

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 343 final.

Brussel, July 19, 1977

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

On the conclusion and implementation of an Agreement establishing a European Laying-up Fund for inland waterway vessels, following Opinion 1/76 of the Court of Justice,

PROPOSAL FOR A COUNCIL DECISION

amending the directives appended to the Council Decisions of 28 December 1972, 17 February 1975 and 17 May 1976 on the opening of negotiations for an Agreement on the implementation of Regulations for the temporary laying-up of vessels for the transport of goods and applicable to certain inland waterways

(submitted to the Council by the Commission)

COM(77) 343 final.

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

On the conclusion and implementation of an Agreement establishing a European Laying-up Fund for inland waterway vessels, following Opinion 1/76 of the Court of Justice,

and :

- withdrawing the Proposal for a Council Regulation concluding the Agreement establishing a European Laying-up Fund for inland waterway vessels and adopting the provisions for its implementation (presented to the Council on 28 July 1976);
 - presenting a proposal for a Council Decision amending the directives annexed to the Council Decisions of 28 December 1972, 17 February 1975 and 17 May 1976 on the opening of negotiations for that Agreement.
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Communication from the Commission to the Council on the conclusion and implementation of an Agreement establishing a European laying-up fund for inland waterway vessels, following Opinion 1/76 of the Court of Justice, and :

- withdrawing the Proposal for a Council Regulation concluding the Agreement establishing a European Laying-up Fund for inland waterway vessels and adopting the provisions for its implementation (presented to the Council on 28 July 1976);
- presenting a proposal for a Council Decision amending the directives annexed to the Council Decisions of 8 December 1972, 17 February 1975 and 17 May 1976 on the opening of negotiations for that Agreement.

I. THE FACTS

1. On the basis of the directives adopted, amended and supplemented by the Council in its Decisions of 28 December 1972⁽¹⁾, 17 February 1975⁽²⁾, and 17 May 1976⁽³⁾, the Commission negotiated with Switzerland an agreement, to which contracting parties to the Revised Convention for the Navigation of the Rhine and the Convention for the canalization of the Moselle would be parties together with the European Economic Community, on the implementation of regulations for the temporary laying-up of vessels for the transport of goods and applicable to the waterways subject to the arrangements laid down by those Conventions.

Negotiations culminated in agreement by all delegations on texts which comply with the directives given by the Council and were initialled by those delegations' negotiators on 9 July 1976.

2. After the conclusion of negotiations the Commission approved, on 21 July 1976, and then sent to the Council the draft Agreement, and its annexed draft Statute, establishing a European Laying-up Fund for Inland Waterway Vessels together with a proposal for a regulation concluding that Agreement and adopting provisions for its implementation⁽⁴⁾.

(1) Doc. R/2904/72 (Trans 170)

(2) Fov. T/351/75 (Trans 16)

(3) Doc. R/1126/76 (Trans 46)

(4) OJ No. C 208, p. 2, 11 September 1976

The European Parliament and the Economic and Social Committee delivered favourable opinions on the proposal on 8 November 1976 and 16 December 1976 respectively.

3. For the sake of legal certainty the Commission concurrently lodged with the Court of Justice on 10 September 1976 a request for an opinion, pursuant to the second paragraph of Article 228 of the EEC Treaty, on the compatibility of the draft Agreement with the provisions of that Treaty.

In Opinion 1/76, given on 26 April 1977⁽¹⁾, the Court of Justice found that the draft Agreement is not compatible with the EEC Treaty.

4. The Opinion of the Court does not call in question the substance of the arrangements that the Agreement as drafted is designed to institute.

Indeed, the Court expressly confirmed the Community's competence to conclude the proposed agreement with Switzerland on the basis of Article 75 of the Treaty, emphasizing that the legal effects of the Agreement for Member States will result solely from its conclusion by the Community and that the fact of certain Member States being parties to the Agreement can be regarded as justified only by, and to the extent of, the specific obligation which it embodies regarding the amendment of the Mannheim Convention. And the Court raised no objection to the objectives of the Agreement as drafted, nor to the establishment of the Laying-up Fund which would be run jointly with Switzerland.

The unfavourable opinion of the Court relates chiefly to the structure of the Fund's supervisory body and the decision-making process within that body; the Court considers that the proposed provisions call in question the competence of the Community's Institutions and modify, in a manner incompatible with the Treaty, relations between Member States in the Community framework by giving those Member States directly concerned with navigation on the Rhine a privileged position to the detriment of the Community and Its Institutions whose structure, competence and internal decision-making power would thus be disregarded.

(1) OJ No. C 107, 3 May 1977

The Court also expressed certain reservations about its involvement in the composition of the Fund Tribunal which would be set up under the Agreement as drafted.

Pursuant to Article 228 of the Treaty, the Agreement, having thus received an unfavourable opinion of the Court of Justice, may not enter into force and therefore may not be concluded as it stands by the Community.

II. AMENDMENTS TO BE MADE TO THE DRAFT AGREEMENT

5. In order to bring the proposed Agreement into compliance with the Treaty it need not be amended in such a way as to affect the substance of the arrangements for which it provides.

Amendments to be made to the draft Agreement and draft Statute will affect the following three essentially institutional points :

(a) Revision of the provisions of the draft Agreement and the draft Statute relating to the involvement of Member States in the implementation of the Agreement and Statute and the working of the arrangements provided for : amendments to the drafting designed to remove the ambiguity in the wording of certain provisions which results from the fact that Member States are parties to the Agreement.

These amendments require no change to the negotiating directives adopted by the Council in 1972, 1975 and 1976 and they can be worked out as part of the process of renewed negotiation with Switzerland; this does not apply, however, to the conditions governing the appointment of the Board of Management: if these are to be amended the Directives concerned must be adjusted accordingly.

(b) Change of the structure and rules of procedure of the supervisory body in which is vested the power to take decisions necessary for the implementation of the arrangements; the essential aim is to substitute the Community and its Institutions for Member States within the structure of the supervisory body and to ensure that its decision-making process is adapted to comply with the internal institutional rules laid down by the Treaty.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Council Decision of 28 December 1972 on the opening of negotiations for an Agreement on the implementation of Regulations for the temporary laying-up of vessels for the transport of goods and applicable to certain inland waterways, as amended and supplemented by the Council Decisions of 17 February 1975 and 17 May 1976, and in particular Article 2(2) thereof;

Having regard to Opinion 1/76 given by the Court of Justice on 26 April 1977,

Having regard to the proposal from the Commission,

Whereas it is necessary to amend the draft Agreement and the draft Statute annexed thereto, as negotiated by the Commission pursuant to the directives adopted by the Council on 28 December 1972, 17 February 1975 and 17 May 1976, in order to render them compatible with the Treaty and to permit the said Agreement to be concluded by the Community in accordance with the requirements laid down by the Court of Justice in Opinion 1/76 given on 26 April 1977;

Whereas to that end it is necessary to amend the above-mentioned directives as regards the structure and rules of procedure of the bodies in which is vested the power to take the decisions necessary for implementing the arrangements established by the said Agreement,

HAS DECIDED:

Sole Article

The provisions of the directives adopted on 28 December 1972 are replaced by the following :

1. Composition of the managing body

The managing body shall consist of fifteen members, appointed by the supervisory body after consultation with the national trade organizations representing inland waterway carriers. In appointing the members the supervisory body shall have regard to the need for the composition of the managing body to be as broadly representative as possible of the chief categories of inland waterway carrier and of the regions in which the system is applicable.

2. Composition and decision-making procedure of the supervisory body

The supervisory body shall consist of members appointed in a personal capacity, eight by the European Economic Community and one by Switzerland; a representative of the Commission shall act as Chairman; secretarial services shall be provided by the Commission.

Members of the supervisory body shall be completely independent of any national allegiance in the performance of their duties in the general interest of the arrangements to be established and shall have regard to the objectives of the common transport policy.

The supervisory body shall act by a simple majority of votes cast.

Decisions on matters of principle affecting the working of the said arrangements shall be taken jointly by the European Economic Community and Switzerland, who shall also be empowered to adopt any necessary directives as a basis for the actions of the supervisory body.

The Chairman of the supervisory body shall furthermore have a right of appeal, having suspensory effect, to the Community and Switzerland against decisions of that body.

Done at Brussels,

For the Council,
The President