

EUROPEAN ECONOMIC COMMUNITY

SUPPLEMENT
TO
BULLETIN No. 11 -1966
of the European Economic Community

EXECUTIVE SECRETARIAT OF THE COMMISSION

The UNIR plan
and the control
of capacity
in inland
water transport

The UNIR plan and the control of capacity in inland water transport

(Memorandum transmitted by the Commission to the Council on 24 June 1966)

1. At its 161st session on 9 March 1965, the Council, having received a note from the Commission on the plan to set up an International Union for the Navigation of the Rhine (1), agreed that Member States should hold consultations before examining any questions concerning this Union in the context of the Central Commission for the Navigation of the Rhine.

Since then, the Council at its 171st session on 22 June 1965 has agreed to a solution regarding the common organization of the goods transport market by road, rail and inland waterway, including a body of measures to align the operating conditions of markets. Control over entry into the trade, arrangements to supervise transport capacity and criteria for the application of these arrangements are expected to come into force in three years' time.

Meanwhile, the Central Commission for the Navigation of the Rhine has continued its study of the UNIR plan, and has decided to hold a special session on 1 July next at which a draft resolution will be presented for approval by the Member States of this Commission.

The EEC Commission, which was represented at the meetings of the Central Commission for the Navigation of the Rhine, on its side continued its studies, and now puts this matter before the Council once more, presenting its comments on the UNIR plan and bringing up some of the legal and institutional problems which will arise in applying measures to regulate inland water transport capacity on a Community basis within the general scope of the common transport policy.

I

A. Control over inland water transport capacity

2. Although from the theoretical economic standpoint opinions are divided, the practical need for control over capacity is almost universally admitted.

The European Parliament has several times emphasized the advantages of such action (1). The De Gryse report on the organization of the transport market recommends that this question be tackled immediately, policy on

capacity and policy on rates being kept in step with each other (2).

For its part, the Economic and Social Committee noted that a capacity control policy and a rates system were the foundation of a general policy for organizing transport (4). Later, the Economic and Social Committee invited the Commission to prepare a proposal for a regulation on capacity control for inland water transport of goods (5).

These opinions seem to correspond to the industry's attitude. The International Union for Inland Navigation (UNIF), in its note on the Commission's Memorandum on the general lines of a common transport policy, declared that capacity control would be a basic element in any organization of the transport market.

3. The Commission deemed it necessary to seek advice from the Consultative Committee on Transport set up in accordance with Article 83 of the Treaty. The Committee gave its opinion on 10 March 1966 (6).

This was to the effect that only a system covering the whole of the Community should be contemplated. Such a system should include measures to eliminate short-term fluctuations and to maintain a long-term balance.

To remedy short-term imbalances, the Committee preferred the method of temporary and voluntary laying-up. Firms temporarily withdrawing tonnage from the market would receive compensation from a fund to which every owner would have to contribute.

The Committee also considered that in inland water transport there was a persistent tendency towards surplus capacity, and suggested scrapping the least productive vessels with the aid of public funds (this would be a single operation allowing the rapid reduction of a considerable surplus). Other measures would

(1) Annexe I contains the full text of this Statement.

(2) See the following reports adopted by the European Parliament: Kapteyn report on common transport policy in the EEC (doc. PE No 106, 11.12.1961);

Müller Herman report concerning the EEC Commission's memorandum on the general lines of a common transport policy (doc. PE No 18, 2.5.1962);

Brunhes report on the EEC Commission's Action Programme regarding a common transport policy (doc. PE No 132, 30.1.1963).

(3) Doc. PE No 115, 17.1.1966.

(4) Doc. CES No 70/62, 28.2.1962.

(5) Doc. CES No 3/64, 12.1.1964.

(6) Annex II contains a summary of this opinion.

be to adopt a licensing system or a temporary blocking of access to the market (with the object of preventing or limiting any growth of surplus capacity or long-term imbalance).

B. The problem of capacity control in Rhine shipping

4. The problem of adjusting supply to demand by capacity control is especially urgent for Rhine shipping, and has for years pre-occupied the Central Commission for the Navigation of the Rhine. This body has set up an Economic Conference on Rhine Navigation, which has met several times since 1952 and has produced the draft statutes of an International Union for the Navigation of the Rhine (UNIR) ⁽¹⁾.

This draft was submitted to the Central Commission, which considered that it must be supplemented by a draft Agreement between the states party to the Mannheim Convention.

These drafts, which together form what is known as the UNIR plan, are now being discussed in the Economic Committee of the Central Commission for the Navigation of the Rhine, and are therefore liable to be amended. However, the work is sufficiently far advanced for us to indicate the main lines of the drafts which will be presented to the Central Commission at its special session on 1 July 1966.

5. The UNIR plan is made up on the one hand of the draft statutes of a corporate Association, and on the other of a preliminary draft Agreement between states party to the Mannheim Convention ⁽²⁾.

The corporate Association, named the International Union for the Navigation of the Rhine, would group all owners of one or more vessels habitually plying on the Rhine or its tributaries. Owners would be obliged to join and their vessels would be entered on a fleet register. Members of the Union would have to pay entry fees, annual subscriptions and contributions to a compensation fund.

Long- and short-term measures are planned. The short-term measures would be voluntary or compulsory laying-up, which would both qualify for payments from the compensation fund. Long-term measures envisaged are agreements freely concluded between carriers with the object of eliminating surplus capacity by scrapping and by limiting investments in new equipment. The Association would be empowered to apply these measures.

The object of the Agreement is to approve the Association's statutes and to amend the Mannheim Convention so as to avoid

incompatibility between parts of the UNIR plan and that Convention. The organization would also be subject to an international supervisory authority named in the plan as the Central Commission for the Navigation of the Rhine.

C. Community objections to the UNIR plan

6. The Commission considers that the UNIR plan is open to serious objections on both economic and legal grounds.

Economic objections

7. The plan would create a special system for a particular area, independently of the common transport policy, which must cover the three forms of transport and the whole of the existing communications network. This artificial separation of the Rhine from other waterways and other means of transport would inevitably cause distortions liable to jeopardize the harmonious execution of the common policy, which is applicable to all forms of transport throughout the Community.

This objection is the more serious in that the Rhine is one of the Community's most important communications, and cannot be left out of the integrated system to be achieved by the common transport policy. Moreover, the increasing interconnection between the Community's waterways requires uniform treatment of all inland water transport.

The difference in systems entailed by the UNIR plan would create distortions in competition between inland water transport firms, and consequently between some of the Community ports and industrial basins.

Moreover, the Commission is doubtful whether the measures suggested in the UNIR plan are an effective and desirable way of attaining the end in view.

It considers that a permanent improvement of the situation can only be obtained by co-ordinating long- and short-term measures, and that this cannot be left to the industry alone.

The short-term action proposed in the plan includes compulsory as well as voluntary laying-up. The former, which is a direct interference in the operations of firms, is

(1) Annex III contains a summary of the work done under the auspices of the Central Commission for the Rhine towards drawing up the UNIR plan.

(2) Annex IV gives in detail the main provisions of the UNIR plan concerning access to the market.

open to the most serious objections, because it is non-selective, applying simply to a given percentage of total tonnage, and because of its probable economically undesirable effects. In fact modern vessels allowing transport on the best terms might be laid up whilst obsolete and unproductive vessels from another firm remained in use. This constitutes an incentive to keep out-of-date vessels and discourages investment in highly productive equipment, which would be liable to the same scale of laying-up as obsolete vessels. Moreover, compulsory laying-up may place firms bound by long-term contracts in a very difficult situation.

As for the long-term action, expansion of the fleet is left to free agreement between members of the Association, and is considered of secondary importance. Thus it does not provide any effective remedy when a permanent surplus exists or is developing.

Finally, the UNIR plan places the main responsibility for action in the hands of the Association. The limits on competition envisaged are determined by the industry. This plan does not seem such as would enable governments to establish a transport policy planned with an eye to the public interest and the interests of carriers and users in the three modes of transport.

9. The very principle of compulsory membership is questionable not only on grounds of the constitutional law of some of the Member States, but also from the economic point of view. The possibilities, inherent in all agreements, of restricting or preventing competition in the carriers' own interests, and the possible harmful results, are likely to be accentuated by the strengthened control over the market granted to a large association compulsorily uniting all carriers and enjoying an entirely free hand, subject to competition only from outsiders or newcomers.

Legal objections

10. By the Treaty of Rome the Community is empowered to make any provisions necessary to introduce and execute a common transport policy, applicable throughout the territories of its Member States for road, rail and inland water transport.

It would seem incompatible with this fundamental principle that Member States should conclude a separate agreement, without reference to the Community, on measures incontestably within the scope of this common policy, and which can therefore only be decided within the institutional framework provided by the Treaty.

In so far as the UNIR plan would be such as to jeopardize the establishment of a common transport policy, it is open to question whether any endorsement of this plan by Member States would not be a breach of the second paragraph of Article 5 of the Treaty, which provides that Member States "shall abstain from any measures likely to jeopardize the attainment of the objectives of this Treaty".

11. Moreover, some of the measures envisaged in the UNIR plan seem incompatible with obligations arising from the Treaty, especially as regards rules of competition.

The plan appears to be an agreement between enterprises of the kind forbidden by Article 85 of the Treaty. The effect of the agreement is to restrict competition within the Common Market, especially by the compulsory laying-up measures, the object of which is to prevent some Rhine carriers from competing and so from playing their part in price formation. This agreement cannot qualify for exemption under Article 85(3), since:

i) It would not help to improve production and would bring no benefit to users, because the non-selective laying-up would have no reference to the profitability of vessels;

ii) It would not promote technical progress or ensure rationalization of investments, because the essentials of the long-term action are left to the initiative of the enterprises or the association, so that competition would be so feeble as to be incapable of stimulating improvements in production.

Doubtless, the application of the rules of competition to transport would not prevent the adoption of measures to eliminate or prevent uneconomic competition. But clearly such measures must be taken and supervised by the public authorities, since any intervention must be to ensure the proper functioning of the transport market in the interest not only of carriers, but of users and the public as well.

II

A. Possibilities of Community control over inland water transport capacity

12. Besides these economic and legal objections, to adopt at this juncture the UNIR plan would seem the more untimely in that it is now possible to solve the problem of capacity in inland water transport, including Rhine transport, by Community control.

To this end, the Commission has made studies and effected all the necessary consultations. It expects to present to the Council, within the three-year time-limit set by the Council agreement of 22 June 1965 on the adoption of controls over access to the transport industry and on means of capacity control, a proposal for a regulation, the main lines of which, subject to further discussion, will be as follows:

a) *General considerations and provisions*

13. In inland water transport, surplus capacity has been evident for some time. Studies and enquiries into this problem have not so far been able to state with any certainty whether this is due simply to seasonal fluctuations or to business trends or structural conditions. There are certainly natural factors, such as climatic effect on the water level, which cause temporary surpluses in capacity, but the situation is also affected by changes in the pattern of demand. Moreover, the existence of a tendency towards a long-term surplus is not to be left out of account. Finally, the structural features of the industry may have repercussions on the short- and long-term level of capacity.

The Commission considers that in these circumstances it is necessary to regulate the market; measures should be taken to correct short-term and prevent any long-term imbalances, and to improve the market structure to permit better adjustment of supply to demand.

These measures must be implemented by the public authorities.

In the Commission's view it is important that Rhine shipping must not be segregated from the rest of inland water transport and that a uniform system must be established for the whole of this industry.

The planned measures are intended to ensure a balance between supply and demand applicable to the whole Community fleet, and to transport for hire or on own account.

14. Inland water transport of goods, whether wholly or partially within the EEC, by vessels listed in the inland waterway licensing registers of Member States, would be subjected to capacity control by the Community.

On registration, renewable each year by payment of the fees, a certificate would be issued.

The system being the same throughout the industry, the Community's inland waterway network would be divided for administrative purposes into three areas, because of the different conditions prevailing:

i) The Rhine basin, including the Rhine from the Swiss border to the sea, the navigable part of the Moselle, and all the other waterways in Belgium, the Netherlands and the Federal Republic of Germany except the Danube (1);

ii) The French basin, including all waterways except the Rhine and the Moselle;

iii) The Italian network.

b) *Short-term measures*

15. These would chiefly consist of purely voluntary laying-up. Funds, maintained by dues levied on the whole industry at the time of taking out or renewal of registration certificates, would be instituted to pay laying-up compensation. Given the division into basins and the possibility of measures confined to one or two basins, it is advisable to establish three separate funds, but under common management.

If a temporary surplus is noted, the competent bodies (point 19 *infra*) will pay, for a specified period and from a given date, daily compensation to any carrier undertaking to withdraw seaworthy registered vessels from the market.

The existence of a temporary surplus capacity would be determined in the light of:

i) Seasonal and structural changes in demand;

ii) The average freight rates on the free market;

iii) The number of vessels waiting in ports or other freighting places;

iv) The average length of waiting periods.

However, it would be necessary to ensure that such laying-up did not become necessary because of a long-term surplus.

The decision to lay up could be confined to one or two basins, taking into account the state of supply and demand in each market, or to particular classes of vessels according to changes in the pattern of demand.

The rates of compensation would be fixed at a level to induce the laying-up of a large enough part of the fleet to restore the balance between supply and demand. A pragmatic approach would be advisable in view of the difficulties which will be experienced, especially at the beginning, in fixing the rates. But compensation rates must be set which will take account of operating costs,

(1) In view of the structure of Danube shipping, the control would not be applicable to goods transport on the West German Danube.

yet not constitute incentives to keep unprofitable vessels in service, or protract the life of marginally viable enterprises.

c) *Long-term measures*

16. A tentative programme will be drawn up to guide the fleet's modernization and expansion, corresponding to foreseeable trends in demand for water transport and the foreseeable effects of the short-term measures on the structure of the fleet. The programme will be fairly long-term, but reviewed periodically, and be integrated with the Community's medium-term economic policy.

17. If the competent authorities should note the presence or development of a permanent surplus larger than is indicated in the programme, they will take appropriate steps to ensure a more balanced development. Such measures will apply for a fixed period, and may include:

i) The payment of a contribution in respect of each new vessel commissioned, the contribution being paid to a common fund, which would be used to absorb surplus capacity by compensating firms prepared to withdraw part of their fleet;

ii) Limits on investments in vessels, by a system of building and commissioning licences.

Of course, these exceptional measures must be taken with the intention of encouraging investment directed toward modernization and replacement of old by new vessels. They will allow new vessels to be commissioned when old vessels of equivalent tonnage are scrapped.

d) *Rules governing entry into the industry*

18. Any person wishing to enter the inland water transport industry must show proof of solvency and professional ability, including a satisfactory experience of management problems and knowledge of national and Community laws on the industry.

These qualifications must not amount to a measure of professional protection or cause great difficulties in practice. Besides the improvement in professional standards they would bring, they are justified by a concern to harmonize provisions in force in member countries.

e) *Functioning of the controls*

19. Proposals on the implementation of short- and long-term measures will be made by representatives of the industry, but decisions will be taken by the Community institutions.

To this end, a group of representatives should be set up to make suggestions on temporary laying-up, limiting investments and, if appropriate drawing up the development programme.

The Commission would be empowered to take the necessary decisions with the help of a Committee of government experts. The Transport Market Supervisory Committee envisaged by the Council decision of 22 June 1965 on the organization of the transport market would appear to be the appropriate body for this task.

f) *Measures to improve the structure of the inland water transport market*

20. The controls envisaged in points 14 to 19 above should result in a better balance between supply and demand. But the Commission considers that they should later be accompanied by means to attenuate or, if possible, eliminate certain special aspects, such as certain features of the pattern of supply, by a rationalization of the industry.

More especially, there should be improvements in transport productivity, standards of service and the profitability of public investment in new or improved waterways, by creating a more uniform fleet adapted to technical progress.

The ability of small and medium-sized enterprises to overcome imbalances between supply and demand should be strengthened by encouraging them to combine into technically and economically rational units. In this way, within the limits laid down by the Treaty and any relevant arrangements made, it would be useful to promote such collaboration between firms as would result in increased productivity through improved technical operation and commercial organization.

In this context it should be emphasized that such groupings must not take the shape of cartels, but of mergers or co-operative enterprises.

Finally it would be desirable from the standpoint of the working owner to improve opportunities for obtaining freight.

As these measures take effect, surplus capacity can be expected to diminish, with a consequent attenuation of the need for the measures.

Whilst the Commission considers that such action to renovate the structure of inland water transport is needed, it believes that a thorough study of the socio-economic structure of the industry is required, and that adjustments should be introduced gradually as they are thought opportune.

B. Problems arising in the application of such controls to Rhine shipping

21. The Commission is aware that political and legal problems will certainly arise in applying such controls to Rhine shipping, on the one hand because of the Mannheim Convention, and on the other, because of the need to apply the measures to vessels from non-Community states.

Compatibility of the measures contemplated with the Mannheim Convention

22. Whilst the short-term measures advocated here are compatible with the Mannheim Convention — since they exclude compulsory laying-up — it appears that the long-term action proposed, with its restrictions on the commissioning of new vessels, would run counter to some clauses of that Convention.

Hence, to achieve effective control over Rhine shipping capacity, it would be necessary — as in the UNIR plan — to amend certain provisions of the Mannheim Convention by agreement between the states party thereto.

Necessity for an agreement with Switzerland and possibly the United Kingdom

23. As the Commission stated in its memorandum of 8 April 1964 ⁽¹⁾ on the application of the EEC Treaty to Rhine shipping, the Community is able to subject Rhine shipping within its territory to normal Community law, independently of the vessel's flag, the carrier's nationality or the country from which the firm concerned operates.

Consequently, from the legal viewpoint, the application on Community territory of the proposed system needs no agreement between the Community and any other state, subject to what is said in point 22 above.

However, from the economic point of view, it must be borne in mind that the economy in general and Rhine shipping are interdependent. For controls to be effective and watertight, an agreement must be reached between the Community and Switzerland to establish a uniform regime for Rhine shipping.

Similar considerations argue in favour of an agreement with Great Britain, albeit less forcefully.

The legal basis on which an agreement in accordance with the EEC Treaty could be

reached must be determined. There are here three possibilities: an association agreement under Article 238, limited to creating reciprocal rights and obligations in this sphere; a commercial agreement based on Articles 111 and 113 (and if necessary, recourse to the complementary possibilities afforded by Article 235).

Relations with the Central Commission for the Navigation of the Rhine

24. The question arises of what will be the implications of the agreement reached with Switzerland and possibly the United Kingdom for relations between the Community and the Central Commission for Navigation of the Rhine, in view of the need for a uniform system governing Rhine shipping.

Leaving aside the question of the Central Commission's competence in economic matters, the following problems must be borne in mind:

i) The common transport policy must cover all the Community's waterways; but the Central Commission is concerned only with the Rhine.

ii) The transport policy for the waterways is but a part of an overall transport policy.

iii) This policy must be integrated with the general economic policy of the Community.

iv) Two Community countries, Italy and Luxembourg, are not represented at the Central Commission.

v) As the common transport policy is progressively implemented, other problems will have to be settled with Switzerland, concerning other modes of transport. Such are transit across Switzerland and the regulation of international road transport.

The Commission is mindful of the fact that the Central Commission for the Navigation of the Rhine is an international body, set up 150 years ago, with long traditions and vast experience. In recent years it has studied the different economic problems of Rhine navigation, especially that of capacity. It might well be in a position to make considerable contributions towards solving problems of inland water transport.

These questions must be examined during the negotiations with Switzerland and the United Kingdom. The framework for collaboration

(1) See Doc. VII/COM (64) 140.

with the Central Commission for the Navigation of the Rhine will have to be decided within the terms of the Rome Treaty and with due regard to the competence and structure of the Community institutions.

III

Conclusions

25. The UNIR plan is open to economic and legal objections, and its adoption by Member States would be incompatible with the Treaty of Rome. Furthermore the problem of capacity in inland water transport

must be settled by general and directly applicable Community regulations.

Referring to the terms of the agreement reached in the Council on 22 June 1965, the Commission:

- i) Recommends that the Council urge the interested Member States to suspend their decision as to approval of the UNIR plan;
- ii) Suggests that the Commission should open conversations with the Swiss Government, on the basis of the present memorandum, to find out whether that Government would be willing to accept a system of controls over Rhine shipping capacity;
- iii) Requests the Council to arrange a session for this purpose at a date in the near future.

ANNEX I

Note from the Commission to the Council

(9 March 1965)

Plan for an International Union for the Navigation of the Rhine (UNIR) and the Common Transport Policy

The Commission notes that the Governments of the Member States which are party to the Mannheim Convention have been invited by resolution of 14 October 1964 of the Central Commission for the Navigation of the Rhine to inform the latter of their attitudes towards a plan (UNIR) adopted by the Economic Conference on Rhine Navigation in September 1964.

The Commission considers that if the European Economic Community is to be definitively established, and especially if the aims of common transport policy set out in the Treaty are to be attained, the Rhine navigation sector cannot be omitted from the process of integration. It believes that a separate system for the Rhine would prejudice the common transport policy, especially as regards the system governing inland waterways, and would be likely to cause artificial distortions in conditions of competition.

The Commission further considers that the measures suggested in the UNIR plan, especially those concerning organization of the Rhine transport market, would probably interfere with the fundamental decisions the Council is invited to take on the basis of proposals on the subject put to it by the Commission. Finally, the Commission draws the Council's attention to the fact that the UNIR plan must be judged in the light of the Treaty rules on competition.

The Commission, therefore, being concerned to see that the Treaty of Rome is put into effect, hereby brings this problem before the Council, so that the latter may invite interested Member States to postpone their decision on the UNIR plan until the Council, in collaboration with the Commission, has taken up a definite position regarding the fundamental options of the common transport policy, and so that the Member States concerned may on this basis concert their action and adopt a common attitude.

ANNEX II

Summary of the opinion rendered by the Consultative Committee on Transport instituted in pursuance of Article 83 of the Treaty

1. Having analysed the relation between supply and demand in inland water transport (1) the Consultative Committee notes that this market shows temporary or intermittent fluctuations, and that there appears to be a long-term surplus of capacity in parts of the Community fleet. These two forms of imbalance can be combated only by different methods. Consequently a distinction is drawn between measures to eliminate short-term fluctuations and those to remove long-term imbalances.

a) *Short-term measures.*

2. Whilst rejecting as unsatisfactory measures to reduce artificially the capacity of boats (sewing up), to limit the distance travelled daily or banning sailing on certain days, the Consultative Committee believes that withdrawing a certain tonnage from the market

(1) Some experts took different views from those summarized here.

by laying-up for fixed periods would be the most effective way of adjusting supply to demand.

3. The Consultative Committee considers that the whole industry should participate in such measures, and consequently does not approve the solution proposed by the sponsors of the UNIR plan, namely, compulsory membership of a professional body operating the laying-up system. It prefers a simpler method, by which all concerned would be obliged to make contributions to a compensation fund, which would provide the finance for a special body set up to operate the system.

4. On examination of the possible forms of laying-up, and bearing in mind that compulsory laying-up prove insufficient, the Consultative Committee, in view of the serious risks of arbitrary and unfair treatment and of the anti-economic effects of authoritarian and binding decisions, is of the opinion that a wholly voluntary system operating throughout the Community should be reimbursed from the compensation fund. The industry would be closely associated in applying this measure, and because there is a matter of public interest involved, the authorities would have to exercise at least general supervisory powers.

5. The Consultative Committee also feels that the improvement of natural waterways is of special importance in that it will in the long run mitigate the principal cause of temporary surpluses.

b) *Long-term measures*

6. The Consultative Committee distinguishes between measures to combat the tendency towards long-term surplus capacity, already in evidence in inland water transport (preventive measures) and those intended to eliminate surplus (remedial measures).

7. The preventive measures mentioned by the Consultative Committee are:

i) Informing firms of market trends; this should be done systematically to guide firms entering the market and to channel investments of existing firms so as to avoid as far as possible misdirected investments;

ii) Action on financing conditions: it would be advisable to study whether it is desirable and feasible to restrict some forms of credit;

iii) Registration of new firms and of shipping commissioned, the register to be kept by the public authorities so that the prevailing

supply and its structure can be known at any moment;

iv) The introduction of certain personal qualifications for entering the trade, which would also help to prevent the creation of surplus capacity;

v) The Dutch licensing procedure: proof of "general interest to transport" may also be considered as a measure preventing long-term surpluses.

8. The remedial measures suggested by the Committee are:

i) The elimination of existing surplus capacity by scrapping the least productive tonnage in a single operation, with aid from public funds;

As well as a quantitative reduction, scrapping would bring about a structural improvement, i.e. a qualitative effect in view of which scrapping may be desirable even in the absence of a permanent surplus, when the replacement of old and unproductive equipment by modern vessels is not proceeding on the scale required by the economic situation. The structural improvement aimed at in scrapping would also help to remedy the shortage of hands. A system of scrapping bonuses would enable old private boatmen to give up their barely marginal activities, which they are obliged to carry on in order to earn a living. Young boatmen now operating unproductive craft would be able to join with other private boatmen in buying profitable vessels, or to undertake retraining should they decide to leave the industry.

ii) The question should be examined of whether a licensing system, based on objective criteria, or even temporary or long-term blocking of access to the market, should be introduced to prevent the formation of permanent surplus capacity.

9. Measures of capacity control would apply equally to transport for hire or on own account.

10. The Consultative Committee believes that the adjusting of supply to demand would be advantageously accompanied by a policy to improve the structure of supply.

Hence the Committee suggests measures to encourage the creation of commercial associations of boatmen, pools and agreements, so as to obtain a better distribution of freight. It also suggests the promotion generally of co-operation in inland water transport, by creating associations of firms and jointly-owned fleets. The aim should be the optimum use of existing capacity.

Central Commission for the Navigation of the Rhine Review of work towards solving problems of Rhine shipping

1. On 12 July 1951 the Central Commission for the Navigation of the Rhine asked its member states to appoint six delegates each, as well as representatives of private carriers and shipping firms to an Economic Conference on Rhine Navigation, to study measures for relating available tonnage to demand at times of low demand.

2. In 1952 the Economic Conference proposed a control over new construction and the withdrawal of capacity temporarily in excess of demand by laying-up. Such a system required widespread support from the Rhine carriers; as this was not forthcoming, the suggestion remained largely a dead letter.

3. On 2 July 1959, the situation of Rhine shipping having deteriorated, the Economic Conference was reconvened. This second session approved by a majority the draft articles of an International Consortium for Rhine Navigation (the CINR plan), designed to operate a system of adjusting the available capacity of the fleet to the prevailing demand. So as to prevent outsiders from again hindering the effective operation of the plan, compulsory membership was envisaged. Because this plan was in some respects incompatible with the Mannheim Convention, a draft agreement was drawn up between states represented in the Central Commission, forming a kind of addendum to the Rhine statute.

4. On 21 October 1960 the Economic Conference transmitted the results of its work to the Central Commission, asking:

i) If it was the Commission's views that such an organization was justified by economic requirements;

ii) If and to what extent the Commission was prepared to propose to member states arrangements to enable the industry to set up an organization covering all shipping and administrated by the industry itself.

5. The Central Commission, at its session in April 1961, approached the Consortium for Rhine Navigation ⁽¹⁾ to discover whether firms were prepared to and capable of reaching, preferably by free choice, agreement to

organize navigation on the Rhine in a way which would ensure its internal cohesion and economic stability.

6. In October 1961 the Consortium carried out a vast survey among Rhine carriers, the results of which, published in February 1962, further revealed the differences of opinion. Opposition to the Conference's planned organization was found to have strengthened.

7. Further to this survey, in May 1962, the Central Commission informed the Economic Conference that it would consider the advisability of recommending the governments to give their firm support to an international organization of the industry after concrete proposals acceptable to a large majority in the industry and forming a plan not limited to capacity control had been drawn up.

8. In September 1962 the Consortium replied that it was possible to form such a plan, as its latest efforts had failed. Moreover, the Consortium stated that it could not make any proposals for the organization of Rhine shipping on a voluntary basis going beyond the plan put forward by the Economic Conference.

In October 1962 the Central Commission postponed its decision.

9. Having regard to the European Economic Community's timetable for work on a common transport policy, and in view of certain proposals submitted in May 1963 by the EEC Commission to the Council, it was decided to convene a third session of the Economic Conference.

Meeting on 5 November 1963, the latter formulated objections to the EEC Commission's proposals for a rate-bracket system, and proposed controls over capacity as a prior condition for organizing the market.

(1) A professional body representing shipping firms and private carriers operating on the Rhine: it co-ordinates its activity with the International Union for Inland Navigation, which represents the water transport industry throughout Europe.

The Economic Conference approved by a majority the draft statutes of an International Union for the Navigation of the Rhine (UNIR), which would *inter alia* control capacity ⁽¹⁾. Compulsory membership was envisaged on certain conditions.

10. A resolution passed by the Economic Conference on 22 September 1964 approved the UNIR plan, and asked the Central Commission to enquire as soon as possible of the governments concerned if they were prepared to accept this plan, and of Member States of the Community if their governments could give consideration to the plan as an integral part of the common transport policy.

11. At a meeting on 19 October 1964 the Central Commission passed a resolution in which it took note of the resolution of the Economic Conference and decided to comply with the request contained in the Conference's aforesaid resolution, and consequently requested delegations to enquire without delay of their governments as to their attitude towards this plan. Further, it instructed its Economic Committee to proceed meanwhile to examine the UNIR plan with a view to ascertaining how, in its essentials, it could be put into effect.

12. On 19 October 1964 the Central Commission wrote to the President of the ECSC Special Council of Ministers, informing him that the implementation of the Economic Conference's proposals could form the basis of an overall settlement, in which it would be possible to solve the difficult and important problems arising in the application of the agreement of 9 July 1957 ⁽²⁾.

The EEC Council and Commission were not explicitly informed.

13. The EEC Commission, noting that the Governments of its Member States party to the Mannheim Convention had been invited to inform the Central Commission of their respective attitudes towards the UNIR plan, referred the matter to the Council (see Annex I to this document).

Following the Commission's statement, the Council agreed that the Member States would confer among themselves before examining any questions concerning the UNIR and in the context of the Central Commission for the Navigation of the Rhine (see doc. 430/65MC/PV/5, 28 April 1965).

14. On 13 October 1965 the Central Commission, discussing the first report submitted by the Economic Committee on the UNIR statutes (see point 11) instructed a working party:

i) To study more closely the economic and legal problems mentioned in the aforesaid report, to study any others which might arise, and to submit its conclusions to the Economic Committee within three months in the form of a commentary on the UNIR statutes;

ii) To submit a preliminary draft agreement to be concluded between interested states to give effect to the plan on the basis of these conclusions.

15. Several sessions of the UNIR working party were devoted to examining the various clauses of the draft statutes from an economic and technical point of view. After consultations, amendments were drafted, but the study could not be finished in the time allowed (see point 14). However, the general lines of the statutes were not altered.

A preliminary draft agreement ⁽³⁾ on the plan's implementation, for conclusion between the states, was also prepared.

The EEC Commission representative, who had been present as an observer, whilst appreciating the efforts made to solve the problem of adjusting supply to demand in transport, voiced certain reserves, which in brief consisted of the objections set out in the main body of this document.

16. On 14 April 1966 the UNIR working party transmitted to the Economic Committee of the Central Commission a progress report containing the statements of the EEC Commission's observer; the amended draft statutes of the UNIR and the preliminary draft agreement were appended for information.

17. The working party's report having been adopted by the Economic Committee, the Central Commission took note of this document at its session of 27-28 April. It asked the Economic Committee to complete the preparations of the preliminary draft agreement, to re-examine the draft UNIR statutes and to report before the next special session on 1 July 1966.

(1) Annex IV contains a summary of the principal provisions of the UNIR statutes.

(2) So called "Petersberg" agreement on rates and conditions for coal and steel transport on the Rhine.

(3) Annex IV contains a summary of the main provisions of this draft.

Principal provisions of the UNIR plan ⁽¹⁾A. Draft statutes ⁽²⁾

1. The plan would set up a corporate association, named the International Union for the Navigation of the Rhine, of all carriers operating cargo vessels on the Rhine and its tributaries; these vessels would be listed in a fleet register. However, inland water transport operators whose vessels do not ply on the Rhine and its tributaries regularly, but intermittently or for part of the year only, would be able to give an acceptance of liability which would replace affiliation without qualifying them for membership; in this case their vessels would not be entered in the fleet register.

2. Members of the UNIR would be obliged to pay entrance fees and annual subscriptions according to the deadweight tonnage of the vessels registered. Moreover, for each vessel on the fleet register, they would be required to pay dues which would go to maintain a "freight distribution and compensation fund". This fund would pay compensation for vessels laid up and cover the administrative costs of freight sharing. Carriers having given an acceptance of liability would pay neither entrance fees nor annual subscriptions, but would be liable to pay compensation dues in proportion to the length in days of their passage on the Rhine and its tributaries.

3. The association's principal aim would be to ensure a smoother flow of traffic by a system of voluntary controls relating available cargo capacity to the present or foreseeable volume of goods, and thus allow profitable use of the fleet.

For this purpose, the UNIR draft statutes include:

a) *Short-term measures:*

i) UNIR members voluntarily laying up vessels during a certain period would qualify, as from a fixed day, for laying-up compensation (voluntary laying-up);

ii) In the event of excess tonnage, actual or foreseen, having an unfavourable effect on Rhine shipping in general and particularly the freight market, the laying-up of part of the registered fleet and vessels under an acceptance of liability would be ordered for a fixed period (compulsory laying-up).

iii) The principle of equal treatment is affirmed, but only UNIR members would qualify for laying-up compensation.

A Freight Distribution Committee would be set up, to keep a constant watch on the volume of business, to decide on the amount and duration of laying-up, to determine the amounts of compensation dues and laying-up compensation and the starting date for paying out the last-mentioned;

b) *Complementary measures to control capacity:*

Agreements to limit investment in new equipment could be freely concluded between firms, as could voluntary agreements to scrap old and unproductive or redundant vessels.

4. The UNIR draft statutes provide for very extensive administrative machinery. Besides the above-mentioned Freight Distribution Committee, it has been agreed to set up a Secretariat-General and other bodies, some quite large. It is proposed to pay members of these bodies allowances.

The means of effecting the difficult and vast administrative tasks involved in business sharing are not specified.

B. Preliminary draft agreement between the Mannheim Convention States

5. The preliminary draft agreement states the grounds for forming this association and aims to solve several legal problems as to the compatibility of the UNIR with the Mannheim Convention (freedom of passage) and with the constitutional law of interested states (freedom of association)

6. Moreover, the draft agreement sets out briefly the Association's objects and functions, amplifies certain provisions of the draft statutes, and is designed to extend its geographical scope to other inland waterways besides the stretches of the Rhine which are subject to international convention (supplementary protocol).

(1) As at 27 April 1966.

(2) Only provisions concerning access to the market are given in this annex.

It is stipulated that every owner of a cargo-, towing- or pusher-vessel using the inland waterways within the Association's jurisdiction must be a member of the Association except as otherwise provided in its statutes (compulsory affiliation).

The draft agreement also confirms that the Association may enforce temporary laying-up of vessels (compulsory laying-up).

Emphasis is given to the fact that Association members as well as non-member firms using inland waterways within the Association's jurisdiction must pay the dues prescribed in the statutes (compulsory dues).

7. However, whereas the draft statutes of the UNIR provide for no public supervision, the draft agreement designates as the international supervisory authority the Central Commission for the Navigation of the Rhine. The latter would nominate for this purpose

a special Standing Committee, in which each interested state would be represented by a plenipotentiary.

The draft agreement specifies the decisions of the Association or its bodies which would be subject to the approval of the Supervising authority, as well as the cases in which the authority could amend or annul the Association's decisions.

8. Lastly, the draft agreement provides for administrative sanctions, the territorial jurisdiction of national courts, the court of appeal and defines the grounds for appeal against decisions of the Association's bodies or the Supervisory Authority and the appeal authorities.

The Agreement, to be concluded for a period of five years, would be subject to ratification; after that time, it would be renewable by tacit consent.

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PRICE PER ISSUE

£0.2.6	\$0.30	FF 1.50	FB 15.-	DM 1.20	Lit. 180	Fl. 1.10
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The supplement is supplied free of charge to subscribers and purchasers of the Bulletin.