II

(Acts whose publication is not obligatory)

COUNCIL

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 States

(75/327/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof;

Having regard to Council Decision No 65/271/EEC [1] of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway, and in particular Article 8 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament [2];

Having regard to the Opinion of the Economic and Social Committee [3];

Whereas one of the objectives of the common transport policy must be to eliminate disparities liable to cause substantial distortion in competition in the transport sector;

Whereas the railways of Europe, both generally and more especially in their capacity as public undertakings, play an important part in the transport system; whereas they operate in a way relatively favourable to the environment and are economical in their use of space and of energy; whereas they are often the most effective means of carrying out many transport operations and, accordingly, in most European countries, are irreplaceable from both the economic and the socio-political point of view;

Whereas, in this context, it is necessary to harmonize the rules governing the relations, especially as regards finance, between railway undertakings and States;

Whereas the Council laid down guidelines to govern financial relations between national railway undertakings and Member States in its resolution of 27 June 1974 [4] on the proposal for a Council Decision on Article 8 of the Council Decision of 13 May 1965;

Whereas the gradual improvement of the financial situation of railway undertakings could appreciably improve the situation on the transport market; whereas this improvement should result in an improvement of the financial results of these undertakings with a view to achieving financial balance; whereas such balance may be achieved only by increasing their financial independence and commercial responsibility to the extent compatible with their role as a public service;

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(1) OJ No 88, 24. 5. 1965, p. 1500/65.
(2) OJ No C 70, 1. 7. 1972, p. 16.
(3) OJ No C 89, 23. 8. 1972, p. 1.
(4) OJ No C 111, 23. 9. 1974, p. 1.

Whereas, however, the amount of financial assistance from the State should be kept commensurate with the services provided by the railways and with their importance; whereas disclosure of how these public funds are being used and what services are being provided by the railways should, as far as possible, prevent political intervention in the commercial management not justified by socio-economic considerations;

Whereas to this end it is important to establish the principle of the division of responsibility between the undertaking and the State; whereas the respective responsibilities of the undertaking and the State should be defined;

Whereas, therefore, provision should be made for drawing up business plans of the railway undertakings under a consultation procedure; whereas the State may make give financial assistance to railway undertakings;

Whereas financial and accounting rules based as far as possible on the principles applicable to industrial and commercial undertakings should be laid down for railway undertakings; whereas provision should be made for the necessary measures to achieve comparability of the accounting systems and annual accounts of all railway undertakings; whereas uniform costing principles should also be laid down; whereas improved presentation of the accounts will also increase the responsibility and independence of the management of these undertakings;

Whereas the managerial independence of railway undertakings should mean that, within the framework of general policy on prices and taking into account both national and Community rules on transport rates and conditions, the undertakings fix their own rates with the aim of optimising financial results and achieving financial balance;

Whereas improved cooperation between railway undertakings would assist in optimising their financial results; whereas Member States, in conjunction with the Commission, should consequently seek to promote such cooperation;

Whereas transitional measures should be taken until the railway undertakings achieve financial balance; whereas the date by which such balance should be achieved will be fixed subsequently taking account of experience gained and of the particular conditions affecting the role and importance of the railways in each Member State; whereas provision should be made at the same time for the necessary adaptations to Council Regulation (EEC) No 1191/69 [1] of 26 June 1969 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 to Council Regulation (EEC) No 1107/70 [2] of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway, taking into account the links which exist between transport and other economic and social sectors;

Whereas it is thus essential that the Commission and the Council should obtain all relevant information on the financial development of railway undertakings,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall take the necessary steps to ensure that this Decision is applied to the following railway undertakings:

— Société Nationale des Chemins de Fer Belges (SNCB) / Nationale Mattschappij der Belgische Spoorwegen (NMBS),

— De danske Statsbaner (DSB),

— Deutsche Bundesbahn (DB),

— Société Nationale des Chemins de Fer Français (SNCF),

— Coras Iompair Eireann (CIE),

— Azienda Autonoma delle Ferrovie dello Stato (FS),

— Société Nationale des Chemins de Fer Luxembourgeois (CFL),

— Naamloze Vennootschap Nederlandse Spoorwegen (NS),

— British Railways Board (BRB),

— Northern Ireland Railways Company Ltd (NIR).

2. As regards the Société Nationale des Chemins de Fer Luxembourgeois (CFL), Belgium and France shall, together with Luxembourg, make such amendments to the constitutive acts as may be necessary to implement this Decision.

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[1] OJ No L 156, 28. 6. 1969, p. 1.
[2] OJ No L 130, 15. 6. 1970, p. 1.

Article 2

1. Within the framework of the overall policies laid down by each State and the discharge of public service obligations by the undertaking, each railway undertaking shall have sufficient independence as regards management, administration and internal control over administrative, economic and accounting matters with a view to achieving financial balance, taking into particular account the application of Regulation (EEC) No 1191/69, of Council Regulation (EEC) No 1192/69 [1] of 26 June 1969 on common rules for the normalization of the accounts of railway undertakings, and of Regulation (EEC) No 1107/70.

This independence shall in any event include the separation of its assets, budgets and accounts from those of the State.

2. Railway undertakings are to be managed in accordance with economic principles. This shall apply also to their public service obligations with the view, in particular, of providing efficient and appropriate services at the lowest possible cost for the quality of service required.

Article 3

In accordance with Article 2, each railway undertaking shall, in particular:

— submit its business plans, possibly covering a number of years, including its investment and financing programmes within the framework of the overall policies laid down by the State and taking account of national transport planning, particularly with regard to infrastructure;

— implement its part of the business plans settled pursuant to Article 4;

— draw up its budget and annual accounts, having regard to Article 4 (3).

Article 4

1. The business plan submitted by a railway undertaking in accordance with Article 3 shall be settled in the context of a procedure decided by the State and based on consultation between the State and the undertaking. The plan shall be drawn up with the aim of achieving financial balance of the undertaking as well as the other technical, commercial and financial management objectives. The plan shall also lay down the method of implementation. The State shall keep the performance of this plan under review.

Should the development of economic conditions jeopardize implementation of this plan or some unforeseen event occur or a government decision be made affecting a basic element thereof, the State and the railway undertaking shall, by the same process, review their objectives and the means of achieving them.

2. The State shall, in accordance with the conditions and the limits laid down in Regulations (EEC) No 1191/69 and (EEC) No 1107/70, determine the public service obligations to be met by the railway undertaking.

3. The State shall, in the light of Article 8, determine the layout of the budget and of the annual accounts of the railway undertaking and shall lay down the procedure and conditions for their approval.

Article 5

1. When the business plan is being drawn up in accordance with the procedure set out in Articles 3 and 4, the State and the railway undertaking shall settle:

— the procedures under which repayments, consolidations and conversion of previous loans are to be effected,

— the respective proportions in which new investments may be financed from internal sources, by borrowing or by direct State grants.

The State may lay down the amounts and the terms and conditions of loans which the railway undertaking is authorized to raise.

In order to enable the above transactions to be carried out, the State may give to the railway undertaking:

(a) guarantees, with or without charge, on loans floated by the undertaking;

(b) interest-bearing or interest-free loans;

(c) direct grants.

2. The State may make to the railway undertaking capital grants consistent with the functions, the size and the financial needs of the undertaking. These grants must, however, be intended to increase the assets of the undertaking and must not constitute a deficit subsidy.

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[1] OJ No L 156, 28. 6. 1969, p. 8.

Article 6

The State may define the conditions under which the railway undertaking effects transactions involving movable or immovable property aimed at ensuring the best possible use of its assets or disposes of railway property no longer needed for railway operations.

Article 7

Pending implementation of the provisions referred to in Article 8 (2), the State shall, to the greatest extent possible, draw on the rules applicable to industrial and commercial undertakings, when defining the rules with which the railway undertaking will have to comply regarding:

— amortization and depreciation of assets,

— reserves.

Taking account of the provisions of Article 13, the State shall define the rules applicable to the railway undertaking with regard to:

— distribution of profits, if any, and, where appropriate, any other form of return on capital,

— covering of deficits.

Article 8

1. The accounting system, budget and annual accounts of the railway undertaking shall be separate from those of the State.

2. Before 1 January 1978, the Council, acting on a proposal from the Commission, shall adopt the necessary measures to achieve compatability between the accounting systems and annual accounts of all railway undertakings and shall lay down uniform costing principles.

3. Until such time as the Community has adopted the measures provided for in paragraph 2, the railway undertaking must, in its accounting system, budget and annual accounts, show clearly and separately at least:

(a) the expenditure and revenue relating to the operation of transport services and to each of the other activities in which the undertaking engages or participates;

(b) the revenue relating to the following services, with separate entries for activities to which public service obligations apply:

(i) passenger transport:

— by rail (if possible subdivided into long and short distance or into high speed and express on the one hand and other rail services on the other),

— by road,

— by other means of transport;

(ii) goods transport:

— full trains and wagons,

— packages and parcels,

— by road.

4 . The railway undertaking must provide the State with the necessary data to enable a detailed assessment to be made of the financial results of each of the categories of activity outlined in paragraph 3 (b).

5. The table provided for in Article 10 of Regulation (EEC) No 1192/69 must be included in an Annex to the annual accounts and must show, in addition, all other sums granted to the railway undertaking during the year by way of financial assistance or compensation.

Article 9

1. Within the framework of general policy on prices and taking into account both national and Community rules on transport rates and conditions, railway undertakings shall determine their own rates with the aim of achieving optimum financial results and financial balance.

2. Pursuant to Article 3 (2) of Regulation (EEC) No 1107/70, compensation may be made in respect of tariff obligations imposed upon railway undertakings and not covered by Regulation (EEC) No 1191/69. Acting on a proposal from the Commission to be submitted not later than 1 January 1978, the Council shall harmonize the procedures for granting such compensation.

Article 10

The railway undertaking shall concentrate basically on activities which are appropriate to this mode of transport.

Bearing in mind the public nature of the undertaking, the State may however, in accordance with conditions it lays down, authorize the undertaking:

— to participate directly or indirectly in any undertaking engaged in operations outside its normal activities or to carry out such operations,

— to employ other transport techniques.

Article 11

1. Member States shall, in conjunction with the Commission, investigate measures likely to promote cooperation among railway undertakings.

2. Before 1 January 1979, the Commission will submit to the Council a report on the objectives to be pursued in the long term and the measures to be taken to promote partial or total integration of railway undertakings at Community level.

Article 12

The State shall lay down the procedures for appointing the members of the governing bodies of the railway undertaking.

Article 13

In conjunction with the railway undertaking, the State shall draw up a financial programme aimed at achieving the financial balance of the undertaking.

Under this programme the State may grant to the railway undertaking deficit subsidies which must be distinct:

— from compensation granted in respect of categories of public service obligations provided for by Article 2 of Regulation (EEC) No 1191/69, or of categories of normalization of accounts provided for by Article 4 (1) and (4) of Regulation (EEC) No 1192/69;

— from aid granted in respect of categories of aid provided for by Article 3 of Regulation (EEC) No 1107/70 and Article 9 (2) of this Decision.

— from the financial assistance provided for by Article 5 (1) of this Decision.

Article 14

1. Every two years, the Commission shall submit to the Council a report on the implementation by Member States of this Decision and of Regulations (EEC) No 1191/69, (EEC) No 1192/69 and (EEC) No 1107/70.

The report must clearly indicate the results achieved, with particular regard to any changes in the financial situation of the railway undertaking.

2. In order to enable the Commission to draw up the report referred to in paragraph 1, Member States shall, at the appropriate time, forward to it the necessary information and, in particular, the programmes referred to in Articles 4 and 13, together with any major changes made to them.

Article 15

1. Before 1 January 1980, the Commission, taking account of the particular conditions affecting the role and importance of the railways in each State, shall submit to the Council such proposals as it deems necessary to fix the time limit and conditions for achieving the financial balance of the railway undertakings.

2. By the same date, 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.

Article 16

1. As soon as possible and not later than 1 January 1977, Member States shall, after consultation with the Commission, give effect, by law, regulation or administrative action, to such provisions as may be necessary for the implementation of this Decision.

2. Where a Member State so requests, or where the Commission considers it appropriate, the Commission shall consult the Member States concerned on the drafts for the provisions referred to in paragraph 1.

Article 17

This Decision is addressed to the Member States.

Done at Brussels, 20 May 1975.

For the Council

The President

R. RYAN