

REGULATION (EEC) No 1192/69 OF THE COUNCIL

of 26 June 1969

on common rules for the normalisation 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 1965¹ 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 Assembly²;

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 it is appropriate for that purpose to take such action as will ensure the elimination of the effects of such financial burdens or benefits with a view to achieving equality of treatment for all modes of transport; whereas for certain classes of financial burden or benefit, such action may consist in their early termination; whereas, in respect of other classes, such action must be carried out as part of a process of normalisation of the accounts of railway undertakings, a feature of such normalisation being the payment of compensation in respect of the effects of such financial burdens or benefits;

Whereas a final settlement of the position as regards certain of the classes of financial burden or benefit to

be covered by normalisation will have to be made in conjunction with the progressive harmonisation of the rules governing financial relations between railway undertakings and States as laid down in 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; whereas, for those classes of burden or benefit, it is therefore appropriate, pending a final settlement, to leave to each State the right to decide in each individual case whether normalisation should take place; whereas, if normalisation is decided on, it should be carried out in accordance with the common rules laid down in this Regulation, in particular as regards the methods for calculating financial compensation;

Whereas, before any steps can be taken in pursuance of the normalisation of accounts to pay any compensation due as a result of that normalisation, it is necessary to determine the financial burdens borne or benefits enjoyed by railway undertakings by comparison with their position if they operated under the same conditions as other transport undertakings;

Whereas, in order to make such determination, the cases to which normalisation should be applied must be defined; whereas all existing cases in the Member States should be covered, with the exception, on the one hand, of public service obligations, within the meaning of Council Regulation (EEC) No 1191/69⁴ 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, on the other hand, of disparities in the infrastructure and taxation burdens under the rules governing the three modes of transport—disparities which will in due course be eliminated under the measures proposed with regard to infrastructure charging and in conjunction with the adjustment of the general and specific taxation systems for transport;

¹ OJ No 88, 24.5.1965, p. 1500/65.

² OJ No C 135, 14.12.1968, p. 34.

³ OJ No C 118, 11.11.1968, p. 7.

OJ No L 156, 28.6.1969, p. 1.

Whereas, since each case of normalisation has its own distinctive features, it is appropriate to define the scope of each such case and to lay down the principles of calculation to be applied for the purposes of determining the financial burdens imposed on, or benefits granted to, railway undertakings;

Whereas, in order to determine the amount of such burdens or benefits, it is necessary to compare the system applicable to railway undertakings with that applicable to private transport undertakings operating other modes of transport;

Whereas the financial burdens borne by railway undertakings are usually greater than the benefits they enjoy and furthermore such undertakings can easily supply the accounting data necessary to determine the amount of such burdens or benefits; whereas it is therefore appropriate to allow such undertakings the initiative in the matter, it being left to the competent authorities of the Member States to examine in accordance with the provisions of this Regulation, and before fixing the amount of compensation, the figures on which the undertakings have based their applications; whereas it is desirable to set a time limit within which such authorities must give a decision;

Whereas, since the payment of compensation is linked to the drawing up of the budgets both of the State or the competent authorities and of railway undertakings, it is appropriate to lay down specific provisions providing for the making of payments on the basis of estimates and the settlement of the outstanding balances;

Whereas, for the sake of clarity and in order to publicise appropriately the normalisation of accounts, it is desirable to lay down that amounts of compensation granted pursuant to the normalisation of accounts should appear in a table annexed to the annual accounts of railway undertakings;

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 in implementation of this Regulation;

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

Whereas, since compensation paid pursuant to this Regulation is to be granted by Member States in accordance with common rules laid down by this Regulation, such compensation should be exempted

from the preliminary information procedure laid down in Article 93 (3) of the Treaty establishing the European Economic Community;

Whereas the implementation of the common transport policy necessitates the immediate application of the provisions of this Regulation to the six national railway undertakings; whereas, by reason of the position of other railway undertakings, with respect in particular to the conditions of competition in transport, and by reason of the need to implement the aforesaid common transport policy by stages, examination of the conditions for extending the application of this Regulation to other railway undertakings can be postponed for some years;

Whereas the process of normalisation does not relieve Member States of their own responsibility for eliminating, as far as possible, existing causes of distortion; whereas, nevertheless, they must not by such action bring about a deterioration, in law or in fact, in the situation of railway staff, or impede or retard improvements in their living and working conditions;

HAS ADOPTED THIS REGULATION:

SECTION I

Definitions and scope

Article 1

1. The accounts of railway undertakings shall be normalised in accordance with the common rules set out in this Regulation.

2. Any financial compensation resulting from the normalisation of accounts laid down in paragraph 1 shall be effected from 1 January 1971 and in accordance with the common procedures set out in this Regulation.

Article 2

1. Normalisation of the accounts of railway undertakings shall, within the meaning of this Regulation, consist in:

- (a) determination of the financial burdens borne or benefits enjoyed by railway undertakings, by reason of any provision laid down by law, regulation or administrative action, by comparison with their position if they operated under the same conditions as other transport undertakings;

(b) payment of compensation in respect of the burdens or benefits disclosed by the determination under (a).

2. Financial burdens resulting from any provision laid down by law, regulation or administrative action which embodies the results of negotiations between the two sides of industry shall not be treated as financial burdens for the purposes of this Regulation.

3. Normalisation of accounts within the meaning of this Regulation shall not apply to public service obligations imposed by Member States and covered by Regulation (EEC) No. 1191/69.

Article 3

1. This Regulation shall apply to the following railway 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. 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.

Article 4

1. Normalisation of accounts within the meaning of this Regulation shall be applied to the following classes of financial burden or benefit:

- (a) payments which railway undertakings are obliged to make but which, for the rest of the economy, including other modes of transport, are borne by the State (Class I);
- (b) expenditure of a social nature incurred by railway undertakings in respect of family allowances different from that which they would bear if they had to contribute on the same terms as other transport undertakings (Class II);

(c) payments in respect of retirement and other pensions borne by railway undertakings on terms different from those applicable to other transport undertakings (Class III);

(d) the bearing by railway undertakings of the costs of crossing facilities (Class IV).

2. The following classes of financial burden or benefit in existence at the time of entry into force of this Regulation shall be terminated by 1 January 1971 at the latest:

- (a) the obligation to recruit staff surplus to the requirements of the undertaking (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).

3. The following class of financial burden or benefit in existence at the time of the entry into force of this Regulation shall be abolished by 1 January 1973 at the latest:

financial burdens in respect of reconstruction or replacement arising out of war damage which are borne by railway undertakings but which should have been assumed by the State (Class VIII);

the capital and interest burden of loans granted under this head shall be the subject of normalisation of accounts within the meaning of this Regulation until liability ceases.

4. The following classes of financial burden or benefit in existence at the time of the entry into force of this Regulation may be the subject of normalisation of accounts within the meaning of this Regulation:

- (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);
- (f) conditions imposed in respect of the placing of public contracts for works and supplies (Class XIV).

The following class of financial burden or benefit may also be the subject of normalisation of accounts within the meaning of this Regulation:

capital and interest burdens borne as a result of lack of normalisation in the past (Class XV).

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 harmonisation 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.

SECTION II

Common rules for normalisation and compensation

Article 5

1. Any financial burden upon, or benefit for, railway undertakings which shall or may be the subject of normalisation of accounts shall be determined in accordance with the provisions of the Annexes to this Regulation. The Annexes shall form an integral part of this Regulation.

2. Where, for any class to be normalised, the conditions applicable to railway undertakings have to be compared with those applicable elsewhere in the transport sector, the comparison shall be only with private undertakings.

Article 6

1. The gross amount of compensation shall be determined for each class of normalisation by applying the principles of calculation specified in the Annex for the relevant class.

The net amount shall be obtained by taking into account only once any item which appears more than once in the calculation of the gross amounts for the various classes.

2. Where the calculation made in accordance with the provisions laid down in the Annexes for each

class of normalisation discloses a financial burden for the railway undertaking, the latter shall be entitled to an equivalent sum by way of compensation from the public authorities.

Where such a calculation discloses a benefit for the railway undertaking, the equivalent sum by way of compensation shall be due from the railway undertaking to the public authorities.

Article 7

1. Every year railway undertakings shall submit to the competent authorities applications for normalisation in accordance with the provisions of this Regulation.

2. Such applications shall consist of:

- (a) data relating to the following financial year, calculated on the basis of the provisions laid down by law, regulation or administrative action in force at the time the application is made; and
- (b) the data needed for adjustment of the amounts paid provisionally in respect of the financial year for which final results are known.

3. Such application, which shall be made in good time to allow the public authorities to make the necessary provision in the budget, shall contain all relevant supporting information concerning in particular:

- (a) the financial burdens or benefits for each class of normalisation;
- (b) the method of calculation applied for each class under consideration;
- (c) the gross and net amounts referred to in Article 6 (1) for each class under consideration. The estimates referred to in paragraph 2 (a) shall be calculated on the basis of the figures for the last period for which final results are known, account being taken of any changes which may have occurred within each class of normalisation up to the time when the application was made.

Article 8

1. The competent authorities of the Member States shall examine the data upon which the application by the railway undertaking concerned is based.

2. After giving the undertaking concerned an opportunity to submit its comments, the competent authorities of the Member States may:

- adjust the amounts of the compensation and alter other items in the application, if the provisions of this Regulation have not been complied with;
- include in the application other financial burdens or benefits resulting from any of the classes listed in Article 4.

3. The competent authorities shall determine, in accordance with the provisions laid down in this Regulation, the estimated amount of the compensation for the following financial year, and the final amount of the compensation for the last preceding financial year for which final results are known. Their decision shall include details of the calculation of such amounts.

4. The competent authorities shall notify the railway undertaking of their decision six months at the latest after receipt of the application.

If the competent authorities fail to give a decision within that period, the undertaking's application shall be deemed to be provisionally accepted.

Article 9

Member States shall pay the estimated amount of compensation determined pursuant to Article 8 in the course of the financial year for which the estimate was made.

In the course of that financial year, Member States shall pay or collect the balance of the compensation due by reason of the difference between the final amount of the compensation for the last preceding financial year for which final results are available and the estimated amounts already paid.

Article 10

1. The amount of the compensation paid in respect of each class of normalisation shall be shown in a table annexed to the annual accounts of the railway undertaking. That table shall show separately amounts of compensation received on an estimated basis, and amounts received or paid in settlement of the outstanding balance as provided in Article 9.

The table shall also show, in respect of each public service obligation, the amounts of compensation granted under Regulation (EEC) No. 1191/69.

2. The total amount of compensation received pursuant to the normalisation of accounts and of compensation received in respect of public service obligations shall, depending on the rules in force in the individual States, be entered either in the trading account or in the profit and loss account of the railway undertaking concerned.

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

Done at Luxembourg, 26 June 1969.

Article 11

Decisions of the competent authorities of the Member States taken in pursuance of the provisions of this Regulation shall state the reasons on which they are based and shall receive official publication.

Article 12

Member States shall ensure that railway undertakings, in their capacity as railway undertakings, are given the opportunity to make representations concerning their interests, by appropriate means, with regard to decisions taken pursuant to this Regulation.

SECTION III

Final provisions

Article 13

1. The Commission may request Member States to supply all relevant information concerning the application 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 exempted 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 of amounts actually paid as compensation in respect of each class of financial burden or benefit covered by this Regulation.

Article 14

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.

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.

For the Council

The President

G. THORN

ANNEX I

Class I: Payments which railway undertakings are obliged to make but which, for the rest of the economy, including other modes of transport, are borne by the State

A. Scope

This class covers cases where, pursuant to some provision laid down by law, regulation or administrative action, a railway undertaking must itself bear certain payments which for the rest of the economy, including other transport undertakings, are borne in whole or in part by the State. Such payments include compensation in respect of loss or injury resulting from accidents at work, and special allowances for the children of employees.

B. Principle of calculation

Compensation shall be equal to the amount which the State would have borne had an undertaking in any other sector of the economy, including other modes of transport, been concerned.

ANNEX II

Class II: Expenditure of a social nature incurred by railway undertakings in respect of family allowances different from that which they would bear if they had to contribute on the same terms as 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, either directly or through a specialised body, in respect of family allowances.

B. Principle of calculation

The financial burden to be normalised shall be equal to the difference between:

- (a) the amount of the allowances provided for under the general law paid by the railway undertaking and
- (b) that same amount adjusted, by:
 - the ratio between the proportion of heads of families to total active staff in the railway undertaking and such proportion in the totality of the undertakings contributing to the body taken as a basis of comparison;
 - the ratio between the average number of persons dependent on each head of family for the railway undertaking and such average number for the totality of the undertakings contributing to the body taken as a basis of comparison.

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 causing the difference in payments arises 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 payments covered by A (2) compensation shall be equal to either:
 - (a) the difference between:
 - the financial burden borne by the undertaking as ascertained directly from its accounts and
 - the direct or indirect benefits which the undertaking enjoys by comparison with other modes of transport by reason of the special provisions referred to in A (2); or
 - (b) the difference between:
 - the financial burdens 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; and
 - the financial burden which would result if the scheme taken as a basis of comparison were applied.
3. If any rules of national law, having the same purpose but drawn in different terms, produce the same results as those obtained by applying paragraphs 1 and 2, compensation may be calculated in accordance with those rules.
4. Each Member State shall inform the Commission by 31 December 1970 of the estimated amount of the 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 harmonisation 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.

ANNEX IV

Class IV: The bearing by railway undertakings of the costs of crossing facilities**A. Scope**

This class covers cases where, pursuant to some provision laid down by law, regulation or administrative action, a railway undertaking bears an abnormally large share of the construction and operating costs of facilities used both by railways and by other modes of transport.

An abnormally large share shall be deemed to be borne in the following cases:

(a) where a new road is built

other than at the request of the railway undertaking, and that undertaking bears the cost of crossing facilities for the new road;

(b) where an overpass or underpass is modernised or where a level crossing is replaced by an overpass or underpass

other than at the request of the railway undertaking, and that undertaking bears the cost of modernisation, less any additional cost for modifications made at the request of the railway undertaking and the value of any benefit which it derives from modernisation;

(c) where a level crossing is modernised

and the railway undertaking bears more than half the cost;

(d) where, in respect of the reconstruction, maintenance or operation of:

— an overpass or underpass,

the railway undertaking bears a proportion of the costs involved greater than the proportion of the costs of constructing or modernising crossing facilities which it ought to bear on the basis of (a) or (b);

— a level crossing,

the railway undertaking bears more than half the cost involved.

B. Principles of calculation

Compensation shall be determined as follows:

For cases coming under (a): the amount of the compensation shall be equal to the proportion of the cost borne by the railway undertaking not having requested the new road in question, less any additional costs incurred by reason of modifications made at the request of the railway undertaking;

For cases coming under (b): the amount of the compensation shall be equal to the proportion of the cost borne by the railway undertaking not having requested the modernisation of the structure in question, less any additional costs for modifications made at the request of the railway undertaking and the value of any benefit which the railway undertaking derives from the works carried out; such benefit shall be assessed having regard, where a level crossing is replaced by an overpass or underpass, to any compensation which the railway undertaking has already received in respect of the level crossing;

For cases coming under (c): the amount of the compensation shall be equal to that part of the cost borne by the railway undertaking which is in excess of the half which it is required to bear;

For cases coming under (d): in the cases of overpasses or underpasses, the amount of the compensation shall be equal to that part of the cost borne by the railway undertaking which is in excess of the proportion of the cost of constructing or modernising crossing

facilities which it ought to bear according to the principles of calculation laid down for cases coming under (a) and (b);

- in the case of level crossings, the amount of the compensation shall be equal to that part of the cost borne by the railway undertaking which is in excess of the half which it is required to bear.

ANNEX V

Class V: Obligation to recruit staff surplus to the requirements of the undertaking

Scope

This class covers cases where, pursuant to some provision laid down by law, regulation or administrative action, a railway undertaking is required to recruit more staff than it actually requires.

ANNEX VI

Class VI: 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

Scope

This class covers cases where, pursuant to some Government measure, a railway undertaking is required to make backdated increases in the wages and salaries of its staff without being allowed to adjust rates so as to take those backdated increases into account, whilst similar financial burdens are not imposed on other transport undertakings.

ANNEX VII

Class VII: Delay imposed by the competent authorities with regard to renewals and maintenance

Scope

This class covers cases where, pursuant to a decision by the public authorities, a railway undertaking is obliged to reduce its expenditure on renewals and maintenance to a level below that required to ensure the continuity of the undertaking's activities.

The effect of such intervention is that expenditure for the financial years in which the postponed work then has to be done is raised to an abnormally high level. This state of affairs results in a financial burden being imposed on the railway undertaking in cases where the latter is unable to increase the amounts allocated for those years to expenditure on maintenance and renewals.

ANNEX VIII

Class VIII: Financial burdens in respect of reconstruction or replacement arising out of war damage which are borne by railway undertakings but which should have been assumed by the State

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 bear financial burdens in respect of reconstruction or replacement arising out of war damage on a different basis from that applicable to other transport undertakings.

B. Principle of calculation

The amount shall be determined by comparing as between railway and other transport undertakings the basis on which the burdens have been borne, account being taken of any indirect expenses incurred by reason of the special nature of railway activities.

The financial burdens to be taken into consideration shall be as follows:

- (a) direct expenditure on reconstruction or replacement;
- (b) the capital and interest burden of loans incurred in connection with reconstruction or replacement.

The amount of the compensation shall be ascertained directly from the accounts of the railway undertaking.

Where a loan has been contracted for the purpose of also meeting other expenditure, the financial burden which it entails shall be determined on the basis of that part of the loan intended for reconstruction or replacement.

ANNEX IX

Class IX: Obligation to retain staff surplus to the requirements of the undertaking

A. Scope

This class covers cases where, pursuant to some provision laid down by the public authorities, a railway undertaking is required:

- (a) to keep employed surplus staff whom, under provisions concerning its staff, it would be entitled to dismiss;
- (b) under certain provisions of its staff regulations not agreed to by the railway undertaking, to retain staff released by rationalisation measures who cannot reasonably be given other work in the undertaking.

B. Principles of calculation

The financial burden resulting from the retention of surplus staff will be proportionate to the number of persons affected by the measure under consideration.

For cases coming under (a): the number of persons to be dismissed shall be proposed by the undertaking. The number of persons to be retained shall be fixed by decision of the competent authorities. Compensation shall be made in respect of expenditure relating to such surplus staff for such period as that staff remains surplus to requirements.

For cases coming under (b): the number of surplus staff to be taken into consideration in the calculation shall be specified by the railway undertaking. This number shall be equal to the number of persons released by rationalisation measures, account being taken of the possibility of re-employing such staff in the course of the year in which the rationalisation measures are to take effect in posts made vacant by reason of retirement, or in newly created posts.

The amount of the resultant financial burden will be equal to the total of the wages or salary, allowances and social security payments for each person retained in employment or for each homogeneous group of such persons. In the latter case, the amount may be calculated on the basis of averages for each such group.

ANNEX X

Class X: 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

A. Scope

This class covers cases where, by reason of some provision laid down by law, regulation or administrative action, a railway undertaking is required to take special measures, such as granting allowances, advancements in seniority, additional promotions, or special holidays, for the benefit of staff having served in the armed forces or rendered special services to their country.

B. Principles of calculation

Compensation shall be equal to the amount of the special benefits which the undertaking is required to grant to the staff in question.

With regard to additional promotions, only promotions granted which are surplus to establishment shall be taken into account.

Compensation may be calculated in two different ways, depending on the number of persons concerned:

- (a) the calculation may be made individually for each case, or
- (b) by homogeneous groups of persons, the average increase in costs per person and the number of persons benefiting each year being determined for each group.

ANNEX XI

Class XI: Allowances payable to staff imposed on railway undertakings and not on 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 grant to its staff or part thereof, whether actively employed or available for active employment, allowances the payment of which is not imposed on other transport undertakings. Such allowances include in particular additional family allowances and supplementary holiday bonuses.

B. Principle of calculation

Compensation shall be equal to the amount of the financial burden which the undertaking has to bear.

ANNEX XII

Class XII: 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

A. Scope

This category covers cases where, pursuant to some provision laid down by the public authorities, a railway undertaking is required to meet, either directly or acting through a specialised body, certain expenses, such as those in respect of medical treatment.

B. Principles of calculation

Compensation shall be equal to the difference between the financial burden actually borne by the undertaking and the burden it would bear if it were affiliated to the body taken as a basis of comparison, allowance being made for benefits granted voluntarily by the undertaking.

With regard to medical treatment comparison shall be calculated as follows: the financial burden borne by the railway undertaking shall be ascertained directly from its accounts. The burden it 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 in accordance with the provisions laid down by law, regulation or administrative action governing such scheme. Expenditure relating to benefits granted voluntarily by the railway undertaking to its staff which are additional to those available under the scheme taken as a basis of comparison shall be deducted from the difference between the two amounts thus obtained.

ANNEX XIII

Class XIII: 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

A. Scope

This class covers cases where, pursuant to a decision of the public authorities, a railway undertaking is required, for reasons of social or regional policy, to keep in operation works or other establishments the existence of which is no longer justified by the requirements of the undertaking.

B. Principle of calculation

Compensation shall be equal to the cost of keeping the works in question in operation as required. The figures for determining that cost shall be those given in the accounts of the railway undertaking.

ANNEX XIV

Class XIV: Conditions imposed in respect of the placing of public contracts for works and supplies

A. Scope

This class covers cases where, pursuant to a provision laid down by the public authorities, a railway undertaking is required to place a proportion of its contracts for works and supplies with domestic undertakings based in certain regions of the Member State, or with specified categories of domestic contractors.

B. Principles of calculation

A comparison shall be made between the price charged by the party to whom the contract is preferentially awarded and the price quoted in the economically most favourable tender for that contract, or failing such a tender, for a similar contract.

The amount of the compensation shall be the difference between those two prices.

ANNEX XV**Class XV: Capital and interest burdens borne as a result of lack of normalisation in the past****A. Scope**

This category covers cases where, as the result of action by the public authorities, the budget of a railway undertaking includes provision for the capital and interest burden of loans contracted with, or advances received from, the competent authorities under decisions made in the past by such authorities on grounds incompatible with the principles of normalisation laid down in this Regulation.

B. Principles of calculation

The said capital and interest burden may be incorporated by the competent authorities in their own budget or may be included in normalisation under this Regulation. In the latter case normalisation shall apply to the total existing capital and interest burden shown in the budget of the railway undertaking in respect of loans contracted with, or repayable advances received from, the competent authorities.

The amount of the burden shall be ascertained from the accounts of the railway undertaking.
