European Communities

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EUROPEAN PARLIAMENT

Working Documents

1977 - 1978

23 March 1977 DOCUMENT 5/77

INTERIM REPORT

drawn up on behalf of the Committee on Regional Policy, Regional Planning and Transport

on sea transport problems in the Community

Rapporteur: Mr H. SEEFELD

PE 47.110/fin.

1.2.1

English Edition

By letter of 27 June 1975 the President of the European Parliament authorized the Committee on Regional Policy, Regional Planning and Transport to submit a report on sea transport questions in the Community. The Committee on Economic and Monetary Affairs was asked for its opinion. The Committee on Regional Policy, Regional Planning and Transport appointed Mr Seefeld rapporteur on 30 September 1975.

It discussed the draft report at its meetings of 30 September 1975 and 25 January 1977.

At its meeting of 23 February 1977 it adopted the motion for a resolution unanimously.

The Report by Mr Prescott on behalf of the Committee on Economic and Monetary Affairs on sea transport problems in the Community was treated as the opinion of that committee (Doc. 479/76).

Present: Mr Evans, chairman; Mr Meintz, vice-chairman; Mr Seefeld, rapporteur; Mr Albers, Mr Brugger, Mr De Clercq, Mr Fletcher, Mr Hoffmann, Mr Noé, Mr Schwabe (deputizing for Mr Ajello), Mr Schyns and Mr Starke.

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The Committee on Regional Policy and Transport hereby submits to the European Parliament the following motion for a resolution together with explanatory statement :

MOTION FOR A RESOLUTION

on sea transport problems in the Community

The European Parliament,

- having regard to the report of the Committee on Regional Policy, Regional Planning and Transport (Doc. 5/77), and the report of the Committee on Economic and Monetary Affairs (Doc.479/76) [1];
- having regard to the proposals and communications from the Commission to the Council (COM (74) 1112 final of 15 July 1974, Doc. COM (75) 112 final of 14 March 1975, Doc. COM (75) 302 final of 17 June 1975, Doc. COM (76) 224 final of 26 May 1976 and Doc. COM (76) 341 final of 30 June 1976);
- having regard to the memorandum from the French Government on the development of a Community project in the field of maritime transport of 4 December 1975;
- having regard to the Council's decisions of 4 November 1976 on sea transport questions;
- having regard to the fact that with the enlargement of the Community a coherent transport policy cannot be achieved without taking aspects of sea transport into account;
- in view of the great importance of sea transport for the Community's trade and in particular its relations with third countries;

1. Expresses its growing concern at the lack of Community rules on sea transport and of a common approach to questions of international maritime policy;
2. Welcomes the fact that the Council has decided on the immediate introduction of a consultation procedure in the sea transport sector;
3. Welcomes the fact that the Commission has at least been given a mandate to conduct investigations in one important area;
4. Calls, however, for the Commission to be given a comprehensive mandate - without prejudice to the powers conferred upon it by the general rules of the Treaty - so that it may establish the basis for a coherent common sea transport policy and on this basis propose the priorities for a Community project in the most urgent cases;

OJ N. C 57, 7.3.1977 p. 57

5. Calls on the Commission to submit proposals in the following areas and in accordance with the following principles:

I. The role of the sea transport policy in the Community's external trade:

(a) The Member States of the Community should be jointly represented as soon as and to the widest extent possible in international organizations and at international conferences concerned with sea transport questions;

(b) Shipping clauses in trade and shipping agreements concluded by the Community with third countries must be aligned within the framework of transport policy;

(c) The Community must evolve and adopt, particularly in UNCTAD, a common position as regards countries wanting to build up their own merchant fleets;

(d) Similarly, a common position towards the state-trading countries should be established;

(e) The Community must develop a common programme of action against flag discrimination in collaboration with those international organizations which, like the OECD, are already tackling these problems.

(f) It would appear that joint action is urgently necessary in order to bring the problem of 'flags of convenience' nearer to solution, priority being given to clarification of the term 'flags of convenience'. The methods applied should include tax harmonization, upward harmonization of social regulations and harmonization of safety and insurance regulations. The Community should support the activities of the OECD in this area;

(g) The Member States should jointly decide to accede to the code of conduct for line conferences, but not apply the rules it contains on the sharing of the tonnage to be transported, and at the first possible conference on the review of rules make a joint effort to achieve an improvement of this code, a condition being that by that time a basic agreement on sea transport policy in the Community has been established;

(h) If necessary, shipping questions should be included in all kinds of negotiations with third countries;

(i) Only when all possibilities for negotiation have been exhausted without the desired results being achieved should the Community resort to measures to counter discriminatory practices and other obstacles to shipping.

II. The role of sea transport within the Community:

(a) The reservation on cabotage in the coastal shipping of the Member States and in shipping between the latter and their overseas territories should be abolished where other Community

countries are concerned. Measures should be introduced to harmonize factors having the greatest cost implications, which at present distort competition;

(b) The measures, particularly in the form of the harmonization of legislation and cost factors, must help to ensure that in competition between the shipping companies in the Member States and in competition between coastal shipping and land and air transport, the means of transport which is most favourable on the basis of overall economic criteria is chosen in each instance;

(c) The Commission should establish how far the operation of the Common Market requires certain tariff rules covering non-discrimination;

(d) The common sea transport policy should make due allowance for port hinterland traffic and its geo-economic implications.

III. The importance of a sea transport policy for ports and shipbuilding:

(a) The common sea transport policy must take account of the policy on ports for which the European Parliament has also called;

(b) The common sea transport policy must help to solve the problem raised by the increasingly heavy demands which progress in transport techniques (giant tankers, container shipping) places on port investments. In this connection the Community should make a contribution to technical progress (nuclear propulsion, landing platforms etc.);

(c) A common policy on shipbuilding and shipbuilding subsidies must form part of the common industrial policy, but must be coordinated with the common sea transport policy.

IV. The harmonization of Member States' sea transport legislation:

(a) There should be upward harmonization of the working conditions of seamen and other employees in the sea transport sector. Special account should be taken of the regulations on crew strengths, training, mutual recognition of qualifications, freedom of movement, overtime, leave, provision for old age, and insurance cover. There must, however, be no restriction on the freedom of action of the social partners in fixing rates of pay;

(b) Member States' tax regulations covering sea transport operations, including concessions in respect of depreciation, must be harmonized; the same applies to indirect and direct subsidies. In this, account must be taken of the position as regards competition with ships sailing under the flags of third countries;

(c) The Commission should consider which provisions of the Member States' commercial law must be harmonized;

(d) Of the technical regulations the following must in particular be harmonized: safety regulations and regulations on construction, fitting-out, capacity gauging and registration in cases where general standards do not already exist under international conventions. It must be ensured that existing conventions are interpreted in the same way by all;

(e) The Community should support, by joint action, international efforts to prevent pollution of the seas;

(f) Appropriate standard control measures must be taken to ensure uniform implementation of all harmonization measures;

(g) The Commission, assisted by its Statistical Office, should encourage the further harmonization of sea transport statistics.

6. Requests that, in working out the Community's sea transport policy and the harmonization of the legislation of the Member States, account should be taken as far as possible of international agreements concluded within the framework of existing organizations and of the situation that can arise in worldwide competition;

7. Instructs its Committee on External Economic Relations to take special account of sea transport questions in its report on commercial agreements between the Community and third countries and if necessary, to obtain an opinion from the Committee on Regional Policy, Regional Planning and Transport;

8. Calls on the Commission to submit as soon as possible the proposals for a common sea transport policy announced in its communication to the Council of 24 October 1973 on the development of the Common Transport Policy (Doc. 226/73);

9. Requests the Commission to submit proposals for a common position on the planned continuation of the Conference on the Law of the Sea, since this concerns important aspects of the sea transport policy;

10. Instructs its President to forward this resolution and the report of its committee to the Council and Commission of the European Communities.

B

EXPLANATORY STATEMENT

Introduction

1. The Treaty establishing the European Economic Community excludes sea and air transport from the common transport policy. Article 84(1) states: 'The provisions of this Title' (i.e. Title IV, 'Transport', of Part Two, 'Foundations of the Community') 'shall apply to transport by rail, road and inland waterway.'

Article 84(2), however, adds: 'The Council may, acting unanimously, decided whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.'

2. The European Parliament has in various reports expressed the view that under Article 84(2) sea transport is not governed by the Title on Transport but is subject to the general provisions of the Treaty. This interpretation, namely that the general rules of the Treaty also apply to sea transport even if the Council has not adopted any measures under Article 84(2), was upheld by the Court of Justice in its judgment of 4 April 1974 in Case 167/73 (Commission of the European Communities v. the French Republic). In partial anticipation of its recognition of this legal situation, the Council of Ministers had had to make it clear in Regulation No. 141 of 26.11.1962 (OJ No. 124 of 28.11.1962) that sea transport was excluded from the application of Council Regulation No. 17 implementing the competition rules contained in Articles 85ff. of the Treaty.

3. There is no point in asking why the authors of the Treaty left sea transport out of the Common transport policy during the negotiations at Val Duchesse in 1957, i.e. twenty years ago. It may be that they simply could not agree on rules for sea transport or that they intended to draw up special rules for sea transport but did not have the time before the Treaty was pronounced ready for signature by the Heads of Government, or they had specific reasons for excluding sea transport which are unknown to us. In any case the situation is now completely different, and the urgent appeal of the Committee on Regional Policy, Regional Planning and Transport for the Commission to be given a mandate to draft proposals for a common sea transport policy is based on an appraisal of the present situation and future developments in this field.

4. There have been many changes since 1957: the Community has been enlarged by countries that are particularly important in world shipping. The Community has established the beginnings of a common external economic policy, but this cannot work if it overlooks one of the most important instruments of Europe's external trade, namely sea transport. Sooner than it would like,

the Community is being forced by world economic developments and by its overseas partners to speak with one voice and to adopt a common position. In all major questions of world economic policy sea transport has again and again played an important role for the Community. Whether it is a question of establishing normal commercial relations, of granting development or food aid or of facing crises such as have occurred in the energy supply and international monetary sectors, sea transport always plays a significant part and is always affected to a considerable degree.

The importance of sea transport for movement within the Community has also changed: while the frontiers between the Member States of the Community of the Six were mainly land frontiers and the share of sea transport in intra-Community transport was probably (precise figures are not available) below 5%, 'sea frontiers' are now far more important, there being no land connection between two Member States and the rest of the Community. The Commission estimates the proportion of sea transport in the internal trade of the Nine at 25%.

5. Your committee therefore feels that the time has now come for the Council to give the Commission a mandate in partial application of Article 84(2) of the EEC Treaty to draw up proposals for initial steps towards a common sea transport policy. The list of problems given in this report should be impressive enough to justify this demand. The mandate to work out a coherent sea transport policy should, of course, not curtail the Commission's scope for putting forward individual proposals, for example on the basis of Articles 113 and 116.

6. It has also been proposed that initially Article 152 rather than Article 84(2) should be applied to sea transport. Article 152 reads:

'The Council may request the Commission to undertake any studies which the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.'

It should, however, be noted that any decision taken by the Council pursuant to Article 152 would, insofar as it concerned sea transport, be a decision taken pursuant to Article 84(2), namely a decision on the procedure for laying down appropriate provisions for sea transport. The only difference is that under Article 84(2) the Council must act unanimously, whereas under Article 152 a mandate could be given by a majority of its members.

7. In this introduction your committee wishes to state its strong and unequivocal opposition to a number of arguments frequently advanced by those who are against the inclusion of sea transport in the European Community's terms of reference.

8. Sea transport, it is argued, should not be included in the Common Transport Policy because it is governed by 'special conditions' and cannot be made subject to the same rules as other means of transport.

Needless to say, this report does not call for the same conditions. The principles governing land transport quite clearly cannot be applied to sea transport as they stand. No one is suggesting that locomotives should be used to pull sea-going vessels. What is needed is a dynamic concept for a common sea transport policy which allows for world-wide contingencies and developments and the specific conditions governing sea transport. But it is equally clear that certain basic principles of the common economic policy of the European Community must also be applied to sea transport. The generally free-market basic structure of the Community, the principle of non-discrimination and a number of other fundamental principles must surely also be applied to sea transport. There can be no progress in the discussion on this subject if some demand that different and others that the same principles be applied as to the other means of transport without saying what these principles are: basic principles such as market economy, competition, equal treatment, and non-discrimination or 'second-line principles' like those laid down in Articles 74 to 82 of the EEC Treaty.

9. Another frequently heard argument is that since sea transport is subject to world-wide ramifications and world-wide rules, it should not be forced into the 'narrow confines' of Community regulations, which would only represent a step backwards compared with world-wide arrangements.

There is no logic to this argument, popular though it may be. What European industry is <u>not</u> subject to world-wide ramifications? Is it not simply true to say of the European economy, with its dependence on imports of raw materials and its vital need to export, that everything we do has world-wide ramifications? Even the cereals which grow in our fields are subject to world-wide rules, which in some respects go further than world arrangements for sea transport.

The reason why the 'world-wide ramifications' argument has found so many adherents in transport policy is perhaps that at least one major mode of transport - rail transport - does not have such ramifications. However, the railways, with their regional monopolies, are the major exception among all other sectors of the economy. The ramifications of the other modes of transport (road transport, inland waterways, pipelines) are also continental rather than world-wide; however, it is only in relation to these and not to industry and agriculture that the world-wide ramifications of sea transport are unusual.

In addition, it is perfectly clear that any Community policy (whether on

cereals or sea transport) must take account of existing international agreements and either conform to them or, if they are seen to be inadequate, attempt to supplement or correct them.

The world-wide ramifications of sea transport cannot be used as an argument against the application of Article 84(2). The Community is no longer a free trade area which is not developing a common external economic policy. In view of the world-wide ramifications of the Community's economy as a whole it is essential for sea transport to be included in the Community's external economic policy.

10. A further argument, usually muted, is that sea transport policy is better left in the hands of the maritime nations and city-ports, of economic circles close to shipping and possessing the necessary expertise, than in the hands of bureaucrats in Brussels. This argument has, however, grown weaker of late since it has become clear that faced with the strong pressure of flag discrimination and 'flags of convenience' the argument of 'unity is strength' carries greater weight than the quiet satisfaction of the lone furrow. A certain measure of bureaucracy will always be unavoidable if there is to be cooperation; the negligible cost of a bureaucracy of this kind may, however, be well worthwhile if it results in a common approach by the Member States.

11. The final argument, likewise seldom expressed in as many words, is the 'national' one: for reasons of tradition people (even those who live far inland) associate sea transport with the national flag, perhaps because mottoes such as 'world prestige' and 'trade follows the flag' were once paraded as an incentive to sacrifice for sea transport (tax concessions etc.). The same argument is now used to prevent the incorporation of sea transport in the Community's external economic policy. Such arguments are rightly no longer advanced publicly since they, too, lack all logic: if true, they would mean that sea transport serves the national interest more than other branches of the economy, but cannot serve the interests of the Community. In this report the attempt is made to advocate a more sensible attitude.

12. As regards defence policy considerations, which are likewise put forward as a reason for not including sea transport in the Community's terms of reference, suffice it to say that they can easily be catered for in the common sea transport policy.

13. As has happened so often in the history of the Community it is pressure from outside which is forcing Europe to act. Your committee has the impression that the proposal for action in this field at this precise point in time is not unrealistic because the opposing forces are being thrust into the background by the grave threat to sea transport in the Community posed by inter-

national monetary chaos, flag discrimination and the spreading damage done by 'cheap flags'. The state-trading countries and many developing countries are forcing their way onto the world shipping market and endangering the Member States' shipping industries.

14. The circles directly concerned have anticipated Community action by setting up an instrument of cooperation at the level of the Nine in the form of a Committee of the Associations of Shipowners in the European Communities (CAACE), with its head office in Brussels, while the seamen's trade unions have long been cooperating at the level of the Six and Nine through the European offices of the Transport Workers' Unions, the Internationalen Transportarbeiterföderation (ITF) and the Weltverbandes der Arbeit (WVA) in Brussels.

Decision-making on sea transport policy at European Community level has become an unavoidable issue. The Community as such will be jointly responsible in the question of whether the 'mare liberum' principle will continue to apply in future or whether a more orderly sea transport market will be achieved.

15. To conclude the introduction to this report, your committee would like to refer to one other important point. Many of the opinions that have recently been expressed on the question of a European sea transport policy, particularly by the shipping companies concerned, call on the Community to look into this or that aspect of international sea transport as a matter of urgency. One opinion stresses the problem of flag discrimination, another the problem of re-registration, another monetary difficulties and yet another tax questions: everyone would like to see a solution to the problem closest to his heart. In other words, it is proposed that we should have what is known in Euro-slang as an 'à la carte' European policy.

The need for a common sea transport policy is, however, rejected.

Everyone would like to see the Community tackling the problems from whose solution he expects to derive advantage; at the same time he would like to keep some distance between Brussels and questions whose solution he believes may expose him to some disadvantage. If, however, the European Parliament is to deliver an opinion on the European sea transport policy, it is evident that it cannot base itself on such individual views. It must take account of them, but it cannot accept them as a guideline for its opinion. The European Parliament has to decide whether generally speaking advantages or disadvantages are likely, and if it concludes that Europe needs a common sea transport policy to safeguard its interests, it must urge that a coherent all-embracing plan be developed, since ultimately all the individual measures must be welded together.

Those responsible for European policy cannot content themselves with an ad hoc procedure: a common policy towards third countries, for example, cannot work unless a minimum of unity within the Community has been established. Unfortunately it would seem that the Commission, which has hitherto pursued a policy of small steps towards land transport, intends to apply to sea transport the same policy even though it has proved ineffective. Its communication to the Council of 30 June 1976 after all refers merely to the 'Community's relations with non-member countries in shipping matters'.

In taking this decision, it is undoubtedly supported by various forces in the Community. However, in its memorandum of 8 December 1975 the French Government proposed

> 'harmonization of intra-Community sea transport from the point of view of intra-Community trade'

in addition to the protection of the states' economic interests against discrimination and the promotion of safety in transport.

Unlike the Commission, other interested parties feel that an external policy should take second place, i.e., it should not be introduced until the internal harmonization process has been completed. Not only do they consider this the logical way to proceed; they also feel that an external policy will be impossible unless it is based on internal harmonization.

Your committee, however, fully supports the concluding remark of the French Government's memorandum of 8 December 1975, which includes the following statement:

'It (the French Government) feels that a common policy on sea transport cannot be achieved through scattered efforts, which might weaken the competitiveness of Member States' merchant fleets in the world. It considers it essential that a coherent whole be shaped starting from a clear-cut definition of the content of this common policy'.

16. To pacify those who fear that the Community might be trying to do too much at one time, it can be added that quite clearly not all the problems can be solved at once, but before practical proposals on present problems are made, it is essential to know what is the general objective.

The following should <u>not</u> therefore be taken to mean that your committee is proposing that all the problems mentioned should be solved immediately. This report merely attempts to draw up a comprehensive list and to prepare the way for the development of a common basic position on sea transport policy questions. It will be for the Commission firstly to give this common basic position more concrete form and then to put forward proposals in respect of the most urgent individual problems.

I. The role of sea transport in the Community's external trade

17. A common policy in those areas of the sea transport policy which affect the Community's external trade, namely shipping clauses in trade agreements, development policy, flag discrimination and re-registration of vessels is an urgent need, far more important at present than a sea transport policy governing intra-Community transport.

Sea transport has not hitherto played its rightful part in the Community's external economic policy.

18. The role of sea transport in the external economic policy must therefore be dealt with separately, as in the present report, which first discusses it before going into questions of intra-Community transport, thereby reflecting the special importance your committee wishes to give the matter. It must not, however, be forgotten that in the long term joint external action is not possible without a common internal policy as a basis.

(a) International organizations

19. As in other areas of the external economic policy, the Member States of the Community should adopt as soon and as far as possible, a common position on questions of sea transport policy.

20. The most important negotiations on questions of world sea transport are at present being held within the framework of the United Nations. Shipping questions have proved to be of great significance for development policy, which is why UNCTAD, the United Nations Conference on Trade and Development, has devoted more attention to sea transport questions than might have been expected. (For information on the United Nations agreement of April 1974 on the introduction of a code of conduct for sea transport problems see below Section I (g), paragraphs 58-67. Sea transport policy problems (territorial waters, prevention of pollution of the sea, rights of passage through straits, etc.) were also broached at the United Nations Conferences on the Law of the Sea which took place in Caracas, Vienna and New York and is to be continued in New York in May 1977.

21. IMCO, the Inter-Governmental Maritime Consultative Organization, with its head office in London, has some 80 member states and holds general consultative assemblies every two years and in addition numerous special meetings to discuss various legal and technical questions related to sea transport.

22. The International Labour Organization (ILO) and its International Labour Office in Geneva have achieved progress in various social matters for sea-going personnel.

By 1 April 1976 a total of 29 conventions on sea transport questions had been concluded within the framework of ILO. However, only two of these conventions have so far been ratified by all the Member States of the Community. Five of the conventions have not been ratified by any of the Member States, while the other 22 have been ratified by various combinations of the Member States. Here again the Community might assume a coordinating function.

The 62nd International Labour Conference in 1976 again dealt with sea transport questions and in particular paid leave for seamen, the protection of young seamen, the continuity of the employment of seamen and the conditions of employment on non-standard vessels, especially those registered under flags of convenience.[1] The signing of an agreement on the supervision of working conditions on sea-going ships on 29 October 1976 represented a decisive breakthrough.

23. Where special questions are concerned, e.g. dangerous goods, considerable importance attaches to ICHCA, the International Cargo-Handling Coordination Association (London).

24. GATT, too, contains transport provisions, and during the GATT negotiations sea transport questions are repeatedly broached although the Member States have not yet agreed on a common position on transport policy. The only step forward so far taken has been the inclusion of flag discrimination in GATT's list of 'non-tariff barriers'.

25. At European level the United Nations' Economic Commission for Europe (ECE) in Geneva deals with major shipping issues such as the simplification of customs clearance and other formalities in respect of sea-going vessels.

26. Annual reports on sea transport questions are published by OECD in Paris, which has been devoting attention - without any striking success - to flag discrimination and other shipping and shipbuilding questions (sharing the work with the Conférence Européenne des Ministres des Transports (CEMT), which itself is not active in the field of shipping).

27. The above list of bodies and organizations in itself reveals that there is very little coordination of maritime policy at world level. Cooperation between the Community countries, which at present account for about one-quarter of world transport, might not only be of great benefit to them but also help to improve the situation in the world as a whole.

28. Your committee at any rate feels that the Community should henceforth adopt a common position and speak with one voice in all these organizations.

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[1] 62nd International Labour Conference (sea transport) 1976, Report of the Director-General and Reports II - V. International Labour Office, Geneva 1976

(b) Trade agreements

29. As sea transport is the most important technical instrument in external trade, all the classic trade agreements from the earliest days have contained shipping clauses. In most cases they are even known as 'trade and shipping agreements'.

30. At present such agreements are in some cases negotiated jointly on the basis of Article 113 of the EEC Treaty,[1] while in other cases existing agreements are tacitly extended.[2] The Commission is given a mandate covering shipping clauses by the Council every time it negotiates a new agreement, which is tantamount to partial application of Article 84(2). Although the Community's and Member States' transport authorities are involved, their negotiating position is rather weak since they do not have the backing of a common sea transport policy concept.

31. Your committee calls for greater account to be taken of the Community's shipping interests during negotiations on trade agreements. Article 113 is not adequate in this respect.

32. The results so far achieved by the Community with trade agreements are correspondingly weak. Argentine merely agreed on 8 November 1973 to a unilateral declaration of intent on sea transport, which came to nothing. Under the trade agreement concluded with Uruguay on 2 April 1973 letters have been exchanged on sea transport. The contents of the letters of the two parties do not, however, agree in important respects. An exchange of letters dated 19 December 1973 between the EEC and Brazil with the same wording was weakened by a Brazilian memorandum which goes no further than describing the status quo. The negotiations with Mexico and Sri Lanka followed a similar course.

33. The European shipowners' organization CAACE[3] makes the following complaint in its annual report for 1973:

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[1] Council decision of 16 December 1969 on the progressive standardization of agreements concerning commercial relations between Member States and third countries and on the negotiation of Community agreements (OJ No. L 326, 29 December 1969).

[2] The last decision authorizing the tacit extension or continued operation of certain Treaties of Friendship, Trade and Navigation Treaties and similar Agreements concluded by the Member States with third countries is dated 6 December 1973 (OJ No. L 30 of 4.2.1974)

[3] CAACE - Comité des Associations des Armateurs des Communautés Européennes: 'Annual Report 1973', page 7.

'Repeated attempts were made during the year to have non-discrimination clauses included in the trade agreements being negotiated by the Commission with Uruguay, Brazil and India. Internal differences of opinion on the legal interpretation and implications of Article 84(2) of the Treaty of Rome prevented, however, any mention of shipping in the final text of the agreements'.

While even in the normal course of events it must be feared that the goods to be shipped will almost always be regarded as more important than the interests of those shipping them, the Community transport policy makers have hitherto been thwarted by Article 84(2) and disputes within the Council of Ministers even before the negotiations have begun.

34. Even in relations with the USA it has not as yet been possible to achieve normal conditions for sea transport. The so-called DISC tax provisions contain a discriminating element, which is a cause of complaint among European shipowners, and the same applies to the Oil Import Preference Bills and the methods of applying the US provisions on coastal shipping to the transport of containers between US ports by European vessels.

In addition, a bill has been introduced in the USA aimed at securing a certain share of oil imports for American merchant ships.

35. Where the agreements on food and development aid are concerned, the situation is somewhat better since the Community incorporates in these agreements clauses on non-discrimination in transport. It has been proposed that similar clauses should be included in contracts on the sale of agricultural products to third countries. Your committee would be opposed to any development that might result in the Community itself introducing discriminatory protective practices, but welcomes any attempt to use the Community's negotiating power to maintain free competition in sea transport.

(c) State-trading countries

36. The Community has so far completely ignored the state trading countries, which in default of a clear-cut Community position on maritime policy, are able to insist that all their export transactions are effected on a cif basis and all their import transactions on an fob basis, which leaves sea transport completely in their hands and simply eliminates European shipowners from this trade.

37. Even more important for the shipping industries of the Community countries is the threat represented by the wide-spread practice adopted by the state-trading countries of undercutting conference tariffs in transport operations direct to the Member States and especially in cross trade. Western shipping companies are firmly convinced that undercutting to an extremely low level in this way corresponds to dumping and have repeatedly pointed out that by Western

standards the Eastern Bloc fleets are operating uneconomically.

38. Above all, it must be realized that the state-trading countries' conduct in this area can only be described as 'double-dealing': on the one hand, they vote with the developing countries in UNCTAD when it is a question, e.g. in connection with the code of conduct for line conferences, of thwarting the interests of the traditional maritime nations; on the other hand, since they have not joined the conferences[1], they adopt the position of the outsider and undercut both the industrialized and the developing countries' shipping companies with rates well below the conference tariffs.

39. In the circles directly concerned the view has been advanced that co-ordinated action against the state-trading countries by the governments on the broadest possible basis is preferable to Community action. It is feared that the governments of the worst affected countries would no longer consider themselves responsible if the Commission took action in this area on the basis of a specific mandate. It is also feared that the Commission would underestimate the effects of Eastern Bloc competition as a consequence of its weighing up the varying extent of Eastern Bloc activity in the Member States and taking account of general commercial considerations. These fears appear, however, to be based on a mistaken assessment of Community machinery. The Community as such has very considerable commercial negotiating power, which it could use to the benefit of the Member States' shipping industries. This power is far greater than anything that the Member States might achieve through coordination. But the Community can only use this power if the Commission is given a general mandate to establish a sea transport policy. If the Community does <u>not</u> develop a coherent sea transport policy, the goods to be shipped, as has been stressed elsewhere and in a different context in this report, will always be regarded as more important than the interests of those shipping them, and the latter's interests may even be ignored altogether.

40. The shipping companies of the Member States and their associations have of late asked their governments for help with increasing frequency and requested protection for the Western European shipping industry against non-commercial competition from the Eastern European countries. For example, countermeasures in the form of equalizing taxes and the like have been recommended. Such measures are obviously only likely to be successful if they are applied by the Western European countries in a uniform manner.

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[1] Recently Soviet shipping lines appear to have opened preliminary talks on accession to various conferences.

41. Your committee is unable at present to make any proposals as to the type of measures that should be taken; this is the Commission's task. But it does support the call from the shipping companies' associations for effective protection against the non-commercial practices of the state-trading countries and hopes that the Community will raise shipping questions in any negotiations between the EEC and Comecon.

(d) New maritime nations

42. The traditional maritime nations, among them a number of the Member States of the Community, are faced with the difficult task of adopting a new and reasonable attitude towards the efforts of some countries, which hitherto have not been involved to any large extent in sea transport, to build up their own fleets.

43. The first, and understandable, reaction was to try and make it clear to these countries that the traditional maritime nations were able to provide sea transport at far lower costs, that new fleets of this kind would simply create excess capacity on the world market, that in terms of costs the developing nations would not be competitive, that subsidies would have to be paid out of their budgets, etc. The question was also whether there was any point in granting development aid if it was used to build up fleets which would compete with those of the countries granting the aid; the latter would thus be asked to make a two-fold sacrifice, and the final result would be not an improvement but an increase in the cost of sea transport throughout the world.

44. The developing countries, however, argue that there is no point in European industrialized nations helping the developing countries to build up their economies if afterwards they are not to be allowed to compete or only allowed to compete in fields in which the industrialized nations are not active, i.e. apparently the production of tropical raw materials. The developing countries at present supply 60% of the world's commodities, while their share in the transport of these goods is well below 10%.

45. It is obviously in the interests of the Community to advocate the retention of as much freedom as possible in world shipping. It is just as certain, however, that the countries previously involved to a lesser extent in sea transport cannot be denied access to world sea transport by references to principles of non-discrimination. Some aspects of this question are being discussed in UNCTAD, and Section I (g) of this report goes into greater detail on the Code of Conduct for Line Conferences which was signed in April 1974.

46. Your committee does not want to prejudge detailed examinations and the Commission's proposals, but it should be pointed out that the Community must seek as a matter of urgency a joint position which takes account of the interests of all concerned by neither turning development policy into a farce nor sacrificing the interests of the European sea transport industry on the

altar of development aid.

47. A further question of which account must be taken when this problem is being discussed is whether the developing countries should not use the few resources they have for investment to improve their port facilities, since they would thus make a greater contribution to the rationalization of world trade than if they gained a foothold in sea transport for reasons of prestige and without regard for the possible earnings from this sector.

(e) Flag discrimination

48. Even if the problem of the new maritime nations is solved, the Members States' shipping industries will still be constantly confronted with the pressure of a growing wave of measures that constitute discrimination against European flags in competition for sea transport business.

49. It is becoming increasingly evident that the Member States individually have no defence against this mounting pressure. There can be no hope of a turnaround in the world trend unless the Community adopts a common position. Consequently, the Commission should concentrate on proposals relating to this problem. It could help to standardize Member States' legislation on the prevention of flag protectionism and ensure coordinated enforcement of such legislation. It should work in collaboration with those international organizations which, like the OECD, are tackling the same problem and strengthen their decision-making capacity by participating in the work of their committees.

50. However, Community instruments must also be created. On the one hand, all trade agreements concluded by the Community should contain non-discrimination clauses for sea transport; on the other hand, consideration could be given to whether common retaliatory provisions - based on Article 84(2) - could be drawn up and enforced by the Community. These could be modelled on the Community's anti-dumping measures. Although there would be no necessity to apply all the retaliatory measures in every instance, the mere existence of such Community instruments would deter the Community's partners from issuing discriminatory regulations. It has been suggested that the Community instruments might, for example, require authorization for the loading and unloading of vessels from flag-discriminating countries, etc. Such measures might obviously make world trade extremely bureaucratic; they could also provoke countermeasures and should therefore be considered only as a last means of defence.

51. Whatever methods the Community may apply, it is evident that common action is urgently needed to keep world shipping relatively free.

(f) Flags of convenience

52. While the problem of flag discrimination is making life difficult for the shipping companies of the Community countries by simply excluding them

from certain branches of trade, flags of convenience represent a double obstacle to the healthy development of shipping in the Community:

- on the one hand, shipping companies sailing under flags of convenience can offer lower prices than others because their costs are lower for many different reasons;
- on the other hand, flags of convenience represent a constant temptation to the shipping capital of the Member States to likewise seek the (doubtful) benefit of cost advantages by re-registering their vessels.

53. The costs advantages of flags of convenience stem from lower taxes and lax crewing requirements, safety and other technical regulations. Although extremely modern giant tankers sail under the flags of convenience of Liberia, Panama, Singapore, Cyprus, Somalia and other countries, their fleets also include real cockle-shells which will now only produce a profit if they go down and their owners can collect the insurance money. Although some of these countries have legislation, its enforcement is not taken seriously. The Community could take action against this situation, firstly by harmonizing the regulations of the Community countries (taking account of existing agreements at world level) and then applying a common procedure for the control of ships calling at Community ports. Sub-standard vessels might be blacklisted and banned from entering Community ports or charged certain fees.

54. A solution to the problem of re-registration is much harder to find. Although the measures discussed in paragraph 53 above could be expected to make re-registration less attractive than today, this is an extremely remote hope and what is more, it does not touch on the problem of tax, which is still one of the most important reasons for re-registration, even if other factors (labour costs) have recently gained in importance.

55. The Community instrument in this case might consist in common tax concessions for sea transport. Greece has used this method with considerable success since 1972 as part of a campaign to win ships back to the Greek flag. A common approach by the Community Member States or activity by the Community as such could, however, substantially increase the range of possible methods since the scope for enforcement would be greater.

56. However, the basis for any solution should, of course, be that the Community and the Member States use all their negotiating power to convince the various governments that the vessels sailing under their flags must meet the minimum standard requirements as laid down in the international agreements. The control and enforcement procedures stipulated in these agreements and forming part of the machinery of the organizations that have created the agreements (e.g. ILO and IMCO), must be fully exploited. Only if the application of existing agreements is jointly enforced can an effective contribution be made to the solution of the problem.

57. Your committee regards the fight against 'cheap flags' as a Community task which must be tackled without delay.

(g) Code of Conduct for Line Conferences

58. The most important regulating instrument created by the shipping companies to govern world line transport is the sea transport conference. Such conferences lay down for their members, in respect of certain transport regions and lines, binding provisions on freight rates, conditions of carriage and other details of sea transport. Since these conferences cannot be completely controlled by any single state, they are in a position to exercise considerable power.

In its work on the importance of sea transport in external trade, particularly the external trade of the developing countries, UNCTAD very soon realized that the key to the solution of a number of important shipping questions lay with these conferences rather than with individual states.

At a Conference called by UNCTAD, therefore, a 'code of conduct' was worked out for line conferences. This took the form of a convention with an annex and three attached resolutions and was signed on 6 April 1974 in Geneva. The convention was available for signature at the United Nations headquarters until 30 June 1975 but accession will still be possible even after that date. It will come into force when at least 24 states with a minimum of 25% of the world trade tonnage become contracting parties. By January 1977 only 17 countries representing some 3% of world fleets had ratified the convention.

The most important points of this 'code of conduct' are as follows:

- The shipping companies of a country which is served by a conference have an inalienable right to membership in that conference.
- Of the transport operations between two countries the shipping companies of those two countries are to have shares of about 40% each, third countries receiving the remaining 20%.
- Provision is made for negotiations and conciliation proceedings between shipping companies and shippers, in which government representatives are to participate.
- The fixing of freight rates is to be based on certain criteria. Set periods are to be observed in the case of increases in freight rates and the introduction of surcharges and currency conversion compensation factors.
- An international mandatory conciliation procedure will help enforce the provisions of the code in the event of disputes.

59. The European Community was unfortunately not united on this issue, which is so important for its economic future. All possible shades of opinion were reflected by the Nine Member States in the vote in April 1974:

The following voted for the code:

- Belgium
- Germany
- France.

The following voted against the code:

- Denmark
- The United Kingdom.

The following abstained.

- Italy
- The Netherlands.

The following did not attend:

- Ireland,
- Luxembourg.

The Commission of the European Communities attended as an observer without exercising any influence over the conference.

It is extremely regrettable that the Member States of the Community were not able to adopt a joint position in due time, especially since if they had done so it might have been possible to influence the negotiations so that the end result would have been acceptable to all Member States.

60. The lack of agreement among the governments is reflected by the present lack of agreement within the Committee of Shipowners' Associations in the European Communities (CAACE) on the code of conduct. CAACE is consequently unable for the moment to give an opinion on the code. This makes it all the more imperative for the Community institutions to study the basic problems carefully and attempt to develop a common line.

61. The Commission of the European Communities decided, despite the absence of a Council decision under Article 84(2), to try to achieve a common position at least retrospectively. To this end it submitted to the Council on 15 July 1974 a proposal for a Council decision on the common procedure to be adopted by the Member States in respect of the United Nations agreement on the introduction of a code of conduct for sea transport conferences (Doc. COM(74) 1112 final of 15 July 1974). The Commission proposed that the Member States should abstain from any measures connected with the signing and ratification of and the accession to this convention (Article 2 of the proposal) and that the Council should decide by 30 June 1975, on a proposal from the Commission, on a common procedure (Article 1 of the proposal).

62. As the Council did not take any decisions, the Commission submitted new proposals in 1975 (Doc. COM (75) 1112 final of 14 March 1975 and COM (75) 302 final of 17 June 1975).

The Commission feels that the code of conduct conflicts with the EEC Treaty in the following respects:

Articles 1 and 2 of Chapter II of the code of conduct conflict with Articles 7, 52 and 85 of the EEC Treaty because they discriminate between shipowners in the Community on the grounds of nationality and restrict competition.

Chapter III of the code, which concerns relations between the conferences and shippers, does not correspond fully to the competition rules contained in Articles 85 and 86 of the EEC Treaty.

The European Parliament has not been consulted by the Council in this matter.

63. Your committee would like to stress that a common position by the Community on questions of international sea transport policy is vital for the European countries.

64. At its meeting of 4 November 1976 the Council exchanged views on this subject and instructed the Permanent Representatives Committee to continue the examination of the matter and to report on its findings in the near future.

65. The UNCTAD agreement provides for the following means of making amendments:

- Under Article 51 any member state may propose amendments by forwarding them to the Secretary-General of the United Nations, who transmits them to all concerned. If a member state does not object within a year, such amendments enter into force after a further six months.

  As the objection of one party to the agreement is sufficient to cause the rejection of an amendment proposed pursuant to this article, it is evident that only minor amendments can be made in this way.

- Under Article 52(1) a conference to review the agreement must take place five years after it has entered into force.

- Under Article 52(4) a conference to review the agreement must be convened five years after it has been signed, i.e. on 6 April 1979, if it has not entered into force by that date and at the request of one third of the states entitled to become contracting parties, subject to the approval of the General Assembly of the UN.

From UNCTAD circles it is known that apart from the official possibilities provided by the agreement, there is no chance of a conference to amend the agreement being held.

66. If no such formula is found and the agreement does not enter into force, the Community should be prepared for a joint approach at the review conference in 1979. If the agreement enters into force, it will have to wait five years for the next opportunity to make amendments. In the meantime, the Community might, however, draw up internal rules to defuse those provisions of the agreement to which some Member States particularly object, such as the 40:40:20 rule, through an agreement that the Community countries will not apply them among themselves (possible within the framework of the OECD).

If a formula of this kind was found, the Community could accede to the agreement as a body, which would mean its entering into force.

67. As soon as the Community countries jointly accede to the agreement, they will increase their prospects of success in negotiations with the state-trading countries aimed at achieving a situation in which the latter are no longer able to act as outsiders and undercut conference rates.

(h) Price of oil and the OPEC countries

68. The changes in the oil and oil product market have given rise to certain problems for the sea transport sector.

On the one hand, the rise in oil prices has resulted in increased costs in sea transport; on the other, a number of OPEC countries have taken to building up large tanker fleets. As long as this is done by taking over existing capacities (individual vessels or whole shipping companies), there is no major change in the situation. But some new tankers have been ordered and are already adding to an acute over-capacity crisis.

The Community should not overlook the link between its sea transport policy and oil policy.

II. The role of sea transport in intra-Community trade

69. It has already been stressed that there has been a considerable increase in the importance of sea transport for intra-Community trade since the enlargement of the Community. Britain, Ireland and parts of Denmark can only be reached from the other Community countries by air or sea, and two of the new Member States have strong national coastal trade such as only Italy and France of the old Community of the Six have.

70. On many routes in the enlarged Community sea transport competes directly with land transport, while in many other cases routes include a sea crossing.

71. For this reason alone the Commission bears a number of responsibilities in the sea transport sector. For example, it has agreed with the British Government that ECSC rail tariff No. 1001 should be extended to cover rail transport by ferry. The following measures have also been taken, initially

on a provisional basis: steel undertakings are required to publish supplements for transport operations which include a sea passage; coal producers are required to inform the Commission of the maritime freight rates used in the calculation of alignment operations.[1] Negotiations continue on the further application of the tariff provisions and other regulations contained in the ECSC and EEC Treaties; the outcome of these negotiations will partly affect sea transport.

72. It is obvious that there will be no coordination of these interventions in the activities of the sea transport sector and that optimum results cannot be expected unless the Community establishes a concept for a common sea transport policy at an early date and includes in this concept the measures needed for the commodity markets because of competition with other means of transport.

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[1] Seventh General Report on the Activities of the European Communities (Doc. 368/73, p. 345, section 403)

(a) Reservation on cabotage

73. Most Member States restrict shipping between two ports of the same territory to vessels flying the flag of the Member State concerned.

74. The continued existence of this reservation on cabotage is not compatible with a Common Market. The table given at the end of this section shows how significant this problem is.

75. Foreign shipping companies wishing to ply between, for example, two French or two Italian ports must obtain authority from the relevant ministry in Paris or Rome. It would appear that on receiving an application of this kind the ministries concerned first ask the national associations of shipowners whether national vessels can carry the freight involved. Not until it has been established that ships of the country are not available is the foreign vessel given the necessary authority. It should be remembered here that in many cases the shipper is forced to pay a substantially higher freight rate than a foreign company in a better position to take the cargo would have charged. The price question, however, apparently plays no part in the authorization procedure. This reservation on cabotage results in increased prices for the shipper and an enormous loss of time as a result of the bureaucracy involved. Shipping circles in the Community also complain that something akin to a restriction of this kind still exists between France and its former territories in North Africa even though the latter gained independence several years ago.

76. The Community should take action without delay to ensure freedom to supply services in this field.

The freedom to supply services should, however, only apply between Member States. There should continue to be protection against possible demands by third countries. Concessions to third countries should only be made on a reciprocal basis.

77. As the reservation on cabotage is intended as a means of protecting national shipping companies and as the basic costs of the shipping companies vary considerably from country to country, the proper procedure might well be for the Community to introduce certain harmonization measures so that the basic costs are the same for all and competition does not become cut-throat. The abolition of the reservation on cabotage should therefore be accompanied by a number of harmonization measures, which are also required for other reasons. The French Government refers in its memorandum of 4.12.1975 to intra-Community trade.

78. The abolition of the reservation on cabotage should, however, not be made dependent on the entry into force of the first harmonization measures. Quite the reverse: in the interests of dynamic development an effort should be made to speed up the harmonization process through the abolition of cabotage.

Maritime operations of the Member States of the Community

1972

Country	Coastal shipping ('national operations')		International shipping (to all countries)		Total
	million tons	%	million tons	%	million tons
Denmark	7.5	16	40.7	84	48.2
Ireland	1.7	4	38.9	96	40.6
United Kingdom	53.4	17	256.8	83	310.2
Germany	3.5	3	124.5	97	128.0
Netherlands	0.0	0	304.6	100	304.6
Belgium	0.0	0	90.5	100	90.5
France	13.7	6	249.2	94	262.9
Italy	47.8	16	259.1	84	306.9
Total	127.6	9	1,364.3	91	1,491.9

Source: Calculated from: Transport, Statistical Yearbook 1972, Statistical Office of the European Communities

(b) Competition

79. If only to ensure uniform application of economic policy to all sectors of the economy, a number of fundamental economic system and policy principles governing the rest of the economy must also be applied to sea transport. As the Community is being constructed on the principle of controlled competition or regulated market economy, these principles must also govern any measures taken in the sea transport sector.

80. Any action taken by the Community in the field of sea transport policy must be geared to ensuring that the most favourable means of transport from an overall economic point of view is used in competition between shipping companies on the one hand and between sea transport and other means of transport on the other.

81. Owing to the distinctive geographical features of the Community, sea transport competes with other modes of transport. One of the long-term goals of the Community must therefore be to align the conditions of competition between sea and other forms of transport.

82. Such competition exists:

- between sea and air transport, e.g. cross-Channel vehicle and passenger traffic;
- between sea and rail transport, e.g. traffic between Italian and French ports;
- between sea and road transport, e.g. between Danish and German ports;
- between sea and inland waterway transport, e.g. traffic between German and Dutch ports or German inland ports that can be reached by sea-going vessels ('open loop' transport);
- between sea and pipeline transport, e.g. traffic from North Africa via Marseilles and the longer French pipeline or via a North Sea port and the shorter pipeline to the Central Rhine area.

83. The time and money involved in setting up a complete work programme might far exceed the possible benefits. The Commission should, however, be given a mandate to prepare a study on this subject and above all the right to act on complaints by those concerned.

(c) Tariff policy

84. Since sea transport competes with other modes of transport, and also because of the function it performs as a form of transport within the Common Market, sea transport tariff questions must be examined by the Community.

85. Mention has already been made of how the Commission has issued a provisional ruling on freight rates for coal, iron and steel by extending the rail tariff to cover rail transport by ferry and also by requiring steel undertakings to publish supplements for transport operations which included sea passage and coal producers to inform the Commission of the maritime freight rates used in the calculation of alignment operations.

86. What has been said of competition generally, also applies to tariffs: a complete programme might involve a greater administrative work-load than would be warranted by the potential benefits, but the Commission should be instructed to establish what transport policy guidelines could be applied to intra-Community sea routes. In particular, the Community could ensure greater publicity for an transparency of regular services. It could also be instructed to look into complaints that discrimination has taken place.

(d) Hinterland transport

87. Sea transport is, in the majority of cases, preceded and followed by land transport. Only where the production, processing or consumption of transported goods occurs on deep-water shores is this not the case.

In the last few years and decades, the activities of shipowners have increasingly extended to land transport. New technical transport methods, such as containers, lash, roll-on/roll-off and even the simple pallet method mean that more and more owners must 'find a foothold in the hinterland'[1].

88. To a much greater extent than in the past, tariff policy decisions are today taken jointly by shipowners and hinterland transport operators. It is thus less easy than ever before to deny the connection between sea transport policy and hinterland transport policy. A modern transport policy must consequently regard the transport industry as a single entity. Port hinterland traffic and the geo-economic implications of the Community's sea transport policy for the overall structure of the economic area of the Member States must therefore be borne in mind with every step forward taken in the common sea transport policy.

In the necessary development of a common regional policy sufficient attention must be paid to port and sea transport needs. The absence of a common policy in the three areas of hinterland transport, sea-ports and regional planning, can but cause considerable difficulties.

III. The importance of a sea transport policy for ports and shipbuilding

89. Seaports and the shipbuilding industry cannot be indifferent to the policy pursued by the Community in sea transport towards third countries and in intra-Community trade. Coordination of port policy and sea transport policy is therefore indispensable. The need to regard sea transport and hinterland transport as a single entity in a modern transport policy naturally makes it all the more necessary to include ports, the links between shipping and hinterland transport.

90. The shipyards should be considered in this context not only because they form one of the most important port industries but primarily because measures taken to support shipyards and shipping companies are often inextricably linked. In many cases, the shipbuilding industry

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[1] Claus Law: 'Schiffahrt auf EWG-Kurs?' in Mitteilungen der Handelskammer Hamburg, No. 5, May 1970, p.306

receives subsidies which are ultimately intended as aid to shipping companies; in other cases, shipping companies are granted concessions in respect of depreciation and other fiscal advantages, the intention, however, being to assist the shipyards.

91. In all its proposals for a sea transport policy, the Commission must therefore also consider questions of port policy and shipbuilding policy, without, of course, overlooking the distinctive features of ports and shipyards[1].

(a) Ports

92. All questions relating to cooperation in international organizations in the sea transport sector, shipping clauses in trade agreements, the build-up by developing countries of their own merchant fleets, flag discrimination and 'flags of convenience', shipping conferences, the reservation on cabotage and competition in sea transport also effects ports and port policy. Although questions of port administration are not directly affected by these sea transport problems, it is obvious that account must be taken of the interests of ports in all decisions in the field of sea transport policy.

93. Your committee therefore feels that the Community must establish a common port policy along with the common sea transport policy, without the one necessarily being preceded by the other.

(b) Port investments

94. Ports are at present being driven to make increasingly large investments as a result of technical developments in sea-going ships, although it is becoming less and less clear whether they will ever be profitable. The picture is the same as in the air transport sector, where the technical development of aircraft means wider and longer runways, the only difference being that larger sums are involved in sea transport. The big mistake here is that the designers of super ships need not concern themselves with berths for them. Because of keen international competition, seaports simply have the choice of either making the necessary investment or withdrawing from the competition - and usually this means withdrawal not only for the giant ships but also for a good proportion of smaller

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1 With regard to shipbuilding, the Commission submitted a 'Communication from the Commission to the Council on Shipbuilding' on 26 May 1976 (COM (76) 224 final). Where ports are concerned, it announced its intention of forwarding a communication to the Council in the second half of 1976 (Ninth General Report, point 376 p.213).

vessels, which often abandon ports they have previously used when a shipping company has to direct its super-tankers elsewhere.

95. The Commission should be instructed to establish whether the political strength of the Community is sufficient to help find a solution to this problem in cooperation with other international organizations. The aim would be a kind of international convention on maximum permissible dimensions and weights in sea transport. In its investigations, the Commission should work in close cooperation with the seaports and consider the possibility of such an action when devising a common policy on seaports.

The Community could also make a positive contribution to technical progress through a common research programme (perhaps investigating the possibility of landing platforms that could be constructed in deep water outside ports).

(c) Shipbuilding

96. The Member States of the Community have already made good progress in the right direction in the field of shipbuilding policy. The first achievement was to put a stop to the subsidy competition between Member States[1]. Although shipbuilding policy must primarily form part of the common industrial policy, it must also be coordinated with sea transport policy.

97. In its proposals to the Council on the shipbuilding industry (Doc. COM (73) 1788 final, Brussels, 24 October 1973), the Commission stresses the difficulty of finding solutions to the problems connected with the shipbuilding policy caused by the lack of a common sea transport policy (point 4, p.8).

98. Your committee, however, feels that the problems of the European shipyards cannot be solved by, for example, compelling European shipowners 'to order European'. This would only shift the problem of the lack of competitiveness on the world market from one sector to another. There is also cause for concern in the following sentence in the above-mentioned proposals (point 2, p.11): 'In addition, the study group will endeavour to use the Commission's influence on the major bodies in the

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[1] Council Directive of 28 July 1969 on the grant of aids to shipbuilding to offset distortions in competition on the world market (OJ No. L 206 of 15 August 1969); Council Directive of 20 July 1972 on aid to shipbuilding (OJ No. L 169 of 27 July 1972). As the Council was not able to agree on a common policy for the years up to 1977 by the deadline, the period of validity of the latter directive was extended initially until 30 June 1974 by the Council Directive of 17 December 1973 (OJ No. L 38 of 11 February 1974), and then until 31 December 1974 by the Council Directive of 27 June 1974 (OJ No. L 180/32 of 3 July 1974). Last amended by Directive 74/59/EEC (OJ No. L 38 of 11 February 1974), which expired on 30 June 1975, it was replaced by Directive 75/432/EEC of 10 July 1975 (OJ No. L 192 of 24 July 1975), which expires at the end of 1977.

industry, who are the buyers and sellers; it will also endeavour to mobilize existing Community financial resources more effectively in order to modernize the shipyards and help the industry meet its financial requirements.' In contrast, your committee supports the demand expressed by the shipping companies to be allowed to have their ships built anywhere in the world. Nor does the Commission's communication of 26 May 1976 contain proposals of this nature.

99. The Community's shipbuilding policy should, however, ensure that varying support measures do not lead to a distortion of the capital or operating costs of the Community's shipping companies.

100. An important sphere in which maritime policy and shipbuilding policy must be coordinated is technical research. It would appear that projects for using atomic power in ships are at present particularly promising and that the Community is even ahead of the rest of the world in this technological field. The institutions of the Community should therefore establish a common support programme so that Europe does not, as usual, find itself claiming the inventor's laurels while the economic benefit goes to other countries.

IV. The harmonization of Member States' legislation on sea transport

101. To allow the Common Market to function satisfactorily, the shipping companies of the various Member States must be able to compete without distortions of basic costs. In other words, all Member States' legislation on sea transport must be combed for cost-distorting factors.

The French Government's memorandum of 4 December 1975 makes special reference to this point, whereas the Commission's communication of 30 June 1976 does not mention it.

102. The harmonization of legislation, which must follow this combing process, must, of course, not ignore the fact that a more difficult problem for the shipping companies of the Community is probably the unfair competition they face from third countries as a result of differences in legislation. Community activity at world level is therefore likely to have greater impact than the harmonization of legislation at Community level.

Two conclusions must be drawn from this: firstly, harmonization of Community legislation must be based as far as possible on existing world agreements; secondly, where world-wide agreements do not yet exist, the Community must first harmonize the legislation of the Member States to produce the desired result, so that it can then emerge as a stronger force at world level and recommend the common ruling for general acceptance.

103. The list of harmonization measures is fairly long, but it does, in principle, tally with the objectives for inland transport operators:

- Safety regulations;
- other technical regulations on construction, equipment, capacity gauging, registration;
- social harmonization, particularly with regard to the number of crew members, social insurance, freedom of movement, etc.;
- insurance regulations (freedom of establishment for marine insurers, etc.);
- harmonization and simplification of customs clearance regulations.

104. Comments will be given on a number of the items in this list of harmonization measures in the following sections, but at this stage it should again be generally emphasized that, as is always the case with harmonization measures, merely adjusting the wording of legislation is of no use if uniform control measures based on the same standards for all are not introduced to ensure consistent enforcement of the laws in all the Member States.

(a) Social legislation

105. In social legislation specifically designed to cover sea transport, there are still cost-distorting differences from one Member State to another, and these must be eliminated through harmonization.

Your committee supports the Commission's proposal for the formation of a joint committee on social questions in the sea transport sector to advise the Commission. This committee must be able to deliver opinions to the Commission on its own initiative. The Community should also cooperate closely with the International Labour Organization in this field and contrive to have the Member States act jointly in the ILO.

106. Your committee would, however, like to stress that none of the proposed measures may be allowed to affect the autonomy of the social partners in the sea transport industry in negotiating wage rates.

107. The Community must make an overall contribution to the upward approximation of working conditions in the sea transport sector. Above all, regulations on the number of crew members must be subjected to a close examination.

Other important subjects for discussion at Community level should be improvements in training, working time, compensation for over-

time, leave and insurance cover. Accident prevention regulations should also number among these subjects. The French Government's memorandum of 4 December 1975 refers in particular to social insurance schemes. This also covers questions of retirement pensions.

108. Of particular importance for the sea transport industry is the implementation of the principle of freedom of movement of workers. Although the sea transport sector boasts of its international character, there are a number of factors here which are extremely unsatisfactory. While many workers in Northern European countries are leaving the sea, with the result that these countries have a shortage of seamen, there would appear still to be a surplus of seamen in the South of Europe despite the present crisis. There is still no mutual recognition of evidence of qualifications, a subject which has now gained special importance. The Commission has been forced to bring before the Court of Justice an application against France under Article 169 for failure to fulfil Treaty obligations regarding the free movement of workers in sea transport. The point at issue is the application in France of a legal provision which in theory reserves paid employment on French vessels to French nationals[1]. The Court of Justice of the Communities has since found in favour of the Commission and has ordered France to abolish the provisions concerned[2].

Another subject that might be investigated at Community level is the question, which is connected with freedom of movement, of the mutual recognition of diplomas and seamen's sickness insurance contributions.

109. A minimum of social harmonization is needed to provide a just basis for competition between the shipping companies of the Community; efforts should, however, be concentrated on improving the working conditions of seamen.

(b) Taxes and subsidies

110. In connection with shipbuilding questions mention has already been made of the subsidies which are paid to shipyards, partly during the construction and partly at the time of sale of sea-going vessels. These subsidies must also be harmonized because the capital costs of shipping companies are affected, which may cause distortion of competition in the

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1 EEC/ECSC/EAEC - Commission: Seventh General Report on the Activities of the European Communities, Brussels - Luxembourg, February 1974, p.247

2 Judgment of the Court of Justice of 4 April 1974 in case 167/73

Community's sea transport sector.

111. Tax legislation also contains certain specific regulations on sea transport which may distort competition. The problems connected with turnover tax have already been tackled at Community level with the general introduction of value added tax, but the legislation on income tax still includes a number of provisions which may distort competition, for example those on depreciation possibilities, and these provisions must be reviewed by the Community. The result could be a general maritime policy instrument, to be used by the Community to avert unfair competition from third countries. The French Government's memorandum of 4 December 1975 sets great store by transparency of tax systems.

(c) Approximation of commercial law

112. The legislation of the Member States contains a number of special regulations on the carriage of goods and passengers by sea. These range from provisions granting exemptions from the appropriate cartel laws for competition-limiting measures by line conferences to laws on marine insurance contracts and the special liability of ship-owners.

International agreements exist only in limited spheres and even then are not always binding on all Member States. Thus, it is possible for shippers to bear differing degrees of liability for damage to goods carried depending on the country from which they operate. This causes shifts in trade. The same applies to different costs resulting from different insurance provisions and from the imposition on shippers of different legal obligations immediately before and after the actual shipping operation. Hence, harmonization is needed as a matter of urgency in this area too.

113. It therefore seems desirable that Member States should agree on the harmonization in particular of the following legal spheres:

- the application of cartel law to sea transport,
- the law relating to the chartering of ships,
- the law relating to the carriage of passengers and goods,
- the law relating to the liability of ship-owners and to marine insurance,
- the law relating to port establishments.

The following specific comments relate to approximation of legislation in the above fields, which is advocated by your committee.

114. The application of national cartel law to sea transport should be approximated for two reasons. First, unlike the USA for example, the

Member States of the Community have no laws applying specifically to sea transport conferences, i.e., to the usual cartels in sea transport.

In most cases the national cartel authorities have the power to decide whether and to what extent proceedings should be taken against competition-limiting practices by the conferences. However, since unilateral measures taken by national authorities might cause the shipping companies concerned to divert transport to the ports of other states, the competition authorities may decide not to institute proceedings. Hence, harmonization of the national provisions in this field is necessary if only with a view to achieving economic policy objectives. However, it also seems desirable to supervise certain practices of the conferences more carefully than has hitherto been possible within the national framework, and, in some circumstances, to prevent certain activities (for example the retrospective granting of freight rebates). The Community could adopt an appropriate directive, perhaps following the example of other industrial nations involved in shipping, such as the USA or Canada.

115. It is also desirable that the law relating to the chartering of ships should, at least in its fundamentals, be made more uniform. Member States' provisions on making cargo space available for individual voyages or for certain periods of time are for the most part flexible. In practice therefore, this sphere is governed mainly by standardized contracts between the parties. However, while many Member States include detailed rules for this type of contract in their laws[1], the legislation of other countries makes provision only for the analogous application of the provisions of the carriage of general cargoes[2].

116. Thus, although a national law might have to be applied in respect of a contract on the chartering of cargo space, it is at present possible for economically identical relationships between contracting parties to take different legal forms depending on the national legislation to be applied.

117. Steps to harmonize laws relating to the carriage of passengers and goods by sea are particularly necessary. There are still considerable differences in both sectors with regard to liability for damage. Major international agreements constitute the initial stages of effective harmonization. These include in particular:

- the international agreement on the harmonization of the rules on bills of lading (Hague Rules) of 25 August 1974

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[1] See, for example, Articles 1-14 of French law No. 66-420 of 18 June 1966 'sur les contrats d'affrètement et de transport maritimes'.

[2] See, for example, the Dutch draft law of 1972.

- protocol amending the Hague Rules (Visby Rules) of 23 February 1968

- international agreement on the harmonization of rules on the carriage of passengers of 29 April 1961

- international agreement on the harmonization of the rules on passenger luggage of 27 May 1967.

However, not all Member States of the European Community are party to these agreements and not all carriage operations are subject to them.

118. There is an urgent need for steps to be taken to ensure that a person who sends general goods or undertakes a journey by sea can use the Member States' transport without any fear that the compensation payments he will receive in the event of damage will differ with the legislation to be applied.

119. The law relating to ship-owners' liability and ship mortgages is largely governed by two international agreements to which almost all Member States are party. However, there are considerable differences of detail as regards the covering of claims against ship-owners. For example, the courts decide which law is to be applied on the basis of different criteria. Moreover, not all Member States adopt the same order of priority for the settlement of claims by several ships' creditors.

In this connection, it would also seem to be essential to abolish the considerable discrepancies that still exist in the law relating to marine insurance.

In this respect, therefore, it is reasonable that the Community should take steps to achieve harmonization.

120. Finally, the law relating to undertakings concerned with loading and unloading and the storage of goods at ports should be harmonized as a matter of urgency. Uniform regulation of legal relationships in this connection could lead to uniform liability for sea transport as a whole, including the shore activities necessarily connected with it.

121. In this field there are particularly wide discrepancies between the various Member States. In the Federal Republic of Germany, for example, the legal obligations of port establishments are based on port practices and such operators do not always bear any minimum liability. France, on the other hand, has a comprehensive law which gives the sender or recipient of goods comprehensive protection against damage in the port area.

(d) Insurance regulations

122. Community action and the harmonization of Member States' legislation could provide favourable solutions to the large number of insurance problems affecting the sea transport sector.

The Community's regulations on the right of insurance companies to freedom of establishment and on the freedom to provide services also concern sea transport.

Community action in the insurance sector must take account of the interests of the Community's shipping companies and of a common sea transport policy.

The question is whether the problem of 'flags of convenience' could not be partially solved by the insurance companies.

(e) Technical regulations

123. Many technical regulations governing sea transport have already been harmonized through agreements at world level. However, differences continue to exist from country to country in what is probably a larger number of individual technical regulations, which, in some cases, result in considerable differences in costs for competing shipping companies in different countries.

124. The field covers safety regulations and accident prevention regulations, general regulations on construction, equipment and capacity gauging, registration of sea-going vessels and the transport of dangerous goods.

125. In some cases, the problems have been left over from world-level negotiations at which agreement could not be reached. The Community may be able to get things moving again by harmonizing at its own level, and then renegotiating at world level.

126. In this context, it should also be pointed out that the Community's maritime policy may be considerably affected by certain agreements and outstanding problems of international maritime law, such as the extension of territorial waters beyond the traditional three-mile zone, the exploitation of the continental shelf and other parts of the seabed, agreements on the prevention of marine pollution, to which a separate section is devoted below, etc. All these agreements have implications for the technical side of sea transport.

Some of these questions have been discussed at the Conference on the Law of the Sea, which began in Caracas. It is to be continued in

New York and may lead to various world conventions. The Community should be jointly represented at this conference.

(f) Prevention of marine pollution

127. In its programme of environmental action, the Commission states that 'of all the different kinds of pollution, marine pollution is now, and will be for a long time to come, probably one of the most dangerous'[1]. What is alarming about marine pollution is not merely its disastrous effects on the biological and ecological balances, but also the less evident factor of the difficulty of finding satisfactory solutions. The multiplicity of sources of pollution and the complexity of the legal status of the sea (high seas, territorial waters, protected fishing areas) make it extremely difficult to work out a coordinated policy.

128. Although initial efforts to combat the growing pollution of the seas were made soon after the Second World War, public opinion did not really awake to the seriousness of the problem until the 'Torrey Canyon' went aground off Cornwall in March 1967, releasing 118,000 metric tons of oil into the sea and causing untold damage. Public awareness has been reflected in a number of national and international measures, which have, however, remained too fragmentary to provide a satisfactory long-term solution.

129. In the abovementioned action programme, which was adopted by the Council in July 1973, the Commission lists the following principal sources of pollution: sea transport, deliberate dumping of waste at sea, exploitation of marine resources and discharge of waste from land. Naturally, only the first of these categories comes within the ambit of the present report.

130. The discharge of oil by ships, and more specifically, the cleaning out of oil tankers, is seen as the principal source of pollution. According to a study by the 'Deutsche Forschungsgemeinschaft' (German Research Association), an estimated 5 to 10 million metric tons of crude oil are discharged into the Baltic Sea every year[2].

131. It is therefore hardly surprising that a number of international agreements have been concluded, some applying throughout the world, others on a regional basis, to combat this particular form of marine pollution, viz:

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[1] Bulletin of the European Communities, Supplement 3/73, p.25.

[2] OJ No. C 22, 7 March 1974, p.30.

- London Convention of 12 May 1954 for the prevention of the pollution of seawater by hydrocarbons; at the instigation of IMCO this Convention was amended and amplified in 1962, 1969 and 1971;
- Brussels Conventions of 29 November 1969 covering action at sea in the event of an accident causing or capable of causing pollution by hydrocarbons and the third-party liability for damage due to pollution by hydrocarbons;
- 1971 Convention setting up an international fund for compensation for damage due to pollution by hydrocarbons;
- London Convention of 2 November 1973 for the prevention of marine pollution by ships;
- Bonn agreement of 9 June 1969 on cooperation in the prevention of the pollution of the North Sea by hydrocarbons;
- Oslo Convention of 15 February 1972 on the prevention of sea pollution by the dumping of waste from ships or aircraft, which applies to the whole of the North Sea and a large part of the Atlantic Ocean (it was ratified by France, the United Kingdom, the Netherlands and Denmark);
- Helsinki Convention of March 1974 on the protection of the marine environment of the Baltic Sea and the bilateral agreement of 15 April 1974 between Denmark and Sweden on the Sund.
- Barcelona Convention of 16 February 1976 on the protection of the Mediterranean against pollution and two protocols, one of which concerns dumping from ships and aircraft. The EEC signed this Convention on 13 September 1976[1].

132. Although your committee welcomes these initiatives, it nevertheless regrets the lacunae in the agreements and the shortcomings directly related to them, such as:

- lack of coherence between the various agreements, numerous cases of duplication and conflicting provisions;
- failure of contracting parties to ratify, whereby several of the above agreements have not yet come into force or have been implemented by only some of the states concerned;
- inadequate enforcement of the provisions of the agreements and the penalties for their infringement.

133. It is this last point which is of major importance in sea transport. As long as the punishment of infringements and violations remains the exclusive prerogative of the flag state, the parties to an agreement are powerless to act against ships flying the flag of a country that has not acceded to that agreement. In view of the cost of implementing obligations specified in agreements, there is a real danger of competition distortion.

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[1] On the basis of the report by Mr Premoli (Doc. 334/76), the European Parliament delivered a favourable opinion on the proposal from the Commission (Doc. 118/76) for a Council Decision on the conclusion of this agreement.

134. The committee on Regional Policy, Regional Planning and Transport therefore considers it desirable that the Commission should as soon as possible carry out an investigation into the question of responsibility for the financial burden arising from measures to prevent marine pollution. Nor can we allow conditions of competition to be distorted through the additional costs incurred by shipowners and transport users as a result of compliance with agreements and conventions, e.g. port dues for tankers being cleaned out in port rather than at sea.

135. Community action on marine pollution in recent years may be described as encouraging. We must welcome the signing by the Community of the Paris Convention of 21 February 1974 on the prevention of land-based pollution of the sea and the Barcelona Convention on 16 February 1976 on the Mediterranean[1]. This procedure must be followed for all future conventions. Your committee also expresses the hope that the European Community will succeed in presenting a common front in this matter at future United Nations Conferences on the Law of the Sea, and that the Member States will give maximum support to the Commission's proposals for effective controls and sanctions (as contained in the working paper on the preservation of the marine environment - SEC(74) 862 of 20 March 1974, Annex).

136. Your committee believes that the best chance of finding a satisfactory solution to the problem of marine pollution caused by shipping lies in the creation of a world-wide agreement, with harmonization of the implementing provisions at Community level.

(g) Controls

137. It has likewise already been emphasized that even the best of harmonization measures will have no effect unless uniformly strict controls are carried out and sanctions imposed in all countries to enforce common legislation.

138. This applies not only to ships of the Member States but also to third country vessels calling at Community ports.

139. The joint and increased use of controls might in itself contribute substantially to solving, for example, the problem of 'flags of convenience'. As things now stand, the introduction of more stringent controls in one Member State of the Community will only result in the ships affected calling at a nearby port in another country. If, however, all the Member States take joint action, almost the whole coast of the Western European sub-continent would be closed, for instance, to vessels which sail without adequate life-saving and fire-fighting equipment and expose their crews to danger or their passengers to tragic accidents.

(h) Statistics

140. One of the first steps that the Community should take is to develop a joint set of statistics on sea transport as the necessary back-

[1] OJ No. L 194, 25.7.1975, p. 22

ground to decisions on the common policy. The Commission's Statistical Office might be instructed to set about harmonizing and improving the statistics on sea transport in cooperation with the Member States' statistical services. The shipping company circles concerned have already promised to cooperate in this work (Annual Report of the CAACE for 1973. p.12).

Summary

141. Finally, your committee would like to point out that the Community must not remain a free trade area without a common external economic policy. As it advances towards economic and monetary union, the Community must assume its full responsibility in the world economy. This also implies a common position in world maritime policy matters. In its own interests the Community must combat flag discrimination and other obstacles to world trade; in the interests of all maritime nations it must, speaking with one voice, make a major contribution to the settlement of problems outstanding at world level; and in the interests of the proper functioning of the Common Market in Europe it must help to achieve greater freedom of movement for people and services between the Member States.

142. For this reason your committee requests that the above motion for a resolution be adopted so that, in partial application of Article 84(2), the Council of Ministers can give the Commission a mandate as soon as possible to submit practical proposals for initial steps in the sphere of a common sea transport policy.