OPINION OF ADVOCATE GENERAL JACOBS
delivered on 27 May 1993 *

My Lords,

1. In these cases, the College van Beroep voor het Bedrijfsleven (Administrative Court of Last Instance in matters of trade and industry) of the Netherlands has referred to the Court a question concerning the validity of certain provisions of Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport (Official Journal 1989 L 116, p. 25; hereafter 'the Regulation'). The question referred raises the issue of the compatibility of Article 8(3)(a) of the Regulation with certain general principles of Community law, in particular, the principle of legal certainty, the principle of legitimate expectations, the principle of proportionality and the principle of equality.

2. The Regulation was adopted under Article 75 of the EEC Treaty with a view to reducing the structural overcapacity in the fleets operating on intra-Community inland waterway networks. The reasons which led to the adoption of the Regulation are set out in its preamble, the first and second recitals of which provide as follows:

'Whereas the structural overcapacity manifest for some time in the fleets operating on the linked inland waterway networks of Belgium, France, Germany, Luxembourg and the Netherlands appreciably affects, in those countries, the economics of transport services, particularly of the carriage of goods by inland waterway;

Whereas forecasts show no sign of sufficient increase in demand in this sector to absorb the overcapacity in the next few years; whereas in fact the share of the total transport market taken by inland waterway transport is continuing to decline as a result of progressive changes in the basic industries supplied mainly by inland waterway'.

3. Article 1 of the Regulation provides as follows:

'1. Inland waterway vessels used to carry goods between two or more points by inland waterway in the Member States shall be subject to measures for structural improvements in inland waterway transport under the conditions laid down in this Regulation.

* Original language: English.

2. The measures referred to in paragraph 1 shall comprise:

— the reduction of structural overcapacity by means of scrapping schemes coordinated at Community level,

— supporting measures to avoid aggravation of existing overcapacity or the emergence of further overcapacity.'

4. Article 2 specifies the types of vessels to which the Regulation applies. Article 3 provides for the setting up of a Scrapping Fund in 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. Article 4 provides that for each vessel covered by the Regulation, the owner must pay into one of the Scrapping Funds a contribution fixed in accordance with Article 6.

5. Under Article 5, any owner scrapping a vessel which falls within the scope of the Regulation and which forms part of his active fleet shall receive a scrapping premium from the Scrapping Fund to which the vessel belongs. In order to facilitate the immediate operation of a coordinated scrapping scheme, Article 7 provides that Member States must make advance payments in the form of loans to the Scrapping Fund set up in their territory.

6. Article 8 contains the so-called 'old-for-new' rules. Article 8(1)(a) provides as follows:

'For a period of five years from the entry into force of this Regulation, vessels covered by this Regulation which are newly constructed ... may be brought into service on inland waterways ... only where:

— the owner of the vessel to be brought into service scraps a tonnage of carrying capacity equivalent to the new vessel without receiving a scrapping premium; or

— where the owner scraps no vessel, he pays into the Fund covering his new vessel ... a special contribution equal to the scrapping premium fixed for a tonnage equal to that of the new vessel; or

— where the owner scraps a tonnage smaller than that of the new vessel to be brought into service, he pays into the Fund in question a special contribution equivalent to the scrapping premium corresponding at the time to the difference between the tonnage of the new vessel and the tonnage scrapped'.

7. Under Article 8(4), a vessel may not be brought into service until the owner has fulfilled the requirements provided for in Article 8(1). Where that prohibition is infringed, the national authorities may take steps to prevent the vessel concerned from participating in the inland waterways trade.

8. Article 8(2) provides that the conditions laid down in Article 8(1) also apply to increases in capacity resulting from the lengthening of a vessel or the replacement of pusher-craft engines.

9. Article 8(3)(a) contains the transitional provisions which are at the centre of the case. They are as follows:

'The conditions set out in paragraphs 1 and 2 shall not apply to vessels in respect of which the owner proves that:

— construction was under way on the date of entry into force of this Regulation, and that

— work already carried out represents at least 20% of the steel weight or 50 tonnes, and that

— delivery and commissioning is to take place within the six months following entry into force of this Regulation.'

Article 11 provided that the Regulation should enter into force on the day of its publication in the Official Journal (28 April 1989) and that it should apply with effect from 1 May 1989. The system of scrapping measures laid down by the Regulation became operational on 1 January 1990. [1]

10. The applicants in the main proceedings are owners of vessels who failed to satisfy the requirements of Article 8(3)(a). As a result, they were required by the Dutch Minister of Transport and Water Resources ('the Minister') to pay a special contribution under Article 8(1)(a), second indent (hereafter 'special contribution'). The particular circumstances of each applicant were briefly as follows.

Case C-13/92 Driessen

11. By a contract concluded on 14 December 1988, Driessen en Zonen V. o. f. ('Driessen') made an agreement with the shipyard Van Eijk Scheepsbouw B. V. for the building of a steel hull for an inland waterway vessel to be delivered no later than the fourth week of 1990 for the price of HFL 2 087 250. In response to Driessen's enquiry about the possibility of cancelling the order in view of the 'old-for-new' rules, the shipyard informed Driessen by letter of 14 March 1989 that the costs of cancellation at that time would amount to HFL 550 000. Driessen decided not to cancel the contract. In the period between December 1988 and February 1989, Driessen incurred commitments to various contractors and suppliers in connec-

1 — See Article 2 of Commission Regulation (EEC) No 1102/89 laying down certain measures for implementing the Regulation (OJ 1989 L 116, p. 30); last amended by Commission Regulation (EEC) No 3690/92 (OJ 1992 L 374, p. 22).

tion with the vessel totalling approximately HFL 1 500 000.

12. By a letter dated 5 January 1990, the Minister notified Driessen that the requirement provided for in the third indent of Article 8(3)(a) to the effect that delivery and commissioning of the vessel must take place within the six months following the entry into force of the Regulation had not been satisfied and that therefore one of the conditions provided for in Article 8(1)(a) had to be complied with before the vessel could be brought into service. The hull was delivered by the shipyard in the second week of 1990 and the vessel entered into service on 17 February 1990.

Case C-14/92 Molewijk

13. By a contract concluded on 25 November 1988, Mr A. Molewijk ('Molewijk') made an agreement with the shipyard Grave B. V. for the building of an inland waterway vessel to be delivered no later than 31 March 1990 for the price of HFL 4 000 000. In response to Molewijk's enquiry in March 1989, the shipyard notified him that the costs of cancelling the contract for the building of the vessel at that time would amount to HFL 1 120 000. It also notified him that it would not be possible to deliver the vessel within six months from the entry into force of the Regulation as he had requested. By a letter of 27 March 1990, the Minister required Molewijk to pay HFL 873 933 by way of special contribution. The vessel was delivered on 7 April 1990 and entered into service on 21 April 1990.

Case C-15/92 Sayonara

14. In the second half of February 1989, Motorschiff Sayonara Basel A. G. ('Sayonara') made an oral agreement with Scheepswerf Slob B. V. for the building of a hull for a freighter to be delivered on 31 January 1990 for the price of HFL 2 900 000. A written contract was signed between the parties on 1 March 1989. By letter of 28 May 1990, the Minister required Sayonara to pay a special contribution calculated at HFL 720 727. The freighter entered into service on 22 June 1990.

Case C-16/92 Mourik

15. On 18 February 1989, C. Mourik en Zoon V. o. f. ('Mourik') made an agreement with the shipyard Gebr. Buys Scheepsbouw B. V. for the building of an inland waterway vessel for the price of HFL 2 435 000. A written contract was signed between the parties on 25 February 1989. According to that contract, work for the building of the vessel was to start in May 1989 and the vessel was to be delivered in April 1990. By a letter of 13 October 1989, the Minister notified Mourik that the requirement provided for in Article 8(3)(a), second indent, to the effect that on the date of entry into force of the Regulation the work carried out on the vessel should represent at least 20% of the steel weight or 50 tonnes had not been satisfied. The vessel entered into service in April 1990. By a decision of 9 April 1990, the Minister required Mourik to pay HFL 402 234 by way of special contribution in relation to that vessel.

16. As appears from the above, all the applicants failed to comply with the requirement provided for in the third indent of Article 8(3)(a) to the effect that delivery and commissioning of a new vessel must take place within six months from the entry into force of the Regulation. Mourik failed in addition to satisfy the requirement provided for in the second indent of Article 8(3)(a) to the effect that work already carried out at the time of the entry into force of the Regulation should represent at least 20% of the steel weight or 50 tonnes.

17. Driessen applied to the College van Beroep voor het Bedrijfsleven for the annulment of the decision requiring it to comply with one of the requirements provided for in Article 8(1)(a). The other applicants applied to the same court for the annulment of the decisions requiring them to pay a special contribution. In substance however the issue is the same in all four cases, and in the course of those proceedings the College van Beroep voor het Bedrijfsleven has referred to the Court an identical question in all four cases, as follows:

'Are the special contribution rules provided for in the second indent of Article 8(1)(a) of Council Regulation (EEC) No 1101/89 and the transitional rules provided in Article 8(3)(a), taken in conjunction with each other, invalid in so far as they take no, or at least insufficient, account of a situation such as the one at issue in these proceedings?'

18. Although the question referred by the national court raises the issue of the validity of Article 8(1)(a), second indent, and of Article 8(3)(a), it is in fact the validity of Article 8(3)(a), second and third indents, which is in issue.

19. Driessen challenges the validity of the requirement provided for in Article 8(3)(a), third indent, as being contrary to the following general principles: the principle of legal certainty, the principle of legitimate expectations and the principle of equality. The other applicants challenge the validity of the requirements provided for in Article 8(3)(a), second and third indents, as being contrary to those principles and, in addition, to the principle of proportionality. They also challenge the validity of the Regulation on the ground that the Council failed duly to consult the Parliament.

20. I shall examine the applicants' arguments together, but in a different order from that followed by them.

The duty to consult the Parliament

21. The applicants argue that the Regulation should be annulled on the ground that the Parliament was not duly consulted. Under Article 75 of the Treaty, on the basis of which the Regulation was adopted, the Council must first consult the Parliament. They argue that although the Parliament had given its opinion on the Commission's initial proposal, the transitional provisions concerning the 'old-for-new' rules included in

that proposal were subsequently amended without the Parliament being consulted. They claim that the Council's failure to reconsult the Parliament constitutes an infringement of an essential procedural requirement.

22. The adoption of the Regulation was preceded by the submission of proposals from the Commission which contained transitional provisions different from those included in Article 8(3)(a). The Commission's initial proposal was submitted to the Council on 19 May 1988 (COM(88)111, Official Journal 1988 C 297, p. 13). Article 8(1), last subparagraph, of that proposal provided that the 'old-for-new' rules 'shall not apply to vessels which the owner proves were under construction on the date on which the scrapping scheme was instituted'.

23. The Parliament gave its opinion on that proposal on 16 November 1988 (Official Journal 1988 C 326, p. 50). The Commission then submitted to the Council an amended proposal on 23 December 1988 which was published in the Official Journal of 7 February 1989 (COM(88)853, Official Journal 1989 C 31, p. 14). Article 8(1), last subparagraph, of that proposal, which was based on the amendments proposed by the Parliament in its opinion, provided as follows:

'These conditions [i. e. the "old-for-new" rules] shall not apply to vessels for which the owner proves that:

(a) construction was underway on the date on which the scrapping scheme commenced;

(b) work is in progress on at least 20% of the steel weight or 50 tonnes;

(c) delivery and commissioning is to take place within six months of the date referred to in subparagraph (a) above.'

24. The applicants' argument that the Parliament was not adequately consulted cannot be accepted. The Court has held that the requirement to consult the Parliament in the course of the Community legislative procedure entails a fresh consultation whenever the text finally adopted, considered as a whole, departs in its very essence ('s'écarte dans sa substance même') from the text on which the Parliament has already been consulted, unless the amendments essentially correspond to the wishes already expressed by the Parliament: see Case C-65/90 *Parliament* v *Council* [1992] ECR I-4593, paragraph 16.

25. The Commission's amended proposal made substantial changes to the transitional provisions concerning the 'old-for-new' rules of the initial proposal but those changes were based wholly on the Parliament's opinion. The text of the amendments proposed by the Parliament in its opinion (Official Journal 1988 C 326, p. 53) and the text of Article 8(1), last subparagraph, of the Commission's amended proposal (above, paragraph 23) are identical, at least in the English, French and German language versions. Although some differences exist between the Parliament's opinion and the Commission's amended proposal with regard to the transitional provisions in the Dutch language version, there can be no

doubt that the Commission's intention was to follow the Parliament's views. It is clear therefore that there was no need for the Parliament to be consulted on the Commission's amended proposal.

26. It is true that the transitional provisions finally included in the Regulation are somewhat different from those included in the Commission's amended proposal. Under Article 8(3)(a) of the Regulation, the material date from which the six-month period started was the date of entry into force of the Regulation, whereas under Article 8(1), last subparagraph, of the amended proposal the material date was the date on which the scrapping scheme commenced. That date was dependent on implementing measures to be taken by the Commission.

27. In my view, however, it cannot be said that because of that difference, the text of the Regulation, considered as whole, departs so substantially from the Commission's amended proposal, which fully reflected the views expressed by the Parliament, as to require a fresh consultation of the Parliament. It is clear from its opinion that the Parliament fully supported the imposition of strict transitional provisions.

28. I conclude that the claim that the Regulation is invalid on the ground that the Parliament was not duly consulted must fail.

The principles of legal certainty and of legitimate expectations

29. The applicants argue that Article 8(3)(a) infringes the principle of legal certainty and the principle of legitimate expectations.

30. They claim that when they concluded the contracts for the construction of the vessels, the Regulation had not entered into force. When the Regulation did so, it was no longer possible for them to cancel those contracts without incurring substantial costs. They argue that Article 8(3)(a) has retroactive effect, and that, according to the case-law of the Court, such effect is permissible subject only to strict conditions. A Community measure may produce retroactive effect only where the purpose to be achieved by the measure so demands and where the legitimate expectations of those concerned are duly respected: see e. g. Case 98/78 *Racke* v *Hauptzollamt Mainz* [1979] ECR 69, paragraph 20, and Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 45. The applicants argue that Article 8(3)(a) does not fulfil either of those conditions.

31. A distinction could be drawn between retroactivity in the strict sense of that term, where measures apply retroactively to transactions completed in the past, and the case where new provisions apply with immediate effect to pre-existing situations. If such a distinction were drawn, it could not be said that the Regulation has retroactive effect in the

strict sense. It would be more appropriate to say that it has immediate application. This is because the 'old-for-new' rules in issue here do not cover vessels which were in service at the time when the Regulation entered into force. The Regulation does not apply to contracts for the construction of vessels which were concluded and completely performed before its entry into force but applies to contracts which were in progress at the time of its entry into force. For the purposes of the present proceedings, however, I do not find it necessary to draw such a distinction.

32. Whether the Regulation is retroactive in the strict sense or merely of immediate application to pre-existing situations, any legitimate expectations must of course be respected. Typically such expectations are likely to arise out of previous legislation (see e. g. Case 74/74 *CNTA* [1975] ECR 533, Case C-189/89 *Spagl* [1990] ECR I-4539, Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477) or out of conduct of the Community institutions (see e. g. Case 127/80 *Grogan* v *Commission* [1982] ECR 869 and Case 289/81 *Mavridis* v *Parliament* [1983] ECR 1731, paragraph 21). However the principle of legitimate expectations may apply also to measures, such as the Regulation, which do not amend an existing legislative provision but introduce legislation in a field thus far unregulated. Even in the absence of previous legislation, or of any particular conduct on the part of the Community institutions, there may be a duty, for example, to adopt adequate transitional provisions. Clearly the principle cannot be extended to the point of generally preventing new rules from applying to the future effects of situations which arose under the earlier rules: see e. g. Case 84/78 *Tomadini* v *Amministrazione delle Finanze dello Stato* [1979] ECR 1801, paragraph 21. It remains the case, however, that in adopting legislative measures the Community institutions must respect any legitimate expectations of the persons concerned unless an overriding Community interest takes priority.

33. I am also prepared to accept that, in a case such as the present where the application of the Regulation to contracts still in progress may cause grave financial loss to certain traders, such immediate application is permissible only if it is necessary to achieve the objectives of the Regulation.

34. I will therefore examine first whether the legitimate expectations of the applicants have been respected and secondly whether the application of the Regulation to contracts in progress at the time of its entry into force was necessary in the light of its objectives. I take the latter point second because of its connection with the issue of proportionality, relied upon by the applicants as a distinct ground of challenge. It must be noted at this stage, however, that the application of the Regulation to existing contracts was qualified by transitional provisions. An essential underlying issue in this case therefore is whether those transitional provisions, viewed objectively, were adequate to protect those likely to be affected.

35. Driessen states that it concluded the contract for the construction of a new vessel after the publication of the Commission's initial proposal. In the light of the transitional rules contained in that proposal, it ordered the new vessel on the understanding that it would be exempted from the 'old-for-new' rules when the Regulation entered into force. At that time, it says, it could not possibly know that stricter transitional requirements would be introduced. It argues that the Regulation is contrary to the principle of legitimate expectations because the vessel owners who could expect, on the basis of the Commission's initial proposal, to be covered by the transitional rules, irrespective of the duration of the building of the vessels ordered, were eventually excluded from those rules. Similar arguments are presented by the other applicants.

36. It seems to me that, at least in principle, a trader who relies on proposed legislation does so at his own risk. If it were accepted that a proposal submitted by the Commission gave rise to a legitimate expectation on the part of the traders concerned that the proposal would be finally adopted by the Council without amendments, that would lead to unacceptable consequences. It would mean that the Council was bound to follow the Commission's proposal in direct contravention of the provisions of the Treaty. It would also prejudice the Parliament's right to participate in, and influence, the legislative process as provided for by the Treaty. Further, it would mean that the Commission itself was bound by its proposal so that it could not amend it at subsequent stages of the legislative procedure. It follows that the Commission's initial proposal could not found a legitimate expectation that the transitional rules included in that proposal would be enacted unamended in the Regulation.

37. Furthermore, the applicants have not succeeded in showing that at the time when they concluded the contracts for the construction of the vessels they could not foresee the introduction of stricter transitional rules such as those which were included subsequently in the Regulation.

38. The Council points out that, in adopting strict transitional rules, it was guided by the wishes of the trade organizations representing inland waterway operators. That point is confirmed by the documents submitted to the Court by the Commission and the Dutch Government. After the submission of the Commission's initial proposal, the *Union Internationale de la Navigation Fluviale* (UINF) and the *Organisation Européenne des Bateliers* (OEB), by a letter dated 2 September 1988, recommended the adoption of transitional rules identical to those which were subsequently included in the Commission's amended proposal. [2] The Dutch Government points out that a large number of inland navigation organizations, including Dutch organizations, are affiliated to the UINF and the OEB. In addition, in its opinion submitted to the Minister on 14 October 1988, the Dutch Social and Economic Council agreed with the strict transitional rules recommended by the UINF and the OEB.

2 — Although there are slight differences in the various language versions of the documents submitted to the Court, it seems clear that the amendments made by the Commission were intended to adopt the organizations' recommendations.

39. It is clear from the documents submitted to the Court by the Commission and the Dutch Government that in the period from September to November 1988 (i. e. before the applicants concluded the contracts for the construction of their vessels) a number of trade journals had published articles reporting the calls of the trade organizations for the inclusion of stricter transitional provisions in the Regulation as well as the text of the transitional provisions proposed by those organizations.

40. During the oral hearing, it emerged that only one of the four applicants in the main proceedings is a member of a trade organization represented by the UINF and the OEB. In my view, however, this is not of crucial importance. In the light of the views taken by the organizations concerned, which were published in the trade journals, it cannot be said that at the time when the applicants concluded the contracts for the building of new vessels it was unforeseeable that the transitional provisions included in the Commission's initial proposal would be amended. All the applicants could have foreseen the possibility that more stringent transitional rules could be adopted.

41. Sayonara and Mourik in particular concluded contracts for the building of vessels after the publication of the Commission's amended proposal. It will be remembered that the Commission's amended proposal was published in the Official Journal of 7 February 1989. Sayonara concluded an oral contract for the construction of the vessel in the second half of February 1989 and a written contract on 1 March 1989. Mourik made an agreement for the building of the vessel on 18 February 1989 and signed a contract on 25 February 1989 (see above, paragraphs 14-15). Those applicants therefore were, or at least ought to have been, aware of the stricter transitional rules included in the Commission's amended proposal at the time when they agreed the building of their vessels.

42. It is argued not only that the transitional rules contained in the amended proposal were stricter than in the original proposal, but also that the transitional rules included in the Regulation were stricter than those which appeared in the amended proposal. It will be remembered that, under Article 8(3)(a) of the Regulation, the material date is the date of its entry into force whereas, under the equivalent provision of the amended proposal, the material date was the date on which the scrapping scheme commenced, which was dependent on implementing measures to be taken by the Commission. The applicants argue that until the end of March 1989, when the outcome of a Council meeting concerning the introduction of legislation on structural improvements in inland waterway transport became known, they could expect that the vessels which they had ordered could be brought into service without being subject to the 'old-for-new' rules.

43. I do not find that argument persuasive. For the same reasons as apply to the Commission's original proposal, the Commission's amended proposal could not

give rise to any legitimate expectation that the transitional rules contained thereby would remain unchanged. As far as the foreseeable character of the transitional rules included in the final version of the Regulation is concerned, it seems to me that in order for the requirements of the principle of legitimate expectations to be satisfied in a case such as the present it is not necessary that the traders concerned must be in a position to predict every detail of the transitional rules. It is sufficient if a prudent and well-informed trader in the position of the applicants could have foreseen the possibility of strict transitional rules being introduced at the time when he concluded a contract for the construction of a new vessel: see Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 37.

44. It seems to me that, in the light of the urgent need to reduce the structural overcapacity in the fleets operating on intra-Community inland waterway networks, which was widely acknowledged, and in the light of the views advanced by the trade organizations, such a trader could have foreseen that possibility. Moreover, if the applicants were resolved to place orders for the building of new vessels at a period when the introduction of a new regime was imminent, they could have protected themselves, as the Council points out, by inserting appropriate clauses in the contracts for the building of the vessels limiting their liability in case they had to cancel the contracts as a result of those changes.

45. At the oral hearing, in support of its argument that Article 8(3)(a) is invalid, Driessen placed much reliance on the judgment of the Court in Case C-368/89 *Crispoltoni* [1991] ECR I-3695. In my view, however, that case does not support Driessen's argument.

46. In *Crispoltoni* the Court held that the retroactive effect of certain regulations governing the common organization of the market in tobacco, whose validity was in issue in those proceedings, was not necessary in order to achieve the objectives of those regulations and indeed was incapable of doing so (paragraphs 18 to 20 of the judgment). As will become clear from what follows, however, I consider that the transitional provisions of Article 8(3)(a), second and third indents, were necessary to achieve the objectives of the Regulation. It should also be noted that in *Crispoltoni* the measures in issue contained no transitional provisions.

47. In *Crispoltoni* the Court also held that the legitimate expectations of the persons concerned had been infringed because they were entitled to expect that they would be notified in good time of any measures having effects on their investments (paragraph 21 of the judgment). By contrast, for the reasons I have already given, I do not consider that the legitimate expectations of the applicants in the present cases have been infringed. As I have pointed out, the effects of the contested Regulation on existing contracts were not unforeseeable.

The principle of proportionality

48. The applicants dispute that the strict transitional rules provided for in Article 8(3)(a) were necessary in order to achieve the objectives which the Regulation sought to pursue.

49. They concede that the transitional provisions relating to the 'old-for-new' rules had to fulfil an important function: they had to prevent a surge in orders by inland waterway operators for the construction of new vessels shortly before the Regulation was due to come into force with a view to avoiding the adverse effects of the 'old-for-new' rules. They argue, however, that the transitional rules provided for in Article 8(3)(a), second and third indents, went beyond what was necessary to achieve that objective.

50. I do not find that argument persuasive. It is clear from the preamble and the provisions of the Regulation that the 'old-for-new' regime is fundamental to the reduction of the structural overcapacity in the inland waterway networks. I am satisfied that the strict transitional rules provided for in Article 8(3)(a) were necessary in order to achieve the effectiveness of that regime and fulfil the objectives of the Regulation. That is confirmed by the fact that, as we have seen, the UINF and the OEB as well as the Dutch Social and Economic Council recommended the introduction of transitional rules similar to those included in Article 8(3)(a).

51. Nor do I accept the argument that the objective of preventing a late surge in orders for the construction of new vessels could have been achieved simply by requiring that the construction of a new vessel must be under way at the time when the Regulation came into force. It is clear that if that were the only requirement imposed, it would be open to traders quickly to place orders for the construction of new vessels shortly before the Regulation came into force thus adding to the existing overcapacity. Moreover it might have been difficult in some cases, after the event, to verify the date on which the order was placed or construction was started. I am satisfied that in order for the effectiveness of the 'old-for-new' regime to be guaranteed, the transitional rules should only cover vessels whose construction was relatively advanced at the time of entry into force of the Regulation and whose completion could be achieved within a limited time thereafter. The requirements of Article 8(3)(a), second and third indents, could properly be regarded as necessary, in my view, if the aims of the Regulation were to be achieved.

52. It is claimed that the requirements provided by Article 8(3)(a), second and third indents, especially by the third indent, gravely damage the interests of a particular class of traders, that is, those who placed orders for the construction of new vessels with small shipyards which require at least a year for the construction of a vessel.

53. According to the case-law of the Court, however, the duty of the Community institutions to ensure that burdens imposed on traders are no greater than is required to achieve the aim pursued by the measure imposing the burden does not necessarily mean that that duty must be measured in relation to any particular group of operators: see e. g. Case 5/73 *Balkan-Import-Export* v *Hauptzollamt Berlin-Packhof* [1973] ECR 1091, paragraph 22, Case 9/73 *Schlüter* v *Hauptzollamt Lörrach* [1973] ECR 1135, paragraph 22; see also Joined Cases 154/78 etc. *Valsabbia* v *Commission* [1980] ECR 907 at paragraph 49.

54. In any event, it seems to me that, in the light of the objectives of the Regulation, the deadline of six months for the completion of the building of a vessel provided for in the third indent of Article 8(3)(a) cannot be considered disproportionately short. It appears that many orders were placed for the building of new vessels before the entry into force of the Regulation in anticipation of the introduction of the 'old-for-new' regime. If a longer time-limit had been allowed, the risk would exist that a greater number of vessels would be introduced in the already overburdened market, thus minimizing the effectiveness of the Regulation. It should be noted that, in view of the manifest overcapacity in intra-Community inland waterway transport, the Regulation was enacted in order 'to bring about a substantial reduction in overcapacity *in the near future*' (see the preamble to the Regulation, recital 3, emphasis added).

55. The view that the time-limit of six months is not disproportionate is also supported by the fact that, as appears from the observations of the Commission and the Council, only a limited number of traders failed to meet it. The majority of the vessels under construction at the time when the Regulation entered into force were delivered within that time-limit. It should also be noted that the applicants exceeded that time-limit by a significant period. It would therefore not have been possible for them to avoid their new vessels being subject to the 'old-for-new' rules unless the transitional provisions had provided for a significantly longer period after the Regulation came into force for the completion of vessels under construction.

56. I conclude that, in the light of the objectives which the Regulation sought to achieve, the requirements provided for in Article 8(3)(a), second and third indents, were necessary to achieve those objectives.

57. At the oral hearing, Driessen also argued that the Regulation does not provide adequate reasons to justify the application of the 'old-for-new' rules to vessels under construction at the time of its entry into force, subject to the transitional rules of Article 8(3)(a), and therefore that it infringes Article 190 of the EEC Treaty. As already stated, however, it is clear in the light of the objectives of the Regulation as set out in its preamble that the transitional rules provided for

in Article 8(3)(a) were necessary to achieve those objectives. I consider therefore that the Council has duly discharged its duty as the enacting institution to provide adequate reasons justifying the immediate application of the Regulation subject to the transitional rules of Article 8(3)(a).

The principle of equality

58. The applicants claim that the transitional arrangements concerning the 'old-for-new' rules are contrary to the principle of equality. The applicants in Cases C-14 to 16/92 claim, in particular, that the requirements of Article 8(3)(a), second and third indents, discriminate against traders, such as themselves, who placed orders for the construction of a vessel with small shipyards vis-à-vis traders who placed orders for the construction of a vessel with large shipyards. They argue that large shipyards are able to complete the construction of a vessel within a shorter period than small ones and therefore that traders who placed orders for the building of a vessel at the same time as the applicants but with a large shipyard were able to meet the time-limit of six months provided for in Article 8(3)(a), third indent. They conclude that the restrictive requirements of Article 8(3)(a), second and third indents, result in a difference in treatment between traders who are in the same position which constitutes discrimination prohibited by Community law.

59. In my view that argument must fail. According to the case-law of the Court, the principle of equality precludes comparable situations from being treated differently unless the difference in treatment is objectively justified: see e. g. Case 84/87 *Erpelding* v *Secrétaire d'Etat à l'Agriculture et à la Viticulture* [1988] ECR 2647, paragraph 29, Joined Cases C-181/88, C-182/88 and C-218/88 *Deschamps and Others* v *Ofival* [1989] ECR 4381, paragraph 18.

60. I cannot see, however, how in the particular circumstances of these cases the principle of equality has been breached. The choice of a shipyard is a commercial decision, the consequences of which are to be borne by the individual trader. The applicants were under no obligation to place orders for the building of new vessels with small shipyards, which they could foresee might take longer. Further, since they were aware that the introduction of a measure aiming at reducing structural overcapacity in the inland waterway networks was imminent they could, as I have already stated, have protected themselves by inserting a clause in the contracts for the building of the vessels limiting their liability towards the shipyards in the event of having to cancel those contracts as a result of the introduction of that measure.

61. There are additional reasons why I do not find the arguments of the applicants persuasive. First, from the practical point of view, it would not be easy to provide for different time-limits for the delivery of new

vessels in the transitional rules depending on the size of the shipyard which undertook the construction of a vessel since disagreement could arise as to the criteria to be used in order to distinguish between small and large shipyards. Secondly, if such different time-limits were provided for, further distinctions might be necessary in the interests of equality. It could be argued, for example, that the efficiency of a shipyard depends not only on its size but also on its technical equipment and therefore that different time-limits should be provided depending on the technical equipment used by the shipyard which undertook the construction of a new vessel. Further, different time-limits might also have to be provided depending on the size of the vessel to be constructed. In my view the principle of equality cannot preclude the legislature from adopting a criterion of general application — indeed that is inherent in the nature of legislation. It may affect different persons in different ways, but beyond certain limits any attempt to tailor the legislation to different circumstances is likely only to lead to new claims of unequal treatment.

62. I conclude that the claim that the Regulation is invalid on the ground that it infringes the principle of equality must fail.

Conclusion

63. I am therefore of the opinion that the question referred to the Court should be answered as follows:

Consideration of the matters examined has disclosed no factor of such kind as to affect the validity of Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport.