II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on the systems of chartering and pricing in national and international inland waterway transport in the Community

(95/C 318/08)

(Text with EEA relevance)

COM(95) 199 final — 95/0121(SYN)

(Submitted by the Commission on 15 September)

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,

In cooperation with the European Parliament,

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

Whereas the growing problems of road and rail saturation, transport safety, environment, energy saving and quality of life call, in the public interest, for greater development and better use of the transport potential offered by inland waterway, in particular by improving its competitiveness;

Whereas the difference in national laws on the systems for the commercial operation of inland waterway transport does not make for the smooth functioning of the internal market in this sector; whereas, therefore, common provisions should be introduced at Community level for the whole of the inland waterways market, as was suggested in the Commission report to the Council of 9 June 1994 on the organization of the inland waterways transport market and systems of chartering by rotation, of which the approach was approved by the Council in its resolution of 24 October 1994 [1];

Whereas the completion of the internal market, in which the free movement of goods, persons, services and capital is guaranteed, calls for an adjustment in inland waterways transport to the organization of chartering by rotation, so as to move towards greater commercial flexibility and a system of open transactions;

Whereas in view of the socio-economic characteristics of the sector, provision should be made for a transitional period, the scope of the rotation system being gradually limited prior to the attainment of freedom of chartering and pricing;

Whereas that period is needed for carriers to adapt to the conditions of a free market and, where appropriate, to set up trade groupings better suited to the logistical needs of shippers;

Whereas in view of the abovementioned objectives, it is both necessary and adequate to set a timetable at Community level for the gradual liberalization of the market, while leaving with the Member States the responsibility for putting such liberalization into effect; whereas this is in accordance with the third paragraph of Article 3b of the Treaty;

Whereas provisions must be adopted to allow action to be taken on the transport market in question in the case of a serious disturbance; whereas, to this end, the Commission should be given the power, through an advisory committee, to take appropriate measures,

[1] OJ No C 309, 5. 11. 1994, p. 5.

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive the following meanings shall apply:

(a) 'chartering by rotation': a system which consists of allocating in a charter exchange requests for transport operations, at fixed prices and under the conditions published, from customers on the basis of the order in which vessels become available after unloading. Carriers are asked, in the order of their registration on the rota, to choose in turn a load from those on offer. Those who make no choice nonetheless keep their position in the order;

(b) 'carrier':

— owner of one or several (up to a maximum of three) inland waterway vessels,

— owner of more than three inland waterway vessels,

— group or cooperative of owner-operators of inland waterway vessels;

(c) 'competent authority': the authority appointed to manage and organize the system of chartering by rotation;

(d) 'serious market disturbance': the emergence in the sector in question of problems specific to that market likely to cause a serious and potentially persistent excess of supply over demand, thereby posing a serious threat to the financial stability and survival of a large number of inland waterway carriers, unless the short and medium-term forecasts for the market in question indicate substantial and lasting improvements.

Article 2

In the field of national and international inland waterway transport in the Community, contracts shall be freely concluded between the parties concerned and prices freely negotiated, where appropriate, within charter exchanges.

Article 3

Notwithstanding Article 2 Member States may, for a limited period up to 1 January 2000, maintain a system of minimum compulsory tariffs and systems of chartering by rotation, provided that:

— there is compliance with the conditions set out in Articles 4 to 7, and

— the rotation and pricing systems imposed are freely accessible under the same conditions to all Member States' carriers.

Article 4

During the transitional period referred to in Article 3 the scope of the systems of chartering by rotation shall be limited to general cargo.

The following shall not be subject to these systems: oil and gas, liquid cargo and dry bulk freight, special cargoes such as heavy and indivisible loads, container transport, transport within port areas, any kind of own-account transport and any type of transport operation outside the rotation system.

Article 5

Loads shall not be subject to chartering by rotation if they cannot be effectively dealt with by such systems; in particular:

— transport requiring handling equipment,

— combined transport, namely, intermodal transport where the routes are principally by inland waterway and the initial and/or terminal legs (as short as possible) are by road or rail,

— new types of transport not covered by Article 4 or by the first and second indents, where shippers, for a preliminary test period of up to 24 months, will have the option of using or not using the rotation system.

Article 6

During the transitional period referred to in Article 3 Member States shall take the necessary steps to maximize flexibility in the systems of chartering by rotation, in particular:

— by providing shippers with the opportunity of concluding contracts for multiple trips, that is to say, a series of successive trips using one and the same vessel,

— by providing that single or multiple trips offered twice under the rotation system without finding any takers shall be taken out of the rotation system and be freely negotiated.

Article 7

Within a period of two years from the entry into force of this Directive, Member States shall take the necessary measures to enable shippers to have a free choice between three types of contract:

— contracts on a time basis, including leasing contracts where the carrier makes one or more vessels and crew exclusively available to a customer for a specific period for the transport of goods for that customer

against payment of a given sum of money per day. The contract is freely concluded between the parties,

— tonnage contracts where the carrier undertakes to transport, for a period laid down in the contract, a given tonnage against payment of cargo rates by the tonne. The contract is freely concluded between the parties and must involve large consignments,

— contracts for single or multiple trips to be undertaken through the system of chartering by rotation.

Article 8

1. In the event of a serious disturbance in the inland waterways market the Commission may, on its own initiative or at the request of a Member State, take suitable measures, and in particular measures designed to prevent any new increase in the transport capacity on offer on the market in question. The decision shall be taken in conformity with the procedure laid down in Article 9 (2).

2. In the event of a request from a Member State for measures a decision shall be taken within a period of three months from receipt of the request.

3. The request from a Member State for suitable measures to be taken must be accompanied by all the information needed to assess the economic situation in the sector in question, in particular:

— indication of the average costs and prices for the different types of transport,

— the rate of utilization of the hold,

— forecast demand.

This information may only be used for statistical purposes. It may not be used for tax purposes or communicated to third parties.

4. Decisions taken pursuant to this Article shall be notified immediately to the Member States.

Article 9

1. The Commission shall be assisted by the committee established by Council Directive (EEC) 91/672 (1).

2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on this draft, where necessary by vote, within a time limit set by the chairman according to the urgency of the matter.

The opinion shall be recorded in the minutes; in addition, each Member State has the right to request that its position be recorded in the minutes.

The Commission shall take full account of the opinion of the Committee. It shall inform the Committee of the manner in which it has taken account of its opinion.

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1999. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall forthwith communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 11

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

Article 12

This Directive is addressed to the Member States.

(1) OJ No L 373, 31. 12. 1991, p. 29.