JUDGMENT OF THE COURT (Fifth Chamber)
17 July 1997 *

In Joined Cases C-248/95 and C-249/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany) for a preliminary ruling in the proceedings pending before that court between

SAM Schiffahrt GmbH,

Heinz Stapf

and

Federal Republic of Germany

on the validity of Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport (OJ 1989 L 116, p. 25), and of Commission Regulation (EEC) No 1102/89 of 27 April 1989 laying down certain measures for implementing Regulation No 1101/89, as amended by Commission Regulation (EEC) No 3685/89 of 8 December 1989 (OJ 1989 L 360, p. 20),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, C. Gulmann (Rapporteur), D. A. O. Edward, J.-P. Puissochet and M. Wathelet, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— SAM Schiffahrt GmbH, by Peter Schnitzer, Rechtsanwalt, Ulm,

— Mr Stapf, by Sigwalt von Waldstein, Rechtsanwalt, Mannheim,

— the German Government, by Ernst Röder, Ministerialrat at the Federal Ministry of the Economy, acting as Agent,

— the French Government, by Catherine de Salins, Deputy Director of the Legal Affairs Department at the Ministry of Foreign Affairs, and Denys Wibaux, Secretary for Foreign Affairs in the same Department, acting as Agents,

— the Council of the European Union, by Amadeu Lopes Sabino and Guus Houttuin, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by Götz zur Hausen, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of SAM Schiffahrt GmbH, Mr Stapf, the Council and the Commission at the hearing on 16 January 1997,

after hearing the Opinion of the Advocate General at the sitting on 27 February 1997,

gives the following

Judgment

1 By orders of 29 May 1995, received at the Court on 19 July 1995, the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court for the Land of North Rhine Westphalia) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty four questions on the validity of Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport (OJ 1989 L 116, p. 25; the 'basic regulation') and of Commission Regulation (EEC) No 1102/89 of 27 April 1989 laying down certain measures for implementing Regulation No 1101/89 (OJ 1989 L 116, p. 30), as amended by Commission Regulation (EEC) No 3685/89 of 8 December 1989 (OJ 1989 L 360, p. 20; the 'implementing regulation').

2 The questions were raised in two sets of proceedings between (i) SAM Schiffahrt GmbH ('SAM Schiffahrt') and (ii) Mr Stapf and the Federal Republic of Germany concerning decisions adopted by the Wasser-und Schiffahrtsdirektion West (Western Waterways and Navigation Board) establishing, pursuant to the abovementioned regulations, the contributions that the plaintiffs had to pay to the German Scrapping Fund for the financial year 1990.

3 The basic regulation is designed to achieve a substantial reduction in overcapacity in the inland waterways sector. To that end, it introduced a scrapping scheme coordinated at Community level but financed by the industry itself.

4 The first, second, sixth and seventh recitals in the preamble to the basic regulation state:

'... 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;

... forecasts show no sign of sufficient increase in demand in this sector to absorb this 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;

...

... overcapacity generally affects every sector 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 ...

... in view of the worrying economic and social situation of the sector involving vessels with a dead weight of less than 450 tonnes and in particular the boat owners' financial situation and limited scope for conversion, specific measures are called for, such as special adjustment coefficients for inland waterway vessels or specific improvement measures for the networks most affected ...'

5 Under Article 2 thereof, the basic regulation applies to cargo-carrying vessels and pusher craft which are registered in a Member State or, if not registered, are operated by an undertaking established in a Member State.

6 Under Article 3(1) and Article 3(2) of the basic regulation, 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, is to set up a Scrapping Fund, to be administered by the competent national authorities. Article 4(1) requires the owner of each vessel covered by the regulation to pay an annual contribution to the fund to which his vessel belongs.

7 Article 5(1) of the basic regulation provides that any owner scrapping a vessel is to receive a scrapping premium from the fund to which his vessel belongs, in so far as the financial means are available, subject to the conditions set out in Article 6 of the regulation.

8 Under Article 6, the Commission is to lay down separately for dry cargo carriers, tankers and pusher craft the rate of annual contributions and scrapping premiums, the period covered by the scrapping schemes, and the adjustment coefficients for each type and category of inland waterway vessel (Article 6(1)). The rates applying to contributions and scrapping premiums are to be the same for each fund (Article 6(2)) and are to be calculated on the basis of either of deadweight tonnage for cargo-carrying vessels or the motive power of the vessel for pusher craft (Article 6(3)). Contribution rates are to be fixed by the Commission at a level allowing the funds sufficient financial resources to make an effective contribution to reducing the structural imbalance between supply and demand in the inland waterway

transport sector, taking into account its difficult economic position (Article 6(4)). Before adopting its decisions, the Commission is to consult the Member States and the organizations representing inland waterways carriers at Community level. The decisions reached by the Commission are also to 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.

9 In order to prevent the gains from the scrapping scheme being cancelled out by extra capacity coming into service at the same time, Article 8(1)(a) of the basic regulation provides that, for a period of five years from the entry into force of the regulation, newly-constructed vessels may be brought into service on inland waterways only where the owner of the vessel to be brought into service scraps tonnage of equivalent carrying capacity without receiving a scrapping premium ('the old for new rule') or, if he does not scrap a vessel, he pays a special contribution to the scrapping fund.

10 Finally, in Article 10(4), the basic regulation requires the Commission, two years after its entry into force, to draw up a report evaluating the effects of the measures adopted and submit that report to the Parliament and the Council.

11 According to Article 1(1) thereof, the implementing regulation fixes, *inter alia*, the annual contributions, the scrapping premiums and the conditions under which they may be granted, having regard to the need to reduce fleet capacity by 10% in respect of dry cargo vessels and pusher craft and by 15% in respect of tanker vessels. According to Article 1(2), a total budget of ECU 130.5 million is considered necessary for the purpose.

12 Under Article 2 of the implementing regulation, the system of scrapping measures became operational as from 1 January 1990.

13 Article 3(1) of the implementing regulation determines the rates of annual contributions to the scrapping fund separately in relation to the three types of vessel concerned, namely dry cargo vessels, tanker vessels and pusher craft. Similarly, Article 5(1) of the implementing regulation fixes separately for each of those three types of vessel the rates on the basis of which scrapping premiums may be applied for and provides that the amount of the latter is to be between 70% and 100% of those rates.

14 Article 6(1) of the implementing regulation provides that, in order to be taken into consideration, an application for a scrapping premium must reach the authorities of the relevant fund before 1 May 1990. In order to prevent any speculation as to the amount of scrapping premiums, an application submitted to the authorities of a fund may be neither withdrawn nor amended.

15 As far as scrapping premiums are concerned, Article 6(2) of the implementing regulation provides that an applicant may apply for a rate within a bracket of between 70% and 100% of the maximum rates laid down by Article 5. In order to permit the maximum possible scrapping of tonnage on a limited total budget, the sixth recital in the preamble to the implementing regulation and Articles 6(3) and 8 thereof give priority to applications whose percentages are the lowest within that bracket. Premium applications validly submitted for a percentage of 70% are thus deemed accepted by the fund within the limits of budgetary availability in the various accounts, whereas, in the case of applications for a scrapping premium over 70%, the fund authorities inform the applicant whether or not his application has been accepted. Similarly, if applications for scrapping premium exceed the budgets, consideration is given first to applications for the lowest premium-rate percentages.

16 Under Article 7(1) of the implementing regulation, the submission of an application for scrapping premium entails an obligation on the owner, in the event that his application is accepted, to proceed either with the scrapping of the vessel or with its permanent immobilization. Under Article 9(1), the scrapping premium is payable where the owner has proved that the vessel has been scrapped or has been immobilized in accordance with Article 7.

17 SAM Schiffahrt and Mr Stapf are both owners of motor vessels which they use to transport goods on the Rhine and its tributaries. SAM Schiffahrt also transports goods on the West German canals.

18 By decisions of 10 April 1990 in relation to SAM Schiffahrt and 19 January 1990 in relation to Mr Stapf, on the basis of the regulations at issue, the Wasser-und Schiffahrtsdirektion West required the payment of contributions of DM 3 231 and DM 4 179 respectively for the 1990 financial year.

19 Their complaints against those decisions having been rejected by the Wasser-und Schiffahrtsdirektion West by decisions of 12 September 1990 and 7 August 1990, SAM Schiffahrt and Mr Stapf brought actions before the Verwaltungsgericht (Administrative Court) Münster, which rejected them by judgments of 15 October 1991. The plaintiffs then appealed to the Oberverwaltungsgericht für das Land Nordrhein-Westfalen.

20 Taking the view that the outcome of the proceedings before it depended on the validity of the provisions governing the levying of the 1990 annual contributions, the Oberverwaltungsgericht decided to stay the proceedings pending a preliminary ruling by the Court of Justice on the following questions:

'1. Was the adoption of Council Regulation (EEC) No 1101/89 of 27 April 1989, Commission Regulation (EEC) No 1102/89 of 27 April 1989 and Commission Regulation (EEC) No 3685/89 of 8 December 1989 appropriate within the meaning of Article 75(1)(c) of the EEC Treaty?

2. If the answer to Question 1 is in the affirmative, can those regulations become invalid if, subsequently to their adoption, they cease to be appropriate within the meaning of Article 75(1)(c) of the EEC Treaty?

3. If the answer to Question 2 is in the affirmative, were the regulations still appropriate at the relevant time for the levying of the 1990 contributions to the Scrapping Fund?

4. Does the obligation laid down in the regulations to pay contributions for 1990 infringe fundamental Community rights or other Community law, in particular the right to property, the right to pursue a trade or profession, the principle of equality and the principle of proportionality?'

Question 1

21 By its first question the national court asks in effect whether the basic regulation should not be declared invalid on the ground that it was not 'appropriate' within the meaning of Article 75(1)(c) of the EEC (now the EC) Treaty.

22 In that connection, Article 74 of the EC Treaty provides that, in relation to transport, the objectives of the Treaty are to be pursued by the Member States within the framework of a common transport policy. Under Article 75, for the purpose of implementing Article 74 and taking into account the distinctive features of transport, the Council is to lay down a number of rules that are specifically described and also 'any other appropriate provisions' [Article 75(1)(c) of the EEC Treaty].

23 As the case-law has firmly established, in giving the Council the task of adopting this policy a common transport policy, the Treaty has conferred wide legislative powers upon it as regards the adoption of appropriate common rules (judgment in Case 97/78 *Schumalla* [1978] ECR 2311, paragraph 4).

24 In reviewing the exercise of such powers, the Court cannot substitute its own assessment for that of the Community legislature, but must confine itself to examining whether that latter assessment contains a manifest error or constitutes a misuse of powers, or whether the authority in question did not clearly exceed the bounds of its discretion (judgments in Case C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 18; C-84/94 *United Kingdom* v *Council* [1996] ECR I-5755, paragraph 58; Case C-169/95 *Spain* v *Commission* [1997] ECR I-135, paragraph 34).

25 The Court's case-law also shows that where, as in this case, implementation by the Council of a common policy requires it to assess a complex economic situation, its discretion is exercisable not only in relation to the nature and scope of the provisions which are to be adopted but also, to a certain extent, to the findings as to the basic facts, especially in the sense that it is free to base its assessment, if necessary, on findings of a general nature (judgments in Case 166/78 *Italy* v *Council* [1979] ECR 2575, paragraph 14; Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333, paragraph 25).

26 In this case, as the Council itself has emphasized, it was called upon, at the time the basic regulation was adopted, to analyse a worrying social and economic situation, described in the sixth and seventh recitals to the preamble to that regulation, and to make, on that basis, political choices as to the means that seemed to it most appropriate. The Council had to reconcile concerns arising from the overcapacity in the inland waterways sector — and particularly the problems connected with a substantial reduction in that overcapacity — with the appropriateness of social measures in favour of persons working in that sector. As the second recital in the preamble to the basic regulation shows, it did so by taking account of a medium-term forecast of the market's development, in accordance with data provided by the Commission and collected in close collaboration with organizations representing the sector at European level.

27 It would appear at first sight that, by adopting a regulation for reducing structural overcapacity so as to deal with an undeniably serious economic and social situation

in the sector, and by organizing for that purpose a scrapping scheme financed by the sector itself, the Council has not clearly exceeded the bounds of its discretion. The method it chose to deal with the sector's problems would appear to be an appropriate contribution to its structural improvement, and thus to alleviating its problems.

28 Apart from that initial assessment, it needs to be examined whether, as the plaintiffs in the main proceedings claim, the rules in question are vitiated by defects capable of rendering them invalid.

29 First, SAM Schiffahrt argues that the scrapping programme was unnecessary, since the overcapacity in the inland waterways sector referred to in the basic regulation was never established. It maintains that the contested regulation was based on out-of-date statistics, dating from 1976.

30 As to that argument, the existence of overcapacity in the inland waterways sector is demonstrated by the various pieces of information referred to in paragraphs 27 and 28 of the Advocate General's Opinion. In particular, the Commission claimed, without contradiction, that, at the time when the basic regulation was adopted, the Member States and the Union Internationale de la Navigation Fluviale (International River Transport Union) were unanimous in recognizing the existence of significant structural overcapacity in the sector.

31 Secondly, the plaintiffs in the main proceedings argue that the persistence of serious structural problems in the sector demonstrates that the basic regulation did not achieve its objective and that it was not, therefore, at the time of its adoption, appropriate within the meaning of Article 75 of the Treaty.

32 That argument cannot be accepted. Without there being any need to decide whether the assessment of a Community measure's validity may depend on the results actually achieved following its adoption, it is sufficient to point out, as does the German Government, that a number of indicators clearly demonstrate how much less satisfactory developments in the sector would have been without the structural improvement measures adopted.

33 Thirdly, the plaintiffs argue that the premiss underlying the basic regulation, namely that in order to improve the economic position of inland waterway transport it is sufficient to share a fixed volume of freight between a smaller number of vessels, is erroneous because it does not take account of the fact that river transport is in competition with road and rail transport.

34 The first point to make in that respect, as the Advocate General observes in paragraph 41 of his Opinion, is that inland waterway transport is not wholly interchangeable with other methods of transport since, on account of the very limited network on which it depends, it cannot offer the same flexibility as road transport or even the lesser flexibility of rail transport. Moreover, the reduction of structural overcapacity, which is aimed essentially at aligning supply and demand in the sector concerned, does not necessarily imply a reduction of the competitive capacity of that sector in relation to others.

35 Fourthly, the plaintiffs argue that the basic regulation has merely resulted in the imposition of an extra charge on competitive operators, by forcing them to finance the scrapping of vessels belonging to uncompetitive operators who would, in any event, have been obliged to withdraw, without receiving any consideration at all.

36 That argument cannot be accepted. The plaintiffs have failed to demonstrate that the annual contributions levied on vessel owners added so significantly to operating costs as to impair their competitive position and that therefore, in adopting the

basic regulation, the Council committed a manifest error in assessing the economic circumstances of the sector concerned.

37 Moreover, since the Council was entitled to base its assessment on findings of a general nature, it was permissible for it to impose the cost of the scrapping programme on the sector as a whole, especially since, in this case, the incentive to leave the market provided by the basic regulation was likely to accelerate the reduction in tonnage and thus allow better use of the remaining vessels, and that reduction was accompanied by reasonable financial conditions for vessel owners, in conformity with the aims of the Treaty as set out in Article 2 thereof.

38 Fifthly, the plaintiffs argue that the contested regulation should have taken into account the fact that, in Germany, transport tariffs were fixed by the public authorities, with the result that a reduction in freight capacity could not have a beneficial effect on freight rates.

39 In reply to that argument, it is sufficient to observe, as the Commission has pointed out, that the system of fixed freight rates applicable in Germany until 1 January 1994 did not apply to international transport, which constitutes the essential feature of the Community market, and that, even where fixed rates apply, reduction in the fleet capacity allows better utilization of the remaining tonnage. Since the Council was entitled to base its assessment on findings of a general nature, it has not therefore been shown that it committed a manifest error of assessment by adopting the basic regulation.

40 Finally, the plaintiffs argue that some of the detailed rules concerning the granting of scrapping premiums are arbitrary. They refer in that respect to the rules concerning the priority given to the lowest premium applications, referred to in paragraph 15 above, and to the rule, referred to in paragraph 14 above, that an application for a premium may not be withdrawn.

41 As to that argument, Article 6(1) of the basic regulation provides that the conditions under which scrapping premiums may be obtained are determined by the implementing regulation. Therefore, even if the detailed rules for the granting of premiums were to be held illegal, such a defect would not justify a challenge to the validity of the basic regulation or the obligation on owners to contribute to the scrapping funds in accordance with Article 4 thereof.

42 In any event, the plaintiffs have not refuted the Commission's arguments that, first, the system of adjustable premiums ensures the best possible use of financial resources and, second, that the impossibility of withdrawing a premium application is necessary in order to prevent speculation as to the amounts of scrapping premiums and thus to implement the premium system in a regular manner.

43 It follows that the line of argument to the effect that the scrapping programme established by the basic regulation did not constitute an appropriate response to the crisis in the sector, and was not therefore 'appropriate' within the meaning of Article 75(1)(c) of the EEC Treaty, must be rejected.

44 The reply to the national court must therefore be that examination of the first question has not revealed any factor capable of affecting the validity of the basic regulation.

Questions 2 and 3

45 In its second and third questions, the national court asks in effect whether the basic regulation should not be declared invalid on the grounds that it lost its appropriateness within the meaning of Article 75 of the Treaty after it was adopted, in particular during the period which was relevant for the purposes of levying contributions for 1990.

46 As the Court has held in its case-law concerning actions for annulment, the legality of a measure must be assessed on the basis of the factual and legal situation which existed at the time when it was adopted (judgment in Joined Cases 15/76 and 16/76 *France* v *Commission* [1979] ECR 321, paragraph 7). By analogy, the assessment of the validity of a measure which the Court is called upon to undertake on a reference for a preliminary ruling must normally be based on the situation which existed at the time that measure was adopted.

47 Even if the validity of a measure might, in certain cases, be assessed by reference to new factors which arose subsequently to its adoption, the documents before the Court do not permit the conclusion that any such factors exist in this case, as the Advocate General has pointed out in paragraph 39 of his Opinion. First, the period in issue in the main proceedings is the financial year 1990, which was the first year in which the basic regulation applied. Moreover, the information referred to in paragraph 30 of this judgment shows that the structural overcapacity which existed in the inland waterways sector at the time the regulation was adopted has not been entirely reduced in the following years.

48 The reply to the national court must therefore be that examination of Questions 2 and 3 has revealed no factor of such a kind as to affect the validity of the basic regulation.

Question 4

49 By its fourth question, the national court asks in effect whether the legislation in question should not be declared invalid on the grounds that the obligation it imposes to pay contributions for the year 1990 infringes fundamental rights or other rules of Community law, in particular the right to property, the freedom to pursue a trade or business, the principle of equality and the principle of proportionality.

The principle of equal treatment

50 The Court has consistently held that the general principle of equality, which is one of the fundamental principles of community law, requires that similar situations are not to be treated differently unless differentiation is objectively justified (judgments in Joined Cases 201/85 and 202/85 *Klensch and Others* v *Secrétaire d'État* [1986] ECR 3477, paragraph 9; Joined Cases C-267/88 to C-285/88 *Wuidart and Others* v *Laiterie Coopérative* [1990] ECR I-435, paragraph 13).

51 The plaintiffs claim that the disputed legislation disregards that principle in several respects.

52 They claim, first, that the obligation to contribute to scrapping funds discriminates against German vessel owners, who had already contributed to a national scrapping fund before the Community fund was set up.

53 That argument cannot be accepted. It presupposes in effect that the prior national contributions affect the functioning of the Community scrapping system and that German vessel owners are in a different position from owners of other Member States. However, the contributions to the Community scrapping scheme have their own objectives, namely the financing of the removal of structural overcapacity not eliminated by the various national measures, including the German measures.

54 Secondly, the plaintiffs contend that the legislation in question discriminates against the inland waterway sector in favour of road and rail carriers, given that only the waterway sector is required to contribute to the scrapping scheme, whilst all transport sectors benefit from the measures. They refer in particular to the first recital in the preamble to the basic regulation, which states that the structural over-

capacity in the fleets operating on the waterway networks appreciably affects 'the economics of transport services', which, in their submission, means the economics of transport services in general, including those by road and rail.

55 Such an argument presupposes that all transport sectors are in comparable situations. As the Commission has argued, however, the owners of other means of transport, such as road and rail, are in an objectively different situation, since they are not experiencing overcapacity comparable to that in the inland waterways sector.

56 There are therefore no grounds for holding that the Council erred in its conclusion, expressed in the ninth recital in the preamble to the basic regulation, that responsibility for structural improvements in a given sector of the economy lay primarily with operators in the sector and that, therefore, the cost of any system introduced had to be borne by inland waterway transport undertakings.

57 Thirdly, the plaintiffs argue that the exclusion of towing vessels from the scope of the basic regulation is unjustified, and constitutes discrimination against the owners of other vessels.

58 On that point, however, the Council explained, without contradiction, that towing vessels have long since ceased to perform a genuine transporting function in the inland waterways sector and do not therefore contribute to the overcapacity in that sector. It cannot therefore be maintained that the Council erred in excluding towing vessels from the scope of the basic regulation.

59 Fourthly, the plaintiffs argue that the failure to take account of the capacity utilization rates of individual vessels at the time when contributions were fixed entails an infringement of the principle of equality.

60 In response to that argument, it must be observed that Article 6(3) of the basic regulation provides that contributions are to be calculated on the basis either of deadweight tonnage for cargo-carrying vessels or of the motive power of the vessel for pusher craft. Such a method of calculating contributions, by placing vessels of a given capacity in equal competitive conditions, complies with the injunction in the 10th recital in the preamble to the basic regulation that competition is not to be distorted, whilst at the same time being achievable and verifiable in practice. As the Commission has pointed out, calculation of the contribution on the basis of the individual utilization of more than 10 000 vessels would have given rise to substantial administrative and supervisory difficulties. It cannot therefore be maintained that the Council committed a manifest error of assessment by deciding to calculate contributions on the basis either of deadweight tonnage for cargo-carrying vessels or the motive power of the vessel for pusher craft.

61 Fifthly, the plaintiffs argue that the legislation at issue is discriminatory in its effects, in that the beneficiaries of the scrapping programme are essentially large shipping companies which reinvest the scrapping premiums in building new vessels.

62 In reply to that argument, it is sufficient to point out that, in accordance with the 11th recital in the preamble to the basic regulation, Article 8(1)(a) requires the owner of a new vessel either to scrap a tonnage of carrying capacity equivalent to the new vessel without receiving a scrapping premium or, if he does not scrap a vessel, to pay a special contribution equal to the scrapping premium for a tonnage equal to that of the new vessel. In its judgment in Joined Cases C-13/92, C-14/92, C-15/92 and C-16/92 *Driessen and Others* v *Minister van Verkeer* [1993] ECR I-4751, paragraph 36, the Court held that that rule was an appropriate way of limiting new investments in a sector characterized by structural overcapacity.

63 Finally, the plaintiffs contend that the disputed legislation disregards the principle of equality by placing German vessel owners at a disadvantage *vis-à-vis* their competitors from the Netherlands and Eastern European countries.

64 With regard to that argument, it must be observed that, since competing vessel owners from other Member States are under the same obligations to contribute to scrapping funds, the legislation does not establish different treatment as between vessel owners from the various Member States. As for competitors from non-member countries, suffice it to say that, since they are not concerned by the legislation and do not therefore benefit from the possibility of carrying out a scrapping, they are not in a position comparable to that of Community vessel owners.

65 Therefore, the line of argument concerning infringement of the general principle of equality must be rejected.

The principle of proportionality

66 The plaintiffs argue that the basic regulation infringes the principle of proportionality, on the ground that it would have been possible to remedy any overcapacity by less stringent measures, such as a prohibition on night-time and week-end navigation.

67 Under the Court's case-law, in order to establish whether a provision of Community law complies with the principle of proportionality, it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it (judgment in *United Kingdom* v *Council*, cited above, paragraph 57; Case C-233/94 *Germany* v *Parliament and Council* [1997] ECR I-2405, paragraph 54).

68 In this case, as the German Government has pointed out, a prohibition on night-time and weekend navigation would not be less stringent for each vessel owner than the system of contributions, as it would artificially reduce the capacity of the vessels concerned, thus inevitably worsening their economic position.

69 Therefore, the Council being entitled to base its assessment on findings of a general nature, it cannot be maintained that the basic regulation is vitiated by a manifest error, or that the Council manifestly exceeded the bounds of its discretion by adopting a scrapping scheme to improve the structure of the inland waterways sector.

70 The line of argument concerning infringement of the principle of proportionality must therefore be rejected.

The right to property and the freedom to pursue a trade or business

71 Finally, the plaintiffs contend that the obligation to contribute to the scrapping funds is contrary to the right to property and the freedom to pursue a trade or business. They argue that the inland waterways sector is undergoing a major crisis which the obligation to contribute to the scrapping funds has the effect of exacerbating, given that there is no consideration for the contributions and their amounts are considerable.

72 Under the Court's case-law, the right to property and the freedom to pursue a trade or business both form part of the general principles of Community law. Those principles are, however, not absolute, but must be viewed in relation to their social function. Consequently, the exercise of the right to property and the

freedom to pursue a trade or business may be restricted, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (judgment in Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 78).

73 In the light of those criteria, the Court finds that the disputed legislation, which is designed to remedy a worrying economic and social situation in the inland waterways sector, corresponds to objectives of general interest pursued by the Community.

74 Moreover, as has been held at paragraphs 27, 32, 36 and 37 of this judgment, the Council had reasonable grounds for taking the view that the system of contributions to scrapping funds constituted a solidarity measure that was appropriate and beneficial for the whole sector in the context of its restructuring. Therefore, the obligation to contribute, which is in any event relatively modest, being, as provided by Article 3(1) of the implementing regulation, between ECU 0.36 per tonne and ECU 3.00 per tonne depending on the type and category of vessel, cannot be regarded as a disproportionate and intolerable interference, impairing the very substance of those rights.

75 Therefore, the line of argument alleging infringement of the right to property and the freedom to pursue a trade or business must be rejected.

76 The reply to the national court must therefore be that examination of the fourth question has revealed no factor of such a kind as to affect the validity of the disputed legislation.

Costs

77 The costs incurred by the French and German Governments, the Council of the European Union and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Oberverwaltungsgericht für das Land Nordrhein-Westfalen by orders of 29 May 1995, hereby rules:

Examination of the questions referred has revealed no factor of such a kind as to affect the validity of Council Regulation (EEC) No 1101/89 of 27 April 1989, on structural improvements in inland waterway transport, and of Commission Regulation (EEC) No 1102/89 of 27 April 1989 laying down certain measures for implementing Regulation No 1101/89, as amended by Commission Regulation (EEC) No 3685/89 of 8 December 1989.

Moitinho de Almeida Gulmann Edward

Puissochet Wathelet

Delivered in open court in Luxembourg on 17 July 1997.

R. Grass — Registrar

J. C. Moitinho de Almeida — President of the Fifth Chamber