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COUNCIL REGULATION (EC) No 718/1999

of 29 March 1999

on a Community-fleet capacity policy to promote inland waterway transport

(OJ L 90, 2.4.1999, p. 1)

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COUNCIL REGULATION (EC) No 718/1999

of 29 March 1999

on a Community-fleet capacity policy to promote inland waterway transport

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 ([1]),

Having regard to the opinion of the Economic and Social Committee ([2]),

Acting in accordance with the procedure laid down in Article 189c of the Treaty ([3]),

(1) Whereas Regulation (EEC) No 1101/89 ([4]) introduced arrangements for structural improvements in the inland waterway sector for the fleets operating on the linked inland waterway networks of Belgium, Germany, France, Luxembourg, the Netherlands and Austria; whereas the objective of that Regulation was to reduce overcapacity in the inland waterway fleets by means of vessel-scrapping schemes coordinated at Community level; whereas that Regulation expires on 28 April 1999;

(2) Whereas of the measures to support these structural improvement arrangements with the aim of avoiding aggravation of existing overcapacity or the emergence of further overcapacity, the 'old-for-new' rule has proved indispensable to balanced operation of the inland waterway market; whereas this rule also remains an essential instrument for intervention in the event of a serious disturbance on the same market, as defined in Article 1 of Directive 96/75/EC ([5]); whereas steps should be taken to prevent the benefits from the scrapping schemes conducted since 1990 being wiped out by new capacity coming into

([1]) OJ C 320, 17.10.1998, p. 4 and OJ C 15, 20.1.1999, p. 15.
([2]) Opinion delivered on 2 December 1998 (OJ C 40, 15.2.1999, p. 47).
([3]) Opinion of the European Parliament of 3 December 1998 (OJ C 398, 21.12.1998), Common Position of the Council of 21 December 1998 (OJ C 55, 25.2.1999) and Decision of the European Parliament of 25 February 1999 (not yet published in the Official Journal).
([4]) OJ L 116, 28.4.1989, p. 25. Regulation last amended by Commission Regulation (EC) No 742/98 of 2 April 1998 (OJ L 103, 3.4.1998, p. 3).
([5]) Council Directive 96/75/EC of 19 November 1996 on the systems of chartering and pricing in national and international inland waterway transport in the Community (OJ L 304, 27.11.1996, p. 12).

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service as soon as the abovementioned rule ends; whereas it is therefore encessary to retain the 'old-for-new' rule for a limited period of not more than four years while gradually reducing the ratios to zero to safeguard the transition and end the Community market intervention stage; whereas it is also important to maintain the 'old-for-new' instrument for regulating the capacity of the Community fleets beyond these four years, but as a standby mechanism set at zero which could be reactivated only in the event of serious market disturbance of the kind referred to in Article 7 of Directive 96/75/EC;

(3) Whereas the emergence of new overcapacity must be kept in check effectively in every branch of the inland waterway transport market; whereas it is therefore important that the measures to be adopted should be generally applicable and cover all cargo vessels and pusher craft; whereas there should be exemption from such measures for vessels which, because they operate solely on closed national or international markets, in no way contribute to the overcapacity on the network of linked inland waterways and provision should be made for the possibility of exempting vessels which, because their deadweight tonnage is less than 450 tonnes, also do not contribute to such overcapacity; whereas, by contrast, private fleets performing own-account operations cannot be excluded because of their impact on transport markets;

(4) Whereas a common approach allowing Member States to take joint measures to attain the same objective is a *sine qua non* for regulating capacity; whereas to this end the scrapping funds introduced by Regulation (EEC) No 1101/89 in the Member States with inland waterways should be maintained, but under a new designation, and should administer this 'old-for-new' rule; whereas the surplus funds from the industry's contributions to structural improvement schemes conducted up until 28 April 1999 should be placed in a reserve fund attached to the abovementioned funds;

(5) Whereas, in view of the fundamental differences between the dry cargo, liquid cargo and pusher craft markets, it is advisable to keep separate accounts in each fund for dry cargo carriers, tanker vessels and pusher craft;

(6) Whereas, in the context of an economic policy compatible with the Treaty, responsibility for capacity regulation lies primarily with operators in the sector; whereas the cost of the measures introduced should therefore be borne by the undertakings in the inland waterway sector; whereas this capacity regulation consists of laying down the conditions to apply for bringing into service certain new capacity without going so far as totally blocking access to the market; whereas it is possible to limit the duration and impact of these conditions and to adjust them flexibly to market trends but the ratios must gradually be reduced to zero within four years starting on 29 April 1999; whereas this regulatory mechanism designated the 'old-for-new' rule should be maintained as a standby mechanism once the

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ratio reaches zero; whereas the special contributions paid under the 'old-for-new' rule should be placed in the reserve fund and may be used for granting scrapping premiums, if intervention in the market proves necessary;

(7) Whereas it is desirable to ensure that the measures provided for in this Regulation and implementation thereof do not distort, or threaten to distort, competition, in particular by favouring certain undertakings to an extent which is contrary to the common interest; whereas, in order to place the enterprises concerned in similar conditions of competition, the special contributions to be paid to the funds covering the building of new craft and the scrapping premiums, if such premiums prove necessary in the event of a serious disturbance of the market and in accordance with the procedure provided for in Article 8 of Directive 96/75/EC, should be set at uniform rates and on uniform terms;

(8) Whereas, since the inland waterway fleets are Community fleets, decisions on operation of this capacity-regulation mechanism should be taken at Community level; whereas the power to adopt such decisions, to see to implementation thereof and to safeguard the conditions of competition laid down in this Regulation should be conferred on the Commission; whereas it is important that the Commission take such decisions after consulting the Member States and the organisations representing inland waterway transport at Community level;

(9) Whereas, in connection with the modernisation and restructuring of the Community fleets to create a context favourable to the environment and safety, social measures should be envisaged to help workers who wish to leave the inland waterway industry or to retrain for jobs in another sector, together with measures to encourage the establishment of groupings of undertakings, to improve operators' skills and to promote adaptation of the vessels to technical progress,

HAS ADOPTED THIS REGULATION:

Article 1

Inland waterway vessels used to carry goods between two or more points by inland waterway in the Member States shall be subject to the Community-fleet capacity policy laid down in this Regulation.

For a period of not more than four years with effect from 29 April 1999 this capacity policy shall include the conditions for bringing into service new capacities, in accordance with this Regulation.

Article 2

1. This Regulation shall apply to cargo-carrying vessels and pusher craft providing transport services on own account or for hire or reward and registered in a Member State or, if not registered, operated by an undertaking established in a Member State.

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For the purposes of this Regulation, 'undertaking' shall mean any natural or legal person exercising an economic activity on a non-industrial or industrial scale.

2. The following shall be exempt from this Regulation:

(a) vessels operating exclusively on national waterways not linked to other waterways in the Community;

(b) vessels which, owing to their dimensions, cannot leave the national waterways on which they operate and cannot enter the other waterways of the Community (captive vessels), provided that such vessels are not likely to compete with vessels covered by this Regulation;

(c) vessels operating exclusively on the Danube (and its tributaries) up to Kelheim without leaving it;

(d) pusher craft with a motive power not exceeding 300 kilowatts;

(e) sea-going inland waterway vessels and ship-borne barges used exclusively for international or national transport operations during voyages which include a sea crossing;

(f) vessels used exclusively for storage of goods, i.e. vessels used for loading and subsequently unloading goods at the same place;

(g) dredging equipment, such as hopper vessels and pontoons and floating construction plant, provided that such equipment is not used for the carriage of goods within the meaning of Article 1;

(h) ferries;

(i) vessels providing a non-profit-making public service.

3. Each Member State concerned within the meaning of Article 3(1) may exclude its vessels with a deadweight tonnage of less than 450 tonnes from the scope of this Regulation. Where a Member State avails itself of this option, it shall notify the Commission accordingly within six months; the Commission shall inform the other Member States.

Article 3

1. Each Member State whose inland waterways are linked to those of another Member State and the tonnage of whose fleet is above 100 000 tonnes, hereinafter referred to as 'the Member State concerned', shall set up, under its national legislation and with its own administrative resources, an Inland Waterways Fund, hereinafter referred to as 'the Fund'.

2. The competent authorities in the Member States concerned shall administer the Fund. Each Member State shall involve its national organisations representing inland waterway carriers in this administration.

3. Each Fund shall have a reserve fund consisting of three separate accounts; one for dry cargo carriers, one for tanker vessels and one for pusher craft.

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This reserve fund shall be financed by:

— the surplus funding from the structural improvement schemes conducted up until 28 April 1999, consisting solely of financial contributions from the industry,

— the special contributions referred to in Article 4,

— the financial resources which could be made available in the event of serious disturbance of the market, as referred to in Article 7 of Directive 96/75/EC.

4. The reserve fund may be used in connection with the suitable measures referred to in Article 7 of Directive 96/75/EC and, in particular, in the course of the improvement measures organised at Community level in accordance with the procedure defined in paragraph 6 and Article 6 of the Regulation.

5. The reserve fund may be used in the course of measures referred to in Article 8 if unanimously requested by the organisations representing inland waterway transport. In this case, the measures must be the subject of an action at Community level.

6. There shall be mutual financial support between the Funds with regard to the separate accounts mentioned in the first subparagraph of paragraph 3. This shall come into play for all the expenditure and all the funding mentioned in the second subparagraph of paragraph 3, so as to quarantee equal treatment for all carriers subject to this Regulation, independently of the Fund to which the vessel belongs.

7. The Member States concerned shall continue to administer the Fund referred to in Article 3 of Regulation (EEC) No 1101/89 until the new Fund referred to in paragraph 1 is set up.

Article 4

1. Vessels covered by this Regulation, whether newly constructed, imported from a third country or due to leave the waterways mentioned in Article 2(2)(a), (b) or (c), may be brought into service subject to the condition (the ‘old-for-new’ rule) that the owner of the vessel to be brought into service:

— either scraps, without receiving a scrapping premium, tonnage in line with the ratio between old and new tonnage set by the Commission,

— or pays into the Fund covering the new vessel, or into the Fund chosen by the vessel-owner in accordance with Article 5(2), a special contribution based on the abovementioned ratio or, if the owner scraps a tonnage smaller than required by the abovementioned ratio, pays the difference between the tonnage of the new vessel and the tonnage scrapped.

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2. The ratio may be set at different levels for different sectors of the market, i.e. dry cargo carriers, tanker vessels and pusher craft.

The ratio shall be constantly reduced to bring it as quickly as possible and in regular stages to zero no later than 29 April 2003.

Once the ratio has been set at zero, the arrangements shall become a standby mechanism and may be reactivated only in the event of a serious disturbance of the market, as provided for by Article 6.

3. The owner of the vessel must have the choice between paying the special contribution or scrapping old tonnage:

— either at the time that the firm order for construction of the new vessel is placed or at the time the application for import is lodged, provided the vessel is brought into service within twelve months thereafter,

— or at the time that the new or imported vessel is brought into service.

The choice of time must be stated when ordering or applying to import the vessel.

The vessel offered for scrapping as compensatory tonnage must have been scrapped before the new vessel is brought into service.

Owners of vessels to be brought into service who have a higher tonnage than necessary scrapped shall receive no financial compensation for this surplus.

Any Member State concerned may permit vessels definitively withdrawn from the market for use for purposes other than the carriage of goods, such as vessels for humanitarian purposes, museum ships, vessels for developing countries outside Europe or vessels placed at the disposal of non-profit-making bodies, to be counted as compensatory tonnage, i.e. treated as if they had been scrapped. It shall communicate such permission to the Commission, which shall inform the other Member States concerned.

4. In the case of pusher craft, the concept of ‘tonnage’ shall be replaced by that of ‘motive power’.

5. The conditions laid down in paragraph 1 shall also apply to increases in capacity resulting from the lengthening of a vessel or the replacement of pusher-craft engines.

6. After consulting the Member States and the organisations representing inland waterway transport at Community level, the Commission may exempt specialised vessels from the scope of paragraph 1.

The specialised vessels must be specially and technically designed to carry a single type of goods and technically unsuitable for carrying other goods, it must be impossible to carry this single type of goods in vessels without special technical installations and the owners of the vessels must give a written undertaking that no other goods will be carried in their vessels as long as the ‘old-for-new’ rule applies.

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Article 5

1. For vessels registered in one of the Member States concerned, the special contribution shall be paid into the Fund of the Member State where the vessel is registered. For non-registered vessels operated by an undertaking established in one of the Member States concerned, the special contribution shall be paid into the Fund of the Member State in which the undertaking is established.

2. The special contribution for vessels registered in a Member State other than a Member State concerned or for non-registered vessels operated by an undertaking established in a Member State other than a Member State concerned shall be paid into one of the Funds set up in the Member States concerned, at the choice of the vessel-owner.

Article 6

In the event of serious disturbance on the market, as defined in Article 7 of Directive 96/75/EC and, at the request of a Member State, after the Committee referred to in Article 8 of the said Directive has given its opinion and following the procedure laid down in the same Article, the Commission may reactivate the 'old-for-new' rule for a limited period, in accordance with Article 7 of the said Directive, accompanied or not by structural improvement measures.

Under such structural improvement measures owners of vessels referred to in Article 2(1) who scrap a vessel, i.e. who have the hull of the vessel broken up totally or, in the case of pusher craft, destroy the hull and the engine, may receive a scrapping premium at the rate set by the Commission under the conditions laid down in Article 7 from the Fund covering the vessel insofar as the financial resources are available.

However, this premium may be granted only in respect of vessels which the owner proves form part of his active fleet, i.e.:

— vessels which are in good working order, and

— vessels for which the owner can produce valid certificates of water worthiness and tonnage or an authorisation to engage in national transport issued by the competent authority of one of the Member States concerned, and

— vessels which have made at least ten voyages during the 24 months preceding application for the scrapping premium. 'Voyage' shall mean a commercial transport operation over a distance normal for the carriage of goods of the same type (over 50 km) and carrying a volume of cargo in reasonable proportion to the cargo capacity of the vessel (at least 70 %).

No premium shall be granted in respect of vessels which, as a result of a wreck or other damage suffered, are no longer repairable or for which the repair costs are higher than the amount of the scrapping premium.

Where the competent authorities have well-founded reasons to doubt that the vessel covered by the application for the scrapping premium is in good working order, they may request a surveyor to certify that the vessel concerned is in a technical condition to carry goods. The scrapping premium shall be refused if the vessel fails to meet this requirement.

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Article 7

1. After consulting the Member States and the organisations representing inland waterway transport at Community level, the Commission shall lay down separately for dry cargo carriers, for tankers and for pusher craft:

— the ratios for the 'old-for-new' rule for the vessels referred to in Article 2,

— the rate of the special contributions,

— the period during which scrapping premiums referred to in Article 6 will be paid, the conditions for granting them and the rates,

— the adjustment coefficients (equivalent tonnage) for each type and category of inland waterway vessel.

2. The special contributions and scrapping premiums shall be expressed in euros. The rates applying shall be the same for each Fund.

3. The special contributions and scrapping premiums shall be calculated for cargo-carrying vessels on the basis of the deadweight tonnage and for pusher craft on the basis of the motive power of the vessel.

4. After consulting the Member States and the organisations representing inland waterway transport at Community level, the Commission shall lay down detailed rules for the mutual financial support referred to in Article 3(6).

5. The decisions reached by the Commission shall also take account of the results of observation of the transport markets in the Community and of any foreseeable changes therein, as well as of the need to avoid any distortion of competition to an extent which is contrary to the common interest. In order to contribute to observation of the market, owners of vessels built or imported must inform the Funds six months before these vessels are brought into service.

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Article 8

Without prejudice to Article 3(5), any Member State may take measures in particular to:

— make it easier for inland waterway carriers leaving the industry to obtain an early retirement pension or to transfer to another economic activity, inter alia, by providing comprehensive information,

— organise vocational training or retraining schemes for crew members, including workers and owner-operators, leaving the industry and provide appropriate information about those schemes,

— improve skills in inland navigation and knowledge of logistics in order to safeguard the development and future of the profession,

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— encourage owner-operators to join trade associations and strengthen the organisations representing inland waterway transport at Union level,

— encourage adaptation of vessels to technical progress in order to improve working conditions, including health protection, and promote safety,

— encourage innovation in respect of vessels and their adaptation to technical progress as regards the environment, including environmentally-friendly vessels,

— encourage ways of leveraging the use of the reserve funds in conjunction with available financial instruments, including, where appropriate, under Horizon 2020 and the Connecting Europe Facility, and with financing instruments from the European Investment Bank.

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Article 9

1. Member States shall adopt the measures necessary to implement this Regulation and shall notify the Commission thereof.

These measures shall provide, *inter alia*, for permanent and effective verification of compliance with the obligations imposed on undertakings by this Regulation and the national provisions adopted in implementation thereof, and for appropriate penalties in the event of infringement.

2. Member States shall communicate to the Commission annually all relevant information on progress with the 'old-for-new' scheme and on the financial position of the Funds and of their reserve fund.

3. The Commission shall adopt the decisions which it is required to take under Article 7.

4. The Commission shall ensure that the Funds apply this Regulation uniformly and shall ensure coordination thereof.

Article 10

This Regulation shall enter into force on 29 April 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.