

# COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 11 March 1991

Amendment to the 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 public service in transport by  
rail, road and inland navigation

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Amendment to the proposal for a

COUNCIL DIRECTIVE

on the development of Community railways

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(presented by the Commission pursuant to Article 149(3)  
of the EEC-Treaty)

Amendment to the 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 public service in transport by  
rail, road and inland navigation

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Explanatory memorandum

1. On 1 December 1989 the Commission sent to the Council a 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 public service in transport by rail, road and inland navigation<sup>(1)</sup>.

The objective of that proposal is to adapt the existing Community rules concerning public service obligations to the new railway legislation as proposed to the Council together with this proposal.

2. At its plenary session of 13 December 1990 the Parliament approved the Commission's proposal, subject to a number of amendments.
3. There are good reasons to accept amendments No.s 49, 52 and 54, as they provide more clarity to the text of the proposed Regulation.
4. The other amendments are unacceptable:

- No. 48 - as it is misplaced in the whereas concerned;
- No. 50 - as it gives to Article 1(2) of Regulation (EEC) No. 1191/69 a meaning totally opposing its present Article 1(1) which neither the Commission nor the Parliament wanted to modify;
- No. 51 - as it deletes the requirement that no cross-subsidies are allowed between public service and commercial sector;
- No. 53 - as this proposal is not the place to lay down provisions on the jurisdiction of the Community Court of Justice.

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(1) O.J. No. C34, of 14.02.1990, p. 11

Amendment to the 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 public service in transport by  
rail, road and inland navigation

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(presented by the Commission to the Council pursuant  
to Article 149(3) of the EEC Treaty)

The Commission's proposal for a Council Regulation amending Regulation  
(EEC) No. 1191/69<sup>(1)</sup>, is hereby amended as follows:

1. Article 1(1), where replacing Article 1(2) of (EEC) Regulation No.  
1191/69, is replaced by:

"2. In order to ensure appropriate rail transport on specific  
routes or in specific areas, taking into account social and  
environmental factors, Member States may provide for the  
establishment or continuation of public services on the basis  
of contracts to be negotiated with undertakings in accordance  
with Article 14."

2. In Article 1(4), where laying down the new text for Article 14(4)  
of (EEC) Regulation No. 1191/69, the words "for a reasonable  
period" are replaced by:

"for a period of at most one year"

3. To Article 1(4), where laying down the new text for Article 14(6)  
of (EEC) Regulation No. 1191/69, the following words are added, in  
the end:

"or until the service is finally discontinued".

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(1) O.J. No. C 34, of 14.02.1990, p. 11

Amendment to the proposal for a

COUNCIL DIRECTIVE

on the development of Community railways

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Explanatory memorandum

1. On 1 December 1989 the Commission sent to the Council a proposal for a Directive on the development of the Community railways<sup>(1)</sup>. The objective of that proposed Directive is to establish the ground rules for the creation of a Community railway system adapted to the needs of a single transport market.
2. At its plenary session of 13 December 1990 the Parliament approved the Commission's proposal, subject to a number of amendments.
3. There are good reasons to accept amendments No. 1, No. 3, No. 6, No. 7, No. 10 and No. 11 (on recitals) as well as amendments No. 18, No. 100, No. 21 (1st part)<sup>(2)</sup>, No. 22, No. 23, No. 26, No. 27 (1st part)<sup>(3)</sup>, No. 28 and No. 39 (on Articles). In fact they either provide further explanation on the purposes pursued or bring more clarity to the Directive's provisions.
4. The other amendments are unacceptable by the following reasons:
  - Amendments No.s 2, 12, 88, 13, 17, 20, 21 (2nd part), 24, 27 (2nd part), 29, 31, 32, 33, 34, 36, 37, 99, 44, 45, 46 and 47: they are either redundant or misplaced in the context of this proposal.
  - Amendments No.s 4, 8 and 43: the separation between infrastructure and transport operations, has to mean at least an effective managerial separation; this is an essential prerequisite for a sound accounting separation, preventing any cross-subsidies to, or from, other activities of the undertaking.

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(1) O.J. No. C 34, of 14.02.1990, p. 8

(2) until "No. 2598/70".

(3) until "its establishment".

- Amendments No.s 5 and 25: having in mind that railway facilities may be owned and/or operated by independent undertakings, having in each case a well defined relation with the State (as will be the case of the Channel Tunnel), the related financial responsibility cannot be simply assigned to the State by the Community legislation.
  
- Amendments No.s 9, 101 and 35: all infrastructure operators and railway undertakings operating (in) the national railway infrastructure should be bound by the Community legislation, either being publicly or being privately owned.
  
- Amendments No.s 14, 15, 16, 30, 40, 41 and 42: they are either against the essential guidelines of the proposal or against well grounded Community principles (notably against the subsidiarity principle).

Amendment to the proposal for a  
**COUNCIL DIRECTIVE**  
on the development of Community railways

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(presented by the Commission to the Council pursuant  
to Article 149(3) of the EEC Treaty)

The Commission's proposal for a Council Directive on the development of Community railways<sup>(1)</sup>, is hereby amended as follows:

1. The following recital is added (becoming the 2nd recital), after the former 1st recital:

"Whereas the expansion of the railway system is a prerequisite for the development of combined transport and greater competition between various modes of transport;"

2. To the former 3rd recital (becoming the 4th recital) the following words are added, after "practical experience":

" ... and whereas the position of railways in the single market must be based on the same conditions as other modes of transport;"

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(1) O.J. No. C 34, of 14.02.1990, p. 8



3. The following recitals are added (becoming 6th and 7th recitals), after the former 4th recital:

"Whereas the separation between infrastructure and the provision of services, achieved by boosting competition in railway service management in terms of comfort and the number of users, makes it necessary that the Member States should be assigned responsibility for the development and maintenance of railway infrastructure;

Whereas access to railway infrastructure must be made available to the railway undertakings of the other Member States;"

4. The following recital is added (becoming the 13th recital), after the former 9th recital:

"Whereas decisions must be harmonised among the Member States to prevent the risk of differing developments;"

5. To the former 10th recital (becoming 14th recital) the following words are added in the end:

"and adapting to market needs"

6. To Article 2(1)(a) the following indent is added, after the 4th indent:

"- Deutsche Reichsbahn (DR)"

7. To Article 2(1)(b) the following words are added, after "services between them":

"A public railway undertaking of a third State may belong to an international grouping, if an agreement concluded between this State and the Community provides accordingly. The Commission shall open negotiations, in particular with Austria, Switzerland and Yugoslavia, aiming at the conclusion of such agreements of the basis of mutual interest and reciprocal trade."

8. To Article 2(1) a new sub-paragraph, (d), is added:

"d) "railway infrastructure" is as defined in part A, Annex I of Regulation (EEC) No. 2598/70."

9. To Article 2(2) the words "urban and suburban" are replaced by:

"urban, suburban and regional"

10. Article 3 is replaced by:

### "Article 3

Member States shall lay down the financial and other requirements, including the procedure for authorisation, that a railway undertaking or an international grouping has to meet for its establishment and for having access to the infrastructure on their respective territories. These provisions are designed to guarantee that all transport undertakings shall have access to all modes of transport in accordance with the principle of equal treatment of and fair competition between modes of transport."

11. Article 5 is replaced by:

"Article 5

The infrastructure operators shall be responsible for the operation of the rail transport and the management systems. Security standards and provisions governing the allocation of infrastructure capacity shall be determined in accordance with the provisions of the Member States and under their control."

12. Article 6 is replaced by:

"Article 6

1. Any railway undertaking established in accordance with Article 3 shall be granted on equitable conditions access rights to (one word deleted) railway infrastructure in the Member State of its establishment.
2. International groupings of undertakings shall be granted access and transit rights in the Member States of establishment of their constituent undertakings, as well as transit rights in other Member States, as required to operate international services on links between the Member States where their constituent undertakings are established."

13. Articles 7 to 14 are replaced by former Articles 6 to 13.

14. To Article 8(2) - former Article 7(2) - the following indent is added, after the 8th one:

"- establish their multiannual business plans and their operational and investment budgets."

15. Article 15 is added, with the text of former Article 14.



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