

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Regulation (EC) on a Community fleet capacity policy to promote inland waterway transport

(98/C 320/04)

(Text with EEA relevance)

COM(1998) 541 final — 98/0281(SYN)

(Submitted by the Commission on 28 September 1998)

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 1101/89⁽¹⁾ 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 markets and 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;

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

⁽²⁾ OJ L 304, 27.11.1996, p. 12.

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 kW;
- (e) seagoing 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 the 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 the Regulation, whether newly constructed, imported from a non-member 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 18 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 in so far 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,

— 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,

— vessels which have made at least 10 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 the 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 euro. 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.

The 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.

ANNEX FOR INFORMATION

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 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 247/97⁽¹⁾ of 10 February 1997 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, in accordance with Commission Regulations (EC) No 2812/94⁽²⁾ of 18 November 1994 in the case of tanker vessels, (EC) No 2310/96⁽³⁾ of 2 December 1996 in the case of pusher craft and (EC) No 742/98⁽⁴⁾ of 2 April 1998 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:

Article 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.

*Article 2***Special contributions**

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

⁽¹⁾ OJ L 40, 11.2.1997, p. 11.

⁽²⁾ OJ L 298, 19.11.1994, p. 22.

⁽³⁾ OJ L 313, 3.12.1996, p. 8.

⁽⁴⁾ OJ L 103, 3.4.1998, p. 3.

(*) Approximate rate at present.

- 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 1 000 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 1 650 tonnes, the maximum rates for the special contributions shall show a linear increase from 100 % to 115 % for vessels up to 1 650 tonnes. For vessels with a deadweight capacity of more than 1 650 tonnes, the maximum rates for the special contributions shall remain at 115 %.
3. The special contributions, expressed in euro, 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 euro for the month of January are specified.

Article 3

'Old for new' ratios

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] (*).

Article 4

Mutual financial support

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 on 1 January of the previous year deriving from receipts intended for the payment of scrapping premiums or promotion measures (S_n).

(*) Approximate rate at present.

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_t),
- 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_t),
- the adjusted annual financial commitment of each Fund (P_{nn}), calculated as follows:

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

- 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.

Article 5

Equivalent tonnage

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 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.

Article 6

Consulting

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'.

*Article 7***Final provisions**

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

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

Proposal for a European Parliament and Council Decision amending Decision No 1254/96/EC laying down a series of guidelines for trans-European energy networks

(98/C 320/05)

(Text with EEA relevance)

COM(1998) 542 final — 98/0284(COD)

(Submitted by the Commission on 30 September 1998)

THE EUROPEAN PARLIAMENT AND THE COUNCIL
OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the first paragraph of Article 129d thereof,

Having regard to the proposal from the Commission,

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

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

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

Whereas the list of projects of common interest established by Decision No 1254/96/EC of the European Parliament and of the Council⁽¹⁾, as amended by Decision No 1047/97/EC⁽²⁾, needs to be updated periodically in line with developments in interconnected energy networks both inside and outside the European Community and taking account of the enlargement process and, more generally, the strengthening of energy links with non-member countries;

Whereas the descriptions of some projects of common interest currently featuring on the list need to be adapted;

Whereas new projects must be added to the list,

HAVE ADOPTED THIS DECISION:

Article 1

The indicative list of projects of common interest set out in the Annex to Decision No 1254/96/EC is hereby amended as follows:

1. points c 8, f 1, g 7 and h 11 are amended as indicated in Annex I to this Decision;
2. the points appearing in Annex II to this Decision are added.

Article 2

This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities*.

Article 3

This Decision is addressed to the Member States.

⁽¹⁾ OJ L 161, 29.6.1996, p. 149.

⁽²⁾ OJ L 152, 11.6.1997, p. 12.