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PROPOSAL

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To:	General Secretariat of the Council
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on repealing Regulation (EEC) No 1108/70 of the Council introducing an accounting system for expenditure on infrastructure in respect of transport by rail, road and inland waterway, and Commission Regulation (EC) No 851/2006 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Council Regulation (EEC) No 1108/70

Delegations will find attached document COM(2022) 381 final.

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Brussels, 3.8.2022
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2022/0232 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on repealing Regulation (EEC) No 1108/70 of the Council introducing an accounting system for expenditure on infrastructure in respect of transport by rail, road and inland waterway, and Commission Regulation (EC) No 851/2006 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Council Regulation (EEC) No 1108/70

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

This proposal for a regulation of the European Parliament and of the Council repealing Regulation (EEC) No 1108/70 and Regulation (EC) No 851/2006 is submitted in the context of the Commission's REFIT programme¹ and commitment on better regulation. The objective is to ensure a legislative framework that is fit for purpose and of high quality, as referred to in the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making². To that end, the Commission has identified these obsolete acts that the Commission is proposing to repeal.

The Commission announced its intention to repeal Regulation (EEC) No 1108/70 in its work programme for 2020³. Based on Article 91 of the Treaty on the Functioning of the European Union (ex Article 71 TEC and ex Article 75 TEEC), Regulation (EEC) No 1108/70 requires the collection of infrastructure expenditure data for rail, road and inland waterways, as well as the collection of statistics about the use of the corresponding infrastructure. The main objective of the Regulation was to collect information on transport infrastructure expenditure and transport infrastructure use ('returns') in the Member States for the development of a system of charging for the use of infrastructure under the common transport policy.

Given the difficulties encountered by Member States in reporting the requested data, Regulation (EEC) No 1108/70 has been amended by Council Regulation (EEC) No 1384/79⁴. This Regulation has introduced simplifications and corrections, with the aim of making data requirements lighter. Four further amendments to Regulation (EEC) No 1108/70⁵ were made following the accession of new Member States.

In addition, Regulation (EEC) No 2598/70⁶, as amended by Commission Regulation (EEC) No 2116/78⁷, Commission Regulation (EC) No 906/2004, and Commission Regulation (EC) No 851/2006⁸, has provided definitions of some of the items that should be included under the various headings of the accounts set by Regulation (EEC) No 1108/70.

In accordance with Article 9(3) of Regulation (EEC) No 1108/70 the Commission should submit a summary report to the Council every year, with the main statistics about transport infrastructure expenditure and use. To date, 15 reports have been submitted by the Commission. The 15th report from the Commission to the Council and the European

¹ https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-less-costly-and-future-proof_en

² OJ L 123, 12.5.2016, p. 1.

³ COM(2020) 37 final - ANNEX 5.

⁴ OJ L 167, 5.7.1979, p. 1.

⁵ Council Regulation (EEC) No 3021/81, OJ L 302, 23.10.1981, p. 8; Council Regulation (EEC) No 3572/90, OJ L 353, 17.12.1990, p. 12; Council Regulation (EC) No 1791/2006, OJ L 363, 20.12.2006, p. 1; and Council Regulation (EU) No 517/2013, OJ L 158, 10.6.2013, p. 1.

⁶ OJ L 278, 23.12.1970, p. 1.

⁷ OJ L 246, 8.9.1978, p. 7.

⁸ OJ L 158, 10.6.2006, p. 3.

Parliament on expenditure on and on utilization of rail, road and inland waterway infrastructure, covering data from 1987 to 1989, was published in 1994⁹. Despite repeated reminders, several Member States failed to supply all the data for the years under review or did not supply the data in the form required by the Regulation. This undermined the regularity of publications and meant that EU aggregates could not be calculated.

The Commission has not prepared any new reports since 1998, mainly because it hardly received any data from Member States and the data it did receive were mostly incomplete. Since 2005, only four Member States have reported infrastructure investment data to the Commission on the basis of Regulation (EEC) No 1108/70.

In addition, the definitions and classifications used in the Regulation have become obsolete. The most striking examples are Sections A.1 and A.2 of Annex II to the Regulation, which list all the railway operators in Europe for which Member States should collect the respective infrastructure expenditure, ignoring the process of market opening of the rail sector introduced by the various rail packages and the changes in governance, in particular the separation between infrastructure managers and railway companies that occurred for some of the companies mentioned in the Annex. It is also not recommendable to list in a legislative act the company names of the railway operators, since they might change over time due to reorganisations and thus make the Annex quickly obsolete.

Furthermore, many concepts and classifications are outdated (e.g. passenger trains classified as ‘long-distance express trains and express trains’ and ‘others’; goods trains classified as ‘rapid service’ and ‘ordinary service’; ‘kilometres worked’ which is usually referred to just as ‘kilometres’) and lacking an appropriate definition. Others are incompatible with the current classifications. For example, the Regulation asks for indicators for the category ‘vans with total permitted laden weight of less than 3 metric tonnes’, while the current legislation - Regulations (EC) No 1071/2009¹⁰ and (EC) No 1072/2009¹¹ - is directed to light utility vehicles with a maximum permissible laden weight of between 2.5 and 3.5 tonnes).

2. RESULTS OF CONSULTATION WITH INTERESTED PARTIES AND INTERNAL ASSESSMENT

2.1. Consultation

In 2017, the Commission carried out a targeted consultation of national statistical institutes about the difficulties experienced by Member States in complying with the requirements set by Regulation (EEC) No 1108/70. The consultation’s main conclusion was that data on transport infrastructure expenditure was generally available at ministry level, although not at the level of detail required by the legislation. Traffic statistics relating to transport infrastructure use (‘returns’) were less available. This information is collected in general by national statistical institutes, according to different sectoral statistical regulations (Regulation (EU) No 70/2012 on statistical returns in respect of the carriage of goods by road¹²,

⁹ COM(94) 47.

¹⁰ OJ L 300, 14.11.2009, p. 51.

¹¹ OJ L 300, 14.11.2009, p.72.

¹² OJ L 32, 3.2.2012, p. 1.

Regulation (EU) 2018/974 on statistics of goods transport by inland waterways¹³, and Regulation (EU) 2018/643 on rail transport statistics¹⁴). However, the breakdowns required by Regulation (EEC) No 1108/70 are mostly unavailable.

Based on the information collected from the 15 reports and from the consultation of national statistical institutes, the relevant Commission department has assessed Regulation (EEC) No 1108/70 in terms of its effectiveness and efficiency, coherence, relevance and EU value added.

Effectiveness and efficiency: Because of the low levels of reporting required, and the technical difficulties in collecting the data, the Regulation remains an excessively burdensome data collection exercise for the Member States rather than an effective and efficient exercise.

Coherence: Regulation (EEC) No 1108/70 partly overlaps with other, more recent data collection rules currently in force. With regard to data on infrastructure expenditure, the clearest overlap is with the data collection under the TEN-T Regulation (Regulation (EU) No 1315/2013)¹⁵, which collects a substantial amount of technical and financial information on the TEN-T core and comprehensive networks. The Rail Market Monitoring Survey, based on Commission Implementing Regulation (EU) 2015/1100¹⁶, also collects information on railways in Europe, including on rail infrastructure expenditure for maintenance, renewals, upgrades and new infrastructure. Regarding data on infrastructure use, Eurostat collects various statistics on road freight transport, rail transport and inland waterways transport that partially overlap with Regulation (EEC) No 1108/70 traffic indicators. The International Transport Forum (ITF/OECD) has regularly collected information on transport infrastructure and maintenance from its members since 1995, and published expenditure figures for road (also providing separate data for motorways), rail, inland waterways, maritime ports and airports. Regulation (EEC) No 1108/70 is therefore inconsistent and incompatible with these more recent legal acts obliging Member States to report on transport infrastructure investment data.

Relevance: Regulation (EEC) No 1108/70 was drafted at a time when the three inland modes of transport played the biggest role in the transport policy for the nine Member States of the European Economic Community. Inland transport remains the most relevant mode of transport within Europe, but the process of globalisation and the increase in aviation accessibility and connectivity put an additional focus on the infrastructure expenditure for maritime ports and aviation, which is not covered by the Regulation.

EU added value: There is clear added value in having a single data source for transport infrastructure expenditure at European level (which is currently lacking) rather than obtaining this information from each Member State separately. However, because of the low level of detail required and technical difficulties in collecting the data, only four Member States have

¹³ OJ L 179, 16.7.2018, p. 14.

¹⁴ OJ L 112, 2.5.2018, p. 1.

¹⁵ OJ L 348, 20.12.2013, p. 1.

¹⁶ OJ L 181, 9.7.2015, p. 1.

been reporting this information. The information received is not used for any policy initiative or technical analysis.

In conclusion, Regulation (EEC) No 1108/70 has become obsolete and the data that would have been collected under the Regulation have either become available from other sources or are no longer needed in the form and specifications required under the Regulation. Therefore, Regulation (EEC) No 1108/70, should be repealed. This will eliminate inconsistencies in the EU legal order and will help simplify EU legislation by eliminating a legal act that is now obsolete.

Commission Regulation (EC) No 851/2006 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Council Regulation (EEC) No 1108/70 should be repealed as well.

2.2. Impacts of the repeal

Based on the analysis of the information collected from the 15 reports and of the data provided since 2015 by only four Member States, the impact of a repeal of the Regulation is considered to be negligible.

For the four Member States that currently report data, the administrative burden will be reduced.

3. LEGAL ELEMENTS OF THE PROPOSAL

The proposal consists of a repeal of Regulation of the Council (EEC) No 1108/70 and of Commission Regulation (EC) No 851/2006.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹⁷,

Having regard to the opinion of the Committee of the Regions¹⁸,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Parliament, the Council of the European Union and the European Commission have confirmed their joint commitment to update and simplify legislation in the Interinstitutional Agreement on Better Law-Making of 13 April 2016¹⁹.
- (2) In order to clean-up and reduce the volume of the legislative *acquis*, it is appropriate to regularly analyse it and identify obsolete legislation. Repealing the obsolete legislation is useful for keeping the legislative framework transparent, clear and easy to use by Member States and relevant stakeholders.
- (3) Regulation (EEC) No 1108/70 of the Council²⁰ requires Member States to report on infrastructure expenditure for rail, road and inland waterways transport, as well as on returns relating to the use of the infrastructure.
- (4) Regulation (EEC) No 1108/70 is based on obsolete provisions and definitions and is inconsistent and incompatible with other, more recent legal acts currently in force obliging Member States to report on transport infrastructure investment data and infrastructure use.

¹⁷ OJ C , , p. .

¹⁸ OJ C , , p. .

¹⁹ OJ L 123, 12.5.2016, p. 1.

²⁰ Regulation (EEC) No 1108/70 of the Council of 4 June 1970 introducing an accounting system for expenditure on infrastructure in respect of transport by rail, road and inland waterway (OJ L 130, 15.6.1970, p.4).

- (5) Regulation (EEC) No 1108/70 is linked with excessive administrative difficulties in collecting the data. Since 2005, only four Member States have provided the data required by the Regulation.
- (6) Regulation (EEC) No 1108/70 should therefore be repealed to eliminate inconsistencies in the Union legal order and this should contribute to simplification of EU legislation by eliminating a legal act which is now obsolete.
- (7) As Regulation (EC) No 851/2006²¹ implements Regulation (EEC) No 1108/70, its purpose expires with the repeal of Regulation (EEC) No 1108/70. Regulation (EC) No 851/2006 should therefore also be repealed.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulations (EEC) No 1108/70 and (EC) No 851/2006 are repealed.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

²¹ Commission Regulation (EC) No 851/2006 of 9 June 2006 specifying the items to be included under the various headings in the forms of accounts shown in Annex I to Council Regulation (EEC) No 1108/70 (OJ L 158, 10.6.2006, p. 3).