



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.09.1998
COM(1998) 541 final

98/0281 (SYN)

Proposal for a

COUNCIL REGULATION (EC)

on a Community fleet capacity policy to promote inland waterway transport

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

1. In its report COM (97) 555 final of 3 November 1997 on the overall impact of the measures provided for in Council Regulation (EC) No 844/94 of 12 April 1994⁵ extending until 28 April 1999 the "old for new" arrangements in the context of the measures to promote structural improvements in inland waterway transport introduced under Council Regulation (EEC) No 1101/89 of 27 April 1989 the Commission concluded as follows:

2. "The scheme provides the best way of regulating the market thanks to the automatic offsetting of new capacity by scrapped capacity, while in no way inhibiting essential investment, notably in the growth sectors. This scheme is supported by the entire industry, which currently wants to extend it on the grounds that it is seen as a form of security in terms of the future of the inland navigation market and, in particular, provides a guarantee against losing the benefits of the improvement measures in which the industry will have invested more than 150 million ECU. At the same time, the sudden abolition of the "old for new" rule could have the effect of simultaneously triggering a sharp fall in the value of the equipment, with grave economic and social consequences for the undertakings concerned, and sparking off a new wave of construction that would soon wipe out the beneficial effects of the improvement measures. This mechanism does not require any financial intervention either on the part of the Member States concerned or of the European Community, since it is financed solely by the industry itself on the basis of special contributions. Consequently, the industry is responsible in its own right for regulating the market. With a view to the total liberalisation of the inland waterway market by 1 January 2000 and to the extent that the current economic climate permits, it could prove necessary, if this is the unanimous desire of the industry, to restore the "old for new" ratio to 1:1, so as to remove all constraints from the free market, without thereby jeopardising the results of the improvement measures, and in this way mobilise market forces in order to increase the efficiency and profitability of the inland waterway sector. In the years to come, this regulatory mechanism, if it is maintained beyond 1999, should ... respond more rapidly to market developments and to economic cycles, which nowadays appear increasingly ephemeral."

3. In the light of this report the Commission started discussions with the Group of Experts on Structural Improvements in Inland Waterway Transport to formulate a capacity regulation policy for the Community fleet to promote inland waterway transport.

⁵ OJ No L 98, 16.4.1994, p. 1.

II. GENERAL

4. The "old for new" rule was devised to counteract the tendency to overinvest and to provide protection against the effects of the reduction in overcapacity. These arrangements were introduced in 1989 for a period of five years from the date of entry into force of Council Regulation No 1101/89 with the possibility of an extension for an additional period not exceeding five years. The Commission report of 16 November 1993 (COM (93) 553 final) to the Council and the European Parliament demonstrated that the "old for new" mechanism was making an effective contribution to the capacity policy and was indispensable to balanced operation of the inland waterway market. This explains why it was extended for a further period up to 28 April 1999 (Council Regulation (EC) No 844/94 of 12 April 1994).

5. It should also be pointed out that the "old for new" rule has never sought to put a brake on investment in new capacity. Indeed, far from freezing tonnages, the "old for new" rule has not hampered the necessary modernisation and improvements in the productivity of the fleet, all the more so as the opening-up of the Central and Eastern European markets has allowed new vessel-building at low cost.

6. Steps must be taken to prevent the benefits from the latest comprehensive scrapping scheme between 1996 and 1998 (at a cost of ECU 192 million) being wiped out by new capacity coming into service as soon as the abovementioned scheme ends but also to move on from the market intervention stage without creating serious disturbance on the market, notably by putting at a disadvantage operators who had to pay a substantial special contribution before 28 April 1999. It is therefore necessary temporarily to retain the "old for new" rule with the existing ratios in the various branches of the market and to announce a gradual reduction of the ratios to zero over a maximum of five years starting on 28 April 1999 to guarantee the security and transparency of the inland waterway market. The "old for new" rule would also remain an essential instrument for controlling the capacity of the Community fleet on a market which will be fully liberalised by 1 January 2000, particularly in the event of serious disturbance (as defined in Article 1 of Directive 96/75/EC). Consequently, this rule would be turned into a standby mechanism, with the ratios set at zero, which could be reactivated by the Commission in the case of a crisis on the market, if so requested by a Member State and after the Committee provided for by Article 8 of Directive 96/75/EC had given its opinion. A standby mechanism of this type of limited duration is warranted by the unique nature of the inland waterway market compared with other modes of transport, in the form of the long vessel life and consequent lack of natural wastage of capacity.

7. A common approach allowing Member States to take joint measures to attain the same objective is a *sine qua non* for regulating the capacity of all the Community fleets. To this end, the scrapping funds introduced by Regulation (EEC) No 1101/89 should be maintained in the Member States with inland waterways and redesignated "Community Fleets Coordination and Promotion Funds" and these Funds should administer the "old for new" rule and be able to draw on any surplus funding from the structural improvement schemes in place up until 28 April 1999, in the form of contributions from the Member States, the Community and the industry which will be placed in a reserve fund and allocated to the abovementioned Funds. These Funds will subsequently be

financed by special contributions ("old for new" penalties) which will decrease until 2004. Consequently, the persons liable to the special contribution under the new proposal will be the same as the persons subject to Regulation No 1101/89 and the new Fund will serve a similar purpose since, by maintaining the "old for new" penalty, old capacity will be scrapped to offset new capacity brought into service or this reserve fund will be used to the same end. Any further reduction in capacity or other suitable measures which prove necessary in the event of a serious disturbance in the market (Article 7 of Council Directive 96/75/EC) would then be financed from these funds.

8. The emergence of new overcapacity must be kept in check effectively in every branch of the inland waterway transport market. The measures to be adopted must, therefore, be generally applicable and cover all cargo vessels and pusher craft. Vessels which in no way contribute to the overcapacity on the network of linked inland waterways, either because of their size or because they operate solely on national markets such as the Rhone and Seine or on closed international markets such as the Danube ("captive vessels"), could therefore be exempted. By contrast, private fleets performing own-account operations cannot be excluded because of their impact on transport markets.

9. In view of the fundamental differences between the dry cargo, liquid cargo and pusher craft markets, it is advisable to keep separate accounts in the funds for dry cargo carriers, tanker vessels and pusher craft.

10. In the context of an economic policy compatible with the Treaty, responsibility for capacity regulation lies primarily with operators in the sector. The cost of the measures introduced must therefore be borne by the undertakings in the inland waterway sector. To regulate capacity the conditions in force for bringing into service new capacity (the "old for new" rule) will be maintained for a maximum of five years, gradually reducing the ratios to zero, without going so far as totally to block access to the market or imposing a quota on the national fleets. The rule would be kept as a standby mechanism which could be reactivated, in which case it would be possible to limit the duration and impact of these conditions and to adjust them flexibly to market trends. The special contributions (penalties) paid under the "old for new" rule could be used, inter alia, for granting scrapping premiums in the event of a serious crisis on the inland waterway market.

11. Since the inland waterway fleets are Community fleets, decisions on operation of this capacity-regulation mechanism must be taken at Community (Commission) level. The power to adopt such decisions, to see to implementation thereof and to safeguard the conditions of competition must be conferred on the Commission, which will adopt a regulation laying down all the detailed rules on the scheme.

12. To soften the potential social impact of the compensatory scrapping of vessels under the "old for new scheme" on certain carriers and workers in the inland waterways industry, the Member States should provide for accompanying measures to help workers who wish to leave the industry definitively retrain for jobs in another sector or add to their skills. Given the important role which inland waterway transport plays in protecting the environment and safety, the modernisation and restructuring of the Community's fleets must continue, leaving the Member States the possibility of intervening in promoting groupings of undertakings and in adaptation of the vessels to technical progress.

promoting groupings of undertakings and in adaptation of the vessels to technical progress.

13. To prevent distortion of competition on the markets in question and to make the proposed system more effective, it is desirable for Switzerland to adopt similar measures for its fleet on the linked inland waterway network of the Member States concerned and for the Community to conduct negotiations to this end.

14. The draft for a Commission Regulation annexed for information, which will not be adopted until the proposal for a Council Regulation has been adopted, lays down certain measures for implementing this proposal for a Council Regulation, incorporates various points from Regulations No 1101/89 and 1102/89,⁵ as last amended by Regulations No 2812/94,⁶ 2310/96,⁷ 241/97⁸ and 742/98⁹, and maintains the ratios laid down therein to avoid drastic discrimination between operators who had to pay a high special contribution and operators who would no longer have to pay anything at all and gradually to reduce the rates to zero over the next five years. Discussions on downward revision of these ratios are being conducted with the industry and the Member States concerned and could, therefore, possibly be completed before adoption of this proposal for a Commission Regulation. This Commission Regulation will have to come into force at the same time as the Council adopts this proposal.

15. To prevent a legal void and any break in the policy pursued by the Community since 1989 on structural improvements in inland waterway transport, which could jeopardise the results of the measures, the Community institutions must proceed with adoption of the proposal as soon as possible and before Regulation No 1101/89 expires on 28 April 1999.

16. In conclusion, the Commission considers that, in view of the special nature of the inland waterways industry, the measures proposed are indispensable in the context of the common transport policy to enable inland waterways to offer an alternative to other modes of transport and thereby contribute to attaining the objective of sustainable mobility.

⁵ OJ No L 116, 28.4.1989, p. 30.

⁶ OJ No L 298, 19.11.1994, p. 22.

⁷ OJ No L 313, 3.12.1996, p. 8.

⁸ OJ No L 40, 11.2.1997, p. 11.

⁹ OJ No L 103, 3.4.1998, p. 3.

III. SUBSIDIARITY

17. The Community action envisaged in the proposal for a regulation on a Community fleet capacity policy to promote inland waterway transport can be analysed, in terms of subsidiarity, by answering five fundamental questions:

(a) What are the objectives of the proposed measure, and how do they relate to the Community's obligations?

This action follows up the Community structural improvement measures introduced in 1989 so as not to lose the benefits, to avoid a drastic change of situation for the operators and to move on from the intervention on the Community market stage without creating serious disturbances. Consequently, the objective is temporarily to retain and phase out over a maximum of five years the common provisions on capacity policy for the entire inland waterway market. On the fully-liberalised market from 1 January 2000 on and after the transition period of a maximum of five years all that will remain will be a standby mechanism which could be reactivated only in the event of a serious disturbance in the market, as defined in Article 1 in conjunction with Article 7 of Directive 96/75/EC.

(b) Is the measure in an area where the Community has sole jurisdiction or where it shares jurisdiction with the Member States?

The proposal is based on Article 75 of the Treaty and therefore falls within the exclusive competence of the Community.

(c) What is the scale of the problem at Community level?

The Member States directly concerned are: Austria, Belgium, France, Germany, Luxembourg and the Netherlands. The other countries either have no inland waterway network or are not connected to the Community network.

(d) What options are available to the Community?

A regulation must be adopted in order gradually to move on from the Community structural improvement measures to a free capacity policy on a free market, while keeping a standby mechanism which could be reactivated to provide a rapid response in the event of a serious market disturbance, as provided for in Article 7 of Directive 96/75/EC.

(e) Are uniform rules needed, or is the adoption of a directive sufficient?

A regulation is needed to maintain the "old for new" rule introduced by Regulation No 1101/89 for five more years after 28 April 1999 and to keep a single, non-discriminatory arrangement.

IV. SPECIFIC POINTS

Article 1

The basic principle is to phase out over a period of not more than five years the conditions imposed on bringing new vessels into service.

Article 2

Paragraph 1

The Regulation should apply to the whole market for the carriage of goods by inland waterway. Moreover, the regulations on international Rhine navigation draw no legal distinction between hire-or-reward and own-account services. The Regulation cannot, therefore, be limited to just one or the other of these types of service.

Paragraph 2

Subparagraph (a) covers vessels operating on waterways other than in the six interlinked Member States (e.g. inland waterways in the United Kingdom or Italy).

It is necessary to exclude captive vessels (as already the case in Regulation (EEC) No 1101/89) and vessels which operate on and never leave closed markets on the Danube. Another reason is that the Danube fleet competes directly against the Central and Eastern European fleets which have the advantage of different market conditions, that there is no overcapacity on this segment of the market and that it is imperative to modernise and expand this fleet (subparagraphs (b) and (c)).

In the pushed convoy sector, small pusher craft with a motive power not exceeding 300 kW are exempted because they operate mainly on the short-distance market (for example, in port zones) and were exempted already under Regulation (EEC) No 1101/89.

Article 3

Paragraph 3

The inland waterway market consists of three distinct sectors with different supply and demand patterns. There is the dry cargo market catered for by dry cargo carriers, the liquid cargo market covered by tankers and the pusher craft market providing the motive force for vessels which are not self-propelled.

Paragraph 4

The reserve fund will be financed by the surplus funds from the 1996-98 scrapping scheme, the special contributions under the "old for new" rule and any financial resources which could be made available in the event of serious disturbance on the market. This fund could finance further capacity shedding or any other appropriate measures in the event of serious disturbance. If no serious disturbance occurs, the reserve fund could also be used, at the unanimous request of the industry, for the measures provided for in Article 8.

Article 4Paragraph 3

To avoid having to establish transitional arrangements every time the various ratios are amended, vessel owners have the choice between paying the special contribution or scrapping old tonnage, either at the time of placing a firm order for the new vessel under construction or when the new vessel is brought into service in practice.

Also, at the request of the Member States, vessels definitively withdrawn from the market for use for purposes other than goods transport, notably for humanitarian aid purposes, may be counted as compensatory capacity, if the Commission so decides.

Paragraph 6

To avoid problems with interpretation of the concept "specialised vessels", the conditions for eligibility for exemption must be clearly defined.

Article 5

No comment.

Article 6

In the event of serious market disturbance, as defined in Article 1 of Directive 96/75/EC, this article makes it possible, at the request of a Member State, as provided for by Article 7 of Directive 96/75/EC and after hearing the committee provided for in Article 8 of the same Directive following the procedure laid down therein, to proceed with further scrapping, depending on the financial resources available in the reserve fund, but only of vessels in the active fleet, as defined in paragraph 1. The measures will be of limited duration, as stipulated in Article 7(4) of Directive 96/75/EC.

Articles 7 and 8

No comment.

Article 9

Switzerland seeks access for its vessels to the Community's inland waterways network, in that it has been participating in the Community's improvement schemes since 1989. The Community could consider negotiations to this end.

Articles 10 and 11

No comment.

**PROPOSAL FOR A COUNCIL REGULATION (EC)
on a Community fleet capacity policy
to promote inland waterway transport**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 189c of the Treaty,

Whereas Regulation (EEC) No 1101/89¹ introduced arrangements for structural improvements in the inland waterway sector for the fleets operating on the linked inland waterway networks of Austria, Belgium, France, Germany, Luxembourg and the Netherlands; whereas the objective of this Regulation was to reduce overcapacity in the inland waterway fleets by means of vessel-scraping schemes coordinated at Community level; whereas this Regulation expires on 28 April 1999;

Whereas of the measures to support these structural improvement arrangements with the aim of avoiding aggravation of existing overcapacity or the emergence of further overcapacity, the "old for new" rule has proved indispensable to balanced operation of the inland waterway market (Commission report COM(97)555 final of 3 November 1997); whereas this rule also remains an essential instrument for intervention in the event of a serious disturbance in the same market, as defined in Article 1 of Directive 96/75/EC;² whereas steps should be taken to prevent the benefits from the scrapping schemes conducted since 1990 being wiped out by new capacity coming into service as soon as the abovementioned rule ends; whereas it is therefore necessary to retain the "old for new" rule for a limited period of not more than five years while gradually reducing the ratios to zero to safeguard the transition and end the Community market intervention stage; whereas it is also important to maintain the "old for new" instrument for regulating the capacity of the Community fleets beyond these five years but as a standby mechanism set at zero which could be reactivated in the event of serious market disturbance, as provided for by Article 7 of Directive 96/75/EC;

Whereas the emergence of new overcapacity must be kept in check effectively in every branch of the inland waterway transport market; whereas the measures to be adopted must, therefore, be generally applicable and cover all cargo vessels and pusher craft; whereas vessels which, because they operate solely on closed national or international

¹ OJ No L 116, 28.4.1989, p. 25. Regulation as last amended by Commission Regulation (EC) No 742/98 of 2 April 1998 (OJ No L 103, 3.4.1998, p. 3).

² OJ No L 304, 27.11.1996, p. 12.

markets, in no way contribute to the overcapacity on the network of linked inland waterways could be exempted; whereas, by contrast, private fleets performing own-account operations cannot be excluded because of their impact on transport markets;

Whereas a common approach allowing Member States to take joint measures to attain the same objective is a *sine qua non* for regulating capacity; whereas to this end the scrapping funds introduced by Regulation (EEC) No 1101/89 in the Member States with inland waterways should be maintained and redesignated "Community Fleets Coordination and Promotion Funds" and should administer this "old for new" rule; whereas the surplus funds from the structural improvement schemes in place up until 28 April 1999 should be placed in a reserve fund attributed to the abovementioned funds;

Whereas, in view of the fundamental differences between the dry cargo, liquid cargo and pusher craft markets, it is advisable to keep separate accounts in each fund for dry cargo carriers, tanker vessels and pusher craft;

Whereas, in the context of an economic policy compatible with the Treaty, responsibility for capacity regulation lies primarily with operators in the sector; whereas the cost of the measures introduced must therefore be borne by the undertakings in the inland waterway sector; whereas this capacity regulation consists of laying down the conditions to apply for bringing into service certain new capacity without going so far as totally blocking access to the market; whereas it is possible to limit the duration and impact of these conditions and to adjust them flexibly to market trends but the ratios must gradually be reduced to zero within five years starting on 28 April 1999; whereas this regulatory mechanism designated the "old for new" rule may be set at zero and maintained for more than five years after 28 April 1999 as a standby mechanism; whereas the special contributions paid under the "old for new" rule are to be placed in the reserve fund and may be used for granting scrapping premiums, should intervention in the market be necessary;

Whereas it is desirable to ensure that the measures provided for in this Regulation and implementation thereof do not distort, or threaten to distort, competition, in particular by favouring certain undertakings to an extent which is contrary to the common interest; whereas, in order to place the enterprises concerned in similar conditions of competition, the special contributions to be paid to the funds for building new craft and the scrapping premiums, should such premiums prove necessary in the event of a serious disturbance of the market and in accordance with the procedure provided for in Article 8 of Directive 96/75/EC, should be set at uniform rates and on uniform terms;

Whereas, since the inland waterway fleets are Community fleets, decisions on operation of this capacity-regulation mechanism must be taken at Community level; whereas the power to adopt such decisions, to see to implementation thereof and to safeguard the conditions of competition laid down in this Regulation must be conferred on the Commission;

Whereas, in connection with the modernisation and restructuring of the Community fleets to create a context favourable to the environment and safety, social measures should be taken to help workers who wish to leave the inland waterway industry or to retrain for jobs in another sector; whereas measures should be taken to encourage the establishment

of groupings of undertakings, to improve operators' skills and to promote adaptation of the vessels to technical progress;

Whereas, in order to prevent distortion of competition on the markets in question and to make the proposed measures more effective, it is desirable for Switzerland to adopt similar measures for its fleet on the linked inland waterway network of the Member States concerned; whereas the Community is prepared to open any negotiations necessary with Switzerland,

HAS ADOPTED THIS REGULATION:

Article 1

Inland waterway vessels used to carry goods between two or more points by inland waterway in the Member States shall be subject to the Community fleet capacity policy laid down in this Regulation. For a period of not more than five years with effect from 28 April 1999 this capacity policy shall include the conditions for bringing into service new vessels, in accordance with this Regulation.

Article 2

1. This Regulation shall apply to cargo-carrying vessels and pusher craft providing transport services on own account or for hire or reward and registered in a Member State or, if not registered, operated by an undertaking established in a Member State.

For the purposes of this Regulation, "undertaking" shall mean any natural or legal person exercising an economic activity on a non-industrial or industrial scale.

2. The following shall be exempt from this Regulation:

- (a) vessels operating exclusively on national waterways not linked to other waterways in the Community;
- (b) vessels which, owing to their dimensions, cannot leave the national waterways on which they operate and cannot enter the other waterways of the Community ("captive vessels"), provided that such vessels are not likely to compete with vessels covered by this Regulation;
- (c) vessels operating exclusively on the closed market of the Danube (and its tributaries) up to Kelheim without ever leaving it;
- (d) pusher craft with a motive power not exceeding 300 kilowatts;
- (e) sea-going inland waterway vessels and ship-borne barges used exclusively for international or national transport operations during voyages which include a sea crossing;
- (f) vessels used exclusively for storage of goods, i.e. vessels used for loading and subsequently unloading goods at the same place;

- (g) dredging equipment such as hopper vessels and pontoons and floating construction plant;
- (h) ferries;
- (i) vessels providing a non-profit-making public service.

Article 3

1. Each of the Member States whose inland waterways are linked to those of another Member State and the tonnage of whose fleet is above 100 000 tonnes, hereinafter referred to as "the Member States concerned", shall set up, under its national legislation and with its own administrative resources, a Community Fleets Coordination and Promotion Fund, hereinafter referred to as "the Fund".

2. The competent authorities in the Member State concerned shall administer the Fund. Each Member State shall involve its national organisations representing inland waterway carriers in this administration.

3. Each Fund shall consist of three separate accounts, one for dry cargo carriers, one for tanker vessels and one for pusher craft.

4. Each Fund shall have a reserve fund financed by:

- the surplus funding from the structural improvement schemes conducted up until 28 April 1999, consisting of contributions from the Member States concerned, the Community and the industry,
- the special contributions referred to in Article 4 of this Regulation,
- the financial resources which could be made available in the event of serious disturbance of the market, as referred to in Article 7 of Council Directive 96/75/EC.

5. The reserve fund may be used in connection with the suitable measures referred to in Article 7 of Council Directive 96/75/EC and, in particular, in the course of the improvement measures organised at Community level in accordance with the procedure defined in Article 6 of this Regulation.

6. The reserve fund may be used in the course of the measures referred to in Article 8 of this Regulation only if unanimously requested by the organisations representing inland waterway transport at Community level.

Article 4

1. Vessels covered by this Regulation, whether newly constructed, imported from a third country or due to leave the national waterways mentioned in Article 2(2)(a), (b) or (c), may be brought into service subject to the condition (the "old-for-new" rule) that the owner of the vessel to be brought into service:

- either scraps, without receiving a scrapping premium, tonnage in line with the ratio between old and new tonnage set by the Commission;
- or pays into the Fund covering the new vessel, or into the Fund chosen by the vessel-owner in accordance with Article 5(2), a special contribution based on the

abovementioned ratio or, if the owner scraps a tonnage smaller than required by the abovementioned ratio, pays the difference between the tonnage of the new vessel and the tonnage scrapped.

2. The ratio may be set at different levels for different sectors of the market, i.e. dry cargo carriers, tanker vessels and pusher craft; the ratio must gradually be reduced to zero within not more than five years of 28 April 1999. Once the ratio has been set at zero, the arrangements shall become a standby mechanism and may be reactivated only in the event of a serious disturbance of the market, as provided for by Article 7 of Directive 96/75/EC.

3. The owner of the vessel shall have the choice between paying the special contribution or scrapping old tonnage either at the time that the firm order for construction of the new vessel is placed or at the time that the application for import is lodged, provided the vessel is brought into service within eighteen months thereafter, or at the time that the new or imported vessel is brought into service. This choice must be stated at the time of ordering or applying to import the vessel. The vessel offered for scrapping as compensatory tonnage must have been scrapped before the new vessel is brought into service. Owners of vessels to be brought into service who have a higher tonnage than necessary scrapped shall receive no financial compensation for this surplus. Vessels definitively withdrawn from the market for use for purposes other than the carriage of goods such as vessels for humanitarian purposes, museum ships, vessels for developing countries outside Europe or vessels placed at the disposal of non-profit-making bodies may be counted as compensatory tonnage, i.e. treated as if they had been scrapped, at the decision of the Commission.

4. In the case of pusher craft, the concept of "tonnage" shall be replaced by that of "motive power".

5. The conditions laid down in paragraph 1 shall also apply to increases in capacity resulting from the lengthening of a vessel or the replacement of pusher-craft engines.

6. The Commission may exempt specialised vessels from the scope of paragraph 1. The specialised vessels must be specially technically designed to carry a single type of goods and technically unsuitable for carrying other goods, it must be impossible to carry this single type of goods in vessels without special technical installations and the owners of the vessels must give a written undertaking that no other goods will be carried in their vessels as long as the "old-for-new" rule applies.

Article 5

1. For vessels registered in one of the Member States concerned, the special contribution shall be paid into the Fund of the Member State where the vessel is registered. For non-registered vessels operated by an undertaking established in one of the Member States concerned, the special contribution shall be paid into the Fund of the Member State in which the undertaking is established.

2. The special contribution for vessels registered in another Member State or for non-registered vessels operated by an undertaking established in another Member State shall be paid into one of the Funds set up in the Member States concerned, at the choice of the vessel-owner.

Article 6

1. In the event of serious disturbance on the market, as defined in Article 7 of Directive 96/75/EC, at the request of a Member State, after the Committee referred to in Article 8 of Directive 96/75/EC has given its opinion and following the procedure laid down in the same Article, the Commission may reactivate the "old-for-new" rule for a limited period, as provided for by Article 7 of Directive 96/75/EC, or adopt improvement measures for owners of all vessels referred to in Article 2(1) who scrap a vessel, i.e. who have the hull of the vessel broken up totally or destroy the engine in the case of pusher craft, to receive a scrapping premium at the rate set by the Commission under the conditions laid down in Article 7 from the Fund covering the vessel insofar as the financial resources are available. This premium shall be granted only in respect of vessels which the owner proves form part of his active fleet, i.e.:

- vessels which are in good working order; and
- vessels for which the owner can produce a valid certificate of waterworthiness and tonnage certificate or an authorisation to engage in national transport issued by the competent authority of one of the Member States concerned, and
- vessels which have made at least ten voyages during the 24 months preceding application for the scrapping premium. "Voyage" shall mean a commercial transport operation over a distance normal for the carriage of goods of the same type (over 50 km) and carrying a volume of cargo in reasonable proportion to the cargo capacity of the vessel (at least 70%).

No premium shall be granted in respect of vessels which, as a result of a wreck or other damage suffered, are no longer repairable or for which the repair costs are higher than the amount of the scrapping premium.

Where the competent authorities have well-founded reasons to doubt that the vessel covered by the application for the scrapping premium is in good working order, they may request a surveyor to certify that the vessel concerned is in a technical condition to carry goods. The scrapping premium may be refused if the vessel fails to meet this requirement.

2. There shall be mutual financial support between the Funds with regard to the separate accounts mentioned in Article 3(3). This shall come into play for all the expenditure and all the Funds mentioned in Article 3(4), so as to guarantee equal treatment for all carriers subject to this Regulation, independently of the Fund to which the vessel belongs.

Article 7

1. The Commission shall lay down separately for dry cargo carriers, for tankers and for pusher craft:

- the ratios for the "old for new" rule for the vessels referred to in Article 2,

- the rate of the special contributions,
- the period during which scrapping premiums referred to in Article 6 will be paid, the conditions for granting them and the rates,
- the adjustment coefficients (equivalent tonnage) for each type and category of inland waterway vessel.

2. The special contributions and scrapping premiums shall be expressed in euros. The rates applying shall be the same for each Fund.

3. The special contributions and scrapping premiums shall be calculated on the basis of either the deadweight tonnage for cargo-carrying vessels or the motive power of the vessel for pusher craft.

4. The Commission shall lay down detailed rules for the mutual financial support referred to in Article 6(2).

The decisions reached by the Commission shall also take account of the results of observation of the transport markets in the Community and of any foreseeable changes therein, as well as of the need to avoid any distortion of competition to an extent which is contrary to the common interest. In order to contribute to observation of the market, owners of vessels built or imported must inform the Funds thereof six months before they are brought into service.

Article 8

The Member States may take measures:

- to make it easier for inland waterway carriers leaving the industry to obtain an early retirement pension or to transfer to another economic activity,
- to organise vocational training or re-training schemes for workers leaving the industry after scrapping of their vessel,
- to encourage private owner-operators to join trade associations,
- to encourage adaptation of vessels to technical progress in order to improve working conditions and promote technical safety requirements,
- to improve operators' skills in order to safeguard the development and future of the trade.

Article 9

The Community shall enter into any negotiations which prove necessary for the purposes of implementation of this Regulation with Switzerland and with other non-member States.

Article 10

1. Member States shall adopt the measures necessary to implement this Regulation and shall notify the Commission thereof.

These measures shall provide, inter alia, for permanent and effective verification of compliance with the obligations imposed on undertakings by this Regulation and the national provisions adopted in implementation thereof, and for appropriate penalties in the event of infringement.

2. Member States shall communicate to the Commission annually all relevant information on progress with the "old for new" scheme and, in particular, on the financial position of the Funds and of their reserve fund.

3. Before 29 April 1999 the Commission shall adopt the decisions which it is required to take under Article 7.

4. The Commission shall ensure that the Funds apply this Regulation uniformly and shall ensure coordination thereof.

Article 11

This Regulation shall enter into force on 29 April 1999.

DRAFT FOR A COMMISSION REGULATION (EC)

**laying down certain measures for implementing Council Regulation (EC) No /99
on a Community fleet capacity policy to promote inland waterway transport**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No /99 of 1999¹ on a Community fleet capacity policy to promote inland waterway transport, and in particular Article 11(3) thereof,

Whereas, under Article 7 of Regulation (EC) No /99, the Commission must lay down the practical arrangements for implementing the Community fleet capacity policy defined in the abovementioned Regulation;

Whereas it is advisable to maintain the special contribution rates laid down in Commission Regulation (EC) No 241/97 of 10 February 1997² since they have proved effective;

Whereas it is advisable to maintain the rates of the different ratios mentioned in Article 4 of Council Regulation (EC) No /99 of 1999, in accordance with Commission Regulations (EC) No 2812/94 of 18 November 1994³ in the case of tanker vessels, No 2310/96 of 2 December 1996⁴ in the case of pusher craft and No 742/98 of 2 April 1998⁵ in the case of dry cargo vessels;

Whereas, in order to operate the mutual financial support arrangements between the Community Fleets Coordination and Promotion Funds, it would seem advisable for the Commission, with the help of the representatives of the Funds, to enter in the accounts the resources available in the reserve fund and to balance the accounts in the event of new improvement measures;

Whereas the Member States concerned and the organisations representing inland waterway carriers at Community level have been consulted on the measures provided for in this Regulation,

HAS ADOPTED THIS REGULATION:

1

2 OJ No L 40, 11.2.1997, p.11.

3 OJ No L 298, 19.11.1994, p.22.

4 OJ No L 313, 3.12.1996, p.8.

5 OJ No L 103, 3.4.1998, p.3.

Article 1

1. This Regulation fixes, inter alia, the rate of the special contributions referred to in Article 7 of Regulation (EC) No /99, the ratios for the "old for new" rule referred to in Article 7 of the same Regulation and the practical arrangements for implementing the Community fleet capacity policy in order to grant scrapping premiums, where necessary.

Special contributions

Article 2

1. The special contributions for the different types and categories of vessels shall be within a bracket ranging from 70 to 115% of the following rates* :

- Dry cargo vessels

- Self-propelled barges: EUR [120] per tonne*

- Push barges: EUR 60 per tonne

- Lighters: EUR [43] per tonne*

Tanker vessels

- Self-propelled barges: EUR [216] per tonne*

- Push barges: EUR 108 per tonne

- Lighters: EUR [39] per tonne*

- Pusher craft:

EUR 180/kW with a linear increase to EUR 240/kW where the motive power is equal to or greater than 1000 kW.

2. - For vessels with a deadweight capacity of less than 450 tonnes, the maximum rates for the special contributions set out in paragraph 1 shall be reduced by 30%.
 - For vessels with a deadweight capacity of between 450 and 650 tonnes, the maximum rates for the special contributions shall be reduced by 0.15% for every tonne by which the deadweight capacity of the vessel in question is less than 650 tonnes.
 - For vessels with a deadweight capacity of between 650 and 1650 tonnes, the maximum rates for the special contributions shall show a linear increase from 100% to 115% for vessels up to 1650 tonnes. For vessels with a deadweight capacity of more than 1650 tonnes, the maximum rates for the special contributions shall remain at 115%.
3. The special contributions, expressed in euros, shall be converted into the currencies of the relevant Fund at the rate applicable on the date of publication of the first Official Journal of the European Communities for the year in question in which the interest rates applied by the European Monetary Institute to its operations in euros for the month of January are specified.

* Approximate rate at present.

"Old for new" ratios

Article 3

With effect from 29 April 1999 the bringing into service of vessels shall be subject to the condition laid down in Article 4(1) of Regulation No /99:

1. In the case of dry cargo carriers, the ratio (between old tonnage and new tonnage) shall be [1.25:1].*
2. In the case of tanker vessels, the ratio shall be [1.50:1].*
3. In the case of pusher craft, the ratio shall be [1:1].*

Mutual financial support

Article 4

1. With a view to entering in the accounts the resources available in the reserve fund or to operating the mutual financial support arrangements between the accounts of the various Funds as required under Article 6(2) of Regulation (EC) No /99, each Fund shall communicate the following information to the Commission at the beginning of each year:

- the Fund's receipts in the previous year, in so far as these receipts are intended for the payment of scrapping premiums or promotion measures (R_{dn}),
- the Fund's financial commitments incurred during the previous year in respect of scrapping premiums or promotion measures (P_n),
- the Fund's surplus as at 1 January of the previous year deriving from receipts intended for the payment of scrapping premiums or promotion measures (S_n).

2. The Commission, with the assistance of the Fund authorities, shall determine, on the basis of the information referred to in paragraph 1:

- the total financial commitments incurred by the Funds during the previous year in respect of the scrapping premiums or promotion measures (P),
- the total receipts of all the Funds during the previous year (R_{dt}),
- the total surplus of all the Funds on 1 January of the previous year (S),
- the adjusted annual financial commitment of each Fund (P_{nn}), calculated as follows:

* Approximate rate at present.

$$P_{nn} = \frac{P_t}{(R_{dt} + S_t)} \times (R_{dn} + S_t),$$

- for each Fund, the difference between annual financial commitments (P_n) and annual adjusted financial commitments (P_{nn}),
 - the sums which each Fund whose annual commitments are less than the annual adjusted financial commitments ($P_n < P_{nn}$) transfers to a Fund with annual financial commitments greater than the annual adjusted commitments ($P_n > P_{nn}$).
3. Each of the Funds involved shall transfer the sums referred to in the fifth indent of paragraph 2(a) and in the sixth indent of paragraph 2(b) to the other Funds by 1 March of the current year.

Equivalent tonnage

Article 5

1. Where a vessel owner brings into service one of the vessels referred to in Article 4 of Regulation (EC) No /99 and presents for scrapping a vessel or vessels of another type, the equivalent tonnage to be taken into consideration shall be determined, within each of the two categories of vessels indicated below, in accordance with the following adjustment coefficients:

- Dry cargo vessels

- Self-propelled barges over 650 tonnes: 1.00,
- Push barges over 650 tonnes: 0.50,
- Lighters over 650 tonnes: 0.36;

- Tanker vessels

- Self-propelled barges over 650 tonnes: 1.00,
- Push barges over 650 tonnes: 0.50,
- Lighters over 650 tonnes: 0.18.

2. For vessels with a deadweight capacity of less than 450 tonnes, the coefficients set out in paragraph 1 shall be reduced by 30%. For vessels with a deadweight capacity of between 450 and 650 tonnes, these coefficients shall be reduced by 0.15% for every tonne by which the deadweight capacity of the vessel in question is less than 650 tonnes.

Consulting

Article 6

1. The Commission shall consult the Member States whenever it plans to amend this Regulation.

2. On all matters concerning the Community fleet capacity policy the Commission shall request the opinion of a group made up of experts from the professional organisations representing inland waterway carriers at Community level. This group shall be known as the "Group of Experts on Community Fleets Capacity and Promotion Policy".

Final provisions

Article 7

This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.

Regulation No 1102/89 shall remain in force until the date of entry into force of this Regulation.

IMPACT EVALUATION FORM

IMPACT OF THE PROPOSALS ON FIRMS AND IN PARTICULAR ON SMALL AND MEDIUM-SIZED ENTERPRISES

Title of the proposals:

Proposal for a Council Regulation (EC) on a Community fleet capacity policy to promote inland waterway transport accompanied by a draft for a Commission Regulation (EC) laying down certain measures for implementing Council Regulation (EC) No /99 on a Community fleet capacity policy to promote inland waterway transport.

The proposal

1. With regard to the principle of subsidiarity, why is Community legislation necessary in this field and what are its main goals?

In view of the specific nature of the inland waterway sector, particularly with regard to capacity, and of the structural changes made necessary by the liberalisation of the transport market to be completed by 1 January 2000, a common approach with the same objective is needed to establish the arrangements for the transition from capacity regulation to a standby mechanism. This new proposal to replace Council Regulation (EEC) No 1101/89 allows further coordination of capacity policy at Community level so as not to lose the benefits of the structural improvements made at Community level since 1989 while ending the market intervention stage within a maximum of five years to guarantee the requisite uniformity and transparency on the market.

Impact on the companies

2. Who will be affected by the proposal?

a) Direct impact (possibilities of new activities)

- private owner operators
- shipowner companies (companies with more than three vessels)
- groupings or cooperatives of private owner operators.

Positive impact: the gradual reduction of the "old for new" ratios within a set maximum of five years enables the industry to prepare for the free market:

- to soak up (over five years) the extra costs arising from the higher special contributions paid before 28 April 1999;
- to allow more efficient modernisation of the fleet (even immediately in the case of the Danube fleet);
- to feel reassured about the future in that the standby mechanism provides a means of maintaining a form of surveillance without constraints, based on the market observation system now being set up, which should prevent subsequent slipping back towards overinvestment and overcapacity in the sector.

b) Indirect impact (provision of transport services)

- all undertakings needing transport (shippers).

Positive impact: will provide better transport facilities and alleviate road congestion.

3. What measures will companies have to take to comply with the proposal?

For a maximum of five years owner operators will have to keep on board new vessels or vessels imported from non-member countries the certificate of payment of the special contribution or the certificate of scrapping of old tonnage.

4. What economic effects is the proposal likely to have?

Positive impact on the waterway market: it will safeguard the results of the structural improvements since 1989 in the context of liberalisation of the market by 1 January 2000 (after which carriers will no longer have to pay annual contributions to fund the improvement scheme). It will maintain the value of the vessels and avoid creating excessive differences between the economic situations of operators who had to pay the high-rate special contributions up to 28 April 1999 and of operators who will no longer have to pay anything after 28 April 2004. It will allow the free market to enter fully into play and harness market forces to boost the efficiency and profitability of inland waterway transport. The psychological impact will be to safeguard the future of the market by maintaining a standby mechanism which could be reactivated but only in the event of serious disturbance in the market.

Negative impact on owner operators who will have to continue to pay special contributions in respect of their investments in new vessels or vessels imported from non-member countries for a further five years, albeit at lower rates (compared with the previous 10 years). However, these contributions will be largely offset by the benefits which the undertakings are reaping already in terms of their profitability on the stronger inland waterway market.

5. Do the proposals contain measures intended to take account of the specific situation of small and medium-sized enterprises (SMEs)?

The inland waterway industry consists primarily of small to medium-sized enterprises (with one to three vessels). The Commission has taken this into account, notably by basing the special contributions on vessel type and size to ensure that they do not work to the disadvantage of the smallest undertakings.

Consultation

6. List of the organisations which were consulted on the proposals and statement of the essential elements of their position

OEB	European Organisation of Barge Owner Operators
UINF	International Union of Inland Waterway Operators
UNICE	International Union of Industries in the European Community

- General agreement on the need for a transitional period to safeguard the benefits acquired from the structural improvement scheme.
- Unanimous agreement by the two trade associations (OEB and UINF) on the need for an instrument allowing rapid action on overcapacity in the future and optimum regulation of the market in the event of a crisis.
- All the organisations consider it useful to improve and expand the market observation system.

ISSN 0254-1475

COM(98) 541 final

DOCUMENTS

EN

07 10 13

Catalogue number : CB-CO-98-548-EN-C

ISBN 92-78-39431-9

Office for Official Publications of the European Communities

L-2985 Luxembourg