

## REGULATION (EEC) No 1191/69 OF THE COUNCIL

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

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<sup>1</sup> on the harmonisation of certain provisions affecting competition in transport by rail, road and inland waterway;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament<sup>2</sup>;

Having regard to the Opinion of the Economic and Social Committee<sup>3</sup>;

Whereas one of the objectives of the common transport policy is to eliminate disparities liable to cause substantial distortion in the conditions inherent in the concept of a public service which are imposed on transport undertakings by Member States;

Whereas it is therefore necessary to terminate the public service obligations defined in this Regulation; whereas, however, it is essential in certain cases to maintain such obligations in order to ensure the provision of adequate transport services; whereas the adequacy of transport services must be assessed in the light of the state of supply and demand in the transport sector and of the needs of the community;

Whereas these termination measures are not to apply to transport rates and conditions imposed on passenger transport undertakings in the interests of one or more particular categories of person;

Whereas, for the purpose of implementing these measures, it is necessary to define the various public service obligations covered by this Regulation; whereas such obligations include the obligation to operate, the obligation to carry and tariff obligations;

Whereas it should be left to the Member States on their own initiative to take measures to terminate or to maintain public service obligations; whereas, however, these obligations being such as to entail financial burdens for transport undertakings, the latter must be able to apply for their termination to the competent authorities of the Member States;

Whereas it is appropriate to provide that transport undertakings may apply for the termination of public service obligations only where such obligations involve them in economic disadvantages determined in accordance with common procedures defined in this Regulation;

Whereas, in order that standards of operation may be raised, transport undertakings should be able, when making their applications, to propose the use of some other form of transport better suited to the traffic in question;

Whereas when deciding the maintenance of public service obligations the competent authorities of Member States must be able to attach to their decision conditions likely to improve the yield of the operations in question; whereas when deciding to terminate a public service obligation the competent authorities must, however, in order to ensure the provision of adequate transport services, be able to provide for the introduction of an alternative service;

Whereas, in order to take account of the interests of all Member States, a Community procedure should be introduced for cases where the termination of an obligation to operate or to carry might interfere with the interests of another Member State;

Whereas it is desirable, in order that the study of applications by undertakings for the termination of

<sup>1</sup> OJ No 88, 24.5.1965, p. 1500/65.

<sup>2</sup> OJ No C 27, 28.3.1966, p. 18.

<sup>3</sup> OJ No C 49, 17.5.1968, p. 15.

public service obligations may be conducted in a proper manner, that time limits both for the submission of such applications and for the study thereof by the Member States, should be laid down;

Whereas, pursuant to Article 5 of the Council Decision of 13 May 1965 on the harmonisation of certain provisions affecting competition in transport by rail, road and inland waterway, any decision by the competent authorities to maintain any public service obligation defined in this Regulation entails an obligation to pay compensation in respect of any financial burdens which may thereby devolve on transport undertakings;

Whereas the right of a transport undertaking to compensation will arise at the time of the decision by a Member State to maintain the public service obligation in question; whereas, however, because budgets are drawn up on an annual basis such right cannot arise during the initial period of operation of this Regulation before 1 January 1971; whereas this date, may in the event of the time limit for the study of applications from transport undertakings being extended, likewise be altered to a later date;

Whereas, furthermore, Article 6 of the Council Decision of 13 May 1965 on the harmonisation of certain provisions affecting competition in transport by rail, road and inland waterway provides that Member States must make compensation in respect of financial burdens devolving upon passenger transport by reason of the application of transport rates and conditions imposed in the interests of one or more particular categories of person; whereas such compensation is to operate from 1 January 1971; whereas the operative date may, by means of action at Community level, be postponed for one year should a Member State meet with special difficulties;

Whereas compensation for financial burdens devolving upon transport undertakings by reason of the maintenance of public service obligations must be made in accordance with common procedures; whereas, in order to determine the amount of such compensation, the effects which the termination of any such obligations would have on the undertaking's activities must be taken into account;

Whereas the provisions of this Regulation should be applied to any new public obligation as defined in this Regulation imposed on a transport undertaking;

Whereas, since compensation payments under this Regulation are to be granted by Member States in accordance with common procedures laid down by this Regulation, such payments should be exempted from the preliminary information procedure laid down in Article 93 (3) of the Treaty establishing the European Economic Community;

Whereas the Commission must be able to obtain from Member States all relevant information concerning the operation of this Regulation;

Whereas, in order to enable the Council to study the situation in each Member State with regard to the implementation of this Regulation, the Commission is to submit a report in this respect to the Council before 31 December 1972;

Whereas it is desirable to ensure that appropriate means are made available by the Member States to transport undertakings in order to enable the latter to make representations concerning their interests with regard to individual decisions made by Member States pursuant to this Regulation;

Whereas, since this Regulation is at present to apply to rail transport operations of the six national railway undertakings of the Member States and, as regards other transport undertakings, to undertakings not mainly providing transport services of a local or regional character, the Council will have to decide within three years from the entry into force of this Regulation what measures should be taken with regard to public service obligations in respect of transport operations not covered by this Regulation;

HAS ADOPTED THIS REGULATION:

## SECTION I

### General provisions

#### *Article 1*

1. Member States shall terminate all obligations inherent in the concept of a public service as defined in this Regulation imposed on transport by rail, road and inland waterway.
2. Nevertheless, such obligations may be maintained in so far as they are essential in order to ensure the provision of adequate transport services.
3. Paragraph 1 shall not apply, as regards passenger transport, to transport rates and conditions imposed by any Member State in the interests of one or more particular categories of person.
4. Financial burdens devolving on transport undertakings by reason of the maintenance of the obligations referred to in paragraph 2, or of the application of the transport rates and conditions referred to in paragraph 3, shall be subject to compensation made in accordance with common procedures laid down in this Regulation.

*Article 2*

1. 'Public service obligations' means obligations which the transport undertaking in question, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions.

2. Public service obligations within the meaning of paragraph 1 consist of the obligation to operate, the obligation to carry and tariff obligations.

3. For the purposes of this Regulation 'the obligation to carry' means any obligation imposed upon a transport undertaking to take, in respect of any route or installations which it is authorised to work by licence or equivalent authorisation, all necessary measures to ensure the provision of a transport service satisfying fixed standards of continuity, regularity and capacity. It also includes any obligation to operate additional services and any obligation to maintain in good condition routes, equipment—in so far as this is surplus to the requirements of the network as a whole—and installations after services have been withdrawn.

4. For the purposes of this Regulation, 'the obligation to carry' means any obligation imposed upon transport undertakings to accept and carry passengers or goods at specified rates and subject to specified conditions.

5. For the purposes of this Regulation, 'tariff obligations' means any obligation imposed upon transport undertakings to apply, in particular for certain categories of passenger, for certain categories of goods, or on certain routes, rates fixed or approved by any public authority which are contrary to the commercial interests of the undertaking and which result from the imposition of, or refusal to modify, special tariff provisions.

The provisions of the foregoing subparagraph shall not apply to obligations arising from general measures of price policy applying to the economy as a whole or to measures taken with respect to transport rates and conditions in general with a view to the organisation of the transport market or of part thereof.

## SECTION II

**Common principles for the termination or maintenance of public service obligations***Article 3*

1. Where the competent authorities of the Member States decide to maintain, in whole or in part, a

public service obligation, and where this can be done in more than one way, each capable of ensuring, while satisfying similar conditions, the provision of adequate transport services, the competent authorities shall select the way least costly to the Community.

2. The adequacy of transport services shall be assessed having regard to:

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

*Article 4*

1. It shall be for transport undertakings to apply to the competent authorities of the Member States for the termination in whole or in part of any public service obligation where such obligation entails economic disadvantages for them.

2. In their applications, transport undertakings may propose the substitution of some other form for the forms of transport being used. Undertakings shall apply the provisions of Article 5 to calculate what savings could be made as a means of improving their financial position.

*Article 5*

1. Any obligation to operate or to carry shall be regarded as imposing economic disadvantages where the reduction in the financial burden which would be possible as a result of the total or partial termination of the obligation in respect of an operation or a group of operations affected by that obligation exceeds the reduction in revenue resulting from that termination.

Economic disadvantages shall be determined on the basis of a statement, actualised if necessary, of the annual economic disadvantages represented by the difference between the reductions in the annual financial burden and in annual revenue that would result from termination of the obligation.

However, where the obligation to operate or to carry covers one or more categories of the passenger or goods traffic on the whole or a substantial part of a network, the financial burden which would be eliminated by terminating the obligation shall be estimated by allocating among the various categories of traffic the total costs borne by the undertaking by reason of its transport activities.

The economic disadvantage will in such case be equal to the difference between the costs allocable to that part of the undertaking's activities affected by the public service obligation and the corresponding revenue.

Economic disadvantages shall be determined taking into account the effects of the obligation on the undertaking's activities as a whole.

2. A tariff obligation shall be regarded as entailing economic disadvantages where the difference between the revenue from the traffic to which the obligation applies and the financial burden of such traffic is less than the difference between the revenue which would be produced by that traffic and the financial burden thereof if working were on a commercial basis—account being taken both of the costs of those operations which are subject to the obligation and of the state of the market.

#### *Article 6*

1. Within one year of the date of the entry into force of this Regulation transport undertakings shall lodge with the competent authorities of the Member States the applications referred to in Article 4.

Transport undertakings may lodge applications after the expiry of the aforementioned period if they find that the provisions of Article 4 (1) are satisfied.

2. Decisions to maintain a public service obligation or part thereof, or to terminate it at the end of a specified period, shall provide for compensation to be granted in respect of the financial burdens resulting therefrom; the amount of such compensation shall be determined in accordance with the common procedures laid down in Articles 10 to 13.

3. The competent authorities of the Member States shall take decisions within one year of the date on which the application is lodged as regards obligations to operate or to carry, and within six months as regards tariff obligations.

The right to compensation shall arise on the date of the decision by the competent authorities but in any event not before 1 January 1971.

4. However, if the competent authorities of the Member States consider it necessary by reason of the number and importance of the applications lodged by each undertaking, they may extend the period prescribed in the first subparagraph of paragraph 3 until 1 January 1972 at the latest. In such case, the right to compensation shall arise on that date.

Where they intend to avail themselves of this power, the competent authorities of the Member States shall so inform the undertakings concerned within six months following the lodging of applications.

Should any Member State meet with special difficulties, the Council may, at the request of that State and on a proposal from the Commission, authorise the State concerned to extend until 1 January 1973 the time limit indicated in the first subparagraph of this paragraph.

5. If the competent authorities have not reached a decision within the time limit laid down, the obligation in respect of which the application under Article 4 (1) for termination was made shall stand terminated.

6. The Council shall, on the basis of a report submitted by the Commission before 31 December 1972, study the situation in each Member State with regard to the implementation of this Regulation.

#### *Article 7*

1. There may be attached to any decision to maintain an obligation conditions designed to improve the yield of the operations affected by the obligation in question.

2. Any decision to terminate an obligation may provide for the introduction of an alternative service. In such a case termination shall not take effect until such time as the alternative service has been put into operation.

#### *Article 8*

1. The Member State concerned shall communicate to the Commission, before implementation, any measure terminating the obligation to operate or to carry which it proposes to take in respect of any route or transport service liable to affect trade or traffic between Member States. It shall inform the other Member States thereof,

2. If the Commission considers it necessary or if another Member State so requests, the Commission shall consult with the Member States concerning the proposed measure.

3. The Commission shall, within two months following receipt of the communication referred to in paragraph 1, address an opinion or a recommendation to all Member States concerned.

## SECTION III

## Article 11

**Application to passenger transport of transport rates and conditions imposed in the interests of one or more particular categories of person***Article 9*

1. The amount of compensation in respect of financial burdens devolving upon undertakings by reason of the application to passenger transport of transport rates and conditions imposed in the interests of one or more particular categories of person shall be determined in accordance with the common procedures laid down in Articles 11 to 13.

2. Compensation shall be payable from 1 January 1971.

Should any Member State meet with special difficulties, the Council may, at the request of that State and on a proposal from the Commission, authorise the State concerned to alter that date to 1 January 1972.

3. Applications for compensation shall be lodged with the competent authorities of the Member States.

## SECTION IV

**Common compensation procedures***Article 10*

1. The amount of the compensation provided for in Article 6 shall, in the case of an obligation to operate or to carry, be equal to the difference between the reduction in financial burden and the reduction in revenue of the undertaking if the whole or the relevant part of the obligation in question were terminated for the period of time under consideration.

However, where the calculation of economic disadvantage was made by allocating among the various parts of its transport activities the total costs borne by the undertaking in respect of those transport activities, the amount of the compensation shall be equal to the difference between the costs allocable to that part of the undertaking's activities affected by the public service obligation and the corresponding revenue.

2. For the purposes of determining the financial burdens and revenue referred to in paragraph 1, the effects of the termination of the obligation in question on the undertaking's activities as a whole shall be taken into account.

1. The amount of the compensation provided for in Article 6 and in Article 9 (1) shall, in the case of a tariff obligation, be equal to the difference between the two amounts as follows:

(a) The first amount shall be equal to the difference between, on the one hand, the product of the anticipated number of units of measure of transport and:

- either the most favourable existing rate which might be claimed by users if the obligation in question did not exist; or,
- where there is no such rate, the rate which the undertaking, operating on a commercial basis and taking into account both the costs of the operation in question and the state of the market, would have applied;

and, on the other hand, the product of the actual number of units of measure of transport and the rate imposed for the period under consideration.

(b) The second amount shall be equal to the difference between the costs which would be incurred applying either the most favourable existing rate or the rate which the undertaking would have applied if operating on a commercial basis and the costs actually incurred under the obligatory rate.

2. Where, by reason of the state of the market, compensation calculated in accordance with the provisions of paragraph 1 is not sufficient to cover the total costs of the traffic affected by the tariff obligation in question, the amount of the compensation provided for in Article 9 (1) shall be equal to the difference between such costs and the revenue from such traffic. Any compensation already made under Article 10 shall be taken into consideration when making this calculation.

3. In making the calculation of revenue and costs as provided in paragraph 1, the effects which termination of the obligation in question would have on the undertaking's activities as a whole shall be taken into account.

*Article 12*

Costs resulting from the maintenance of obligations shall be calculated on the basis of efficient management of the undertaking and the provision of transport services of an adequate quality.

Interest relating to own capital may be deducted from the interest taken into account in the calculation of costs.

*Article 13*

1. Decisions taken under Articles 6 and 9 shall fix in advance the amount of compensation for a period of at least one year. At the same time they shall determine the factors which might warrant an adjustment of that amount.
2. Adjustment of the amount referred to in paragraph 1 shall be made each year, after closure of the annual accounts of the undertaking in question.
3. Payment of compensation fixed in advance shall be made by instalments. The payment of any sums due by reason of the adjustment provided for in paragraph 2 shall be made immediately after the amount of the adjustment has been determined.

## SECTION V

**Imposition of new public service obligations***Article 14*

1. Save for cases falling within Article 1 (3), after the date of entry into force of this Regulation Member States may impose public service obligations on a transport undertaking only in so far as such obligations are essential in order to ensure the provision of adequate transport services.
2. Where obligations thus imposed entail for transport undertakings economic disadvantages within the meaning of Article 5 (1) and (2) or financial burdens within the meaning of Article 9, the competent authorities of the Member States shall, when deciding to impose such obligations, provide for grants of compensation in respect of the financial burdens resulting therefrom. The provisions of Articles 10 to 13 shall apply.

## SECTION VI

**Final provisions***Article 15*

Decisions made by the competent authorities of Member States in accordance with the provisions of this Regulation, shall state the reasons on which they are based and shall be published in the appropriate manner.

*Article 16*

Member States shall ensure that transport undertakings, in their capacity as transport

undertakings, are given the opportunity to make representations concerning their interests, by appropriate means, with regard to decisions taken pursuant to this Regulation.

*Article 17*

1. The Commission may request Member States to supply all relevant information concerning the operation of this Regulation. Whenever it considers it necessary, the Commission shall consult with the Member States concerned.
2. Compensation paid pursuant to this Regulation shall be exempt from the preliminary information procedure laid down in Article 93 (3) of the Treaty establishing the European Economic Community.

Member States shall promptly forward to the Commission details, classified by category of obligation, of compensation payments made in respect of financial burdens devolving upon transport undertakings by reason of the maintenance of the public service obligations set out in Article 2 or by reason of the application to passenger transport of transport rates and conditions imposed in the interests of one or more particular categories of person.

*Article 18*

1. Member States shall, after consulting the Commission and in good time, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Regulation and in particular of Article 4 thereof.
2. Where a Member State so requests, or where the Commission considers it appropriate, the Commission shall consult with the Member States concerned upon the proposed terms of the measures referred to in paragraph 1.

*Article 19*

1. As regards railway undertakings, this Regulation shall, in respect of their rail transport operations, apply to the following undertakings:

- Société nationale des chemins de fer belges (SNCB)/Nationale Maatschappij der Belgische Spoorwegen (NMBS);
- Deutsche Bundesbahn (DB);
- Société nationale des chemins de fer français (SNCF);

- Azienda autonoma delle Ferrovie dello Stato (FS);
- Société nationale des chemins de fer luxembourgeois (CFL);
- Naamloze Vennootschap Nederlandse Spoorwegen (NS);

2. As regards other transport undertakings, this Regulation shall not apply to undertakings mainly providing transport services of a local or regional character.

3. Within three years of the entry into force of this Regulation the Council shall, on the basis of the principles and objectives set out in Section II of its Decision of 13 May 1965, decide on the action to be taken with regard to obligations inherent in the concept of a public service affecting transport operations which are not covered by this Regulation.

*Article 20*

This Regulation shall enter into force on 1 July 1969.

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

Done at Luxembourg, 26 June 1969.

*For the Council*

*The President*

G. THORN

---