

# European Communities

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EUROPEAN PARLIAMENT

## Working Documents

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### Report

drawn up on behalf of the Committee on Regional Policy and Transport

on the proposal from the Commission of the European Communities to the  
Council (Doc. 407/74) for a Regulation modifying Regulation (EEC)

No. 1107/70 relative to aids granted in the field of transport by railway, road and  
inland waterways

Rapporteur: Mr. W. SCHWABE

PE 39.371/fin.



By letter dated 4 December 1974 the President of the Council of the European Communities requested the opinion of the European Parliament, pursuant to Articles 75 and 94 of the EEC Treaty, on the proposal from the Commission of the European Communities to the Council for a regulation modifying Regulation (EEC) No 1107/70 relative to aids granted in the field of transport by railway, road and inland waterways (Doc. 407/74).

At its sitting of 9 December 1974 the European Parliament referred the proposal to the Committee on Regional Policy and Transport as the committee responsible and to the Committee on Economic and Monetary Affairs for its opinion.

The Committee on Regional Policy and Transport appointed Mr SCHWABE rapporteur on 18 December 1974. It considered the proposal at its meetings of 23 January 1975 and 11 February 1975 when the motion for a resolution and the explanatory statement were adopted unanimously with one abstention.

The following were present; Mr James Hill, chairman; Mr Seefeld, vice-chairman; Mr Schwabe, rapporteur; Mr De Clercq, Mr Delmotte, Mr Fabbrini, Mr Mursch, Mr Nyborg, Mr Pêtre and Mr Zeller.

The opinion of the Committee on Economic and Monetary Affairs is attached.

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A

The Committee on Regional Policy and Transport hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a regulation modifying Regulation (EEC) No 1107/70 relative to aids granted in the field of transport by railway, road and inland waterways,

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council<sup>1</sup>;
  - having been consulted by the Council (Doc. 407/74);
  - having regard to the report of the Committee on Regional Policy and Transport and the opinion of the Committee on Economic and Monetary Affairs (Doc. 512 /74);
  - recalling that, by virtue of Article 8 of a Council Decision of 13 May 1965<sup>2</sup>, provision has been made for the progressive harmonization of the provisions governing the financial relations between railway undertakings and States directed towards making such undertakings financially autonomous;
  - recognizing however that it is necessary to continue to permit Member States to grant certain financial support to railway undertakings within their programmes of activity and, during an interim period until equilibrium is achieved, also to give subsidies of equilibrium;
1. Considers that, in the light of the Council's "agreement in principle" on 11 December 1974 to a Decision on the improvement of the position of railway undertakings and the harmonisation of the rules governing financial relations between such undertakings and States<sup>3</sup>, the proposed regulation is both desirable and necessary;
  2. Invites the Commission to adopt the following amendments pursuant to Article 149 (2) of the EEC Treaty;
  3. Instructs its President to forward this resolution and the report of its Committee to the Council and the Commission of the European Communities.

<sup>1</sup>O.J. C 158 of 17.12.1974 , p. 19

<sup>2</sup>O.J. 88 of 24.5.1965, p. 1500/65.

<sup>3</sup>R/77/75 (TRAINS 6)

Proposal for a Regulation of the Council  
modifying Regulation (EEC) 1107/70 relative to aids  
granted in the field of transport by railway, road  
and inland waterways

Preamble and recitals unchanged

The only article

The only article

Article 4 of Regulation (EEC) 1107/70 of the Council of 4 June 1970 is replaced by the following provision:

Unchanged

"1. Until the entry into force of community regulations conforming to Article 8 of the Decision of the Council of 13 May 1965 concerning the railway undertakings other than those envisaged in the first article of the decision of the Council of ..... relative to the improvement of the financial situation of the railway undertakings and the harmonization of the rules governing the financial relationships between these undertakings and the States, and without prejudice to the provisions of Regulation (EEC) 1191/69 and of Regulation (EEC) 1192/69, the provisions of Article 3 shall not apply to payments by the States and public authorities to railway undertakings made by reason of any failure to achieve harmonization as laid down in the said Article 8, the rules governing the financial relationship between the railway undertakings and the States, the purpose of such harmonization being to make those undertakings financially autonomous.

1. Unchanged

<sup>1</sup>For full text see OJ C 158, 17.12.1974, p. 19

Text proposed by the Commission of the  
European Communities

2. Until the entry into force of the provisions provided for in Article 17 of the Decision of the Council of ..... relative to the improvement of the financial situation of the railway undertakings and the harmonization of the rules governing the financial relationships between these undertakings and the States, the provisions of Article 3 do not apply to aids granted within the railway undertaking's programmes of activity by application of Article 5 paragraph 1 of the said decision nor to the equilibrium subsidies granted in application of Article 15 of the same decision."

Amended text

2. Until the entry into force of the provisions provided for in Article 15 of the Decision of the Council of ..... relative to the improvement of the financial situation of the railway undertakings and the harmonization of the rules governing the financial relationship between these undertakings and the States, the provisions of Article 3 do not apply to aids granted within the railway undertaking's programmes of activity by application of Article 5 paragraph 1 of the said decision nor to the equilibrium subsidies granted in application of Article 13 of the same decision."

EXPLANATORY STATEMENT

1. The proposed regulation seeks to amend Article 4 of Regulation (EEC) No 1107/70<sup>1</sup> which regulation was concerned with the granting of aids for transport by rail, road and inland waterway. The aim of that regulation was 'the elimination of disparities liable to distort the conditions of competition in the transport market' and Article 3 of the 1970 regulation forbade Member States from taking coordination measures or imposing obligations inherent in the concept of a public service which involve the granting of aids pursuant to Article 77 of the EEC Treaty, except in certain cases. Article 4 of the same regulation, which is the subject of the proposed amendment, exempted from the provisions of Article 3 payments by States and public authorities to railway undertakings made by reason of any failure to achieve harmonisation as laid down by Article 8 of the Council decision of 13 May 1965 on the harmonisation of certain provisions affecting competition in transport by rail, road and inland waterway<sup>2</sup>, until such time as Community rules adopted, pursuant to Article 8, had entered into force.

2. Article 8 of the 1965 decision provided that:

"From 1 January 1968, provisions governing the financial relations between railway undertakings and States shall be progressively harmonised.

Such harmonisation shall be directed at making such undertakings financially autonomous and shall be completed by 31 December 1972 at the latest"

3. Since 1968, a number of steps have been taken towards the improvement of the financial situation of the railways namely by Regulation (EEC) No. 1191/69<sup>3</sup> on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, and by Regulation (EEC) No 1192/69<sup>3</sup> on the normalisation of the accounts of railway undertakings.

4. Despite the timetable laid down in the 1965 decision, however, it was not until 11 December 1974 that the Council finally agreed in principle (in an amended form) to a decision relative to the improvement of the financial situation of the railway undertakings and the harmonisation of the rules governing the financial relationships between these undertakings and the States, which had been proposed to them by the Commission in 1971. This decision was reported on by Mr Faller on behalf of the Transport Committee on 5 June 1972 (Doc. 49/72).

<sup>1</sup>O.J. L 130 of 15.6.1970, p. 1.

<sup>2</sup>O.J. 88 of 24.5.1965, p. 1500/65.

<sup>3</sup>O.J. L 156 of 28.6.1969.



5. Though the Council transmitted the present proposal to the Parliament on 4 December 1974 with the hope that the Parliament would be able to deliver its opinion during the January part-session, it was not, as indicated above, until 11 December that the Council decision which makes necessary the proposed regulation was agreed in principle and it was not until after the January part-session had taken place that a text of the decision was made available to your rapporteur. Without such a text it was impossible for the Committee to pronounce on the present proposal which refers to specific Articles of that decision. It was of course also essential for your rapporteur to be able to compare the original proposed decision of 1971 with the decision as finally agreed in principle on 11 December 1974.

6. Having now done this your Rapporteur feels able to state that although there are a considerable number of differences between the text upon which Mr Faller's report was based and on which Parliament voted and the text as agreed in principle by the Council on 11 December last, they are not of such a nature as would justify (even were it procedurally possible) a further examination by Parliament of the amended text. Indeed, the 1974/5 version of the decision is, in respect of Article 5, an improvement on the equivalent Article in the 1971 version in that the transparency of the description of aids has been increased.

7. One further point your rapporteur wishes to make in connection with the Regulation now under consideration is that its necessity is very largely a matter of legal interpretation. Article 94 of the Treaty states that "the Council may ..... make any appropriate regulations and may in particular determine the conditions in which Article 93 (3) shall apply and the categories of aid exempted from this procedure". Hence, although at first sight it would appear more logical for the provisions of Article 4 to appear in the decision agreed in principle on 11 December 1974, the effect of Article 4 being to exempt categories of aid from the provisions of Article 93, any amendment or application of Article 4 must in law be done by means of a regulation.

8. The decision of 11 December 1974 insofar as it puts into effect, for the National railway undertakings, the provisions of Article 8 of the 1965 decision referred to above, will, as soon as it is adopted, cause Article 4 of the 1970 regulation to become spent. The effect of this would be (a) that railway undertakings would be unable to benefit from payments in the sense of Article 4 arising from coordination measures or obligations inherent in the concept of public service, and (b) that they would cease to benefit from the provisions of Article 5 (2) of the 1970 regulation which exempts railway

undertakings from the procedure provided for in Article 93(3) of the EEC Treaty (which provides for the Commission to be informed of any plans to grant or alter aid and that the Member States shall not put its proposed measures into effect until the procedure provided for by Article 93(2) has resulted in a final decision). By Article 5(2) of the 1970 regulation, the only obligation imposed on Member States for aids granted under Article 4 is to communicate details of such aids to the Commission in the form of estimates at the beginning of each year, and subsequently in the form of a report after the end of the financial year.

9. The Committee on Regional Policy and Transport have always recognised the peculiar position of railway undertakings and the particular problems and financial burdens from which they suffer, which to some extent arise both from the virtual monopoly position which they once enjoyed and from the great extent to which they were under the control of the State. At the same time, however, the committee have always endorsed the principle set out in Article 8 of the 1965 decision, namely that of the ultimate financial autonomy of the railways. In this connection they would recall that paragraph 53 of the Commission's Communication to the Council on the development of the Common Transport Policy (Doc. 226/73) reads as follows:

"As for the railway undertakings, the solution of their financial problems and the definition of their future role must be among the main tasks of the Common Transport Policy. The financial rationalisation which the Member States have undertaken at Community level should be pursued by the effective implementation of Article 8 of the Council's decision of 13 May 1965."

10. The question which the committee have had to ask themselves therefore is whether in our opinion a continued exemption from the provisions of Article 3 of the 1970 regulation is justified in view of the Council's decision of 11 December 1974 taken towards the implementation of Article 8 of the 1965 decision. In effect this exemption is not for a limited period since although Article 15 of the 1974 decision places a time limit on the Commission of 1 January 1980 to submit proposals to the Council for achieving the financial balance of the railway undertakings, it is only by that date that the Commission will be asked to fix the time limits and conditions for achieving this balance.

11. One must recognize, however, not only the peculiar position of railway undertakings (see para. 9 above) but also that since the 1965 decision the role of the railways within the Community has increasingly been viewed less from the point of view purely of competition than from the point of view of the need to make the best use of their resources in economic and social terms. This has been reflected to a certain extent in Community legislation in this field since 1968 and the committee note that the 1970 regulation already took into account the possibility of the extension of aid categories. Moreover, the proposed decision of 1971 (on which Mr Faller reported) already envisaged the continuation of certain state payments to railways.

12. The only amendments proposed by the committee are of a drafting nature and the only comment that the committee would make on them is that they illustrate the possible consequences that may arise from drafting legislation in advance of the decisions which may necessitate it.

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Letter of 7 February 1975 from Mr LANGE, chairman of the Committee on Economic and Monetary Affairs to Mr HILL, chairman of the Committee on Regional Policy and Transport.

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Dear Mr Hill,

The Committee on Economic and Monetary Affairs discussed the proposal for a regulation modifying Regulation (EEC) No. 1107/70 relative to aids granted in the field of transport by railway, road and inland waterways (Doc. 407/74) on 8 January 1975. It had to break off its discussions since it was not familiar with the Council's decision of 11 December 1974, which is very closely connected with the Commission's proposal. On 7 February 1975 the committee did not have sufficient time to look into the proposal for a regulation and the Council's decision, which had meanwhile been forwarded, in the detail that the matter requires.

As the Committee does not wish to impede the work of the Committee on Regional Policy and Transport and prevent the early submission of this report for consideration by Parliament, I would inform you that the Committee on Economic and Monetary Affairs in principle questions the granting of such aids since it is not clear from the Commission's proposal what effect they may have on competition in the other transport sectors and the industries supplying the railway undertakings. The committee is not convinced that these industries will not receive concealed subsidies via the railway undertakings.

The Committee on Economic and Monetary Affairs considers it necessary for the whole system of aids to the commercial sector to be reviewed to ensure that conditions of competition accord with the provisions of the Treaty.

I would ask you to regard the above as the opinion of the Committee on Economic and Monetary Affairs.

Yours sincerely,

(Erwin LANGE)