COMMISSION OPINION

of 30 November 1995

addressed to the Belgian Government concerning three draft ministerial orders concerning chartering procedures for inland waterway goods transport

(95/532/EC)

Pursuant to Article 1 of the Council Decision of 21 March 1962 instituting a procedure for prior examination and consultation in respect of certain laws, regulations and administrative provisions concerning transport proposed in the Member States [1], as amended by Decision 73/402/EEC [2], the Belgian Government notified the Commission by letter dated 28 March 1995 of three draft ministerial orders concerning chartering procedures for inland waterway goods transport. The first draft order concerns national services and lays down the procedures for intervention by the *Office Régulateur de la Navigation Intérieure* (Office Regulating Inland Waterways Transport) in drafting contracts of affreightment and the conditions and prices to be met by such contracts. The second draft ministerial order regulates inland waterway traffic from Belgium to France and the Netherlands and the third lays down the conditions for releasing boats engaged in own-account haulage operations from intervention by the *Office Régulateur de la Navigation Intérieure.*

The letter from the Belgian Government reached the Commission on 3 April 1995. In a letter dated 21 April 1995 the Commission asked the Belgian authorities for further details. It received their reply on 8 June 1995 and held a meeting with representatives of the Belgian Government on 30 June 1995.

Pursuant to Article 2 of the abovementioned Council Decision, the Commission hereby delivers the following opinion :

1. The Commission first examined the draft ministerial orders on national services and on services from Belgium to France and the Netherlands.

   It notes that the draft ministerial order on services between two Belgian ports maintains the current cargo-allocation system, while changing certain operating procedures to allow the trade slightly greater flexibility. For example, customers will now have the option of refusing boats which fail to conform to the technical requirements or a carrier with whom they were dissatisfied in the past.

   It will be possible for certain services to be chartered freely subject to approval by the *Office Régulateur de la Navigation Intérieure.* These exemptions could be extended by the commissioner of the Office to other categories of product or types of charter.

   Although, in principle, only chartering for single trips is allowed under the current rotation system, under the draft ministerial order on national services chartering for not more than five consecutive voyages and time charters for up to two months will be possible in the new system. The Belgian Government will decide the general procedures to apply to services consisting of over five consecutive voyages, time contracts lasting over two months and tonnage contracts once the proposed draft ministerial order enters into force. The draft ministerial order stipulates that tonnage contracts could be fully or party released from the rotation system and that, in the event of partial liberalization, at least 30 % of the total load will have to be chartered freely.

[1] OJ No 23, 3. 4. 1962, p. 720/62.
[2] OJ No L 347, 17. 12. 1973, p. 48.

As regards prices and conditions of carriage, the draft ministerial order provides for the establishment of a general system of reference tariffs and for the freight committee consisting of representatives of the public authorities and the circles concerned to be consulted and give its opinion on the detailed arrangements. The minister will take the final decision on prices and conditions of carriage. Provision has also been made for deviation from the reference tariff, subject to conditions to be laid down in due course by the freight committee.

The draft ministerial order regulating inland waterway transport to France and the Netherlands advocates that the cargo-allocation system be maintained or introduced respectively on these routes, with the same operating procedures as laid down in the ministerial order on national services. Consequently, the current rotation system run by small operators for traffic from Belgium to the Netherlands will disappear.

2. From the economic point of view, the Commission considers that introduction of the new mandatory cargo-allocation system on routes from Belgium to the Netherlands must create no obstacles to the liberalization of the inland waterway market advocated in the proposal of 23 May 1995 for a Council Directive on the systems of chartering and pricing in the national and international inland waterway transport market in the Community [1]. Moreover, the Commission stressed this aspect in its opinion of 12 June 1995 addressed to the Netherlands Government concerning a draft temporary law on cargo allocation in north-south inland waterway services [2].

No such cargo-allocation system could be contemplated without strict guarantees that the branch of the market concerned will switch definitively to a system based on free competition within an effectively limited period. The Commission realizes that the plan is to extend chartering by rotation to new routes and notes with interest the clauses on liberalization and greater competitiveness on the part of small operators in the cargo-allocation system envisaged for inland waterway services within Belgium and traffic to France and the Netherlands. It also notes that the draft proposed for services to these two Member States would be temporary. The provision made in this draft for the cargo-allocation system to end definitively on 1 January 2000 would be compatible with the objectives of liberalization of the inland waterway market advocated in the Commission's abovementioned proposal for a Directive and would fit in with the timetable envisaged for liberalization of this market in two other Member States.

3. The Commission notes that, with regard to routes to France and the Netherlands, in which case any amendments are the responsibility of the Minister of Transport, the draft ministerial order in question imposes the obligation to apply a system of chartering by rotation as the general rule and presents the liberalization clauses only by way of derogation therefrom. To provide fuller guarantees that the transition of this sector of the market concerned will be completed by the date envisaged for ending the cargo-allocation system, the Commission recommends that the Belgian Government amend the draft ministerial order to this effect, i.e. that it establish the general principle of liberalization of the inland waterway market concerned first and then set out the rules on the cargo-allocation system envisaged thereafter, by way of derogation from this general principle and for a limited period ending on 1 January 2000.

4. Out of concern to ensure a more effective transition to free competition by the time limit envisaged, the Commission requests the Belgian Government to make the following amendments to the draft ministerial orders on national services and services to France and the Netherlands:

— Article 23 of the draft ministerial order on national services stipulates that it will be possible for tonnage contracts to be released fully or partially from application of the cargo-allocation system, based on the general chartering procedures to be laid down by the Belgian authorities within one year of entry into force of the order.

[1] COM(95)199 of 23 May 1995.
[2] OJ No L 134, 20. 6. 1995.

The Commission recalls that in its proposal of 23 May 1995 for a Council Directive on gradual liberalization of the inland waterway market, it advocated chartering of tonnage contracts outside the rotation system as the first stage. The Commission calls on the Belgian Government to take this into account when it lays down these general procedures and to notify it of the text of the provisions proposed on this subject in advance.

— Article 22 of the same draft ministerial order states that the general procedures for chartering time contracts of over two months' duration will also be laid down in due course. The Commission calls on the Belgian Government once again to take account of the objectives set in the abovementioned proposal for a Directive when it lays down these general procedures, and to notify it of the texts of the provisions proposed on the chartering procedures for time contracts in advance.

— The draft ministerial order on services to France and the Netherlands provides for the repeal of the order on 1 January 2000. The recital to the draft stresses that the order is provisional and will apply until the introduction of Community legislation on liberalization of the inland waterway market. As the Commission's formal proposal has already been submitted to the Council for a decision on the subject, the Commission calls on the Belgian Government to add the following wording to this article :

'Article 7

This order shall enter into force on ..... and shall expire on 1 January 2000 *or on an earlier date set by Ministerial Order, if so required by a European Union legal act.'*

5. The draft ministerial order concerning own-account operations lays down the conditions under which boats for this type of service may be used outside the rotation system. This draft raises no particular comments with regard to Community law ; it enshrines the principle of non-intervention by the *Office Régulateur de la Navigation Intérieure* in the chartering procedure, on condition, however, that the boat has been granted an own-account certificate issued by the public authorities on the basis of criteria making it possible to distinguish between own-account operations and services for hire or reward.

6. Subject to the foregoing points and conditions, the Commission considers that the three draft ministerial orders are not incompatible with the general transport policy.

7. The Commission is sending this opinion to the other Member States.

Done at Brussels, 30 November 1995.

For the Commission

Neil KINNOCK

Member of the Commission