

KOMMISSIONEN FOR DE EUROPÆISKE FÆLLESSKABER

COM(75) 640 final.

Brussels, 10 December 1975

PROPOSAL FOR A
COUNCIL REGULATION (EEC)

on a system of reference tariffs for the carriage
of goods by inland waterway between Member States

(submitted to the Council by the Commission)

COM(75) 640 final.

EXPLANATORY MEMORANDUM

I. General

1. In its Communication of 24th October, 1973, the Commission proposed the progressive setting-up of a Community regulatory system for transport which would meet the requirements of economic union and of society at the least cost to the latter. It emphasized that, in this matter, the concept of the market economy as, in principle, the most effective instrument of resource allocation remains the guiding principle of its common policy for the operation of the goods transport markets.

In the three-year programme of action set out in the second part of that Communication, the Commission advocated as from now a number of measures for the market, designed to establish a transport system operating essentially according to the rules of healthy competition, while at the same time making provision for procedures which would allow any necessary corrections to be made to the operation of market forces where the need arose.

2. In such a market the functions which transport rates should ultimately perform cannot be met by compulsory tariffs imposed on undertakings by the State. Decisions concerning the management of transport services should be taken by the transport undertakings themselves. The latter should be free, particularly insofar as fixing rates is concerned, in order to achieve more flexible matching of rates to costs, for each type of transport, and to market conditions.

.../...

3. This concept can only be put into practice progressively in the various markets for goods transport within the Community. Definite stages should be fixed for its implementation in order to avoid too abrupt a change from the present rate-fixing and tariff systems. Such a development should also take into account, as far as possible, the characteristics of the modes of transport and of the markets. Basically, what will be done is to relax tariff systems in markets which are still relatively rule-bound and to retain those which satisfy market rules, whilst not ruling out the possibility of improvements.

4. Ever since the nineteenth Century international inland waterway transport rates on Community waterways have always been established without interference from public authorities. This system was originally on a completely freemarket basis but has changed since, particularly on the Rhine, with pooling and agreements between operators. Hitherto, however, public authorities have never interfered in the fixing of rates for international transport by inland waterway.

This system of freely-fixed rates has not always resulted in optimum pricing. Such criticism is not, however, directed at the sometimes large fluctuations in rates or the fact that the combines have to face competition from outsiders. Both these phenomena are normal occurrences on markets where competition is allowed to operate.

This system of free rate-fixing for international inland-waterway transport has not always proved satisfactory on all markets because the structural problems of this mode of transport (serious over capacity, partly due to State interventions) and combined with a rigid tariff system on national markets.

5. If market structures are to be improved, solutions to these two problems must be found. Several Member States have already taken major steps to solve the structural problem. Other measures can be expected in the near future.

It will be some time before compulsory tariff systems for inland transport can be relaxed. Nevertheless, there are signs of long-term trends in this direction.

6. Structural rationalization measures will be all the more effective if inland waterway transport remains organized on a market-economy basis so that it can develop fully to the benefit of the entire economy. The structural problems which are of vital importance to inland waterway transport cannot, therefore, be solved either by compulsory tariff systems or compulsory "tour de rôle" (i.e. queuing) systems. Quite the opposite: such measures would maintain the status quo, which is unsatisfactory, and, in short, only conceal the real problems while at the same time dulling any desire felt by inland waterway undertakings to take steps themselves to nationalize the trade. There are therefore no political or economic grounds for a compulsory tariff system on international markets; indeed, its introduction would require excessive checks. The principle that the tariff system for international transport by inland waterway is based on the market economy must therefore be upheld.

7. This does not, however, preclude the industry itself from publishing voluntary tariffs in collaboration with the other socio-economic circles concerned. Such reference tariffs could improve the system of individual, free rate-fixing in three ways:

- they could enhance market transparency. This would be the case, particularly, if tariffs reflected the two criteria on which they must be based, i.e. costs and the market situation.
- Tariffs could produce a degree of uniformity in the market behaviour of inland waterway undertakings without recourse to coercive measures or collective constraint. This would also depend on the quality of the tariffs, i.e. how effective they were as guide and indicator for the fixing of individual transport rates.

- finally, in the above circumstances, the tariffs - even if they were not made legally binding by the public authorities - could have a certain stabilizing effect, especially if adequate measures were taken in other areas where the real problems facing inland waterway transport are to be found.

8. The proposed Regulation providing for such a system of reference tariffs is of particular importance today since - in addition to the reasons given above - structural and social problems, and the effect of the recession, have led in one Member State to the unilateral introduction of a compulsory tariff system for certain international transport operations. These measures will not meet the justified demands of the inland shipping industry. This development is also regrettable as it represents a break with the common rate-fixing system used up to now in international inland-waterway transport. This proposal should therefore also be seen as an effort to restore uniformity.

9. Moreover, a system of non-compulsory tariffs is not liable to cause problems regarding application on waterways subject to the Mannheim Convention.

II. Specific Points

Article 1

The scope of this Regulation extends to all carriage of goods by inland waterway vessel between Member States. For the purposes of the Regulation, inland waterway transport operations between ports of the same Member State during which frontiers are crossed are regarded as domestic operations.

Article 2

Transport operations, as defined in Article 1, will be subject to a system of reference tariffs. In order to ensure that the transport undertakings themselves are responsible for establishing the rates, it is recommended that the reference tariffs be only for guidance in deciding rates, transport users and carriers being able at all times to agree rates according to the market situation and their own interests.

Article 3

In order that the reference tariffs be an effective guide to rates on the various inland waterway transport markets, they must be closely aligned with the actual situation, though taking into account the costs. Such a result can only be achieved through the widest possible variety of tariffs to ensure that they will meet any situation.

Article 4

In accordance with the general approach of the Commission to the organization of transport markets along market-economy lines, inland waterway transport undertakings themselves will be responsible for establishing the reference tariffs through the medium of their trade organizations, in consultation with other interested bodies.

These trade organizations will ensure that the said tariffs are sufficiently publicized by promulgating them in the trade press and will recommend that their members abide by them when contracts of carriage are concluded. Provision is also made for these tariffs to be available at major chartering places, in order to ensure their sufficient dissemination. These places will be designated by the Member States.

To ensure that tariffs are established properly, it is desirable for the Member States to designate the trade associations responsible for doing so and those which must be consulted.

Article 5

There must be an arbitration procedure for cases where agreement is not reached in negotiations to fix or amend tariffs between the trade organizations of inland waterway transport undertakings and other interested parties. If this happens, the dispute will be referred to the Commission; the latter will have a month to make a decision, after due consideration of the matter, during which it will consult the Advisory Committee referred to in Article 6 (1) a) of Council Regulation (EEC) No. of(1)

Article 6

The establishment of reference tariffs for all types of inland waterway is not a prerequisite of sound organization of the inland-waterway transport market. Transport via narrow-gauge secondary waterways may therefore be exempted from the tariff system. It does not seem likely that lack of a tariff system for these markets will jeopardize the system as a whole. Exceptions are nevertheless subject to the prior approval of the Commission which must ensure that they remain compatible with the general concept and aims of organization of the market. The Commission shall examine in particular the regularity and the volume of the transport operations in question

(1) Council Regulation on a system for observing the markets in the carriage of goods by rail, road and inland waterway between Member States.

Article 7

For the Commission and the competent authorities of the Member States to carry out their task of observing the transport market in the public interest, they must be able to obtain information on the rates actually charged under the tariff system. That information is also essential to enable the national and Community authorities to check compliance with obligations resulting from Community law.

Article 8

Each year the Commission will draw up a report on trends in transport rates and conditions in inland waterway transport between Member States, being assisted in doing so by the Advisory Committees set up by Council Regulation (EEC) No. of (1).

Article 9

The implementation of this Regulation will necessitate the adoption of laws, regulations or administrative measures by the Member States. It must be ensured that they are adopted in time.

The implementing measures envisaged by a Member State must be made known to the Commission which may consult the other Member States about them either on its own initiative or at the request of a Member State.

The Member States will, of course, afford assistance to each other and the Commission to ensure that the system of reference tariffs is properly applied.

(1) Council Regulation on a system for observing the markets in the carriage of goods by road, rail and inland waterway between Member States.

Article 10

No comment.

Article 11

Trade organizations must be allowed sufficient time to establish reference tariffs. The Commission considers a period of nine months adequate, since it would also allow enough time for the entire arbitration procedure by the end of 1977.

Article 12

No comment.

PROPOSAL FOR A COUNCIL REGULATION (EEC)

No. of

on a system of reference tariffs for
the carriage of goods by inland waterway
between Member States

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 75 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas the organization of the market for the carriage of goods must be
designed according to the rules of the market economy in order to ensure
optimum allocation of resources;

Whereas such design also extends to transport rates and conditions which
constitute an important element in the common transport policy, the
introduction of which is required by the Treaty;

Whereas, consequently, the fixing of transport rates and conditions
must be the sole responsibility of transport undertakings themselves;

Whereas the policy of the Community with regard to rates for the
carriage of goods must therefore help to maintain the fixing of transport
rates and conditions in accordance with the market economy on markets
where such a system already exists, and to introduce it progressively
to markets where States still intervene in rate-fixing.

./.

Whereas, with the exception of one case where traffic has been subjected unilaterally to tariffs, international transport by inland waterway has not hitherto been subject to tariff regulation by the authorities; and whereas the system of inland waterway transport rates and conditions based on the rules of a market economy must therefore be maintained;

Whereas, if that system has not always functioned optimally, this is due to the structural problems of this mode of transport for which solutions have been decided on or will be in the near future;

Whereas such arrangements for establishing rates do not, however, rule out systems in which tariffs are established by the trade organizations of the carriers themselves, after consulting the relevant socio-economic interests, and which individual undertakings are then recommended to apply;

Whereas the publication of voluntary reference tariffs may be a stabilizing factor on free markets, insofar as these tariffs reflect the state of the market and costs so that the parties to a contract of carriage may accept them as a reasonable basis for bargaining about transport rates;

Whereas it is unjustifiable to establish reference rates for transport via narrow-gauge waterways, insofar as the trade organizations of undertakings in transport by inland waterway seek and obtain the consent of the Commission for such exemption;

Whereas, in the event of negotiations in the inland shipping sector on the establishment of tariffs or the consultation of transport users running into difficulties, an arbitration procedure under public law, by the Commission in the first instance and the Council in the second instance, should produce solutions which satisfy the interests of all parties concerned;

Done at Brussels, this 20th day of July 1968.
The President of the Commission: J. S. /
The Vice-President of the Commission: J. S. /

Whereas, in order to enable the business circles concerned to perfect this tariff system and to enable the Community to make any changes considered necessary, it is essential to establish a system for observing trends in rates on markets for transport by inland waterway;

Whereas the system of reference tariffs shall not affect obligations arising from Community law; and whereas in order to check compliance with those obligations, the Commission and the Member States must have powers to require the notification to them of the actual transport rates charged;

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to the carriage of goods for third parties by inland waterway between Member States of the European Communities, including goods coming within the purview of the Treaty establishing the European Coal and Steel Community. It shall not apply to cross-frontier inland waterway transport if the place of loading and unloading is in the same State.

Article 2

1. The transport operations referred to in Article 1 shall be subject to a system of reference tariffs.

2. Reference tariffs shall constitute an indication for determining transport rates, which users and transport undertaking shall be free to fix at their discretion according to the market situation and their own interests.

Article 3

1. The system of reference tariffs shall include bilateral and multilateral tariffs.

2. Reference tariffs shall be established either on the basis of general tariffs or on the basis of special tariffs. They shall be differentiated by all the criteria which contribute to the establishment of rates which relate to costs and the market situation.

3. Reference tariffs shall incorporate prices and incidental charges and all rules required for calculating the transport rate.

4. Reference tariffs shall be established in such a way as to lead to the charging of transport rates which cover the costs of the corresponding services including general overheads and the like, and a fair profit.

Article 4

1. Reference tariffs shall be established jointly by the trade associations of inland waterway carriers in the Member States concerned, in bilateral or multilateral negotiations. To this end they shall consult organizations representing transport users, agents and providers of ancillary services, and transport workers.

2. When the negotiations referred to in paragraph 1 have been concluded, the trade organizations of the inland shipping industry shall forthwith ensure that the tariffs are published in the trade press and recommend their application to contracts for international carriage by inland waterway. Reference tariffs shall be available for the consultation of those participating in the market in the major chartering places of international inland waterway transport.

3. The provisions of paragraphs 1 and 2 shall apply mutatis mutandis in the event of alterations to the reference tariffs.

4. The Member States shall designate the organizations and chartering places referred to in paragraphs 1 and 2.

Article 5

1. If the negotiations referred to in Article 4 with a view to altering the reference tariffs fail, the organizations concerned shall submit the disagreement to the Commission.

2. Within one month from the date of receipt of the information, the Commission shall take a decision on the matter, after consulting the Committee referred to in Article 6, (1)(a) of Council Regulation (EEC) No. (1) This decision shall be published in the Official Journal of the European Communities.

3. The decision of the Commission shall become enforceable one month from the date of publication unless, meanwhile, a Member State brings the matter before the Council. In that event the Council shall take a decision by a qualified majority on the dispute within one month and publish the decision in the Official Journal of the European Communities.

Article 6

1. The trade organizations of inland waterway transport undertakings may ask to be exempted, subject to the Commission's authorization, from establishing reference tariffs for traffic originating from and terminating in waterways with a gauge precluding their use by vessels capable of carrying over 400 metric tons.

2. When examining such requests, the Commission shall take particular account of the regularity of the traffic concerned and its volume and the effect of the lack of a tariff on the transport market concerned and on the tariff system as a whole.

Article 7

1. The transport undertakings shall communicate to the Commission and to the competent authorities of the Member States, upon request, any information relating to rates operative for the international carriage of goods by inland waterway.

2. The Commission shall establish, if need be, a uniform outline programme for these communications.

(1) Council Regulation of concerning a system of observing the markets for the carriage of goods by rail, road and inland waterway between the Member States; O.J. of the EC No.)

./.

3. Information regarding individual undertakings obtained pursuant to this Article shall be covered by the obligation of professional secrecy.

Article 8

The Commission shall, by 1 December each year and after consulting the Advisory Committees provided for in Article 6 (1) (a) and (b) of Council Regulation (EEC) No. (1), draw up a report on the trends in rates and conditions of transport in transport by inland waterway between Member States.

Article 9

1. After consulting the Commission, the Member States shall in due time adopt the legal and administrative provisions necessary for the implementation of this Regulation.
2. At the request of a Member State, or on its own initiative, the Commission shall consult the Member States with regard to the drafts of the laws and administrative provisions referred to in paragraph 1.
3. The Member States shall afford assistance to each other and to the Commission for the purposes of the application of this Regulation.

Article 10

The provisions of this Regulation shall not apply to any obligation covered by the Treaty establishing the European Coal and Steel Community.

Article 11

Reference tariffs for the carriage of goods by inland waterway between Member States shall be published not later than 31 december 1977. The negotiations referred to in Article 4 shall begin as soon as this Regulation enters into force. If there is no result before 30 September 1977, the points in dispute will be submitted to the Commission as laid down in Article 5.

Article 12

This Regulation shall enter into force on 1 January 1977.

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

Done at Brussels,

For the Council
The President

(1) Council Regulation of ... concerning a system of observing the markets for the carriage of goods by rail, road and inland waterway between the Member States (O.J. of the EC no.)