

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 410 final.

Brussels, 21 July 1976.

Proposal for a  
REGULATION (EEC) OF THE COUNCIL

concluding the Agreement establishing a European laying-up fund  
for inland waterway vessels, and adopting the provisions for  
its implementation

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(submitted to the Council by the Commission)

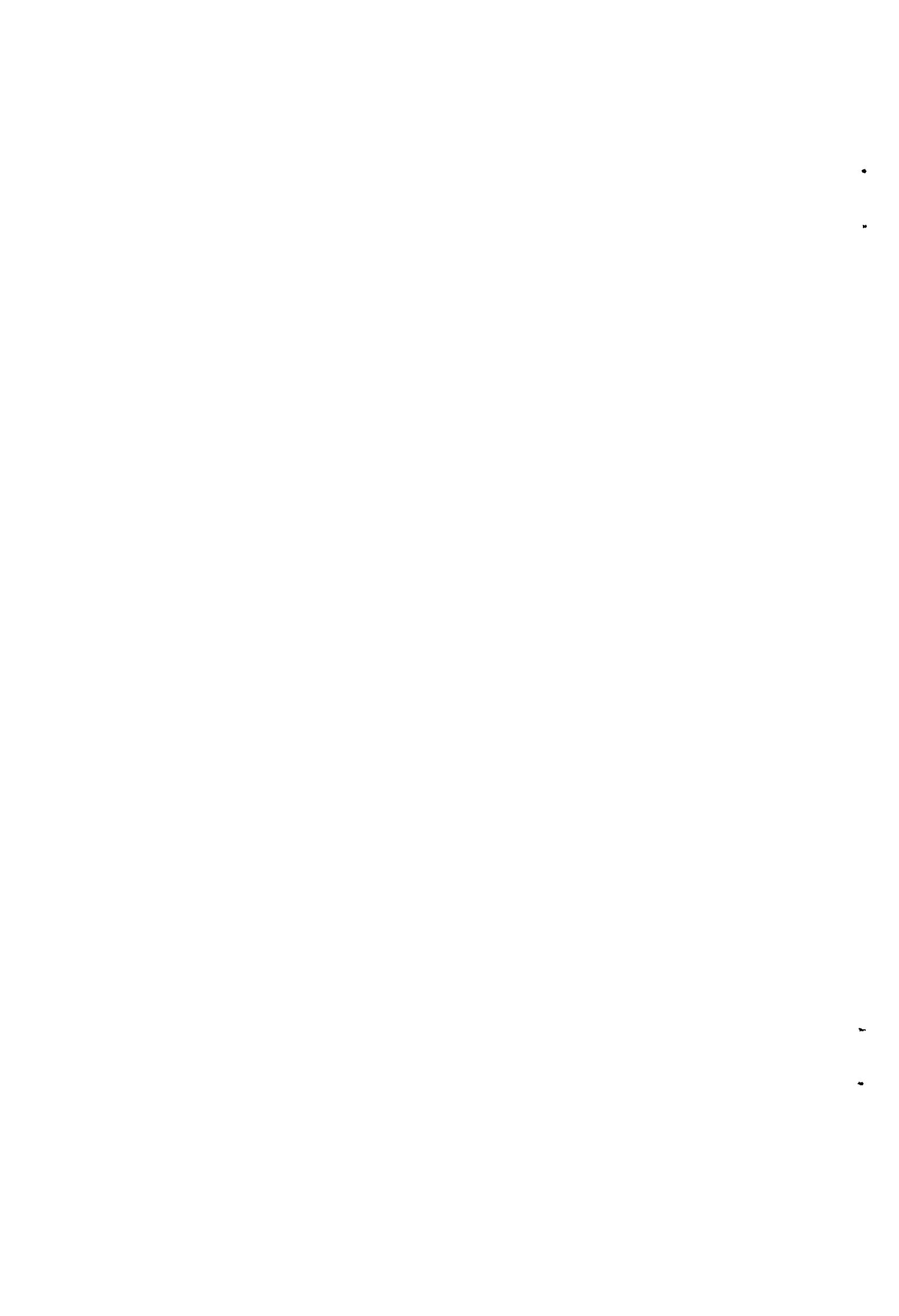
COM(76) 410 final.



PROPOSAL FOR AN EEC REGULATION

concluding the Agreement establishing a European laying-up fund for inland waterway vessels and adopting provisions for its implementation

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EXPLANATORY MEMORANDUM

A. GENERAL REMARKS

Acting on a Commission proposal, the Council decided on 28 December 1972<sup>1</sup> to authorize the latter to "open negotiations having as their object the conclusion of an Agreement to which the Contracting Parties to the Revised Convention for the Navigation of the Rhine and the Convention for the Canalization of the Moselle will be parties together with the European Economic Community. This Agreement concerns the implementation of Regulations on the temporary laying-up of vessels for the transport of goods, applicable to waterways, subject to the arrangements laid down in the abovementioned Conventions".

The Directives annexed to this Decision were amended and supplemented, particularly as regards the scope of the Agreement and for legal and institutional reasons, by Council Decisions of 17 February 1975<sup>2</sup> and 17 May 1976<sup>3</sup>.

The Commission opened these negotiations with the Swiss Delegation with the participation of the delegations of the other Contracting States on 22 February 1973; they culminated in the agreement of all the delegations, which enabled the negotiations to be closed on 9 July 1976 with the initialling of the draft Agreement and Statute establishing a European laying-up Fund for inland waterway vessels.

The text of this draft Agreement and draft Statute complies with the Directives embodied in the Council decisions.

The aim of the draft Agreement is to establish a system to remedy any temporary imbalance between supply and demand in respect of carrying capacity which is likely to disturb the market seriously. It forms an essential part of the Common Transport Policy, as the Council pointed out in its Resolution of 27 January 1970. (4)

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<sup>1</sup>Council Decision on the opening of negotiations for an Agreement on the implementation of regulations on the temporary laying-up of vessels for the transport of goods by inland waterway (Doc. R/2904/72 (TRANS 170)).

<sup>2</sup>Council Decision of 17 February 1975 (Doc. R/351/75 (TRANS 16)).

<sup>3</sup>Council Decision of 17 May 1976 (Doc. R/1126/76 (TRANS 46)).

<sup>4</sup>Council Resolution of 27 January 1970 (Doc R/210/1/70 (TRANS 25 Rev 1))

The aim of this Regulation is to propose that the Council approve and conclude the Agreement in question and specify the measures which should be taken by the Community with a view to its implementation.

## B. SPECIAL CONSIDERATIONS

### Articles 1 and 2

These Articles contain the usual clauses concerning the approval and conclusion by the Community of agreements concluded with non-member countries.

### Article 3

In accordance with the Council Directives the draft Agreement is to be valid for five years; this term may subsequently be extended for successive five-year periods by a joint decision of the Contracting Parties. To prevent any Member States who are also Contracting Parties to the Agreement from adopting divergent positions in the event of the term of the Agreement being extended, provision should be made that any decision concerning extension should be the subject of a joint position which is given expression by the prior approval of the Council.

### Article 4

In accordance with the Council Directives, the draft Agreement provides for the possibility of extending the territorial scope of the Statute to other waterways situated on the territory of certain Member States. Given the importance which such an extension would present for the Community as a whole, it is proposed to make any such decision subject to a decision of the Council.

### Article 5

Since the system established by the Agreement and the Statute in question are an essential element of the Common Transport Policy, and since the conditions for its implementation must be harmonized with the other essential provisions of this common policy, it would be appropriate to create a joint procedure for collaboration on questions laid before the Fund's Supervisory Board involving a point of principle or a more general point relating to the Common Transport Policy.

Under this procedure any Member State or the Commission may put a question of this nature to the Board in order that the latter may work out a joint position and, where appropriate, take a decision which would be binding on the Member States represented on the Supervisory Board.

#### Article 6

The aim of the provisions of Paragraph 1 is to lay down the conditions for nominating the six judges who - together with an additional judge to be nominated by the Swiss Government - are to constitute the Fund Tribunal set up pursuant to Article 42 of the Statute annexed to the draft Agreement.

As agreed by all the delegations during the negotiations (and accepted by the Swiss Delegation), and as approved by the Council when it gave its agreement on the text submitted to it by the Commission (cf. Doc. R/2342/75 (TRANS 103), footnote 1, p. 40), these conditions should consist in instructing the Court of Justice to appoint six of its judges; this solution should ensure the necessary connection with the judicial supervision exercised by the Court of Justice in Community matters.

The aim of the Paragraph 2 is to ensure that the provision of the second indent of Paragraph 4 of Article 42 of the draft Statute is implemented under the conditions likewise agreed during the negotiations and approved by the Council.

The Commission would point out, however, that the Swiss Delegation has declared that, pending further consideration, it is to provisionally maintain certain reservations concerning Article 44 of the Statute regarding the competence of the Fund Tribunal to give preliminary rulings as to the interpretation of the Agreement and the Statute and on the validity and interpretation of the decisions taken by the organs of the Fund. These reservations concern firstly the insertion of the word "appellate" in the provision of the second subsection of this Article and secondly on the obligation to request a preliminary ruling imposed on courts of last resort by virtue of the third sub-paragraph of the same Article. Accordingly, the Commission is proposing to make suitable additions to the text of Article 6 of this proposal for a Regulation if these reservations are not withdrawn.

#### Article 7

This Article contains a general provision authorizing the Council to adopt, on a Commission proposal, the necessary measures at Community level to ensure that the obligations arising from the Agreement are carried out or to facilitate the operation of the Fund.

#### CONCLUSION

On the basis of the considerations referred to above, the Commission is proposing that the Council

- authorize its President to nominate the persons authorized to sign the Agreement on behalf of the Community
- conclude the Agreement by adopting the attached regulation



Proposal for an EEC Regulation

concluding the Agreement establishing a European laying-up fund for inland waterway vessels, and adopting the provisions for its implementation

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and particularly 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 it would be appropriate to conclude an Agreement between the European Economic Community, the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation, establishing a European laying-up fund for inland waterway vessels;

Whereas the system introduced by this Agreement, which is aimed at achieving a more stable economic situation for inland waterway shipping, constitutes an important factor in the implementation of a common transport policy, and whereas it would therefore be appropriate to adopt joint procedures aimed at ensuring that the Community and its Member States act on the same basis as regards extending the territorial scope, the possible renewal of the said Agreement and the ways and means of any joint action required of the Member States represented on the Fund's supervisory body in connection with any questions of principle that might arise from the operation of the system;

Whereas, in the case of the Community and the signatory Member States of the said Agreement, the implementation of this Agreement and the annexed Statute implies the fixing of a method for nominating judges to the institution responsible for legal supervision, as well as the granting of certain material facilities towards the running of this institution;

Whereas the implementation of the Statute annexed to the Agreement is also such as to lead the Community to adopt certain implementing measures;

HAS ADOPTED THIS REGULATION:

### Article 1

The Agreement between the European Economic Community, the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland, and the Swiss Confederation, establishing a European laying-up fund for inland waterway vessels, together with the Statute of the said Fund annexed to this Agreement have been signed, approved and confirmed in the name of the Community.

The texts of the acts referred to in paragraph 1 are annexed to this Regulation.

### Article 2

The President of the Council shall deposit as far as the Community is concerned the act of notification of the conclusion of the Agreement as provided for in article 7 of this Agreement.

### Article 3

Any renewal of the term of the said Agreement pursuant to the provisions of Article 5(2) shall be subject to a decision taken in due time by the Council acting in accordance with the procedure described in Article 75 of the Treaty. Each of the Member States that is a contracting party to the Agreement must adopt a decision on the subject of such a renewal similar to the decision adopted by the Council.

### Article 4

Any extension of the territorial scope of the Statute to other waterways within the territory of a Member State in accordance with the provisions of Article 5 of the Statute annexed to the Agreement shall be subject to prior approval by the Council acting by a qualified majority on a proposal from the Commission.

### Article 5

1. When a question involving a point of principle relating to the Fund established by the Agreement or a point relating to the common transport policy is raised before the Supervisory Board, then, at the request of a Member State or the Commission, the question may be submitted to the Council which shall consider the matter urgently and shall act by a qualified majority on a proposal by the Commission with a view to establishing common guidelines and shall, where necessary, take any decision it regards as appropriate.

Where the Council has issued a decision on such a question, the Member States represented on the Supervisory Board of the Fund shall, meeting in the Supervisory Board, adhere to the guidelines or decisions adopted by the Council. In the meantime they shall abstain from taking up any position likely to prejudice or compromise the Council's deliberations on the question submitted.

2. The procedure referred to in paragraph 1 is mandatory in cases where the Supervisory Board is called upon to act unanimously pursuant to Article 5(2), Article 7(1) and (2), Article 10(4), (5) and (6), Article 11(5) and Article 28(1) of the Statute.

Article 6

1. The Court of Justice shall nominate six of its judges who, together with an additional judge to be nominated by Switzerland, shall constitute the Fund Tribunal for a term of five years, pursuant to the conditions laid down in Article 42 of the Statute.

In the event of the death or the resignation of a judge during his term of office the Court of Justice shall be responsible for finding a replacement for the remaining period of that term.

2. The Court of Justice shall place its buildings, technical services and the services of its Clerk at the disposal of the Fund Tribunal.

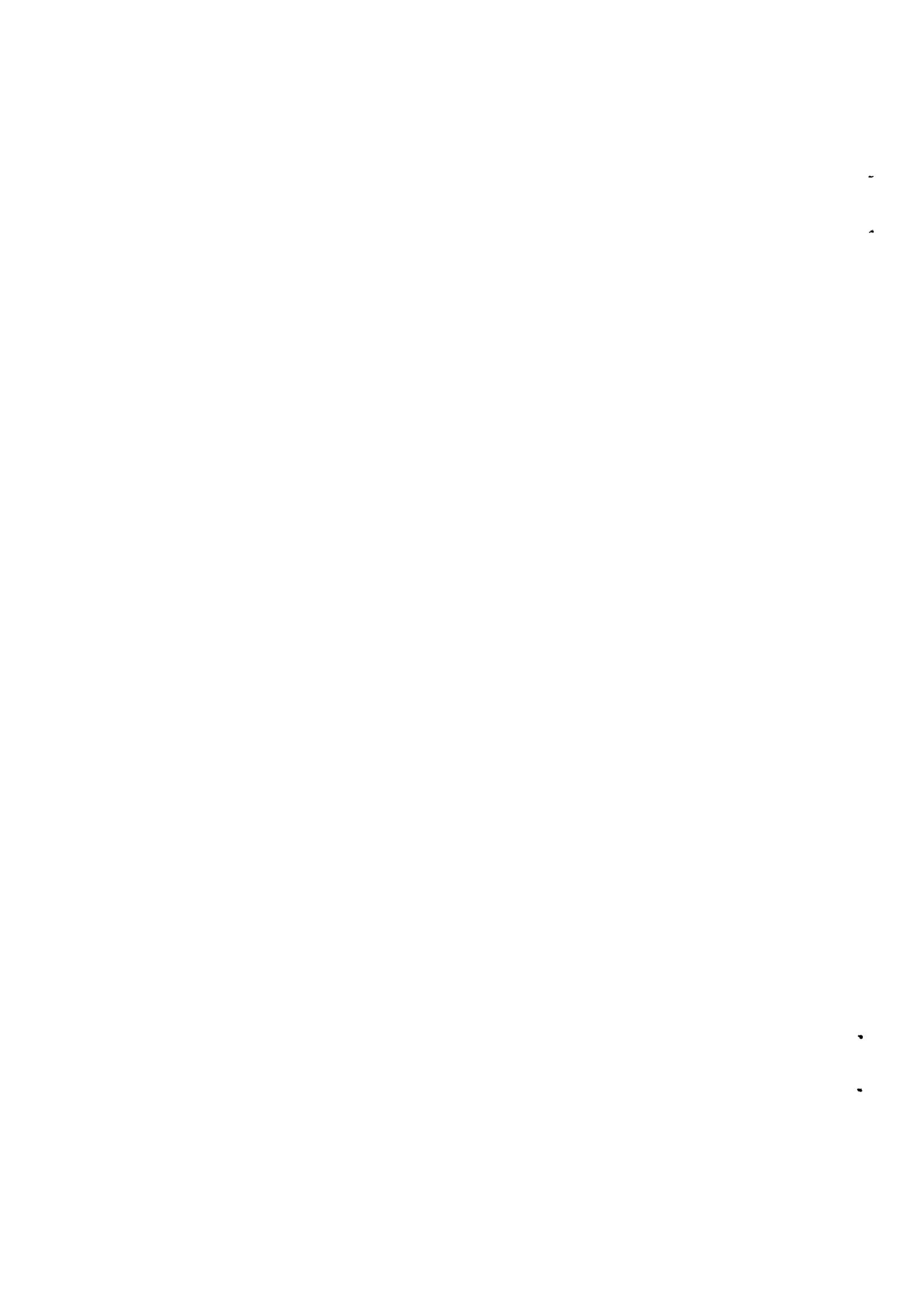
Article 7

In respect of the Community, the Council, acting by a qualified majority on a proposal by the Commission shall adopt whatever measures are necessary to ensure the fulfilment of any obligations deriving from the Agreement and to facilitate the operation of the Fund it has instituted.

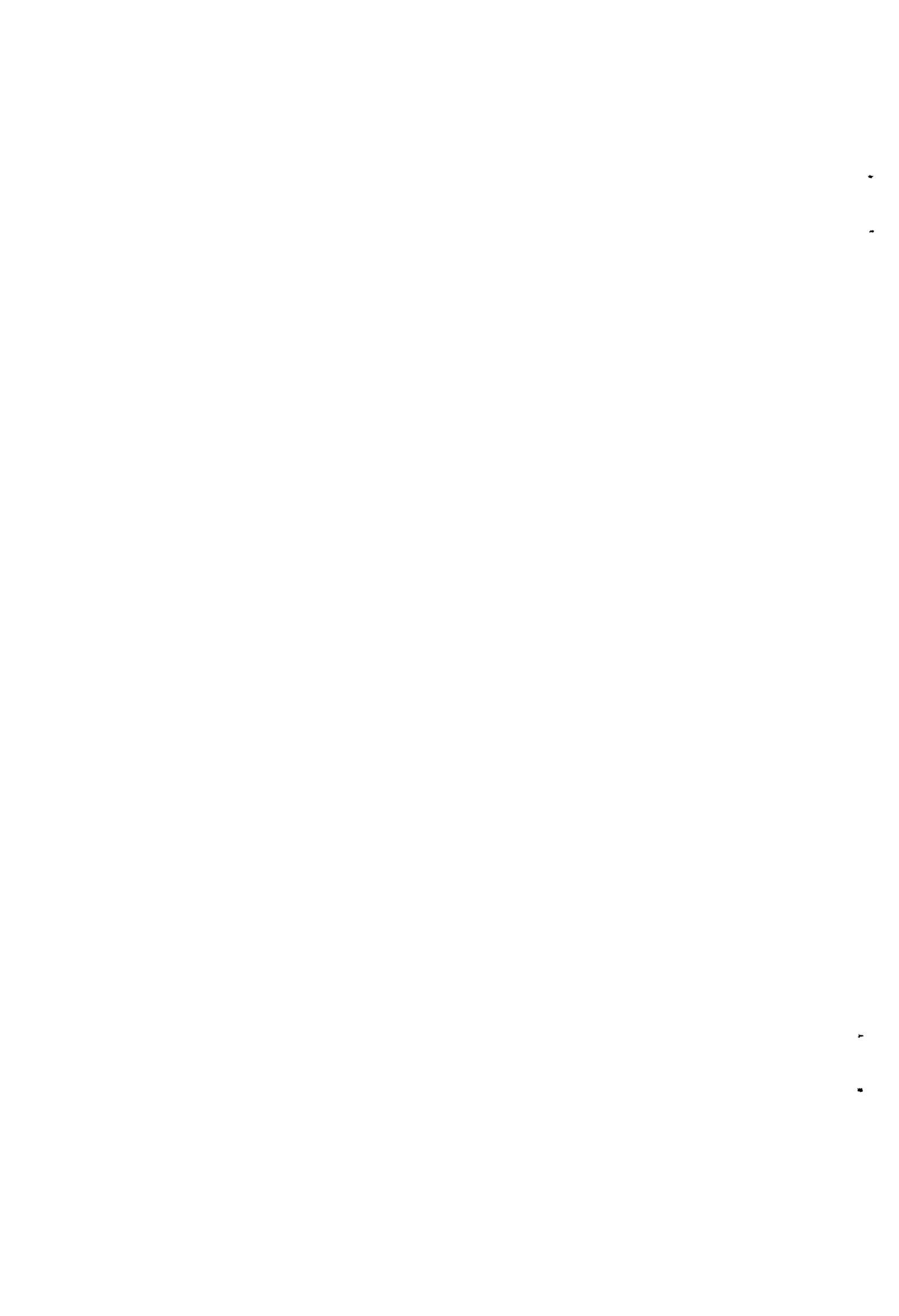
This regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ....., .....

For the Council  
The President



AGREEMENT ESTABLISHING A EUROPEAN LAYING-UP FUND FOR  
INLAND WATERWAY VESSELS



The European Economic Community,  
The Kingdom of Belgium,  
The Federal Republic of Germany,  
The French Republic,  
The Grand Duchy of Luxembourg,  
The Kingdom of the Netherlands,  
The United Kingdom of Great Britain and Northern Ireland,  
The Swiss Confederation,

DESIRING to remedy any temporary imbalance between supply and demand in respect of carrying capacity, which because of their interpenetration, occurs on most of the inland waterways of the Member States of the European Economic Community and of Switzerland at the same time;

RESOLVED to implement a joint regulatory system having as its aim the restoration of normal conditions of the market concerned by means of a temporary laying-up of a proportion of the current excess carrying capacity;

WHEREAS such a laying-up system should be voluntary and subject to the condition that suitable compensation be paid solely out of funds raised by contributions from the inland waterway carriers concerned to those undertakings which temporarily withdraw vessels from the market;

WHEREAS such a system requires the establishment of a special Fund the management and the control of which should be the responsibility of bodies representing both the inland waterway carriers and the public authorities and which should be empowered to take decisions which are directly applicable;

WHEREAS the system should be drawn up with sufficient flexibility to allow its later extension to other inland waterways not covered by the initial geographical field of application and the provisions governing its future renewal should be so drawn up as to allow that question to be considered in terms of its economic effectiveness;

HAVE DECIDED to establish a EUROPEAN LAYING-UP FUND FOR INLAND WATERWAY VESSELS and to lay down the conditions under which it shall operate and to this end have designated as their Plenipotentiaries:

The European Economic Community :

His Majesty the King of the Belgians:

The President of the Federal Republic of Germany:

The President of the French Republic:

His Royal Highness the Grand Duke of Luxembourg:

Her Majesty the Queen of the Netherlands:

Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland:

The Swiss Federal Council:

WHO BEING THE CONTRACTING PARTIES and having exchanged their Full Powers, found in due and good form,

HAVE AGREED AS FOLLOWS:

Article 1

There is hereby established a EUROPEAN LAYING-UP FUND FOR INLAND WATERWAY VESSELS (hereinafter called "the Fund").

The aim of the Fund shall be to reduce any such temporary imbalance between supply and demand in respect of carrying capacity as might cause serious disturbance of the market.

The Fund may not however be used with the aim of fixing a permanent minimum level for freight rates during all periods of slack demand or of remedying structural imbalance.

#### Article 2

The Fund shall be governed by the Statute set out in the Annex to this Agreement of which that Annex shall form an integral part and shall have the like legal effect.

#### Article 3

1. The Contracting States which are party to the Revised Convention for the Navigation of the Rhine of 17 October 1868 hereby acknowledge that the implementation of the Statute annexed to this Agreement implies their adoption of an additional Protocol to that Convention relating to Articles 3 and 34 thereof.

They undertake to adopt such a Protocol no later than one month after the signature of this Agreement.

They shall approve or ratify that Protocol in accordance with their respective constitutional requirements at the same time as they approve or ratify this Agreement.

2. The Contracting States which are party to the Convention between France, Germany and Luxembourg of 27 October 1956 on the Canalization of the Moselle hereby acknowledge that the implementation of the Statute annexed to this Agreement implies their adoption of an additional Protocol to that Convention relating to Article 35 thereof.

They undertake to adopt such a Protocol no later than one month after the signature of this Agreement.

They shall approve or ratify that Protocol in accordance with their respective constitutional requirements at the same time as they approve or ratify this Agreement.

#### Article 4

The States in which this Agreement and the Statute annexed thereto shall be enforceable are the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Denmark (except the Faroe Islands), the French Republic, the Republic of Italy, Ireland, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation.

Article 5

1. This Agreement shall remain in force for a period of five years from the date on which the obligations imposed upon inland waterway carriers pursuant to Article 53 (3) of the Statute take effect. If it is not renewed under paragraph 2, it shall remain in force for a further period of one year, unless a new arrangement to be applied later has been agreed upon in the meantime.

2. By decision of the Contracting Parties acting jointly this Agreement may be renewed for successive periods of five years. For this purpose, any such renewal shall be decided upon at least one year before the expiry of the period then current.

Article 6

The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising under this Agreement or under the decisions of the organs of the Fund. They shall facilitate the achievement by the Fund and its organs of their tasks.

Article 7

1. This Agreement, drawn up in a single original in the Danish, Dutch, English, French, German and Italian languages, these texts all being equally authentic, shall be deposited in the archives of the Secretariat of the Council of the European Communities, which shall transmit a certified copy to the Government of each of the Contracting States.

It shall be approved or ratified by the Contracting Parties in accordance with their respective constitutional requirements. The instruments of approval or ratification shall be jointly deposited with the Secretariat of the Council of the European Communities by the Contracting Parties.

2. This Agreement shall enter into force, when all the Contracting Parties have approved or ratified it, on the first day of the month following the date on which the instruments of approval or ratification are jointly deposited.

DONE at ..... on .....

For the European Economic Community

For the Kingdom of Belgium

For the Federal Republic of Germany

For the French Republic

For the Grand Duchy of Luxembourg

For the Kingdom of the Netherlands

For the United Kingdom of Great Britain and Northern Ireland

For the Swiss Confederation

S T A T U T E

of the

EUROPEAN LAYING-UP FUND FOR INLAND WATERWAY VESSELS

CHAPTER I : General provisions

Article 1

1. The EUROPEAN LAYING-UP FUND FOR INLAND WATERWAY VESSELS (hereinafter called "the Fund") is an international public institution established under the Agreement establishing a European Laying-up Fund for Inland Waterway Vessels (hereinafter called "the Agreement").
2. The Fund shall be governed by the provisions of the Agreement and of this Statute and by the implementing provisions adopted by the organs of the Fund. In the absence of any such provisions, the law of the State in which its Headquarters are situated shall apply.
3. The Fund shall have legal personality.
4. The Fund shall enjoy the most extensive legal capacity accorded to legal persons; it may in particular acquire or dispose of movable and immovable property, conclude contracts and may be a party to legal proceedings.
5. The Fund shall be non-profit-making.

Article 2

1. The Headquarters of the Fund shall be at Duisburg (Federal Republic of Germany).

The Fund shall open at least one branch office in each State in whose territory there are inland waterways to which this Statute applies and in Belgium, except in the event of a renunciation by the State concerned. It may also open branch offices in other States in which this Statute is enforceable, and shall do so if those States request it.

2. Proceedings may be brought against the Fund at the place where it has its Headquarters, and by natural or legal persons whose permanent residence or seat is in a State where a branch office of the Fund has been established, at the place of such branch office.

Article 3

1. For the purposes of its official functions, the Fund shall be exempt, in the States in which this Statute is enforceable, from all direct taxes, including those withheld at source, on its income and assets.

Neither the contributions referred to in Article 9 nor the compensation referred to in Article 23 shall constitute consideration for the supply of services for the purposes of turnover taxes.

For the purposes of this Article, the expression "official functions" of the Fund means all activities strictly necessary for its administration and management.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

2. Nothing in this Statute shall be taken to confer any privilege or tax exemption of any kind on the owners or operators of vessels, who shall remain subject, as regards the contributions they pay to the Fund and the compensation they receive from it, to the tax law of the State in which they are liable to tax.

3. Notwithstanding any present or future regulations on exchange control, including currency restrictions and transfers of funds, the payment shall be authorised, whether direct or by transfer of funds, of contributions to the Fund by the owners or operators of vessels, and of laying-up compensation paid by the Fund to the owners or operators of vessels; likewise there shall be authorised the free transfer of any amount by the Fund from or to any of its branch offices, on condition that the payment made relates to one of the duly authorised purposes of the Fund.

4. Without prejudice to the provisions of this Statute, the Fund and its branch offices shall not be treated less favourably than nationals as far as deposits of capital are concerned.

#### Article 4

1. This Statute shall apply to the vessels specified in Article 6 operating on the following inland waterways (hereinafter called "the waterways of the Fund") shown on a map annexed hereto.

(a) the Rhine, including the Grand Canal d'Alsace, from Rheinfelden to the sea, and all other inland waterways in the Netherlands;

- (b) the Moselle, from its confluence with the Rhine at Koblenz as far as Metz;
- (c) the Neckar, the Main, the Regnitz (up to km 6.85), the Rhine-Herne, Wesel-Datteln, Datteln-Hamm and Dortmund-Ems (as far as the Münster Lock) canals and the Ruhrwasserstrasse; and
- (d) any inland waterway to which the scope of the Statute may be extended under Article 5.

Article 5

1. The territorial scope of this Statute may be extended by Belgium, France or Germany, when the Agreement is concluded or at any time thereafter, to all or part of the inland waterways within their respective territories if these waterways are closely linked, operationally and economically, to the waterways of the Fund.

The State concerned shall notify the other Contracting Parties of such an extension and they shall make it public in the same manner as this Statute.

2. Any adjustment to this Statute which is required in order to operate the Fund as a result of the extension of its scope pursuant to paragraph 1, together with the date and details of the entry into force of such extension and any transitional provisions, shall be adopted by the Supervisory Board by unanimous decision of all its members.

Article 6

This Statute shall apply to the following types of vessel, laden or unladen, operational or laid up or under repair, whether they are used or intended to be used for the carriage of goods, whether on own account or for hire or reward:

A. Cargo-carrying vessels

- (a) self-propelled vessels for the carriage of dry, liquid or liquefied cargo;
- (b) non-self-propelled vessels for the carriage of dry, liquid or liquefied cargo;
- (c) lighters, including ship-borne lighters.

B. Propelling vessels

- (a) tugs;
- (b) pusher craft.

Article 7

1. The following shall be exempt from the obligations imposed under Articles 9 to 13:

- (a) Cargo-carrying vessels of any type whose deadweight at maximum displacement does not exceed 400 metric tons, and tugs or pusher craft whose engine power does not exceed 140 horsepower (103 kilowatts).

The threshold of 400 metric tons shall, however, be reduced to 300 metric tons until 1 January 1981; the Supervisory Board, by unanimous decision of all its members, may, before the end of the year from which the obligations imposed upon inland waterway carriers take effect, decide that this reduction shall not take place;

- (b) Sea-going vessels not carrying out any transport operations between ports or port facilities situated on the waterways of the Fund;
- (c) Ferry boats;
- (d) Vessels carrying out a non-profit-making public service;
- (e) Vessels which enter the waterways of the Fund solely for repairs or conversion and leave without carrying out any transport operation, and new vessels which leave a shipyard for a destination outside those waterways;
- (f) Other categories of vessels, to be specified by the Supervisory Board by unanimous decision of all its members, which, because of their conditions of operation and their highly specialised use, do not compete with the vessels to which this Statute applies.

2. Taking due account of the technological developments in transport by lighters and ship-borne lighters and of the effects on competition which this category of vessel may exert with respect to the other categories, the Supervisory Board may, by unanimous decision of all its members, modify in respect of lighters and ship-borne lighters, the tonnage limit laid down in paragraph 1 (a).

Article 8

1. Unless this Statute is subsequently extended to include inland waterways in Belgium, Article 4 shall not apply to vessels leaving Belgium by way of Antwerp and returning by way of Zelzate, or vice versa, using the Westerschelde in transit without loading or unloading cargo in the Netherlands or beginning or terminating towing or pushing services there.

2. The following shall be exempt from the obligations imposed under Articles 9 to 13: vessels used solely for carrying goods or for towing or pushing services on waterways of the Fund between loading and unloading points both situated in France, except where both such points are situated on the Rhine or on the canalized Moselle, or where one of them is situated on the Rhine and the other on the canalized Moselle.

CHAPTER II - Payment of contributions in respect of inland waterway vessels

Article 9

1. For all vessels which use the waterways of the Fund and are subject to this Statute, other than those exempted under Articles 7 and 8, there shall be paid to the Fund a daily contribution fixed according to Article 10.

2. Without prejudice to the provisions of Article 12 concerning period undertakings, the contribution shall be payable in respect of the number of days during which the vessel is on the waterways of the Fund. Fractions of days shall be counted as whole days.

3. The contribution shall be payable to the Headquarters of the Fund or to one of its branch offices or to any other office designated by the Fund for such purpose, in accordance with the exchange control regulations in force in the State where the payment is made and taking account of Article 3 (3).

Article 10

1. The daily contribution for each vessel shall be calculated by multiplying its equivalent tonnage or equivalent engine-power by the basic rate referred to in paragraph 2.

The equivalent tonnage and the equivalent engine-power shall be calculated by multiplying the real deadweight in metric tons or the nominal engine-power in horsepower of the vessel concerned by the adjustment coefficient for the appropriate category of vessel.

2. For the first year of operation of the system established by this Statute, the basic rate for contributions shall be fixed at a sum equivalent to DM 0.0175, and the adjustment coefficients shall be as follows :

<u>Cargo-carrying vessels</u>	<u>for the carriage of dry cargo</u>	<u>for the carriage of liquid or liquefied cargo</u>
Self-propelled vessels	1.00	1.50
Non-self-propelled vessels	0.35	0.53
Lighters, including ship-borne lighters	0.33	0.56
<u>Propelling vessels</u> (1 HP= 0.735 KW)		
Tugs	1.00	
Pusher craft	2.30	

3. Any subsequent alteration to the basic rate of contribution shall be made at the latest by 30 November of the year preceding that to which it shall apply, having regard to the available reserves of the Fund, to the foreseeable amount of laying-up compensation to be paid out under Article 23, and to the operating expenses of the Fund.

Such alterations shall be adopted by the Supervisory Board acting on a proposal from the Board of Management.

4. In order to fix a basic rate for contributions exceeding by more than 15% the rate provided for in paragraph 2, the Supervisory Board shall act by unanimous decision of all its members; the rates so fixed shall constitute the new basic rate the increase of which by more than 15% shall require the same unanimity.

5. Any alteration to the adjustment coefficient must be made at the latest by 30 November of the year preceding that to which it shall apply. Such alterations shall be made by the Supervisory Board by unanimous decision of all its members.

6. When, during a period of laying-up the objectives of the system established by this Statute are threatened by the presence of an excessive number of vessels seeking work on the waterways of the Fund, in respect of which no period undertaking under Article 12 has been given, the Supervisory Board, by unanimous decision of all its members, may decide to implement measures to remedy the situation.

Article 11

1. Without prejudice to Article 12 (3), for every vessel subject to payment of the contribution provided for in Article 9 a declaration of entry shall be made when the vessel enters the waterways of the Fund and a declaration of exit when it leaves.

In the case of vessels already on the waterways of the Fund on the date when the obligations imposed upon inland waterway carriers pursuant to this Statute take effect, the declaration of entry shall be made within fourteen days thereof.

2. Entries and exits shall be recorded by the offices of the Fund in the log book referred to in Article 15. Each vessel to which the first sub-paragraph of paragraph 1 applies shall be in possession of such a log book when it first enters one of the waterways of the Fund; for ship-borne lighters the log book shall be issued at the time of payment of the contributions referred to in Articles 12 and 13 (2).

3. Any vessel whose entry has been recorded in its log book, shall, until such time as its exit shall have been recorded therein, be deemed to be using the waterways of the Fund, unless the owner or operator of the vessel or the person in charge thereof can prove either that the vessel did in fact leave the waterways of the Fund but that he was unable, through no fault or negligence on his part, to have such exit recorded, or that it was unable to leave owing to circumstances beyond his control.

4. Any vessel using the waterways of the Fund whose entry has not been recorded in its log book shall be presumed to have been using them for at least three months. This presumption shall not apply if the owner or operator of the vessel or the person in charge thereof declares its entry within two days of the entry of the vessel upon these waterways, and if he can at the same time prove that when it entered the waterways he was unable, through no fault or negligence on his part and owing to circumstances beyond his control, to have the entry recorded.

5. This Article may be amended by the Supervisory Board by unanimous decision of all its members.

#### Article 12

1. The owner of any vessel subject to payment of the contribution provided for in Article 9 may undertake, in advance in writing, at the time of or before a declaration of entry upon the waterways of the Fund, to pay the daily contribution, irrespective of the number of days on which the vessel is on those waterways, for one or more of the following periods during a single calendar year:

- (a) the entire calendar year;
- (b) 274 consecutive days from the day from which the undertaking takes effect;
- (c) 182 consecutive days from the day from which the undertaking takes effect;
- (d) 91 consecutive days from the day from which the undertaking takes effect.

2. Where a period undertaking as provided for in paragraph 1 is given, the total amount of the daily contributions payable for the periods concerned shall be reduced as follows :

- (a) by 20% where the undertaking is in respect of the entire calendar year;
- (b) by 10% where the undertaking is in respect of a period of 274 days;
- (c) by 7.5% where the undertaking is in respect of a period of 182 days;
- (d) by 5% where the undertaking is in respect of a period of 91 days.

These reductions shall apply only to the undertaking concerned and may not be increased or aggregated where several successive undertakings are given in the same year.

3. Vessels in respect of which a period undertaking has been given shall for the period thereby covered, not be required to declare their entry upon and exit from the waterways of the Fund.

#### Article 13

1. The daily contributions due as a result of the declarations provided for in Article 11 shall be payable, in respect of the declared duration of the vessel's stay on the waterways of the Fund, from the day on which the vessel enters these waterways.

The Fund may allow time limits for payment; the owner of the vessel may then be required to give security.

2. For ship-borne lighters, the payment of the daily contributions may be made, before they enter the waterways of the Fund, in advance at the beginning of each year; they shall cover the period of time during which the vessels are expected to be on these waterways. In this case, Article 12 (2) shall not apply. The time spent by these vessels in the seaports shall not be included when calculating this period provided that they do not carry out any journeys to or from a port other than that in which they were unloaded from the mother ship.

On the basis of the information recorded in the log book under Article 11 (2), the Fund shall, at the end of each year, reconcile the accounts relating to the contributions payable in respect of these lighters.

3. Contributions due in respect of period undertakings under Article 12 shall be payable in full at the latest on the day from which the undertaking takes effect.

The Fund may allow payment to be made by quarterly instalments payable in advance, in which case the owner of the vessel shall be required to pay interest and, where necessary, to give security.

4. The Fund may set off contributions due to it against laying-up compensation owed by it under Article 23.

Vessel owners shall have no such right of set off.

5. If a vessel in respect of which a period undertaking has been given becomes unfit for navigation, is lost, broken up, converted or used for purposes other than those referred to in Article 6, or if it is withdrawn from the waterways of the Fund for at least one year or is sold to a person who operates it outside the waterways of the Fund, or if it is taken out of service and left without a crew for more than six months or is used solely for storage of cargo for more than six months, its owner may, on surrender of the log book, request repayment of the contribution in respect of the period subsequent to the date on which the circumstance adduced is found to have first arisen, less the amount of the appropriate reduction.

6. The Supervisory Board, acting unanimously, may amend the provisions as to payment set out in this Article.

#### Article 14

1. The Supervisory Board shall determine in which cases and subject to what conditions a person operating a vessel who is not its owner may comply with the obligations and undertakings provided for in Articles 9 to 13 and 18.

2. The person in charge of the vessel shall, as regards all declarations to be made to the Fund and as regards undertakings under Article 12, be the legal representative of the owner of the vessel and, in the cases referred to in paragraph 1, of its operator; the declarations made and undertakings given by that person shall be binding on the owner or operator in favour of the Fund.

CHAPTER III : Certificates and Register

Article 15

1. All vessels subject to payment of contributions shall carry a log book issued by the Fund.
2. The log book shall contain counterfoils to be filled in whenever a declaration of entry or exit is made or a period undertaking is given, together with detachable copies of each such declaration or undertaking.

The counterfoils shall be kept in the log book and the copies shall be retained by the offices of the Fund to which the declaration is made or the undertaking is given and shall be sent without delay to the Headquarters of the Fund.
3. The duly completed counterfoils in the log book shall constitute evidence that the obligations imposed by this Statute have been carried out and, as the case may be, that a vessel qualifies for laying-up.
4. The Fund shall use the copies sent to it to compile a Register of vessels entitled to laying-up compensation provided for in Article 23 and to prepare any other information relevant to the state of the market.
5. Every vessel which uses the waterways of the Fund shall bear a number, in accordance with rules to be laid down by the Supervisory Board.

Article 16

Any vessel which uses the waterways of the Fund but is exempt under Articles 7 and 8 from the obligations imposed by this Statute shall, for inspection purposes, carry an exemption certificate, which shall be issued by the Fund when the vessel enters a waterway of the Fund on submission of a declaration by the owner of the vessel or other person in charge thereof and on production of evidence of the circumstances or conditions constituting the grounds for exemption relied on. The certificate shall state the grounds for exemption.

However, no exemption certificate shall be required for vessels referred to in Article 8 (1) and for sea-going ships.

Article 17

1. The Supervisory Board shall lay down standard forms for the exemption certificate and the log book. It shall adopt all necessary provisions as regards their use and the procedures for issuing and replacing them.

2. The exemption certificate or, without prejudice to Article 22, the log book, shall at all times be kept on board the vessel to which it relates and must be shown on request to any officer responsible for carrying out inspections. In the case of lighters and ship-borne lighters, these documents shall be kept on board the pusher vessel which moves them.

Article 18

1. The owner of the vessel or other person in charge thereof shall supply all information and supporting documents regarding the specifications of his vessel which may be requested by the Fund for the purpose of issuing an exemption certificate or log book.

2. Any alteration in the particulars indicated in the exemption certificate or the log book shall be communicated to the Fund without delay by the owner of the vessel or other person in charge thereof. Such communication shall be accompanied by all supporting documents required by the Fund and shall be recorded on the exemption certificate or in the log book.

CHAPTER IV : Laying-up

Article 19

1. If it is established, on the basis of the criteria laid down in Article 20, that a temporary imbalance between supply and demand in respect of carrying capacity has arisen or is imminent, then, subject to the limits imposed by the need to maintain the Fund in financial equilibrium, it shall be decided to lay up all or part of the excess carrying capacity.

Such equilibrium shall be determined by taking into consideration the revenue of the Fund, the reserves which it has built up, including interest from investments, its operating costs and any annual servicing of loans.

2. Each such decision shall specify the maximum tonnage or engine power and the categories of vessels to be accepted for laying-up, the rates of laying-up compensation, the duration of laying-up and the closing date for entry in the laying-up lists. It shall also specify the date of its entry into force and shall be adequately publicized throughout the period during which it remains in force.

3. A decision may, whenever developments in the situation so require and on the basis of the criteria laid down in Article 20, be repealed or amended.

The repeal or amendment of a decision shall not affect the acquired rights in respect of vessels laid up pursuant to the decision which has been repealed or amended.

4. If the situation or the foreseeable trend of the market so warrants, it may be decided to limit laying-up to certain sectors of the market having broadly similar operational and economic characteristics, or to certain categories of vessels.

#### Article 20

In order to determine the amount of excess carrying capacity, account shall in particular be taken of the following:

- the total tonnage or engine power awaiting work and the average length of the period spent thus awaiting freight;
- the foreseeable short-term trend of demand for carrying capacity;

- average daily rates of all kinds and conditions for the carriage of goods by inland waterway and the foreseeable trend of such rate and conditions; and
- the profitability of inland waterway carrier undertakings in general.

For the purpose of assessing these criteria, use shall be made of the information available from official sources and of all other information collected by the Fund.

#### Article 21

1. Any laying-up decided on under Article 19 shall be organized on a voluntary basis.
2. As soon as the decision to lay up enters into force, the Fund shall open laying-up lists which shall be kept at such ports and other places as it shall have designated as the sole laying-up places in accordance with paragraph 3.
3. Each State in whose territory the waterways of the Fund are situated and Belgium shall designate, during the month following the entry into force of this Statute, those ports and other places on their respective territories which may be used as laying-up places; these shall be sufficient in number to prevent overcrowding in the berthing areas and uneconomical journeys for the vessels. Some of these laying-up places may lie on waterways other than those referred to in Article 4.

4. Any vessel afloat which has been duly fitted-out and provided, save for lighters and ship-borne lighters, with a crew to work and maintain it, and for which the daily contributions have been paid since the beginning of the current calendar year for at least 274 consecutive days, may be entered in one of the laying-up lists opened under paragraph 2, provided that an additional fee is paid equal to the difference between the sums already paid and the amount of the annual charge.

The owner or operator of a vessel shall not, to qualify his vessel for entry on a laying-up list by virtue of having paid contribution for 274 days, avail himself of any period undertaken under Article 12 which was given 21 days or less before the entry into force of a laying-up decision.

5. Entry on a laying-up list shall be valid only for the minimum laying-up period decided on.

6. A vessel entered on a laying-up list shall, from the date of such entry until the end of its laying-up, be neither operated nor sent for repair; during this period it shall remain stationary in the place appointed by the offices responsible for the laying-up list in which it is entered and it may be moved only under exceptional circumstances and with the written permission of or by order of these offices.

Article 22

1. The Supervisory Board shall take all necessary measures to ensure that the obligations imposed in respect of vessels entered on a laying-up list are enforced. Such measures shall include, in particular, provision for temporary surrender of the log-book and other navigation documents.

2. If the owner or operator of a vessel or other person in charge thereof evades the enforcement measures thus decided on, he may, by a decision under Article 35, be declared to have forfeited his right to laying-up compensation and be required to repay any sums already received.

Article 23

1. For every vessel laid up under Article 21 the owner or operator shall receive daily laying-up compensation paid at the rate applicable on the date when the vessel is entered on the laying-up list.

2. The amount of the daily compensation in respect of each vessel laid up shall be calculated by multiplying its equivalent tonnage or equivalent engine power, obtained in accordance with Article 10 (1), by the basic rate referred to in paragraph 3.

3. The basic daily rate of laying-up compensation shall be fixed, at the same time as the laying-up decision is taken, at a level which will encourage those concerned to lay up sufficient vessels to restore the situation to normal, having regard to the average freight rates charged on the market concerned, to the average percentage of costs saved as a result of laying-up, and to the amount of the wages and social security charges for which an operator who lays up a vessel remains liable.

4. If the basic daily rate of laying-up compensation is adjusted by a decision under Article 19 (3), then, if such adjustment constitutes an increase, the person concerned shall be paid at the new rate with effect from the date on which the decision enters into force; if it constitutes a reduction, the rate payable on the date on which the vessel was entered on the laying-up list shall remain applicable until the expiry of the minimum laying-up period provided for in the original decision.

#### Article 24

1. Laying-up compensation shall be paid by the Fund at the end of the laying-up period, or if this period exceeds thirty days, every thirty days.

Laying-up compensation shall be payable at the request of the recipient, either in cash at the Headquarters of the Fund or at one of its branch offices or at one of the other offices designated under Article 9 (3), or by transfer to such postal or bank account as the recipient shall have designated for that purpose at the time of entry on the laying-up list referred to in Article 21 (2).

2. The recipient of laying-up compensation shall forfeit his entitlement thereto if, at any time during the laying-up period, the vessel, without the permission of the competent authorities, leaves the place designated for its laying-up at the start of that period, or if it is used commercially for loading, unloading or stowage purposes, or if any work by way of repair or overhaul other than normal maintenance is carried out on it.

3. Laying-up compensation received from the Fund in infringement of this Statute or of its implementing provisions shall be repaid to the Fund, together with interest calculated at the rate in force under the law of the State where the Fund has its Headquarters, without prejudice to any penal sanctions applicable in respect of such infringement.

#### Article 25

No person employed as a member of the crew of a vessel that is laid up shall be dismissed solely on account of such laying-up. Any dismissal contrary to this prohibition shall be automatically void.

#### CHAPTER V : Organisation of the Fund

#### Article 26

The tasks assigned to the Fund shall be carried out by

- a Supervisory Board; and
- a Board of Management, assisted by a Director.

Each organ shall act within the limits of the powers conferred on it by this Statute.

Section A : The Supervisory Board

Article 27

1. The Supervisory Board shall consist of a representative from Belgium, Denmark, Germany, France, Italy, Luxembourg, the Netherlands, the United Kingdom and Switzerland and a representative of the Commission of the European Communities, who shall act as Chairman; Secretarial services shall be provided by the Commission.

The States referred to above shall communicate to the Chairman of the Supervisory Board the names and addresses of their representatives on whom they shall confer all necessary powers and authority to enable the Board to take the requisite decisions without delay.

Each of the States represented may renounce its right to be represented for a minimum of two years. Such renunciation shall not prevent the adoption of decisions requiring a unanimous decision of all its members.

2. The Secretary-General of the Central Committee for the Navigation of the Rhine shall be invited to take part in meetings of the Supervisory Board in a consultative capacity and without the right to vote.

3. The Supervisory Board shall be convened by its Chairman, whenever necessary, at his own initiative or at the request of one of its members.

Each member shall have one vote. The Chairman shall take part in the discussion but shall not have the right to vote.

4. The Supervisory Board may take decisions if at least half of its members are present.

5. Except where this Statute otherwise provides, the Supervisory Board shall take decisions by a simple majority of the votes cast. This majority shall include the affirmative votes of at least three of the representatives of the following States: Belgium, Germany, France, the Netherlands, Switzerland.

6. Except in the cases referred to in Articles 5 (2), 7 (1) and (2), 10 (4), (5) and (6), 11 (5) and 28 (1), abstentions by members present or the absence of any member shall not prevent the adoption by the Supervisory Board of decisions which require unanimity.

#### Section B : The Board of Management

##### Article 28

1. The Board of Management shall consist of members appointed by the States of which they shall be respectively nationals, the seats being allocated as follows: four members for Germany, two members for Belgium, two members for France, one member for Luxembourg, four members for the Netherlands and two members for Switzerland.

Each of these States shall make appointments on the basis of proposals from the national trade organisations representing inland waterway carriers, bearing in mind that the membership of the Board of Management should be as broadly representative as possible of the most important categories of inland waterway carriers.

In the event of an extension of the territorial scope of this Statute, the number of members of the Board of Management may be altered by the Supervisory Board by unanimous decision of all its members.

2. The term of office of the members of the Board of Management shall be two years, unless they are removed from office. After expiry of their term, members shall remain in office until appointment of a successor or until reappointment.

In the event of the death or resignation of a member, or if the conditions necessary for the exercise of his office are no longer satisfied, a new member shall be appointed for the remainder of the term of his predecessor.

3. The Board of Management shall elect from among its members, for each new term of office, a Chairman and one or more Vice-Chairmen, who shall be of different nationalities.

4. The Board of Management shall be convened by its Chairman or, if he is unable to act, by its Vice-Chairman senior in age, whenever necessary, at his own initiative or at the request of one of its members, the questions to be dealt with being notified. It shall meet at least twice a year.

The meetings of the Board of Management shall be held at the place where the Fund has its Headquarters, unless another meeting place has been decided upon.

5. Subject to Article 31 (1), the members of the Board of Management shall be convened at least ten days before the date on which the meeting is to take place by a notice in writing stating the items on the agenda. No decision may be taken concerning items not included on that agenda.

If all the members of the Board of Management are present or validly represented, the Board may meet, if no objection is raised, even though the procedure laid down for convening it has not been followed, validly discuss and take decisions on any items which come within its powers.

6. Each member of the Board of Management shall have one vote. A member may, by proxy in writing, authorize another member to represent him; however, no member may represent more than two other members.

7. The Board of Management may take decisions if at least half of its members are present or represented. Ballots shall be secret, save as may otherwise be decided.

8. The Board of Management shall take decisions by a two-thirds majority of the votes cast.

9. The Board of Management shall designate the persons empowered individually or jointly to bind the Fund by their signatures.

With the agreement of and under the conditions laid down by the Supervisory Board acting unanimously, the Board of Management may delegate functions to committees selected from among its members.

Section C : Powers

Article 29

1. The Supervisory Board shall safeguard the public interest and shall ensure that the aims and provisions of the Agreement and of this Statute are observed.

2. The Board of Management shall be responsible for the administration and financial management of the Fund, subject to the limits imposed by its budget. It shall ensure that the decisions of the Supervisory Board are carried out.

Article 30

1. The Board of Management shall prepare, for submission to the Supervisory Board, proposals for the annual budget of the Fund and for the basic rates of contribution.

The proposal for the annual budget shall contain estimates of the amount of laying-up compensation payable and, where appropriate, of the rates for such compensation.

Such proposals shall be submitted to the Supervisory Board before 31 October of each year for the following calendar year.

2. The Supervisory Board shall take decisions on the proposals submitted by the Board of Management.

It may request the latter to re-submit such proposals, amended in the light of its comments thereon.

3. The Supervisory Board shall approve the annual accounts of the Fund, which shall be submitted to it before 30 June of the year following that to which they relate, and shall give a discharge to the Board of Management in respect of its financial management.

Article 31

1. The Board of Management shall, on the basis of the criteria laid down in Article 20, determine the length of laying-up periods and the rates of compensation.

For this purpose it shall meet within three days of the dispatch of the notice convening the meeting. A copy of this notice, of the agenda for the meeting and of all relevant documents shall at the same time be forwarded to the Chairman and members of the Supervisory Board.

Any measures decided upon by the Board of Management shall immediately be communicated by telex to the Chairman and to each member of the Supervisory Board.

2. Any such measures decided upon by the Board of Management shall be deemed to be approved by the Supervisory Board and shall become definitive on the eighth day after the date of such communication unless one of the members of the Supervisory Board has requested that they be examined.

In order to be valid, such a request, accompanied wherever possible by a statement of the grounds therefor, shall be received by the Chairman of the Supervisory Board within five days of the decision of the Board of Management referred to in paragraph 1. On receipt of such a request, the Chairman of the Supervisory Board shall immediately communicate it to the members of the Board and to the Chairman of the Board of Management.

3. Where a request for examination has been received pursuant to paragraph 2, the Supervisory Board shall act within three days of the expiry of the time limit for submitting requests for examination.

The Supervisory Board may either :

- approve the decision of the Board of Management; or
- call upon the Board of Management to submit to it, within a time-limit fixed by it, new measures prepared in the light of the comments it has made; or
- itself decide upon other appropriate laying-up measures.

Decisions taken by the Supervisory Board shall be immediately notified by its Chairman to the Board of Management.

4. The Supervisory Board may, in the light of experience, alter the time limits laid down in paragraphs 1 to 3.

#### Article 32

In the event of the Board of Management failing to act, the Supervisory Board may call upon it to determine provisions for the adoption or repeal of laying-up measures, or to prepare the proposals provided for in Article 30 (1).

If the Board of Management does not act within twenty days of the receipt of such a communication, the Supervisory Board may act on its own initiative. This time-limit shall, however, be reduced to seven days, in the case where no decision is taken concerning a measure under Article 31.

Article 33

1. The Supervisory Board shall, after consulting the Board of Management, adopt the general provisions for implementing this Statute which are not provided for herein.
2. The Supervisory Board shall act in matters in respect of which express powers have not been conferred upon another organ of the Fund.
3. Decisions of the Supervisory Board under paragraphs 1 and 2 shall be taken unanimously.

Article 34

1. The Supervisory Board shall, on a proposal from the Board of Management, appoint and dismiss the Director of the Fund and determine his terms of service and his functions.
2. The Director of the Fund shall act under the supervision and on the instructions of the Board of Management; he shall be responsible for the day-to-day administration and the financial management of the Fund. He shall ensure that the decisions of the Board of Management and, as the case may be, of the Supervisory Board are carried out, in particular as regards the collection of contributions and the payment of laying-up compensation. He shall produce and issue the log books and exemption certificates.

3. The Director shall represent the Fund in all legal and administrative proceedings.
4. The Director shall be responsible for providing secretarial services for the Board of Management, for drawing up the minutes of its meetings and making them available to the Supervisory Board.
5. Without prejudice to paragraph 1 and subject to the limits imposed by the budgets of the Fund, the Board of Management shall determine the number of members of its staff and their terms of service.
6. The terms of employment of the members of the staff shall be governed by the labour law and the social legislation of the State in which their duties are normally carried out.

Article 35

1. The Director of the Fund shall take the decisions concerning contributions or laying-up compensation in each individual case. Application may be made to him for a decision concerning laying-up compensation. In such a case, he shall give his decision within thirty days. If no answer to such application is given within that time-limit, there shall be deemed to be an adverse decision against which an objection within the meaning of paragraph 2 may be entered.
2. Any person receiving notice of a decision taken in his case or of the rejection of his application may enter an objection thereto. The objection shall be entered within ten days :

- from the date of notification of the decision or the rejection of the application, or
- where the objection concerns an adverse decision under the second sub-paragraph of paragraph 1, from the date of expiry of the time limit for answering the relevant application.

The objection, which shall state the grounds on which it is based, shall be submitted in writing and shall be forwarded to the Headquarters of the Fund or to one of its branch offices.

An objection posted on the last day of the period for objection shall be deemed to be received within that period.

3. Objections entered within the prescribed time-limit shall have suspensory effect. Each objection shall be examined by the Board of Management, which shall give a reasoned decision in each case. Where the objection is to a decision concerning the amount of laying-up compensation, the decision shall be given within thirty days of receipt of the objection. The person concerned shall be notified of the decision.

If the Board of Management does not take a decision within the time-limit specified in the preceding sub-paragraph, there shall be deemed to be an adverse decision.

Article 36

The right under Article 23 to receive laying-up compensation, the obligation under Articles 9 to 13 to pay the contribution and the obligation under Article 24 (3) to refund any compensation unlawfully received shall become time-barred upon the expiry of two years from the end of the calendar year in which such right or obligation arose. This period of limitation shall be interrupted by any act instituting legal proceedings.

Section D : Audit of Accounts

Article 37

1. The Supervisory Board shall appoint, for a term of two years, two independent Auditors and two deputy Auditors, who shall not be members of that Board, of the Board of Management or of the Directorate of the Fund.
2. The Auditors shall examine the annual accounts of the Fund and report thereon each year to the Supervisory Board.

Section E : Languages of the Fund

Article 38

1. The minutes of the meetings of the Board of Management, the notices of such meetings, the documents prepared for meetings of the organs of the Fund, the decisions of general application adopted by them, and the Auditors' report shall be drawn up in Dutch, French and German. The members of those organs may use any of those languages.

2. Decisions taken in individual cases and decisions under Article 35 (1) and (3), log books and exemption certificates shall be drawn up in Dutch, French and German. The addressees of such decisions and documents shall use one of these languages in their dealings with the Fund.

Section F : Effect and Publication of Decisions of General Application

Article 39

Decisions of the organs of the Fund having general application shall be binding in their entirety and directly applicable in all Member States of the European Economic Community and in Switzerland.

They shall enter into force on the date fixed therein.

Article 40

1. Decisions of the Supervisory Board or of the Board of Management taken in pursuance of this Statute and having general application, general implementing provisions and provisions amending this Statute adopted by the Supervisory Board shall be published in the official gazettes of the European Communities and of Switzerland.

2. Decisions on laying-up periods and compensation shall be notified immediately by the Chairman of the Supervisory Board to the national authorities which shall be designated for this purpose by the States in whose territory there are waterways of the Fund and by Belgium. These authorities shall ensure that before their entry into force the decisions are displayed in harbour board offices, handling and berthing areas, freight offices and markets, 'tour de rôle' offices (rotation booking) and any other place which they consider appropriate.

The Supervisory Board may decide to change the method of publishing these decisions.

CHAPTER VI : Supervision by the Courts

Article 41

1. Natural or legal persons who can establish an interest shall have a right of appeal to the courts designated under paragraph 2, against decisions taken in individual cases by the Fund under Article 35 (3).

Each appeal shall state the grounds and shall be brought, accompanied by the relevant supporting documents, within thirty days of either the notification of the contested decision or of the expiry of the time-limit within which the absence of such a decision is deemed to be an adverse decision. An appeal shall not have suspensory effect in respect of the contested decision.

2. The States in which the Headquarters or a branch office of the Fund is situated shall designate the courts which shall have jurisdiction in the appeals provided for in paragraph 1. In States where Rhine Navigation Tribunals or Moselle Navigation Tribunals have been set up under the Revised Convention for the Navigation of the Rhine of 17 October 1868 or the Convention between France, Germany and Luxembourg of 27 October 1956 on the Canalisation of the Moselle respectively, these Tribunals may be declared to have jurisdiction in such appeals.

Such appeals shall be governed by the rules of procedure applying to the courts before which they are brought.

3. The appeals referred to in paragraph 1 shall be brought before the courts for the place where the Fund has its Headquarters, or, in the case of persons whose permanent residence or seat is in a State where the Fund has a branch office, before the courts for the place where the branch office is situated.

Article 42

1. A court called the "Fund Tribunal" is hereby established to ensure that in the interpretation and application of the Agreement and of this Statute, the law is observed.

2. The Fund Tribunal shall consist of seven judges appointed for a term of five years, one judge to be appointed by Switzerland and six other judges by all the other Contracting Parties. The judges shall elect the President of the Tribunal from among their number.

In the event of the death or the resignation of a judge during his term of office, he shall be replaced for the remainder of that term.

3. The Fund Tribunal shall not sit in permanent session. It shall sit when convened by its President to hear the appeals brought before it.

4. The Fund Tribunal shall adopt the provisions necessary for its functioning. These provisions shall include the rules for the organisation of its work and its rules of procedure and also safeguards regarding the impartiality of the judges and their immunity in respect of acts performed by them in their official capacity.

The Fund Tribunal shall decide where it shall sit, depending upon the facilities which may be offered to it by the Contracting Parties for this purpose.

5. Judgments shall contain the reasons on which they are based.

6. The costs relating to the functioning of the Fund Tribunal shall not be included in the costs awarded against a party.

#### Article 43

1. The Tribunal shall review the legality of acts of the organs of the Fund. It shall for this purpose have jurisdiction in actions brought by a State in which this Statute is enforceable or by the Commission of the European Communities on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Agreement or of this Statute, or of any rule of law relating to their application, or misuse of powers.

These proceedings shall be instituted within one month of the publication of the measure concerned.

If the action is well-founded, the Tribunal shall declare the act concerned to be void. However, the Tribunal shall, if it considers this necessary, state which of the effects of the measures which it has declared void shall be considered as definitive.

2. Should the Supervisory Board, in infringement of the Agreement or of this Statute, fail to take decisions, the States in which this Statute is enforceable and the Commission of the European Communities may bring an appeal before the Tribunal to have the infringement established. The appeal shall be admissible only if the Supervisory Board has first been called upon to act. If, within one month of being so called upon, the Supervisory Board has not defined its position, the appeal may be brought within a further period of one month.

3. The organ of the Fund whose act has been declared void or whose failure to act has been declared contrary to the Agreement or to this Statute shall be required to take the necessary measures to comply with the judgment of the Tribunal.

4. Appeals brought before the Fund Tribunal under paragraph 1 shall not have suspensory effect. The Tribunal may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

#### Article 44

The Fund Tribunal shall have jurisdiction to give preliminary rulings concerning the interpretation of the Agreement and of this Statute and concerning the validity and interpretation of decisions taken by the organs of the Fund in order to ensure uniform application of these provisions in all the States concerned.

Where such a question is raised before any [appellate]<sup>1</sup> Court or tribunal of a State in which this Statute is enforceable, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Tribunal to give a ruling thereon.

[Where **any** such question is raised in a case pending before a court or tribunal against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Fund Tribunal.]<sup>1</sup>

#### Article 45

A State represented on the Supervisory Board, or the Commission of the European Communities, if it considers that a State in which this Statute is enforceable has failed to fulfil an obligation under the Agreement or under this Statute, may, after raising the matter at a meeting of that Board with a view to finding an acceptable solution, bring the matter before the Fund Tribunal.

If the Fund Tribunal finds that a State has so failed to fulfil an obligation that State shall be required to take the necessary measures to comply with the judgment of the Fund Tribunal

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<sup>1</sup> Reservations of the Swiss delegation

CHAPTER VII : Implementation of Decisions, Assistance by National Authorities, Penalties

Article 46

1. Decisions of the organs of the Fund in respect of which no further objection or appeal is possible, and which impose under this Statute a pecuniary obligation on the owner or operator of a vessel, shall be enforceable and shall be recognised as such in all the States in which this Statute is enforceable.

2. Enforcement shall be governed by the rules of procedure in force in the State in which it is carried out. The order for enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the competent national authority.

3. The courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

Article 47

1. In order to ensure the observance and the implementation of this Statute and of decisions taken in pursuance thereof, the Fund may request the assistance, under conditions to be established by common accord, of the public authorities of the States in which this Statute is enforceable.

2. The public authorities of the States in which this Statute is enforceable and the Fund shall communicate to each other, on request, any information concerning the vessels to which this Statute applies which may be necessary for the implementation of this Statute.

Before 1 March of each year the Fund shall, on request, forward to the public authorities of the States in which the Statute is enforceable copies of records for the preceding year of payments to members of the Board of Management, Fund employees and owners or operators of boats having their domicile for tax purposes in the requesting State, showing the names and addresses of all recipients and stating the reason for the payments made to the persons concerned.

#### Article 48

1. Every State in which the Headquarters or a branch office of the Fund is established shall take the necessary measures, after consultation within the Supervisory Board, on the drafts thereof, to impose sanctions for the following infringements :

- using a vessel entered on a laying-up list to carry out loading, unloading, transport, stowage, towing or pushing operations or sending such a vessel for repair or carrying out or attempting to carry out a transport operation using a vessel for which an exemption certificate has been issued by virtue of Article 8;
- refusing to show the log book or the exemption certificate when so requested by the competent authorities.

2. Without prejudice to the penal sanctions applicable under national law in respect of other unlawful acts, the infringements referred to in paragraph 1 shall be punishable by a penalty or fine not exceeding a sum equivalent to 1000 DM in the currency of the State in which the court or tribunal is seised of the matter.

3. Infringements shall be dealt with by the court or tribunal for the place where the infringement was committed. This court or tribunal may be a Rhine Navigation Tribunal or a Moselle Navigation Tribunal in those States where such a tribunal has been established.

4. The decisions of the courts or tribunals referred to in paragraph 3 shall be enforceable in all the other States referred to in paragraph 1 in accordance with the procedures laid down by the law of the country in which they are enforced.

5. Sanctions may be imposed for the infringements referred to in paragraph 1 in special legal proceedings or appropriate administrative proceedings.

#### CHAPTER VIII: Financial Provisions

##### Article 49

1. All items of revenue and expenditure of the Fund shall be included in estimates to be drawn up for each financial year and shall be shown in the budget. The revenue and expenditure shown in the budget shall be in balance.

2. The financial year shall run from 1 January to 31 December.
3. The budget of the Fund shall be drawn up, and the accounts kept, in the currency of the State in which the Fund has its headquarters.
4. Contributions and laying-up compensation shall be collected and paid in the currency of the State in which payment takes place, in accordance with the rate of exchange ruling for current transactions on the day the transaction takes place in the country where payment is made.

#### Article 50

1. The revenue of the Fund shall consist solely of the contributions from owners of vessels as provided for in Articles 9 to 13 and of the interest from investing such contributions and shall be applied solely for paying laying-up compensation under Article 23 and for meeting the costs relating to the functioning of the Fund.

By way of derogation from the preceding sub-paragraph, the Fund may, in the event of its encountering liquidity difficulties, raise short-term loans, the duration and amount of which shall be reasonable in relation to its anticipated revenue. Such borrowings shall not involve the Contracting Parties, either directly or indirectly, in any financial obligations.

2. The Fund alone shall be liable for the payment of laying-up compensation. The Contracting Parties shall be under no liability for any commitments undertaken by the Fund.

Article 51

Decisions as to the raising of loans shall be taken by the Board of Management, within limits and subject to conditions laid down by unanimous decision of the Supervisory Board. The Supervisory Board shall ensure that its decisions in this respect are implemented.

CHAPTER IX : Winding-up of the Fund

Article 52

1. On termination of the Agreement the Fund shall be wound up. In such case, the Supervisory Board shall appoint one or more liquidators to close the accounts and liquidate the assets of the Fund.
2. Subject to the recovery of any contributions and the payment of any compensation then outstanding, the Fund shall collect no further contributions and pay no further laying-up compensation, with effect from the date of winding up, and any laying-up measures which may be in hand shall lapse.
3. After discharge of all liabilities, the net assets of the Fund shall be distributed among the owners of the vessels in respect of which contributions have been paid during the year in which the dissolution takes place and the two preceding calendar years, in proportion to the contributions collected for such vessels by the Fund during that period.

The right of owners to participate in such distribution shall lapse two years after the publication by the liquidators of the schedule of distribution.

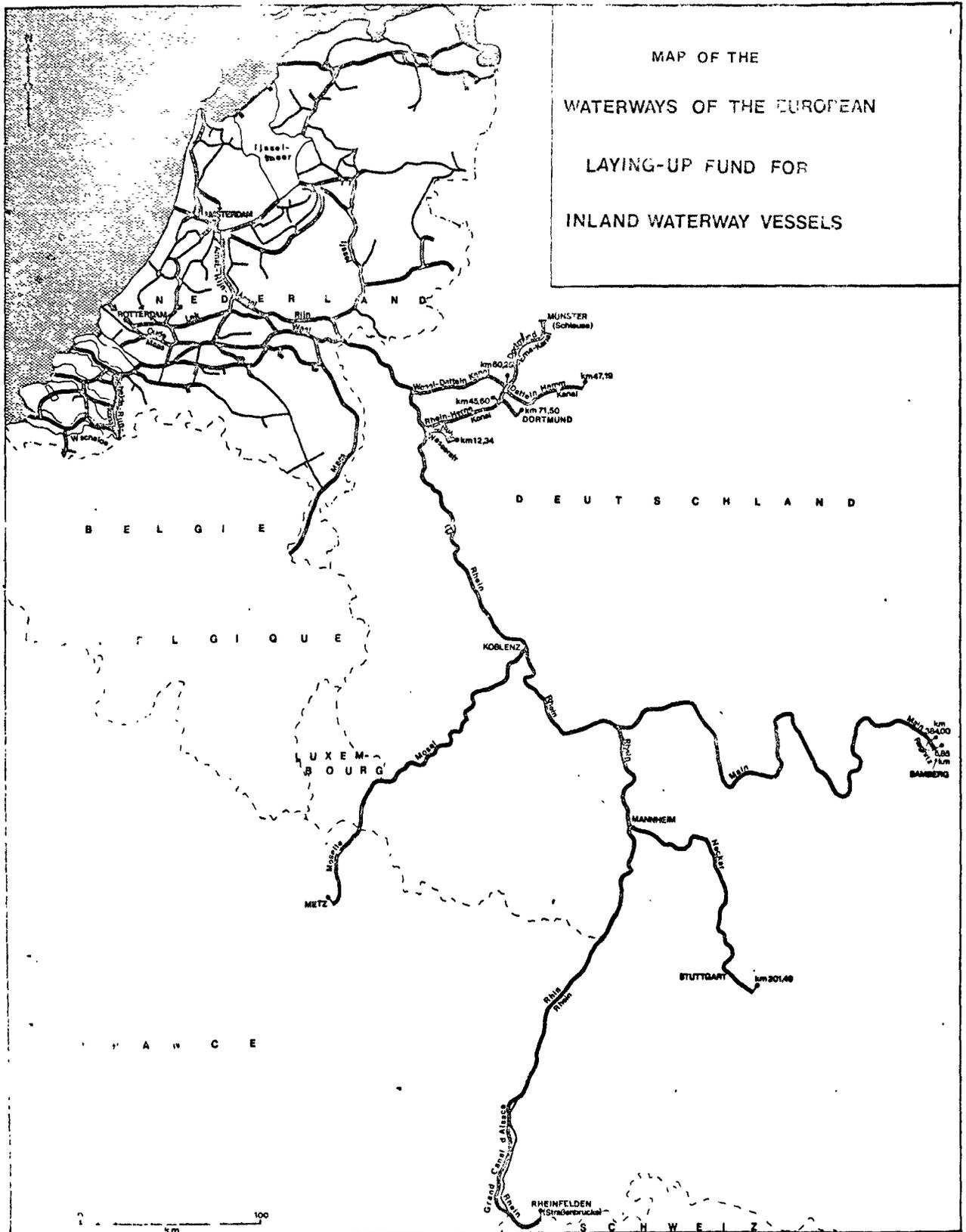
4. Any additional measures required in order to liquidate the assets of the Fund shall be taken by the Supervisory Board acting unanimously.

CHAPTER X : Setting up of the Organs of the Fund

Article 53

1. The Supervisory Board shall be set up within one month of the entry into force of the Agreement. It shall take up its duties as soon as it is set up and shall meet within a month of its setting-up, in particular to fix the limit for the initial loan and to the terms of service and the functions of the Director of the Fund and to appoint him and the Auditors.
2. The Board of Management shall take up its duties and shall meet within a month of the appointment of its members. It shall immediately submit proposals regarding the appointment of the Director of the Fund, his terms of service and his functions. It shall also take steps without delay to organise the Fund. It shall immediately draw up a draft Budget for the first financial year. This budget may provide for a loan to be raised to start the Fund; the Fund shall be authorised to take up a loan not exceeding a sum fixed by the Supervisory Board.
3. The Supervisory Board shall fix the calendar year on the first day of which the obligations imposed upon inland waterway carriers under this Statute shall take effect.
4. The Fund Tribunal shall meet within three months of the entry into force of the Agreement in order to adopt the measures necessary for its operation.

MAP OF THE  
 WATERWAYS OF THE EUROPEAN  
 LAYING-UP FUND FOR  
 INLAND WATERWAY VESSELS



DECLARATION TO BE INSERTED IN THE MINUTES CONCLUDING THE AGREEMENT

"Statement by the Contracting Parties concerning Article 3 of the Statute

The fact that the compensation provided for in Article 23 of the Statute does not constitute consideration for supplies of services has no effect on any Value Added Tax deductions made by undertakings in receipt of this compensation.