



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.05.1995
COM(95)167 final

95/0106 (CNS)

Proposal for a

COUNCIL REGULATION (EC)

**on common rules applicable to the transport of goods or
passengers by inland waterway between Member States with a
view to establishing freedom to provide such transport services**

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. GENERAL

1. The transport of goods or passengers by inland waterway between Member States and in transit through them is only partly covered by Community provisions on market access. Only access to traffic on the Rhine is governed by conditions of access adopted at Community level; these were introduced pursuant to Additional Protocol No 2 to the Convention of Mannheim and transposed into Community law by Council Regulation (EEC) No 2919/85 of 17 October 1985 laying down the conditions for access to the arrangements under the Revised Convention for the Navigation of the Rhine relating to vessels belonging to the Rhine Navigation.¹ While the national transport services sector² is fully covered by rules of access adopted by the Council, access to one area of international transport links is not covered by Community provisions.

In order to fill this gap, it is firstly necessary to ensure that access to the entire inland waterway market (both national and international transport operations within the Community) is subject to Community rules.

2. However, the adoption of rules governing access to the inland waterway transport market between Member States at Community level primarily stems from a requirement arising from the judgment of the European Court of Justice of 22 May 1985 in Case 13/85³ (action brought by the European Parliament against the Council for failure to act). In its judgment, the Court drew attention in particular to the obligation imposed on the Council by Article 75(1)(a) to introduce a legislative instrument to establish freedom to provide transport services between Member States. It made it clear that the requirements of freedom to provide services involve the abolition of all discrimination against the provider of the services on the grounds of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided.

Freedom to provide inland waterway transport services between Member States already existed before the EEC Treaty came into being and has existed since its entry into force: this freedom has always been applied *de facto* by the Member States to these transport links. For this reason, there did not seem to be any need to lay down rules governing access to these transport services at Community level, especially as the provisions of Article 76 of the Treaty make the *de facto* freedom of access irreversible and this situation is also in keeping with the general objectives of the Treaty.

¹ OJ L 280, 22.10.1985.

² Council Regulation (EEC) No 3921/91 of 16.12.1991 laying down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State (OJ L 373, 31.12.1991, p. 1).

³ [1985-4] ECR 1556.

However, it has become necessary for the Council to adopt rules governing access to the market in inland waterway transport between Member States and in transit through them following the accession to the European Union of a country, namely Austria, whose inland waterways are connected to those of the other Member States in view of the fact that two Member States have concluded bilateral inland waterway transport agreements with this country which are incompatible with the principle of freedom to provide services in this area.

Since these bilateral agreements subordinate access for transport operators in Member States which are not party to the said agreements to the issue of special permits by the Austrian authorities and the two Member States concerned, Austrian accession to the Community has meant that, because of the agreements, different arrangements apply between the Member States in relation to the international transport and transit of goods and passengers by inland waterway.

It is therefore necessary, in accordance with the requirements arising from the judgment of the Court of Justice of 22 May 1985, for the Council, on the basis of Article 75(1)(a) of the Treaty, to lay down Community rules for access to transport services between Member States which ensure that the principle of freedom to provide services applies in law to all international transport links within the Community. The achievement of this objective will furthermore make it possible to avoid distortions of competition and disturbances in the organization of the transport market concerned.

3. The Community action envisaged in this proposal can be analysed from the viewpoint of subsidiarity by answering four basic questions:

- (a) What are the objectives of the proposed action in relation to the Community's obligations?

The action is based on the concern to maintain, throughout the Community, freedom to provide inland waterway transport services between Member States and in transit through them following the accession of Austria, a country whose inland waterways are connected to those of the other Member States. The judgment of the European Court of Justice of 22 May 1985 in Case 13/85 requires the Council to introduce a legislative instrument based on Article 75(1)(a) to establish freedom to provide transport services on transport links between the Member States.

- (b) Is the proposed action the exclusive responsibility of the Community or a responsibility shared with the Member States?

The Council proposal is based on Article 75(1)(a) of the Treaty and is therefore the exclusive responsibility of the Community.

- (c) What is the Community dimension?

The action recommended concerns all the Member States and is aimed at establishing in law the principle of freedom to provide inland waterway transport services between the Member States and in transit through them.

(d) What means of action are available to the Community?

The proposed action can only be achieved by means of a Council Regulation similar to Council Regulation (EEC) No 3921/91 which lays down the conditions under which non-resident carriers may transport goods or passengers by inland waterway within a Member State ("cabotage").

II. SPECIAL CONSIDERATIONS

4. The Commission recommends that Community transport operators continue to benefit from freedom to provide services for the transport of goods or passengers by inland waterway between the Member States and in transit through them. There does not seem to be any need to modify the present *de facto* situation for these transport links as it is already in keeping with the objectives followed for the completion of the internal market.

PROPOSAL FOR A COUNCIL REGULATION

on common rules applicable to the transport of goods or passengers by inland waterway between Member States with a view to establishing freedom to provide such transport services

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Commission proposal,¹

In cooperation with the European Parliament,²

Having regard to the opinion of the Economic and Social Committee,³

Whereas the establishment of a common transport policy involves, *inter alia*, laying down common rules applicable to access to the market in the international transport of goods and passengers by inland waterway within the territory of the Community; whereas those rules must be laid down in such a way as to contribute to the completion of the internal transport market;

Whereas these uniform arrangements for market access also involve introducing the freedom to provide services by eliminating all restrictions imposed on the provider of services because of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided;

1

2

3

Whereas, following the accession of new Member States, different arrangements exist between Member States for international transport and transit by inland waterway because of bilateral agreements concluded between Member States and a new acceding State; whereas it is therefore necessary to lay down common rules to ensure the proper functioning of the internal transport market and more particularly to avoid distortions of competition and disturbances of the organization of the market concerned;

Whereas this action is within the Community's exclusive field of competence and that the objective can only be attained by the establishment of uniform rules and obligations;

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation applies to the transport of goods or passengers by inland waterway for journeys between Member States and in transit through them.

Article 2

Any operator transporting goods or passengers by inland waterway shall be allowed to carry out the transport operations referred to in Article 1 above without discrimination on grounds of his nationality or place of establishment, provided that:

- he is established in a Member State in accordance with the laws of that Member State,
- he is entitled in that Member State to carry out the international transport of goods or passengers by inland waterway, and
- he uses for such transport operations vessels which are registered in a Member State or, in the absence of registration, are covered by a certificate of membership of a fleet of a Member State.

Article 3

This Regulation shall not affect the rights for operators from third countries existing under the Revised Convention for the Navigation of the Rhine (Convention of Mannheim), the Convention on Navigation on the Danube (Belgrade Convention) or the rights arising from the European Community's international obligations, in particular those arising from association or partnership and cooperation agreements concluded with associated or third countries in Central and Eastern Europe.

Article 4

This Regulation shall enter into force on the twentieth day following the date of its publication in the Official Journal of the European Communities.

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

Done at Brussels,

For the Council
The President

X

ISSN 0254-1475

COM(95) 167 final

DOCUMENTS

EN

07 10

Catalogue number : CB-CO-95-188-EN-C

ISBN 92-77-88390-1

Office for Official Publications of the European Communities
L-2985 Luxembourg