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INFORMATION MEMO

Application of the
EEC Treaty to Rhine shipping

On April 8, 1964 the Commission presented a Memorandum on the application of the EEC Treaty to Rhine navigation, setting out in detail its views on the political, economic and legal questions arising with respect to Rhine shipping in the context of an integrated European transport system. The Commission did so because of the doubts expressed in various quarters as to the compatibility of various provisions of Community legislation in force and of certain measures proposed by the Commission to the Council under the Rome Treaty with the traditional legal status of Rhine shipping, notably as established by the revised Convention for Rhine Navigation of October 17, 1868 (the Mannheim Convention). The Memorandum will be of particular interest when transport policy comes up for discussion in the European Parliament and in the Council. The Commission hopes that it will help to speed up the adoption of the proposals on transport policy it laid before the Council on May 10, 1963.

From a study of the legal aspects, the Commission has concluded that the rules of Community law are normally applicable to Rhine shipping. The question whether crew members are nationals of a Community Member State or whether or not a shipping firm has its head office or a subsidiary within the Community is of no consequence. The main function of the Mannheim Convention is to ensure freedom of passage and parity of treatment on the Rhine for the flags of all nations. This implies the right to carry passengers or freight freely in boats or on rafts and, among other things, the right to conclude and execute transport contracts, to have access to all the Rhine ports, and to use warehousing and trans-shipment facilities in these ports. But freedom of navigation does not mean that State or Community authorities are unable to intervene to safeguard the normal play of competition in passenger or freight transport against disturbances. Community law and the measures proposed by the Commission are in no way incompatible with the Mannheim Convention.

The fact that the Commission recommends fresh regulations for Rhine shipping does not signify that it wishes to see any change, still less impairment, of the international status of the Rhine. A Community aware of its pledge to pursue a liberal commercial policy cannot be restrictive in its shipping policy regarding its own waterways. The Commission therefore takes the view that the traditional legal status of the Rhine must not be seen as an obstacle but as a point of departure from which to embark on the European integration of transport. The Rhine must remain accessible, as an international river, to the vessels of all countries on the basis of equal rights and equal obligations. What is needed now is an arrangement for the Community's principal waterway to be fitted organically into the integrated transport economy, with measures to prevent disturbances to the proper functioning of the common freight market from occurring on this river.

Aside from these legal considerations, the Commission maintains that neither the political and economical principles of the Rome Treaty nor the Community regulations in force, nor the new measures proposed conflict with the political and economic bases of the Mannheim Convention. The two treaties have the same objectives: to ensure the broadest possible freedom of economic initiative for all and to combat national protectionism. Economic and social changes since the date of the Mannheim Convention have created other conditions which must be fulfilled if competition on the transport markets is to be safeguarded. The Community institutions now have to deal with disturbances of competition and anti-economic behaviour of those active in the market which were scarcely conceivable in the past.

In giving form and substance to the general parity principle, the Community institutions must go beyond the policy aims implied in the parity principle of the Mannheim Convention. The Commission believes that this is not a question of "absolute equality for its own sake" but of eliminating cases of differential treatment not justified on objective economic grounds. This question has an impact on relations between carriers and users.

In the relationship between national traffic and international traffic, the proposed regulation on rate brackets is designed to eliminate a serious distortion of competition at present affecting both carriers and users. The application of uniform principles for the formation of transport rates will eliminate the present disparities on the Rhine, which arise from the existence of differing laws and regulations.

Differences of treatment between Rhine shipping and shipping on other Community inland waterways cannot in the Commission's opinion be tolerated on either economic or political grounds. As and when they are remedied, and after the abolition in navigation on waterways east and west of the Rhine of discriminatory rules imposed on non-resident carriers, inland-waterway networks will be even more heavily used than they are now by vessels operating from ports in other Community river basins. This means that there must be identical economic treatment for all inland shipping.

The Commission is giving special attention to substantial equality of treatment for the various types of transport. The object is to ensure that all types of transport will be able on the same competitive terms to exploit to the full the advantages peculiar to each. But it should not be inferred that Rhine shipping will reap only benefits from the harmonization measures proposed; it must in principle also accept the same burdens as competitive types of transport and other inland shipping sectors. The rate-bracket system planned should also help to create equal basic conditions. This rate formation system, which is by nature elastic, will enable the special conditions of Rhine navigation to be properly taken into account.

The policy aim that the parity principle must also be put into effect as regards transport users has been given tangible form in the rule that freight rate discrimination and support rates are prohibited. But Rhine shipping will need not only prohibitions but also inspection arrangements and provision for penalties. Moreover the users of Rhine shipping must, in principle, enjoy the same protection as that provided for the customers of other Community transport enterprises by the upper limits of rate brackets. Agreements in restraint of trade and abuse of dominant positions must be forbidden for the same reasons.

In including Rhine shipping in its proposals for the introduction of a common transport policy, the Commission is not thinking only of ensuring uniform competitive conditions for all the transport industries within the Community and uniform protection of transport users. It is also anxious to improve and strengthen the general economic situation of Rhine shipping. In the field of rates policy, the lower limits of the brackets will contribute, among other things, to maintaining the earnings of well-managed enterprises at a satisfactory level. Thus small firms, too, will be able to adapt their social conditions and their technical equipment to modern transport requirements. Unification of transport terms and conditions will give carriers a sound basis for managerial decisions and for working out forecasts. The Rome Treaty's social clauses and the Commission's proposed decision on harmonization will leave enough latitude for the difficulties facing crews and

the members of their families to be overcome despite the special living and working conditions obtaining on the Rhine. Much progress has already been made in this field, but any suggestion that Rhine shipping should not take part on the same footing as the rest of the economy in the attempt to introduce into the Community a harmonized social system, open to progress and in line with the requirements of modern society would be quite unacceptable.

From the Commission's study of the relationship between Community law and traditional Rhine shipping law, it is clear that the Community and Switzerland are in principle free to negotiate the necessary adjustments affecting reciprocal transport. The Commission therefore proposes to open exploratory talks with Switzerland, which will be extended to matters of road and rail transport also. Such an approach should enable other transport questions arising on one side or the other from their respective economic and geographical positions to be satisfactorily dealt with. The question of the reply to Switzerland's request of 15 December 1961 for the opening of negotiations on closer Swiss participation in the integration of the European economies can be left aside in these talks.