposition of such obligations, compensation for current burdens must be made obligatory.

The last paragraph of Article 4(4) provides : "A final settlement of the position as regards Classes IX to XV shall be adopted by the Council by not later than the time when measures are adopted 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 waterway. In the meantime, Member States shall endeavour to remove the causes of those financial burdens or benefits."¹

This refers to the following seven classes of financial burden to which railway undertakings are subject :

- (a) the obligation to retain staff surplus to the requirements of the undertaking (Class IX);
- (b) measures benefiting staff, in recognition of certain services rendered to their country, imposed on railway undertakings by the State on terms different from those applicable to other transport undertakings (Class X);

(1) OJ 88 of 24 May 1965, p. 1500

- (c) allowances payable to staff imposed on railway undertakings and not on other transport undertakings (Class XI);
- (d) expenditure of a social character incurred by railway undertakings, in respect in particular of medical treatment, different from that which they would bear if they had to contribute on the same basis as other transport undertakings (Class XII);
- (e) financial burdens devolving upon railway undertakings in consequence of their being required by the State to keep in operation works or other establishments in circumstances inconsistent with operation on a commercial basis (Class XIII);
- (f) conditions imposed in respect of the placing of public contracts for works and supplies (Class XIV);
- (g) capital and interest burdens borne as a result of lack of normalization in the past (Class XV).

In view of the foregoing, on 28 July 1971 the Commission sent to the Council a proposal for a Regulation amending Regulation (EEC) N° 1192/69¹ at the same time as the proposal for a Council Decision on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States. The proposal provided for the removal or compulsory compensation of financial burdens under Classes IX, X, XI, XII and XV, the eventual elimination of Class XIII and the compulsory normalization of Class XIV.

(1) OJ C 106 of 23 June 1971, p. 48

On 20 May 1975 the Council adopted Decision N° 75/327/EEC on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States¹, but did not examine the proposal for a Regulation amending Regulation (EEC) N° 1192/69, which is still pending.

4. Finally, paragraph B(4) of Annex III to Regulation (EEC) N° 1192/69, concerning financial burdens in respect of retirement and pension payments, provides that, on the basis of a report to be submitted by the Commission not later than the time when measures are adopted for the implementation of Article 8 of the Council Decision of 13 May 1965, the Council is to decide what action is to be taken in this respect.

The Commission submitted its report on 25 October 1972² but the Council has not yet decided what action to take.

5. Independently of the fact that, as a result, the Council has not yet initiated the measures provided for in various provisions of Regulation (EEC) N° 1192/69 the following should be noted :

- a number of classes in respect of which normalization is optional have never been used by any of the Member States;
- in some cases the conditions under which the classes were devised have changed considerably;
- the entry into force of Council Decision N° 75/327/EEC on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States has brought in new elements which must be taken into account;

(1) OJ L 152 of 12 June 1975, p. 3

(2) Doc. SEC(72)3510 final

- the problems still outstanding must be solved if the railways are to be able to achieve the financial balance which is the objective of the Decision of 20 May 1975 referred to above.

Accordingly, it would appear appropriate to replace, by a new proposal, the proposals presented by the Commission on 28 July 1971 and 20 December 1972, to modify Regulation (EEC) N° 1192/69.

DETAILS

6. Insofar as the classes subject to normalization referred to in Article 4(4) of Regulation (EEC) N° 1192/69 are in fact imposed upon railway undertakings, they should be made the object of compensation.

It would appear therefore desirable if the existence of these classes of normalization and the need to maintain them were to be examined jointly by the railways and the Member States concerned, using the consultation procedure laid down for the purpose of establishing the financial programmes and business plans provided for in Articles 13 and 4(1) respectively of the Decision of 20 May 1975. If it is jointly decided that such burdens should be maintained, compensation in accordance with the Community method must be arranged. This procedure is in accordance with the provisions of Article 7(1) of Regulation (EEC) N° 1192/69.

7. However, Class XIV, Conditions imposed in respect of the placing of public contracts for works and supplies, which has never been applied, can surely cover only cases of discrimination on grounds of nationality which might be imposed on railways and which Community provisions already prohibit. It hardly seems fitting that such a situation could be grounds for compensation, which would amount to supporting a given supplier. This class and the corresponding Annex can be abolished.

8. As regards Class XV, Capital and interest burdens borne as a result of lack of normalization in the past, it should be noted that the scope of Article 5 of the Decision of 20 May 1975 is wider in that it covers the repayment of all previous loans, regardless of their origin. Although Annex XV to Regulation (EEC) N° 1192/69 refers to both "the capital and interest burden of loans contracted with....." and "advances received from" (the competent authorities), this difference has no practical meaning since these advances are a subcategory either of loans or financial contributions, which are in any case covered by Article 5(1) of the Decision.

It may be concluded that it is the Member States responsibility to carry out all the operations covered by Annex XV to Regulation (EEC) N° 1192/69 on the basis of Article 5 of the Decision of 20 May 1975.

In fact, in the context of the business plans which Member States must adopt on the basis of proposals by the railways, pursuant to Articles 3 and 4(1) of the Decision of 20 May 1975, the State is required to settle, inter alia, "the procedures under which repayments, consolidations and conversion of previous loans are to be effected" (Article 5(1) of the Decision).

This possibility of duplication should therefore be eliminated by abolishing Class XV and the corresponding Annex.

9. Annex III to Regulation (EEC) N° 1192/69 covering Class III, Payments in respect of retirement and pensions borne by railway undertakings on terms different from those applicable to other transport undertakings, stipulates, in paragraph B(4) : "Each Member State shall inform the Commission by 31 December 1970 of the estimated amount of compensation it intends to pay to its railway undertaking pursuant to the foregoing principles. The Commission shall submit a report on this subject by 31 December 1971. On the basis of that report and by not later than the time when measures are adopted 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 waterway, the Council shall decide what action should be taken in this respect."

The Commission presented the report on 25 October 1972. It was examined by the Council but no decision has yet been taken. It is clear that leaving the choice between three different methods of calculating compensation to the discretion of the Member States results in certain disparities : it is possible to apply a given method as long as it gives the same results as those arrived at by using the other calculating method; but it is difficult to prove such concordance. Under these circumstances, and in view of the objective of achieving financial balance in the railways and harmonizing the conditions of competition an attempt should be made to align the various methods now used.

Quite independently of the preceding arguments and in order to arrive at a precise assessment of the overall financial burdens borne by the Member States to the advantage of their railways, the Commission must be notified of the existence of any independent pension funds for railway personnel and of the grants paid into them.

10. For all reasons abovementioned, the Commission has decided to replace the proposals of 28 July 1971 and 20 December 1972 by the present proposal.

In accordance with Article 75 of the EEC Treaty the opinion of the European Parliament and the Economic and Social Committee are obligatory.

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amending Regulation (EEC) No 1192/69 on common rules
for the normalization of the accounts of railway undertakings

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 Council Decision of 13 May 1965 on the harmonisation
of certain provisions affecting competition in transport by rail, road and
inland waterway (65/271/EEC)¹,

Having regard to Council Regulation (EEC) No 1192/69 of 26 June 1969 on common
rules for the normalization of railway undertakings⁽²⁾, and in particular Articles
3(2), 4(4) and point B.4 of Annex III,

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 one of the objectives of the common transport policy is to eliminate
disparities which arise by reason of the imposition of financial burdens on,
or the grant of benefits to, railway undertakings by public authorities, and
which are consequently liable to cause substantial distortion in the conditions
of competition;

Whereas a first step in this field has been realized by the adoption of
Regulation (EEC) No 1192/69,

(1) OJ 88 of 24 May 1965, p. 1500

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

Whereas Article 3(2) of Council Regulation (EEC) No 1192/69 provides for its scope to be extended to cover railway undertakings other than the major national undertakings listed in paragraph 1, as amended by Chapter IV, Transport, paragraph 2, of Annex I to the Act concerning the Conditions of Accession and the Adjustments to the Treaties; and whereas at the present stage of integration of the transport market it is worthwhile extending the scope of that Regulation only to cover railway undertakings which participate substantially in international transport; and whereas it is the responsibility of those undertakings, under a procedure to be laid down by the governments, to show that they meet the aforementioned conditions;

Whereas the classes of financial burdens and benefits listed in Article 4 (2) of Regulation (EEC) No 1192/69 should have been abolished by 1 January 1971 at the latest; whereas the opportunity should nevertheless be given to Member States, where exceptional economic and social circumstances so require, to impose on the railway undertakings certain of the measures covered by these classes; and whereas it will therefore be necessary to make compensation in respect of such measures;

Whereas, in respect of the classes of financial burdens and benefits listed in Article 4(4) of Regulation (EEC) No 1192/69, the Council is to adopt a final settlement by the time that measures are adopted for the implementation of Article 8 of Decision 65/271/EEC on the improvement of the situation of railway undertakings and the harmonization of rules governing financial relations between such undertakings and States⁽³⁾; and whereas the Council adopted such measures by its Decision 75/327/EEC of 20 May 1975; whereas certain of these categories of burdens and benefits are no longer justified and should therefore be abolished; whereas others should be made subject to an examination under the procedures of consultation between Member States and the railway undertakings provided for under Article 4 of the Decision of 20 May 1975 and where appropriate should be the subject of adequate compensation;

Whereas paragraph B(4) of Annex III to Council Regulation (EEC) No 1192/69 provides that the Commission shall, by 31 December 1971, submit a report on the estimated amount of compensation which, in application of the principles adopted in the said Annex, each Member State intends to pay to

(3) OJ No L 152 of 12 June 1975, p. 3.

its railway undertakings; and whereas, on the basis of that report and by not later than the time when measures are adopted for the implementation of Article 8 of Decision 65/271/EEC, the Council shall decide what action to take; and whereas the Commission transmitted its report to the Council on 25 October 1972 and the measures for the implementation of Article 8 of the Decision were adopted by the Council in its Decision 75/327/EEC; and whereas it is therefore desirable to arrive at a closer harmonization of the principles of calculation concerned;

HAS ADOPTED THIS REGULATION :

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Article 1

Paragraph 2 of Article 3 of Council Regulation (EEC) No 1192/69 of 26 June 1969 is amended to read as follows:

"2. This Regulation shall also apply to railway undertakings other than those listed in paragraph 1 to the extent that, under a procedure fixed by the State, it can be shown that these undertakings bear financial burdens covered by one of the classes listed in Article 4 and that international transport constitutes a substantial part of their activities."

Article 2

Paragraph 2 of Article 4 of Council Regulation (EEC) No 1192/69 of 26 June 1969 is amended to read as follows:

"2. The following classes of burden or benefit, which may however be imposed on railway undertakings only where exceptional economic and social circumstances so require, shall be normalized within the meaning of this Regulation:

- (a) the obligation upon railway undertakings alone to recruit staff surplus to their requirements (Class V)
- (b) backdated increases in wages and salaries imposed by the Government of a Member State, except where such increases are made for the sole purpose of bringing the wages and salaries paid by railway undertakings into line with the wages and salaries paid elsewhere in the transport sector (Class VI)
- (c) delay imposed by the competent authorities with regard to renewals and maintenance (Class VII)."

Article 3

Paragraph 4 of Article 4 of Regulation (EEC) No 1192/69 is hereby amended to read as follows:

"4. The following classes of financial burden or benefit shall be the subject of normalization of accounts within the meaning of this Regulation if it is decided to maintain them after examination under the consultation and co-operation procedures laid down for the establishment of business plans and financial programmes in Articles 4(1) and 13 respectively 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 :

(3) OJ No L 152 of 12 June 1975, p. 3.

- (a) the obligation to retain staff surplus to the requirements of the undertaking (Class IX);
- (b) measures benefiting staff, in recognition of certain services rendered to their country, imposed on railway undertakings by the State on terms different from those applicable to other transport undertakings (Class X);
- (c) allowances payable to staff imposed on railway undertakings and not on other transport undertakings (Class XI);
- (d) expenditure of a social character incurred by railway undertakings, in respect in particular of medical treatment, different from that which they would bear if they had to contribute on the same basis as other transport undertakings (Class XII);
- (e) financial burdens devolving upon railway undertakings in consequence of their being required by the State to keep in operation works or other establishments in circumstances inconsistent with operation on a commercial basis (Class XIII)."

Article 4

Annexes XIV and XV of Council Regulation (EEC) N° 1192/69 are hereby repealed.
Annex III of the same Regulation is hereby replaced by the following :

"Annex III

Class III : Payments in respect of retirement and pensions borne by
railway undertakings on terms different from those applicable
to other transport undertakings

A. Scope

This class covers cases where, pursuant to some provision laid down by law, regulation or administrative action, a railway undertaking is required to make payments in respect of retirement and other pensions for its staff and other persons entitled on terms different from those applicable to other transport undertakings.

The difference in terms resulting in the difference in payments may arise by reason of :

1. the fact that the railways must pay pensions as they fall due directly and in full while other transport undertakings pay to an appropriate body a contribution proportionate to the number of their active staff and to the level of salaries and wages of that staff; or
2. the fact that railway staff receive the benefit of certain special provisions to which other modes of transport are not subject and which result in additional financial burdens on or in benefits for railways.

" B. Principles of calculation

1. With regard to payments covered by A (1), compensation shall be equal to the difference between the financial burden which the undertaking bears and that which it would bear if, with the same number of persons actively employed and receiving the same remuneration, they were subject either to the scheme under the general law (general social security scheme or compulsory supplementary schemes) or to the scheme applicable to other modes of transport. In cases where such schemes offer no basis for comparison, the retirement and pensions scheme of a representative transport undertaking shall be taken as a basis.

The financial burden borne by the railway undertaking shall be ascertained directly from its accounts.

The financial burden which the undertaking would bear, if, with the same number of persons actively employed and receiving the same remuneration, it were subject to the scheme taken as a basis of comparison, shall be determined by applying the provisions laid down by law, regulation or administrative action governing such scheme.

2. With regard to the payments covered by A(2) compensation shall be equal to the difference between :
 - the financial burden which the undertaking bears or would bear in order to cover the totality of the payments in respect of the retirement and pensions scheme to which it is subject, taking into account, where appropriate, any direct or indirect benefits which the undertaking enjoys by comparison with other modes of transport by reason of the application of that scheme, and
 - the financial burden which would result if the scheme taken as a basis of comparison were applied.

3. To enable the Commission to evaluate the amount of the compensation calculated in accordance with the principles set out in paragraphs 1 and 2, the Member States shall notify the Commission of any sums they pay into independent pension funds from which the staff of the railway undertakings may benefit. "

Article 5

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

Done at Brussels,

For the Council,

The President

