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## Working Documents

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DOCUMENT 484/76

### Report

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

on the proposal from the Commission of the European Communities to the  
Council (Doc. 281/75) for a regulation on the harmonization of certain social  
provisions relating to goods transport by inland waterway

Rapporteur: Mr J. OSBORN

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PE 45.246/fin.



By letter of 29 September 1975 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 75 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a regulation on the harmonisation of certain social provisions relating to goods transport by inland waterway.

The President of the European Parliament referred this proposal to the then Committee on Regional Policy and Transport as the committee responsible and to the Committee on Economic and Monetary Affairs and the Committee on Social Affairs, Employment and Education for their opinions.

On 22 October 1975 the Committee on Regional Policy and Transport appointed Mr Osborn rapporteur. It considered this proposal at its meetings of 19 November 1975 and 17 February 1976. The newly constituted Committee on Regional Policy, Regional Planning and Transport further considered it at a joint meeting with the Committee on Social Affairs, Employment and Education on 24 and 25 March 1976 and considered the draft report at its meetings of 14 July 1976 and 21 October 1976.

At its meeting of 25 November 1976 the committee unanimously adopted the motion for a resolution and explanatory statement.

Present: Mr Evans, Chairman; Mr Nyborg, Vice-Chairman; Mr. Osborn, rapporteur; Mr Albers, Mr De Clercq, Mr Delmotte, Mr Ellis, Mrs Kellett-Bowman, Mr Mursch and Mr Schwabe.

The opinions of the Committee on Economic and Monetary Affairs and the Committee on Social Affairs, Employment and Education are attached.

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A

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

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a regulation on the harmonisation of certain social provisions relating to goods transport by inland waterway

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council<sup>1</sup>;
  - having been consulted by the Council pursuant to Article 75 of the EEC Treaty (Doc. 281/75);
  - having regard to the report of the Committee on Regional Policy, Regional Planning and Transport and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Social Affairs, Employment and Education (Doc. 484/76);
  - welcoming the Commission's proposal as a step towards the implementation of the Council Decision of 13 May 1965<sup>2</sup> on the harmonisation of certain provisions affecting transport by rail, road and inland waterway;
  - recalling however the difficulties which have been encountered in enacting or implementing comparable social provisions in road transport;
  - wishing to ensure that similar difficulties do not arise in the implementation of harmonised social provisions in goods transport by inland waterway.
1. Stresses that the final definition of the crew composition provisions of the proposed regulation should only be proposed by the Commission on the basis of consultation with all interested parties and should be based on the physical characteristics of different types of waterways rather than being, as at present proposed, national derogations.

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<sup>1</sup> O.J. No. 259, 12.11.1975, p.5

<sup>2</sup> O.J. No. 88, 24.5.1965, p.1500

2. Emphasizes the need to ensure that fair competition and parity of social conditions be maintained not only within the Community but also with third countries operating within the Community.
3. Stresses the need to eliminate any discrimination against the employment of women in goods transport by inland waterway.
4. Considers that representatives of both sides of the industry should be included in the composition of the authorities to be responsible for implementing the provisions of the proposal concerning crew composition and that common penalties should be adopted for contraventions of the proposed regulation.
5. Is of the opinion that, within a reasonable period, a comparable regulation should be introduced covering the crew of passenger craft.
6. Requests the Commission of the European Communities to incorporate the following amendments in its proposal pursuant to the second paragraph of Article 149 of the EEC Treaty.

Proposal on the harmonisation of certain social provisions  
relating to goods transport by inland waterway

Preamble and recitals unchanged<sup>1</sup>

SECTION I

Article 1 unchanged

SECTION II  
SCOPE

Article 2

1. This Regulation shall apply to crew members of vessels engaged in goods transport on the inland waterways of Member States;

2. Nevertheless, during a transitional period expiring at the conclusion of the negotiations referred to in Paragraph 3 of this Article, this regulation will not apply to crews of vessels:

- on waterways covered by the Regulation on Inspection of Shipping and Rafts on the Rhine of 18 November 1947 and belonging to undertakings which have their headquarters on the territory of a third country;
- on waterways covered by the Paris Agreement concerning the working conditions of Rhine boatmen of 21 May 1954 and belonging to undertakings which have their headquarters on Swiss territory;

Article 2

1. unchanged

2. Nevertheless, during a transitional period expiring at the conclusion of the negotiations referred to in Paragraph 3 of this Article, this regulation will not apply to crews of vessels:

- on waterways covered by the Regulation on Inspection of Shipping on the Rhine of 1 April, 1976, which vessels belong to undertakings which have their headquarters on the territory of a third country;
- on waterways covered by the Paris Agreement concerning the working conditions of Rhine boatmen of 21 May 1954, which vessels belong to undertakings which have their headquarters on Swiss territory;

<sup>1</sup> For complete text, see O.J. No. 259, 12.11.75

Article 2 (Cont'd)

3. Member States will start whatever negotiations are necessary in order, if possible before ..... (18 months from the adoption of the Regulation) to:

- modify, within the framework of the Central Commission for Navigation on the Rhine, the Regulation on Inspection of Shipping and Rafts on the Rhine of 18 November 1947 to eliminate from it all provisions which prove incompatible with the provisions of this regulation;
- modify the Agreement on conditions of work of Rhine boatmen of 21 May 1954 to eliminate from it all provisions which prove to be incompatible with the provisions of the present Regulation or, if necessary, denounce the Agreement;

Article 3

The Community shall undertake such negotiations with third countries as may prove necessary for the implementation of this Regulation.

Article 2 (Cont'd)

3. Member States will start whatever negotiations are necessary in order, within ..... (18 months from the adoption of the Regulation) to:

- modify, within the framework of the Central Commission for Navigation on the Rhine, the Regulation on Inspection of Shipping on the Rhine of 1 April 1976 to harmonise all provisions which prove incompatible with the provisions of this Regulation;
- modify the Agreement on conditions of work of Rhine boatmen of 21 May 1954 to harmonise all provisions which prove to be incompatible with the provisions of the present Regulation or, if necessary, denounce the Agreement;

4. As soon as possible but not later than five years after the coming into force of this Regulation, the Commission shall propose to the Council a comparable Regulation covering the crew of passenger craft.

Article 3

The Community shall undertake, where appropriate, in consultation with the Central Commission for Navigation on the Rhine, such negotiations with third countries as may prove necessary for the implementation of this Regulation



Article 3 (Cont'd)

Article 3 (Cont'd)

Such negotiations shall be conducted with particular reference to preserving fair competition and parity of social conditions in goods transport by inland waterway.

Article 4 unchanged

SECTION III

CREWS

Article 5

Article 5

Crew members must meet the following requirements:

(a) the boatmen:  
must be at least 21 years of age  
and have sailed for at least four  
years at sea or on inland waterways.  
In the assessment of sailing  
experience, account may be taken of  
part or all of the time spent in  
attendance at an appropriate training

(a) unchanged

Article 5 (cont.)

establishment. Three years previous experience may be deemed sufficient if the person concerned holds a certificate of proficiency stating that he has completed a boatman's training, for which a minimum standard shall be laid down by the Council, acting on a proposal from the Commission, not later than one year after the entry into force of this Regulation;

(b) the helmsmen:

must have sailed for at least one year as deck hand or deck hand motor-man on inland waterways;

(c) the dockhand:

must be at least 17 years of age and have sailed for at least one year as a member of a deck crew at sea or on inland waterways. In the assessment of sailing experience, account may be taken of part or all of the time spent in attendance at an appropriate training establishment;

(d) the ship's boy:

must be at least 15 years of age;

(e) the engineer:

must, in addition to possessing a basic knowledge of engines, have worked for at least two years as deckhand motorman or have undergone a course of vocational training, for which the minimum standard will be laid down by the Council acting, on a proposal from the Commission, not later than one year after the entry into force of this Regulation;

Article 5

(b) unchanged

(c) unchanged

(d) the ship's boy:

must be at least 16 years of age;

(e) unchanged

Article 5 (cont.)

(f) the deckhand/motorman:

must, in addition to possessing a basic knowledge of engines, have sailed for at least one year as deck-hand on board vessels equipped with mechanical means of propulsion at sea or on inland waterways.

Article 6

Any crew member may, if the safety of the vessel or cargo so requires, be called upon to perform duties other than those which fall within the scope of his specific functions, provided that his qualifications and physical powers are commensurate with such duties.

Article 7

1. The composition of crews for the various categories of vessels is laid down in the Annex, which forms an integral part of this Regulation.

Article 5

(f) unchanged

Article 6

In the case of danger any crew may, if the safety of the crew, the vessel or cargo so requires, be called upon to perform duties other than those which fall within the scope of his specific functions, provided that his qualifications and physical powers are commensurate with such duties.

Article 7

1. Not later than five years after the coming into force of this Regulation the Commission shall submit to the Council a proposal for a Regulation making

Article 7 (cont'd)

2. During a period which will terminate at a date to be fixed by the Council on a proposal from the Commission, the latter shall authorise the Member States, upon request, to apply derogations from the rules prescribed under fl for the totality or a part of the traffic operating on the waterways located in their territory in as far as such derogations are justified by the particular navigation conditions on these waterways and that they conform to the following requirements:

- (a) they take account of the prescriptions of the present Regulation; and particularly, respect the provisions of Sections IV and V;
- (b) they respect the safety regulations for movement on the waterways concerned and that they take account of the technical level of the equipment of the vessel in question;
- (c) they do not represent a step backward in the social field in relation to the existing level in the Member State concerned.

These derogations shall not apply to navigation on the Rhine. By "navigation on the Rhine" is meant navigation from Mitterbrücke Basle to the open sea including the Alsace Canal, the Pannerdensche Canal, the Nederrijn, the Lek, the Waal, the Norwede, the Noord and the Nieuwe Maas.

Article 7

provision for the composition of crews for the various categories of vessels engaged in goods transport on the various categories of inland waterway which will be laid down in the Annexes which will form an integral part of that proposal for a Regulation.

2. The categories of vessel shall be based on those covered by the Annex to this Regulation.

3. The categories of inland waterway shall be established in accordance with the following criteria:

(a) whether they are lakes, free-flowing rivers, canalised or partly canalised rivers (that is to say, rivers with locks) or canals;

(b) the dimensions of such inland waterways concerning their locks, and navigable depth and width;

(c) whether they present particular navigational difficulties or dangers.

4. In drawing up the Regulation, the Commission shall take as a basis the crew composition as laid down in the Annex to this Regulation but they may make provision for a reduction of crew composition for certain categories of vessel operating entirely and exclusively upon certain categories of waterway provided:

Article 7 (cont'd)

3. The Commission will formulate its decisions provided for in Section 2 after consultation with the Joint Advisory Committee on Social Questions arising in Inland Water Transport, instituted by the Commission Decision of 28.11.1967<sup>1</sup> and after consultation with the applicant Member State and, as necessary, with the other Member States affected by the provisions in question.

This decision shall be notified to the applicant State within four months from the date of receipt of the application by the Commission. This delay may be extended to six months where the Commission invites the opinion of other Member States.

4. Member States may, individually, authorise a reduction in crew composition in those cases where the technical equipment of the vessel in question is higher than that prescribed and is capable of effecting certain tasks normally effected by crew members. The Member States shall inform the Commission of measures taken by virtue of this disposition.

<sup>1</sup> OJ No.297 of 7.12.1967 modified by Commission Decision of 19.6.1970  
OJ No.L 140 of 27.6.1970

Article 7

(a) that such reductions are justified by the particular navigation conditions on these waterways and that they conform to the following requirements:

I they take account of the prescriptions of the present Regulation, and particularly, respect the provisions of Sections IV and V;

II they respect the safety regulations for movement on the waterways concerned and that they take account of the technical level of the equipment of the vessel in question;

III they do not represent a step backward in the social field in relation to the existing level in the Member State or States concerned.

(b) that the Commission has consulted with the Joint Advisory Committee on Social Questions arising in Inland Water Transport, with the Member States and with any national or international body responsible for navigation on inland waterways within the Community.

5. The Commission may by Regulation authorise reductions in the crew composition provided for in this Regulation, or the subsequent Regulation provided for in Paragraph 1 above, in

Article 7 (cont'd)

Article 7

those cases where the technical equip-  
ment of the vessel in question is  
higher than that prescribed and is  
capable of effecting certain tasks  
normally effected by crew members.

Such amending regulations shall  
only be made by the Commission if  
the consultation provisions of para-  
graphs (a) and (b) of paragraph 4  
above have been complied with.

6. For an interim period which shall  
run from the adoption of this Regula-  
tion until the adoption of the further  
Regulation provided for by paragraph 1  
of this Article the composition of  
crews for the various categories of  
vessel shall be determined by the  
Annex, which forms an integral part  
of this Regulation. During this  
interim period the Commission shall  
authorise temporary derogations upon  
request by the Member States provided  
that the provisions of paragraph 4  
above have been complied with.

Article 8

Article 8

1. Crews may not include any female  
members:

- where the rigging of the vessel is  
difficult to handle;
- where the rudder, at maximum draught,  
cannot be moved effortlessly by one  
person;
- where the work of individual crew  
members entails shifting or carrying,

1. Subject to the following provision  
of this Article there shall be no dis-  
crimination between the employment of  
men and women as members of crews.

2. Women shall not continue to work  
as active crew members after the sixth  
month of pregnancy or before the end  
of the third month following their  
confinement.

Article 8 (cont'd)

Article 8

without assistance, loads or articles or rigging exceeding 15 kilograms in weight or carrying, with the help of another crew member, loads or articles of rigging exceeding 35 kilograms in weight. The casting-off and paying-out of heavy towing cables shall in all cases be considered as falling within this category of work;

- where the vessel does not possess separate accommodation, washrooms and toilets for female and male crew members. This provision shall not apply where all the crew are members of the same family.

2. The competent authorities to be designated by each Member State pursuant to Article 22 shall decide whether the vessel is suitable for women to work aboard and shall incorporate their decision in a certificate of inspection.

deleted

3. No person responsible for supervising and caring for children under the age of six who are constantly on board the vessel shall be employed as a crew member.

deleted

4. Women shall not be employed after the sixth month of pregnancy or before the end of the third month following their confinement.

deleted

Article 9

1. The crew prescribed for a particular mode of operation shall be constantly on board the vessel during the voyage. Departure of a vessel without its prescribed crew shall be prohibited.

2. By way of derogation from the preceding paragraph, where not more than one member of the prescribed crew is unable to work during a voyage because of exceptional and fortuitous circumstances, such as illness, accident or official instructions, a vessel may nonetheless continue its voyage as far as the first place where it can moor and wait in safety.

Article 9

1. Unchanged

2. By way of derogation from the preceding paragraph, where one or more members of the prescribed crew is unable to work during a voyage because of exceptional and fortuitous circumstances, such as illness, accident or official instructions, a vessel may nonetheless continue its voyage as far as the first safe place where it can moor in order to put ashore for speedy medical treatment any such member of its crew if necessary, or otherwise as far as the first place where it can moor and wait in safety.



SECTION IV

SPREADOVERS

WORK AT THE HELM AND RADAR SCREEN

Articles 10-12 unchanged

Article 13

Derogations from the provisions  
of Articles 10, 11, 12, 14 and 15  
shall be permitted only in the  
following cases:

(a) where a crew member is unable  
to work for reasons of illness or  
accident and his work has to be taken  
over by another crew member; in this  
case, the derogation remains valid  
only until the vessel reaches a  
stopping place appropriate to the  
circumstances, at which the incapaci-  
tated crew member must, if necessary,  
leave the vessel and be replaced;

(b) in order to ensure the safety of  
the vessel, or **its cargo**.

Article 13

Unchanged

Unchanged

(b) in order to ensure the safety of  
the vessel, its crew or its cargo

SECTION V

REST PERIODS AND BREAKS

ANNUAL LEAVE AND PUBLIC HOLIDAYS

Articles 14-17 unchanged

SECTION VI

WORK IN PORT

Article 18 unchanged

SECTION VII

SELF-EMPLOYED BOATMEN

Article 19 unchanged

SECTION VIII

APPLICATION OF MORE FAVOURABLE PROVISIONS

Article 20

1. Provisions now in force in the Member States which lay down higher minimum requirements concerning age, crew composition, professional qualifications, rest periods and breaks or lower maximum requirements for the spreadover, duration of work at the helm or of observation of the radar screen than those laid down in this Regulation shall remain applicable.

Each Member State may apply higher minimum requirements concerning age, crew composition, profession qualifications, rest periods and breaks or lower maximum requirements for the duty period, duration of work at the helm or of observation of the radar screen than those laid down in this Regulation.

2. By way of derogation from the fore-going paragraphs, the provisions of this Regulation shall continue to apply to members of crews engaged in international transport on board vessels registered in another State.

3. Every two years, starting from the date of entry into force of this Regulation, the Commission shall present to the Council a report on developments in the situation concerning the matters referred to in this Article.

Article 20

1. Unchanged

Each Member State may establish higher minimum requirements concerning age, crew composition, profession qualifications, rest periods and breaks or lower maximum requirements for the duty period, duration of work at the helm or of observation of the radar screen than those laid down in this Regulation

2. The provisions mentioned under 1 apply in international transport within the Member State concerned, in other Member States or in third countries, exclusively to crew members of vessels registered in the Member State which made those provisions.

3. Crew members engaged in international transport on board vessels registered in another State do not fall under the provisions of paragraph 1; the provisions of this Regulation apply to these crew members.

Article 20 (cont'd)

4. By way of derogation from paragraph 3 higher minimum requirements for crew composition laid down by a Member State apply also to crew members aboard vessels registered in another State when engaged in international transport in the Member State concerned.

5. The provisions mentioned under 1 apply in national transport in the Member State which has made those provisions on all vessels participating in this national transport irrespective of the country of registration.

SECTION IX

IMPLEMENTATION AND SUPERVISION

Article 21

The Commission shall lay down by Regulation, before ..... (18 months after the adoption of the Regulation)

- (a) a model for a log book;
- (b) a model for an individual record book, together with the necessary procedures for their use.

Article 21

The Commission shall, six months before the coming into force of those provisions of this regulation which, as determined by Article 25, do not come into force on the operation of this Regulation, lay down by Regulation:

- (a) a model for a log book;
- (b) a model for an individual record book together with the necessary procedures for their use.

Article 22

Each Member State shall designate the authorities to be responsible for ensuring the implementation of the provisions concerning crew composition contained in the Annex to this Regulation.

Article 22

1. Each Member State shall designate the authorities to be responsible for ensuring the implementation of the provisions concerning crew composition contained in the Annex to this Regulation.

2. Representatives of the workers and employers associations shall be included in the designated authorities.

Article 23 unchanged

SECTION X

FINAL PROVISIONS

Article 24

1. After consulting the Commission, Member States shall adopt by ..... (18 months after the adoption of the Regulation) the necessary laws, regulations and administrative provisions required for the implementation of this Regulation.

The provisions shall contain, among other things, details of organisation, procedures, control measures and penalties for contraventions.

Article 24

1. Unchanged

1a. The Commission shall as soon as possible lay down by Regulation common penalties to be adopted by Member States for contraventions of this Regulation.

2. Member States shall afford each other assistance in the implementation of the provisions of this Regulation and in the supervision thereof.

2. Unchanged

3. Where the competent authorities of a Member State are aware of an infringement of the provisions of this Regulation committed by a crew member who comes under the jurisdiction of another Member State, they may notify the authorities of that State thereof. The competent authorities shall transmit to each other all the information in their possession concerning penalties applied for such infringements.

3. Unchanged

Article 25

Articles 2 Paragraph 3, 5 clauses (a) and (e), 7 Paragraphs 2 and 3, 21 and 24 will apply from the coming into force of this regulation. The other provisions of this Regulation shall become applicable as from .... (18 months after the adoption of the Regulation).

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

Article 25

Articles 2 Paragraphs 3 and 4, 5 clauses (a) and (e), 7 Paragraphs 6, 21 and 24 will apply from the coming into force of this regulation. The other provisions of this Regulation shall become applicable as from .... (18 months after the adoption of the Regulation), or as otherwise provided for.

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

For the Council  
The President

Done at Brussels, ....

(Annex unchanged)

EXPLANATORY STATEMENTI INTRODUCTION

1. In preparing this Report your Rapporteur has held exhaustive discussions with all the most interested parties; the Commission of the European Communities, the Central Commission for Rhine Navigation (hereafter referred to as the Central Commission), representatives of the employers and owners of fleets and representatives of the employees. Inevitably it was impossible to consult everyone (the position of the self-employed owners who work their own boats is particularly difficult), but your Rapporteur feels that the discussions he and Mr Albertsen, rapporteur for the opinion of the Committee on Social Affairs, Employment and Education, have had, have been sufficient for them to be able to consider the proposed regulation on an informed and critical basis.

2. Indeed this applies equally to the Committee on Regional Policy, Regional Planning and Transport and to the Committee on Social Affairs, since - at the initiative of the latter Committee - a Joint Meeting was arranged in Brussels on 24 and 25 March 1976 between the two Committees and other interested parties.

3. Before turning to his specific comments on the text of the proposed regulation and on the amendments which he is proposing, your Rapporteur considers that it might be useful to say a little about the inland waterway situation in the Community generally.

4. The first point to make is that, unlike road and rail transport, the transport of goods (and passengers) by inland waterway is only a partial Community question. In four Member States, the volume of traffic or tonnage of individual craft is insignificant as is the number of people employed. Denmark, Ireland, Italy and the United Kingdom are likely to be virtually unaffected by the implementation of the proposal.

5. As far as the other Member States are concerned, the proportion of goods transported by inland waterway, as a percentage of all means of goods transport, varies considerably. In 1972, for example, in the Netherlands the figure amounted to as much as 56% of the total, in Belgium and Germany the

corresponding percentages were 23% and 20% whilst for France the figure was as low as 8%. In 1972 waterway goods traffic represented about 13% of the Community total, a decline of nearly 19% from the 16% of the total carried in 1962. On the other hand it should be remembered that this decline is relative to other forms of transport. For the period 1963-1972 the volume of inland waterway traffic rose by 24%.

6. During that decade then it is true to say that goods transport by inland waterway suffered from the expansion of transport by road and pipeline, though to a markedly lesser extent than did the railways. In addition, the inland waterway transport of certain of the Member States has suffered from a number of crises arising from overcapacity, the freighting rota system or "tour de role", and small scale operation (over 80% of undertakings in France and Belgium operate only one boat). It is not the place, in this report, to consider these problems in any detail, since there are steps being taken, or which will have to be taken, to combat them. They will therefore only be mentioned where the provisions of the Commission's present proposal would seem likely to have an effect, whether adverse or beneficial, on them.

7. The crisis in the inland waterway market is also felt on the Rhine. In 1973 Rhine navigation, in terms of tonnage, accounted for 61.27% of the total Community tonnage of France, Germany, Belgium and the Netherlands, though it must be remembered that the Rhine tonnage includes Swiss boats. Between 1965 and 1973 there was a total tonnage increase on the Rhine of approximately 28%. In 1975 however 25 million tons less were carried on the Rhine than in 1974; a drop of 8.7%, this decline would appear to be caused mainly by the current economic recession.

8. Of course the Rhine enjoys a unique and predominant position among the waterways of the Community, and its size has made possible the development of "pusher barges" which would be impossible on smaller waterways. In addition to being a great natural artery reaching from Switzerland to the North Sea and passing through areas of great industrial significance, the Rhine is likely in the future, with the opening of the Rhine/Danube canal, to achieve an even greater importance in goods transport.

9. As against its advantages, the Rhine possesses a number of disadvantages; its water level is liable to considerable variation, and navigation on it is in places dangerous. In addition the Rhine is a border river dividing or passing through Member States and having its navigable origins in a non-Member State, Switzerland. To meet some of these difficulties, navigation on the Rhine is administered by the Rhine Commission under the revised Mannheim Agreement of

1868; amongst the Commissioners is the representative of one non-Member State, Switzerland, and of another Member State, the United Kingdom which has no direct interest or riparian rights in the Rhine. In this connection it should be mentioned that another European waterway, the Moselle, is controlled by a Commission similar to the Rhine Commission under the French, German, Luxembourg Convention of 27 October 1956.

10. In drafting his Report your Rapporteur has no wish to consider in detail the possible legal implications or complications which could arise from possible conflicts of competence between the Community and the Central Commission (which includes as stated in the preceding paragraph one non-member State) or the Moselle Commission.

11. A Commission Memorandum to the Council of 8 April 1964<sup>1</sup> considered the compatibility of the Rhine Regime with Community Law and found that there was no incompatibility between the realisation of a common transport policy and the legal status of Rhine Shipping under the revised Mannheim Agreement of 1868. This may be open to legal objection but your rapporteur attaches considerable importance to the Commission's statement, in a letter to him, that "this development should not mean a basic change on the traditional legal and institutional order on the Rhine; the responsibilities and tasks of the Rhine Central Commission, in which Switzerland is also represented, should remain in principle unaffected".

12. In this connection, it is incidentally interesting to note that the 1868 Mannheim Convention envisaged the possible development of some form of Common Market. Article 13 of the Convention states 'In the case when several States unite themselves in a common customs or duty system, the frontier of the Union shall be considered ... as a territorial frontier'.

13. It is bearing the Commission's attitude in mind that your Rapporteur has taken pains to satisfy himself that the Central Commission will retain its full rights including that of providing more 'favourable' provisions than the present proposal. It would appear reasonable that when there are effective institutions already in existence which are fully compatible in their aims with the aims of the Community to refrain from taking over any of their functions without stating the cause.

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<sup>1</sup> VII COM(64) 140



There would appear to be no reason for removing any of its competence from the Central Commission (or for that matter from the Moselle Commission which broadly speaking applies the regulations in force on the Rhine).

14. The official attitude of the Central Commission towards the proposed regulation became clear at its meeting of May 1976 when, while welcoming the fact that it was largely based on current Rhine regulations, it pointed out that there were certain provisions of the proposal which were not well adapted to Rhine navigation. In its resolution<sup>1</sup> the Commission stated that harmonisation between the existing Rhine Regulations and the proposed Regulation was both desirable and possible but that account should be taken of the special characteristics and technical and economic needs of different waterways. The Central Commission also stressed the need to preserve a unified and common system on the Rhine and to this end stated that it was prepared to collaborate with the Commission of the European Communities.

15. Your Rapporteur welcomes the fact that the Commission of the European Communities for its part is prepared to join with the Central Commission in such collaboration.

16. One difference between the Commission's proposal and the Rhine Regulation is that the latter extends to craft of 15 tons or more while the former will only cover craft in excess of 150 tons. Your Rapporteur has considered this point carefully, but has finally decided, partly in the light of the views of the Central Commission themselves, who have stated in evidence that there are so few vessels of a tonnage of less than 150 tons that little useful purpose would be achieved by extending the scope of the proposed regulation to include them, that the Commission's minimum of 150 tons should not be altered.

17. The most contentious part of the proposed regulation is perhaps contained in Section IV (Articles 10 to 13) which deals with spreadovers and Section V (Articles 14 to 17) which deals with rest periods and breaks and annual leave and public holidays.

18. It is generally accepted that the application of these articles will result in greater operational costs, though the increase will vary considerably not only as between Member States but also as between different kinds of inland waterway undertakings (pusher barge convoys and larger or smaller vessels). In order to have an independent estimate of possible operational cost increases the Commission sought an opinion from a specialist company 'Interfides' which produced a report which examined the probable or possible effects of the proposal in three Member States, France, Germany and the Netherlands for certain types of operation and vessels.

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<sup>1</sup> Commission Centrale pour la Navigation du Rhin, Doc. 76/11, Protocol 5

19. Before this report was published the Committee on Regional Policy, Regional Planning and Transport had the opportunity of hearing evidence from both sides of the industry concerning the effect of these sections on operational costs. If the estimates the Committee then received were both tentative and varying the same is true for the 'Interfides' report. That report states clearly that there is an absence of firm statistical data and it stresses throughout the uncertain and hypothetical nature of its conclusions.

20. One thing is, however, clear and that is that there will be an increase of operational costs particularly as a result of applying Articles 10, 11, 12 and 14. Depending on the country and the type of operation this increase could be anywhere between 4% and 30%. One result of this, undoubtedly will be to reduce overcapacity either by requiring more vessels to be in service (largely as a result of Article 10), or by operators being forced off the market. It will obviously be easier for large scale operators to absorb an increase in their operational costs by increasing their tariffs than for those who operate only one or two vessels. This in turn is likely to distort competition as between various Member States insofar as the size of fleets tends to be larger in Germany than in the Netherlands or Belgium for example.

21. Your Rapporteur has considerable reservations about Sections IV and V of the proposed regulation, but in the uncertain light of the evidence he has heard and read he does not feel prepared to suggest specific amendments. He considers it likely however that, as at present drafted, these sections are too all-embracing and do not make sufficient distinction between various types of operator.

22. Finally, in connection with Sections IV and V, your Rapporteur would observe that while he is fully aware that over capacity is one of the main problems in transport by inland waterway, he considers that this is a problem which should be tackled directly and not, as it were, by a side door. In this connection he welcomes the Commission's proposal for a regulation concluding the Agreement establishing a European laying-up fund for inland waterway vessels<sup>1</sup> which applies principally to the Rhine and includes the Swiss Confederation. This represents a very real step forward, but other measures may well be necessary since if people are to be taken out of the industry this should not be as a consequence of a social regulation such as the present proposal, but it should be done through legislation which will make proper provision for compensation, re-training, the destruction of old vessels and so on.

<sup>1</sup> O.J. No. C 208, 3.9.1976, p.2

23. The preceding paragraph has particular relevance as far as the situation of self-employed boatmen is concerned. As already pointed out it is particularly difficult to obtain evidence from, or statistics about, this sector of the market. Self-employed boatmen do, however, comprise a very important part, perhaps as much as 70% (in terms of ownership if not of tonnage). The 'Interfides' report clearly demonstrates the dangers that the present proposal could pose to the self-employed; if they were to be forced off the market not only would this result in social hardships, but it might do considerable harm to the well-being of inland waterway transport as a whole. For reasons which are both social and economic then, your

Rapporteur considers that it is of great importance that the present proposal should be more flexible than as at present drafted, and that the situation where a large part of the operators might be forced out of the market as a result of a regulation designed primarily for social considerations, should be avoided. The present proposal should, therefore, (a) be more flexible, particularly in regard to Sections IV and V, and (b) should form part of an overall Community inland waterway policy which will clearly recognise, and attempt to deal with, the problems of overcapacity.

## II THE PROPOSED REGULATION

24. The present proposal has its juridical origins in the Council Decision of 13 May 1965 on the harmonisation of certain provisions affecting competition in transport by rail, road and inland waterway in that it seeks to harmonise 'certain social provisions relating to goods transport by inland waterway'. A very limited amount of success in "social harmonisation" has been achieved in the two other transport fields, and the Commission is now seeking to apply the Decision of 13 May 1965 in part to the remaining field. When one remembers the difficulties which have arisen, and which continue to arise in the harmonisation of social provisions in road transport it is important to try to ensure that similar problems should not endanger the effective working of this proposal.

25. A further point, which your Rapporteur has taken into account in his comments and proposals, is that there are very real differences between transport by road and transport by inland waterway. The technical differences between various waterways are far greater than between various types of road: this is true also not only of the differences between various types of vehicles and vessels, but also of the way in which roads and waterways are or may be administered. It is partly bearing this in mind that has led him to propose fundamental amendments to Article 7 (but see paras. 29 and 36 below).

26. It cannot be denied that very wide disparities exist between the various Member States concerning social provisions affecting the inland waterways. For navigation on the Rhine conditions of work such as manning and spreadover are governed and regulated by the Regulation on Inspection of Rhine Boats of 1976 and by the Paris Agreement of 1954 on the working conditions of Rhine boatmen. Manning is regulated by law in Germany, Belgium and Italy, though there are no legal provisions in France, the Netherlands or the United Kingdom. The maximum "spreadover" period is regulated for differing periods as between Belgium and the Rhine, and indeed on the Rhine, and is not regulated in Germany. All these are factors which can easily lead to distortion of competition and in turn to "flags of convenience" fleets being established in Member States where minimum requirements are cheaper or more favourable to the owner or employer. For this reason then your Rapporteur is satisfied that some harmonisation of social conditions is necessary not only in the interests of free competition but also of welfare and safety; at the same time he has felt obliged to ask himself the questions:

- (a) are the Commission's proposals in the best interest of internal navigation as a whole, particularly at a time of stagnation if not crisis?
- (b) will it be possible to apply the regulations effectively? and
- (c) will the cost of the new provisions, if applied successfully, be detrimental to the interests of the industry?

It is with these considerations in mind that your Rapporteur has proposed the amendments on which he offers detailed comments in the next section of this Report.

27. The present proposal is modelled largely on the regulations currently obtaining on the Rhine, though in some cases the Rhine regulations may be considered more "socially" favourable and in others less. Your Rapporteur will comment on these differences when appropriate.

III. THE OPINIONS OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS AND  
THE COMMITTEE ON SOCIAL AFFAIRS, EMPLOYMENT AND EDUCATION

28. The Committee on Economic and Monetary Affairs has, in its opinion on the proposed regulation, indicated its general support while stressing the need to ensure that its provisions are extended equally to third countries. This view is fully endorsed by your Rapporteur, and is expressed in his proposed amendment to add a new paragraph to Article 3.

29. The Committee on Social Affairs, Employment and Education has, in a lengthy and valuable opinion by Mr Albertsen, examined the proposal in great detail and suggested a number of specific amendments. Your Rapporteur has however adopted a somewhat different approach, and rather than offering specific amendments to particular provisions concerning crew composition, he has tried to make the proposed Regulation more flexible by giving a right of derogation from, or amendment of, certain provisions to the Commission after certain clearly defined consultations between the Commission and various interested parties.

30. When, however, one studies the Conclusions to Mr Albertsen's opinion (Part III, paragraphs 1 to 34), it will be seen that basically both Committees are seeking to achieve the same ends even if by somewhat different means. In fact the only significant difference between your Rapporteur's amendments and those of the Committee on Social Affairs, Employment and Education that remains is the question of whether the proposal should apply to craft of a minimum tonnage of 15 tons (as is at present the case in the Regulation on Inspection of Shipping on the Rhine of 1 April 1976), or to a minimum tonnage, as proposed by the Commission, of 150 tons.

31. Your Rapporteur has considered this matter carefully and for the reasons set out in paragraph 16 above, he believes that the figure should be left at the 150 tons proposed by the Commission.

IV DETAILED CONSIDERATION OF PROPOSED AMENDMENTS

32. New Article 2(4). This amendment is designed to ensure that within five years of the coming into force of this regulation, a comparable regulation should be proposed by the Commission, extending to the crew of passenger craft. There would seem to your Rapporteur to be no justification for not doing so either on grounds of social progress, competition, and particularly important in this sphere, of safety. It should be noted that the two Commission proposals concerning access to the occupation of carrier by waterway and the mutual recognition of diplomas (Doc. 324/75 - III & IV) both relate to passenger as well as goods transport, as does the present Rhine Regulation. Even though passenger transport represents only a very small

fraction of inland waterway transport, the question of safety is nevertheless of prime importance. Hours worked by the crew are as important an element in safety as is the provision of life belts or other measures which do not fall within the scope of this proposal. Your Rapporteur feels therefore that the proposal should within the near future be extended to passenger craft.

Article 2 (3). It is felt that the time scale is unnecessarily generous and that negotiations could be completed within 18 months.

33. Article 3. This Article has been amended to ensure that the Rhine Commission will be consulted particularly in view of the construction of the Rhine Danube Canal. Your Rapporteur considers that none of the present powers of the Rhine Commission should be removed and that they should remain free to legislate for Rhine traffic provided that their proposals are not socially less favourable than those of the Commission (see para.20 above).

The second amendment results from the meeting of 24/25 March 1976, and is at the request of both social partners. It is designed to ensure that distortion of competition does not result from lower standards being required on vessels of third countries which will probably be navigating extensively in the Rhine after the opening of the Rhine/Danube canal.

34. Article 5 (d). This amendment is to bring the minimum age of the ship's boy into line with current educational practice.

35. Article 6. This has been amended to make the wording more precise by including the concept of danger as a cause for imperilling safety, whether of crew, vessel or cargo.

36. Article 7. As this is perhaps the most important amendment your Rapporteur is proposing, he feels it necessary to explain it at some length. As at present drafted the Commission proposal allows, in Article 7, for a very wide ranging power of derogation, on a national basis, for the composition of the crew. Despite the attempted safeguards it appears to your Rapporteur that to allow such a right of derogation (which will result in permanent derogations) could even be said to represent a retrograde step.

In his opinion it would be better to take into account the conditions which affect the size of crew necessary to perform certain tasks on certain categories of vessel, and he has accordingly suggested in his new paragraph 3 that criteria of waterways should form the basis of the categories from which differences from the present Rhine requirements could be worked out by the Commission, rather than the Member States.

Recognising that it may take some time to determine the categories of waterway and also that the derogations permitted by paragraph 4 must only arise as a result of negotiations, your Rapporteur has suggested, in paragraph 1, that as long a period as five years should be allowed to elapse between the coming into force of the present regulation and the submission by the Commission to the Council of the definitive Regulation.

It would however be undesirable to have an interim period during which only spreadovers, rest periods and so on were covered since these are matters which must be considered in conjunction with crew composition. Therefore for the interim period between the coming into force of the present Regulation and the adoption of the further Regulation, your Rapporteur has made provision to cover this situation in his proposed paragraph 6.

During this period the manning provisions set out in the Annex to the proposed Regulation will apply but Member States will be able to apply to the Commission to authorise temporary derogations. Such derogations, which can only be granted after the procedures and conditions imposed by paragraph 4 have been complied with, will lapse automatically at the end of the interim period.

Your Rapporteur is aware that allowing derogations on the basis of types of waterways and the vessels working them is likely to present more difficulties of a political nature than the Commission's proposal that the Member States themselves should be entitled to seek derogations. Even if politically more difficult he is convinced that a worthwhile harmonization will only be achieved if derogations are allowed only on a basis of technical criteria which will apply on a non-national basis.

37. Article 8. Although presumably drafted to defend the interests of women, your Rapporteur points out that an approach such as is typified in paragraph 1 of this Article is out of line with contemporary thinking and is specifically prohibited, for example, under Section 7(2)(a) of the United Kingdom Sex Discrimination Act 1975 which provides:

'(2) Being a man is a genuine occupational qualification for a job only where -

(a) the essential nature of the job calls for a man for reasons of physiology (excluding physical strength or stamina) ....'

Your Rapporteur considers it unlikely that women will apply for, or be employed for jobs, patently beyond their physical capacities. As at present worded, Article 8, however well intentioned, could result in discrimination, and he accordingly puts forward an amended text that basically will forbid any discrimination while leaving the points covered by paragraphs 2, 3 and 4 of the unamended Article 8 to national legislation.

38. Article 9(2). This amendment is designed to achieve greater clarity in the drafting.

39. Article 20. This amended version of Article 20 has been prepared by the Commission and is designed to clarify the original text. It does not make any changes of substance. The Commission have confirmed that this Article will permit national or international bodies such as the Rhine or Moselle Commissions to apply higher standards on their waterways.

40. Article 21. The purpose of this amendment is to ensure that as soon as reasonably possible after the Regulation is adopted, a model log book will be available; there would appear to be no technical objections to this.

41. Article 22, new paragraph 2. This new paragraph is intended to tighten up the implementation provisions by including representatives of employers and employees in the designated authorities.

42. Article 24. The new paragraph 1A is designed to ensure that the Commission will introduce a common system of penalties as soon as possible. Without such a common system there is a risk of distortion of competition if one country applies much less severe penalties for a particular offence than another.



OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

Letter from the chairman of the committee to Mr McDONALD, chairman of the Committee on Regional Policy, Regional Planning and Transport

Luxembourg, 3 February 1976

Dear Mr Chairman,

At its meeting on 19 and 20 January 1976, the Committee on Economic and Monetary Affairs considered the proposal from the Commission of the European Communities for a regulation on the harmonization of certain social provisions relating to goods transport by inland waterway (Doc. 281/75).

Although it regretted the delay in the implementation of the Council's decision of 13 May 1965 on the harmonization of certain provisions affecting competition in transport, our committee gave favourable consideration to the Commission's proposal for a regulation.

The Committee on Economic and Monetary Affairs nonetheless felt that, in order to avoid jeopardizing the economic interests of the Community, the approximation of conditions of competition in the area of goods transport by inland waterway - the primary purpose of the proposal - would require the extension of Community regulations to nationals of third countries, in line with the general scope of Article 2(1). For this reason our committee stressed the importance of initiating negotiations without delay with Switzerland (Article 2(2)), as far as conditions of navigation on the Rhine are concerned, and with other third countries (Article 3), and of their rapid completion once the regulation has been adopted.

The Committee on Economic and Monetary Affairs also hopes that the Commission will draw up as quickly as possible proposals for harmonizing working conditions in this transport sector.

Aside from these considerations, the Committee on Economic and Monetary Affairs approved the proposal for a regulation and I ask you to consider this letter as a favourable opinion.

Yours sincerely,

(sgd. Francis LEENHARDT

Present: Mr Notenboom, acting chairman; Mr Albertsen, Lord Ardwick, Mr Cousté, Mr De Keersmaecker, Mr Delmotte, Mr Dykes, Mr Hougardy, Mr Lange, Mr Mitterdorfer, Mr Prescott, Mr Romualdi and Mr Suck.

OPINION OF THE COMMITTEE ON SOCIAL AFFAIRS, EMPLOYMENT AND EDUCATION

Draftsman: M. ALBERTSEN

On 1 December 1975, the Committee on Social Affairs and Employment appointed Mr ALBERTSEN draftsman.

It considered the draft opinion at its meetings of 9 December 1975, 22 January, 25 February, 29 June, 29-30 September and 20-21 October 1976 and adopted it unanimously on 21 October 1976.

Present: Mr van der Gun, chairman; Mr Adams, vice-chairman; Mr Albertsen, rapporteur; Mr Albers, Mr Bouquerel, Mrs Dunwoody, Mr Härzschel, Mrs Kellett-Bowman, Mr Meintz, Mr Pisoni, Mr Seefeld (deputizing for Mr Dondelinger) and Mr Walkhoff.

## I. INTRODUCTORY REMARKS

1. The present proposal for a regulation has been a long time coming. It originates from the Council Decision of 13 May 1965 on the harmonization of certain provisions affecting competition in transport by rail, road and inland waterway<sup>1</sup>. According to Article 12 of this decision, harmonization of provisions concerning working and rest periods and overtime arrangements was to have been completed by 31 December 1968 at the latest.

2. The delay has therefore been considerable, a fact to which the European Parliament has already drawn attention in a written question by Mr SEEFELD<sup>2</sup>.

The Commission's answer at that time was that the proposal had taken rather a long time to draw up 'because of its technical aspects and the various interests involved'.

3. In spite of this delay, the proposal for a regulation is still not complete since it disregards Article 12(2) of the abovementioned Council Decision by its failure to contain provisions on overtime arrangements.

In addition, there are no provisions whatsoever concerning passenger transport. In its reply on this point to the committee, the Commission explained that passenger transport was far less important than goods transport and so harmonization of social conditions in that sector was not as urgent. However, the Committee on Social Affairs, Employment and Education finds this view difficult to accept. Certainly, it is mainly the Rhine that carries a significant amount of passenger traffic, as is evident from the Central Commission's answer to a question put to it by the Committee on Regional Policy, Regional Planning and Transport<sup>3</sup>, and the existing passenger transport regulations for this waterway will continue in force; yet it seems unreasonable that crew members on vessels engaged in passenger and goods transport respectively will not be covered by the new, more favourable, welfare provisions. Furthermore, the Commission has itself adopted a different attitude with regard to road transport, where the proposal for a Council regulation on the harmonization of certain social legislation expressly includes both goods and passenger transport<sup>4</sup>.

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<sup>1</sup>OJ No. 88, 24 May 1965, p. 1500/65

<sup>2</sup>OJ No. C 233, 13 October 1975, p.12

<sup>3</sup>PE 43.934/Ann., p.8

<sup>4</sup>COM(76) 85 final, 3 March 1976

4. While the purpose of introducing a regulation on inland waterway navigation is first and foremost to approximate the conditions of competition, it is also intended to improve social welfare conditions and safety standards in this branch of transport.

The Committee on Social Affairs, Employment and Education has been primarily concerned with the social aspects, but since these are in fact closely connected with both safety and competitiveness, it has proved necessary to examine every facet of the proposal.

5. By way of preparation our committee arranged and participated in various meetings with representatives of employers, workers, the Central Commission for the Navigation of the Rhine and the Commission of the European Communities.

These formal and informal discussions prompted our committee to formulate a number of questions, which in due course were answered in writing by those concerned. They form one of the bases of this opinion.

Contacts with representatives of inland waterway transport in the Community culminated in a hearing organized by the Committee on Social Affairs, Employment and Education. For this occasion the draftsman of the opinion, Mr K. ALBERTSEN, had drawn up a list of questions (PE 44.102) to form the basis for a debate on individual articles of the proposal on 24 and 25 March with the participation of experts on inland waterway navigation<sup>1</sup>.

6. During the course of the abovementioned meeting it became clear, particularly from the workers' side, that the present proposal is the fruit of many years of cooperation between the Commission and the interested parties. Our committee welcomes this fact and is especially pleased that improvements have been initiated in this area of economic life, which must at present be regarded as the most backward transport sector as far as social welfare provisions are concerned.

The Committee of ITF Unions in the EEC stressed that their organization represented the interests only of wage-earners and not self-employed boatmen; this, in their view, explained the low level of social provisions, since the self-employed were prepared to work no matter how low social provisions might be.

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<sup>1</sup> See summary record, PE 44.395

7. In order to gain some idea of the size of the industry, the Committee on Social Affairs, Employment and Education put a number of questions of a more technical kind to the Commission. The answers show that the number of cargo vessels on the Community's inland waterways in 1971 was approximately 23,000 and the number of persons employed is estimated to be in the order of 110,000 to 120,000.

As to the proportion of Community traffic handled by inland waterways, statistics from 1972 show that this sector is definitely less important than road transport (which alone claimed very nearly 50% of the market) and rail transport, whose share was 27%. Nevertheless it accounted for 14% of the total as against 10% for pipelines.

Moreover, a glance at transport trends during the 1963-1972 period makes it clear that the industry is by no means stagnating. While railways have not shown any increase at all during this period, inland waterway traffic has risen by 24%, as against 63% for road transport and a sixfold increase in the case of pipelines.

The range of goods transported by inland waterway is very restricted, however. Building materials and crude or processed minerals make up over a half of the total volume of goods transported, while the other groups: agricultural products, coal, foodstuffs, ores, fertilizers, etc., each account for only 5 to 10% of the total. Only petroleum products continue to have some importance, amounting to a good fifth of the total volume of goods transported.

8. A pre-eminent feature of the Community's inland waterways is the Rhine. It is the backbone of Europe's internal waterway network and alone carries 60% of all goods transported by inland waterway in the Community. Nor is there any stagnation here either, since statistics show that the volume of goods transported on the Rhine rose by 28% between 1965 and 1973.

9. For over a century, navigation on the Rhine has been subject to very exact regulation on the basis of the Mannheim Convention of 1868, whose origins go all the way back to the Congress of Vienna. Under this convention the Rhine became an international navigable waterway and all customs duties, tolls and other barriers to free movement between the states through which the Rhine flows were abolished<sup>1</sup>.

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<sup>1</sup> See GIRAUD report on problems of EEC transit traffic through Austria and Switzerland: Doc.500/75 of 2 February 1976 p.19 ff.

Some provisions of the Mannheim Convention already bore a certain supranational character; and the Central Commission for the Navigation of the Rhine, which it established, is an international body endowed with supranational powers in certain limited areas.

The fact that one of the states party to this convention, Switzerland, is not a member of the Community, created certain problems when the present proposal for a regulation was being drawn up. It is against this background that Article 2(2) of the proposal must be seen, for this states that, for a transitional period, the regulation shall not be applicable to crews of vessels based in Switzerland. For a certain unspecified period then, they will remain subject to the Rhine regulations.

10. In drawing up the present proposal, it was of course natural to take as a basis the Rhine regulations<sup>1</sup>, although certain changes have had to be made to take account of the varied conditions obtaining on the other inland waterways of the Community.

The regulation must, of necessity, cover all crew members and all types of vessel operating on the Community's inland waterways without distinction as to nationality or home port. This is essential for competition, safety and social welfare considerations. While the number of ships with home ports in third countries is very low (scarcely exceeding 1%), the types of vessels and patterns of ownership vary considerably.

The figures supplied by the Central Commission for the Navigation of the Rhine show that self-propelled barges now account for rather more than two-thirds of goods transport with pushed barges taking up the remaining third. Towed barges are disappearing rapidly: although they represented over three-quarters of the total in 1950, today their share of goods transport is a couple of percent only.

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<sup>1</sup>Regulations for the inspection of vessels and rafts operating on the Rhine, 18 November 1947.  
Agreement on the working conditions of Rhine boatmen, concluded in Paris on 27 July 1950.

The patterns of ownership vary greatly from country to country. In the Netherlands particularly, the market is dominated by self-employed boatmen and they are also in a strong position in the rest of Rhine navigation, taking an estimated 70% of the market.

These numbers are of great importance for the assessment of the present proposal, since there is a danger that the regulations proposed for spreadover, rest periods, annual leave, etc., might force this self-employed group out of the market.

11. Since the expected rise in costs caused by implementation of the regulation is naturally a source of worry to people in the industry, the Commission of the European Communities has requested an independent audit and management service, INTERFIDES, to calculate the economic effects of certain articles of the proposal.

The studies showed that the effects will differ according to the type of vessel and in each of the countries. Generally speaking, however, it must be said that the result of the study, which appeared after the proposal was drawn up, does place an obligation on the Commission to examine more closely the industry's ability to survive, before the regulation is given its final form.

12. INTERFIDES examined the situation in West Germany, the Netherlands and France.

The economic consequences for German shipping will be considerable because the introduction of a maximum daily spreadover (Article 10) and a minimum daily rest period (Article 14) will involve a substantial reduction in average daily working hours and therefore bring about a rise in costs to the industry of between 25 and 30%. Further economic effects will result from the introduction of a limit on the duration of radar screen observation (Article 12) and the requirement for at least 4 weeks annual leave (Article 17), although INTERFIDES does not feel that these factors will cause significant cost increases. Their size will depend on the extent to which the industry is able to take suitable measures to adapt to the new circumstances and counteract the disadvantages of a reduced turnover rate particularly by a more efficient use of time and capacity.

13. Implementation of the regulation is expected to give rise to increased costs in the Dutch inland shipping industry as well, and the reduction of the daily spreadover is expected to result in an average increase in running costs of approximately 7.5%. The introduction of a time-limit for radar screen observation may result in increased expenditure on crew. This extra expenditure may, however, be avoided if crew members are in future holders of a certificate in radar screen observation.

14. The French study concerned the effects on barge trains and self-employed boatmen.

As far as the train is concerned, introduction of the regulation with specified spreadover and rest periods will not have any financial consequences if they are already operated on a four-shift system. But the provision on the reduction of continuous work at the helm (Article 11) means that either the composition of the crew will have to be changed or else the existing crew must be supplemented with extra helmsmen. The total annual cost of changing the composition of the crew would not, however, exceed half a percent, whereas taking on two additional helmsmen would increase costs by slightly over 1%.

If a train is operated by only three shifts, it would be necessary to engage a fourth if the daily maximum spreadover is not to be exceeded. In this case, the cost increase would amount to almost 5%.

15. The Commission's proposal is likely to put the self-employed boatman out of business.

These boat owners operate, with the assistance of their wives, on vessels which are at the same time their homes.

Therefore, if Article 8 on the employment of female crew members is implemented, considerable financial consequences must be expected since it would be necessary to employ a deckhand if the woman became pregnant or if there were small children present under the age of six. This increase is estimated to be approximately 26%, and in addition there would be the cost of the compulsory provision of separate accommodation, washrooms and toilets (Article 8(1) fourth indent).



On the other hand, the provisions on maximum spreadover and rest periods are not expected to have any appreciable financial consequences, since (at least on the canals in northern France, which were the subject of the study) the locks are usually open for only 13 hours in summer and between 10 and 12 hours in winter.

The limitation of continuous work at the helm to a maximum of four hours will have financial consequences only if wives are unable to take the helm. In such cases, the employment of a deckhand would mean a rise in total annual costs of approximately 32%.

16. The parties consulted by the Committee on Social Affairs, Employment and Education held widely divergent views regarding financial consequences of the proposal.

The Central Commission for the Navigation of the Rhine stated that in the first instance inland waterways other than the Rhine would be faced with increased expenditure and that one of the consequences might be increased expenditure on shipbuilding and maintenance of vessels which did not sail on the Rhine.

For the workers it was quite clear that implementation of the Commission's proposal might well mean that many could no longer hold their own in competition. However, this was not regarded as totally negative, since in their opinion a considerable number were working today under very bad social conditions.

On the other hand, the German Federation of Employers for Rhine Navigation expressed reservations on the proposal, precisely because of the consequent increase in costs. In the opinion of this organization, it was unreasonable to harmonize provisions in an area where both large vessels with exclusively male crews and quite small family-operated vessels were operating. Furthermore, it considered it unfortunate that the Commission should put forward a proposal before any attempt had been made to ascertain its financial implications.

In reply to a question on the ability of the smaller family-operated vessels to survive, the Commission of the European Communities, for its part, has made the laconic statement that it does not believe that there is any threat to the survival of family operated vessels.

17. Of the proposal in general, the conclusion must be that it represents great social progress within an industry which until now has been very backward.

The Commission has made considerable use of the Rhine provisions in drawing up the proposal for a regulation, but in certain areas it has introduced less favourable regulations for workers, thus disregarding optimum safety conditions and exerting a negative influence on conditions of competition. The Commission itself states that certain of the proposed provisions are more stringent than the Rhine provisions (e.g. the daily rest period) in the interests of social welfare, while others have necessarily to be less stringent since they apply as minimum standards for smaller and less difficult waterways than the Rhine (e.g. requirements concerning the crew).

Our committee cannot, however, subscribe to the latter view. Firstly, the regulation is also to apply to the Rhine whose regulations would therefore be harmonized in a retrograde direction (contrary to Article 117 of the EEC Treaty, which speaks of 'harmonization while the improvement is being maintained'). Secondly, the regulation lays down a shorter period of work for certain members of the crew than on the Rhine, is clearly the opposite of an improvement in safety such as the Commission itself states to be one of the objectives of the proposal for a regulation.

18. The great unknown factor remains the self-employed boatmen - the small family-operated vessels. Increased costs will have a very severe effect on them and scrupulous observance of the regulation would, in many cases, result in bankruptcy.

It is to be hoped that the introduction of better social conditions can be combined with reasonable treatment of independent operators. Thus, in July 1976, delegations from the Member States of the European Community (excluding Denmark and Ireland) and Switzerland negotiated an Agreement establishing a European laying-up fund for inland waterway vessels<sup>1</sup>, the purpose of which is to rationalize the economic situation

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<sup>1</sup> COM(76) 410 final, 21.7.1976

on inland waterways by eliminating the existing imbalance between supply and demand in goods transport. The Agreement is for an initial period of five years and only applies to the Rhine, the Moselle, the Neckar and the Main and Dutch inland waterways, but it is nevertheless an important step and will probably prompt many self-employed boatmen to leave an industry whose need for social progress is unquestionable.

The Committee on Social Affairs, Employment and Education regrets, however, that the Agreement centres round excess carrying capacity and seems to overlook the man at the helm merely granting laying-up compensation to the owner or operator and stipulating that crew members may not be dismissed solely on account of laying-up. In our committee's view this is quite inadequate; laying-up should be accompanied by retraining courses for the younger persons involved and early retirement for the older ones, since it seems unreasonable for a single social group to have to pay for the required modernization of goods transport on the Community's inland waterways.

## II. CONSIDERATION OF THE PROPOSAL FOR A REGULATION

19. Article 1 defines certain basic concepts employed in the proposal for a regulation.

- a. Since a 'mixed-duty day' is defined as a day during which part of the time is spent on sailing and part on such work as loading and unloading, it would be reasonable to have a definition of days exclusively occupied with loading and/or unloading, for Article 10 states that, for the calculation of the average daily spreadover, account shall be taken only of sailing days and mixed-duty days and therefore not of days which are exclusively occupied with loading/unloading.
- b. Section 4 gives a list of the various crew members, but makes no mention of the person responsible for preparing meals each day. In the opinion of our committee, it not only seems right for the cook to be included under the provisions of this regulation but also for him to be trained in cookery, at least on the larger vessels.

The Commission has stated that since the present proposal for a regulation is based on the Rhine provisions and these do not mention a cook, the Commission did not want to do so either. However, this view does not quite tally with the annex to the proposal for a regulation which says of the composition of the crew (page 8):

'When the statutory crew on board a vessel consists of more than six members, no crew member shall, irrespective of the mode of operation, be assigned the task of cooking for all'.

This must mean in practice that a vessel must also carry a cook.

- c. 'Daytime sailing', 'semi-continuous' and 'continuous sailing' are mentioned in section 5. Semi-continuous sailing is set at a maximum of 18 hours, which implies that crew members are entitled to an uninterrupted night's rest of only 8 hours. This is, however, incorrect since crew members are entitled to 12 hours of uninterrupted rest. This period of 8 hours must, however, fall between certain times, which therefore means that the remaining 4 hours must be taken either immediately before or immediately after these particular times.

- d. The final sentence of section 8 stipulates that during an uninterrupted period of 6 hours a crew member may dispose freely of his time. If this means that he can also go on land during the voyage, it is in conflict with Article 9 (1). Since the crew prescribed for continuous sailing must remain on board during the voyage, even during rest periods, this ought to be stated in unambiguous terms.
- e. Finally, it should be pointed out that a comparison between the provisions of Article 1 and the existing Rhine provisions shows that the Commission's proposal is considerably more severe. For example, daytime sailing is fixed at a maximum of 14 hours out of 24 as against 16 hours on the Rhine, while the maximum for semi-continuous and continuous sailing is 18 hours in the proposal, while on the Rhine it must not exceed 20 hours.

This represents a real reduction of working hours to the advantage of the employees, which the Committee on Social Affairs, Employment and Education can only welcome, yet it has to be considered inadequate both in the light of the Community principle of a 40-hour work week and having regard to the much shorter spreadover proposed by the Commission for road transport crew<sup>1</sup>.

20. Article 2 (1) states that the regulation shall apply to 'crew members of vessels engaged in goods transport on the inland waterways of member states'.

- a. In some languages the wording chosen could give rise to misunderstanding since a strict interpretation would exclude crew members on tugs, pushboats and empty vessels from the provisions of the regulation. Since this cannot be the intention, the wording of paragraph 1 ought to be suitably amended.
- b. Paragraph 2 introduces a derogation from this. During a transitional period, the regulation will not apply to vessels belonging to undertakings which have their headquarters on the territory of a third country, provided that they are subject to the Rhine provisions.

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<sup>1</sup> COM (76) 85, Section IV, p. 9 ff

In practice this concerns only Switzerland. The problem is that the Mannheim Convention has acquired sovereignty over the Rhine, while the Community has sovereignty over that part of the waterway which lies within its territory. Since Switzerland wishes to retain its rights under the Mannheim Convention, the Community must try to reach an agreement with this third country to ensure that all vessels on the Rhine and the Community's other waterways are subject to the same conditions and provisions.

- c. Paragraph 3 fixes the transitional period at 18 months. This has been judged quite unrealistic by the experts, and our committee must therefore insist that the Commission take up formal contacts with the Central Commission for the Navigation of the Rhine at the earliest opportunity so that the transitional period can be limited to an absolute minimum.

21. Article 3 makes it possible to undertake negotiations with third countries in general on the implementation of this regulation in the Community.

The reason for this provision is that measures to regulate inland waterway navigation within the Community can be effective only if they apply to all vessels from third countries as well.

At present, the number of vessels from third countries on the waterways of the Community is negligible, but a large increase must be expected, particularly from Eastern Europe. The problem will reach notable proportions when the Rhine-Main-Danube Canal is opened in a few years' time. Representatives of both employers and employees have expressed great anxiety at the competition to be expected from the state-trading countries. Furthermore, Mr Albers drew attention in Written Question No. 851/75<sup>1</sup> to fears that East European inland waterway traffic will operate 'dumping prices' in the future once the Rhine, Main and Danube have been linked up. The Commission must therefore be requested to open negotiations with the countries concerned in good time in order to lay down the rules of competition which will place businesses in the Community on an equal footing with those from the state-trading countries. It would be unfortunate if competition from these countries were to produce a set-back in the improvement of social conditions in the context of collective bargaining.

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<sup>1</sup> Bulletin No. 56/75, 1 March 1976, p.24

22. According to the explanatory memorandum to the proposal for a regulation, Article 4 contains a derogation for crews of certain classes of small craft and those which do not, as such, operate on the transport market.

It is the opinion of our committee, however, that the principle must be established of equal conditions for all crews irrespective of the type of vessel they are employed on, although an exception is the case of vessels which do not operate on the transport market at all is logical.

The Committee on Social Affairs, Employment and Education cannot, however, accept the limit concerning vessels whose deadweight is less than 150 tonnes. The Commission does indeed state the number of vessels operating with a deadweight of less than 150 tonnes is relatively small. Apart from the unreasonableness of excepting a group of crew members solely by reference to their small number, this recommendation faces other difficulties with regard to goods transport by inland waterway.

The Rhine provisions cover all vessels over 15 tonnes, hence vessels of between 15 and 150 tonnes on the Rhine will continue to be subject to them, while vessels having this deadweight on other inland waterways will not be covered by them or any other regulation. This is clearly unacceptable for reasons of competitiveness and safety and on social grounds. Our committee therefore requests the Commission to introduce uniform regulations for all waterways and consequently to lower the limit from 150 tonnes to 15 tonnes.

23. Article 5 sets out the requirements which crew members must fulfil,

- a. Our committee objects to the fact that several of these requirements are less strict than the existing Rhine provisions. This cannot be accepted under any circumstances, since the Rhine provisions must constitute an absolute minimum whilst the objective of the Community's regulation must be the introduction of forward-looking social arrangements.

The Commission's proposal lays down that boatmen must have sailed for at least four years at sea or on inland waterways, while the requirements under the Rhine provisions is 5 years. A helmsman, according to the Commission's proposal, must have sailed for at least one year as deckhand or deckhand/motorman, while the Rhine requirements is two years of which at least one year on the Rhine. A deckhand must have sailed for at least one year as a member of a deck crew according to the proposal, whilst the Rhine requirement is 2 years. Finally, the engineer, according to the proposal, must have worked for at least two years as deckhand/motorman, whilst the Rhine requirement is 3 years.

- b. Particularly in the case of the boatman, the insistence on experience at sea is not satisfactory either, but ought to be followed up by a certain number of years' experience in sailing on inland waterways in order to acquire adequate competence in navigation and transport.
- c. The age limit for the ship's boy has indeed been raised from 14 years on the Rhine to 15 years in the proposal, but this still seems too low, since it cannot be sensible to introduce age limits which are lower than the age at which compulsory school education generally ends. The employees' representative has proposed 16 years as the proper age limit, and our committee agrees with this.
- d. Two members of the crew are absent from the list: the cook and the stoker. The cook is not mentioned under Article 1 (4), which gives a definition of a crew member, and it ought there to be stated that he must have had training in cookery.

Even more extraordinary is the lack of any mention of the requirements to be met by the stoker. This member of the crew is expressly mentioned in Article 1 (4) and so Article 5 should state what requirements he has to fulfil.

- e. One year's experience as deckhand is, in the opinion of our committee, far too little to be able to meet the demands which are placed on a helmsman. Sub-section c also states that in the assessment of sailing experience, account may be taken of part or all of the time spent in attendance at an appropriate training establishment. It should, however, be expressly stated that this is dependent on the trainee's obtaining good results and being awarded a diploma.
- f. The introduction of less rigorous and/or inadequate conditions therefore seems to our committee to be unreasonable since in fact it lowers the standing of the occupation.

In view of the development of inland waterway navigation as a whole, the increasing intensity of traffic, larger units, greater speeds, dangerous loads etc., the aim of a regulation should be to introduce more rigorous conditions.



The Commission itself states that the extension of the Rhine provisions to other waterways would mean that many operators would be put out of business. While this is possibly correct, it is not consonant with the Commission's own statement on page one of the explanatory memorandum to the proposal, that it is imperative that the provisions 'will also be concerned with improving social conditions and safety standards in this mode of transport'. Moreover, the Commission, in framing regulations on spreadover, rest periods and holidays, has not been influenced by the wish to prevent those operators, who would not be able to hold their own in competition, from leaving the industry.

24. Article 6 makes it possible for crew members to be called upon to perform duties other than those which fall within the usual scope of their specific functions 'if the safety of the vessel or cargo so requires'.

Even though this is made conditional on the fact that 'his qualifications and physical powers are commensurate with such duties', our committee feels that it is not satisfactory for crew members to be called upon to perform duties other than their own without more precise details being given.

At the hearing with experts, there was general agreement between the employees' representatives and the members of the two committees concerned, that the wording was not such that abuse could be ruled out. While the employees' representatives felt the qualifications and requirements mentioned ought to be made a condition for admission to the industry, together with suitable tests at regular intervals, the committee members felt that the words 'in an emergency' should be added to the text of the article so that it could be invoked only in cases of force majeure.

25. Article 7 allows the Member States to introduce derogations from the rules governing the composition of crews.

a. While paragraph 2 does indeed lay down certain conditions to be fulfilled, i.e. that this is valid only for a limited period, that the Commission must give its authorization, that the provisions on spreadover and rest periods must be taken into account, that the traffic safety regulations must be respected and that there must be no step backward in the social field in relation to existing levels in the Member States, our committee is nevertheless of the opinion that this article will in fact create very dangerous loopholes in the regulations.

The employees, employers and the Central Commission for the Navigation of the Rhine have all expressed misgivings about the possibility of divergent regulations causing discord between the countries concerned. It has for instance been argued that uniform provisions must be guaranteed in all Member States in order to avoid distortion of the conditions of competition, and also that divergent regulations might produce a general decline within the industry instead of the harmonization intended. Moreover, Member States ought not to be allowed to apply any such derogations in an arbitrary manner; tripartite negotiations should always be held first.

- b. Paragraph 4 goes even further. By virtue of this, Member States may make a reduction in crew composition without the authorization of the Commission ' in those cases where the technical equipment of the vessel in question is higher than that prescribed and is capable of effecting certain tasks normally effected by crew members'.

Our committee can hardly agree to this, since the introduction of more modern technical equipment should not automatically lead to a reduction in the crew. Quite the contrary! For instance, more modern equipment may subject the crew to greater stress, which would necessitate shorter spreadovers and an increase in the crew; besides which it is unreasonable that technical progress should be of benefit only to companies and not their employees.

In the opinion of the Committee on Social Affairs, Employment and Education, Article 7 must therefore be framed in such a way that it is permissible to depart from the provisions only with reference to social considerations or for reasons of traffic safety, and then only after authorization has been obtained.

- 26. Article 8 bars women from becoming crew members under certain circumstances. However, these are formulated in such a general way that in fact it seems as though the intention was to exclude women from the industry completely.

- a. Paragraph 1 automatically denies women access to employment in goods transport by inland waterway in cases where the rigging of the vessel is difficult to handle, where the rudder cannot be moved effortlessly by one person, where loads exceeding 15 kg in weight have to be carried and where there is no provision for separate accommodation, washrooms and toilets.

This is an obvious case of discrimination against and depreciation of women. The Commission has defended the measure by referring to its desire to protect women. This attitude has been strongly attacked by various members of our committee, particularly the female ones, who have pointed out that the aim of the regulation should not be to deal with the relationship between men and women and that protective measures should benefit employees as a whole and not one of the sexes alone. Of course, our committee does not wish to go to the opposite extreme and actually force women to seek employment within this industry but merely to give them the opportunity to do so once they are acquainted with the conditions. The Commission itself seems to have accepted this view when drawing up the proposal on the harmonization of certain social legislation relating to road transport<sup>1</sup>, which contains no special provisions to curtail the right of women to enter the industry. Conditions within these two transport industries are perhaps not completely identical but it is evident that equipment which is difficult to handle, the application of special effort and the carrying of loads weighing more than 15 kg are also tasks which arise when driving heavy truck combinations, and women are not excluded from this. In addition, there is no separate accommodation for road transport crew: this has not, however, prompted the Commission to introduce special provisions governing the entry of women into the industry.

- b. Paragraph 2 mentions a 'certificate of inspection' in which the competent authorities have to record whether the vessel is suitable for female employees. The Commission does not elaborate on this in the explanatory memorandum and so our committee considers that the nature of this certificate should be explained and that the issuing authority should be specified.
- c. Paragraph 3 excludes people responsible for supervising children under the age of 6 from being members of the crew. This represents a step backwards by comparison with the Rhine provisions, where persons caring for children under 10 are barred from employment. If this provision is to be preserved, a higher age limit would be reasonable, bearing in mind children's needs.
- d. The protection of pregnant women, to which the Committee on Social Affairs, Employment and Education gives high priority, is provided for in paragraph 4, according to which women shall not be employed after the 6th month of pregnancy or before the end of the 3rd month following their confinement.

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<sup>1</sup>COM(76) 85 final, 3 March 1976

The phrase 'women shall not be employed' may, however, give rise to certain difficulties of interpretation, since this would not cover the wives of self-employed boatmen, who certainly act as crew members but who are not employed in the true sense of the word. The text should therefore read 'women may not be members of the crew after the 6th month of pregnancy or before the end of the 3rd month following their confinement'.

The introduction of this provision does, however, raise the question who is responsible for the payment of wages and sickness and unemployment benefit during the period in which sickness benefit cannot be claimed under the provisions of national legislation.

- e. In view of the many reservations made with regard to Article 8, there is a large measure of agreement amongst committee members that the whole article should be scrapped and that the matter should be left to national legislation on the employment of women in this sector.

This view must also be considered in the light of the principle of equal treatment for male and female employees. The Commission itself states in the document it has drawn up on this subject<sup>1</sup> that 'beyond the recognized need for protection during pregnancy, women at work now seek little, if any, differential protection from that regarded as appropriate for men. Although many dangerous jobs remain, some women now regard such jobs as well within their range of interest and would resent an attempt to protect them from doing them'.

The logical course of action for the Commission to take would therefore be to delete Article 8, which would then place women in an identical situation with regard to employment within goods transport by inland waterway and by road.

- 27. Article 9 makes it possible for a voyage to be continued even when one of the crew members is unable to work.

Besides the fact that the Commission's explanatory memorandum states that permission is required for this to be done, while no such restriction appears in the text of the article, the wording seems far too vague. Moreover, the question which member of the crew is unable to work is not immaterial.

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<sup>1</sup>COM(75) 36, 12 February 1975, p. 22

At the hearing with experts, there was general agreement that the regulation should state more clearly where the vessel should moor and the representative of the Central Commission for the Navigation of the Rhine also pointed out that a helmsman had always to be present on board and that, in case of illness, the vessel should make for the nearest port.

Furthermore, the Commission's text only speaks of one member of the crew being unable to work, which must mean that in those cases where several crew members are unable to work the vessel may not continue its voyage and must therefore cast anchor. The dangerous situation which would arise if several crew members were unable to work during the voyage would, however, also occur if the boatman, the helmsman or the engineer were suddenly put out of action. Our committee therefore requests the Commission to formulate this article so precisely that any unusual or unforeseen occurrence could not put the vessel with its crew and other users of the inland waterway in an **unnecessarily** dangerous situation.

28. Article 10 lays down maximum spreadover time.

- a. For daytime sailing, this is 14 hours during the summer and 12 hours during the winter. This represents a reduction in comparison with the Rhine provisions, where the maximum is set at 16 hours.

This will inevitably lead to the need for larger crews and hence a certain increase in costs. As stated above, the cost analysis carried out by INTERFIDES has shown that the size of the cost increase will vary from Member State to Member State and from one type of vessel to another.

The Committee on Social Affairs, Employment and Education welcomes any improvement of employees' working conditions, but wonders whether the stipulation of 14 hours on board is still not too high, bearing in mind the principle of introducing a 40-hour week.

Furthermore, a comparison with the corresponding provisions for road transport crews shows that crew members of vessels on inland waterways are worse off. Article 8 of the Commission's proposal for a regulation on the harmonization of certain social legislation relating to road transport (COM(76) 85) lays down, for instance, that spreadover shall not exceed 12 hours and may be prolonged by 2 hours only no more than twice a week provided that several breaks are taken in the course of it. Furthermore, Article 8(4) states that 'the total length of all spreadovers within any one week shall not exceed 60 hours'.

This provision is not included in the present proposal, which merely states that 'the average daily spreadover calculated over a period of 12 consecutive weeks shall not exceed 12 hours'. This clearly puts crew members in an inferior position vis-à-vis other workers, since their total spreadover must be at least 84 hours per week. The objection that crew members are not actively employed for all 84 hours per week has only relative force since the same is true of truck combinations with two drivers; furthermore, some jobs on certain vessels are necessarily uninterrupted for the whole voyage, with no possibility of relief, such as that of the motorman.

Our committee is therefore of the opinion that the length of the daily spreadover must be discussed once again and that a provision should be introduced laying down a reasonable maximum for the total weekly spreadover.

- b. The second sub-paragraph of Article 10 (1) states that, for the calculation of the average daily spreadover, 'account shall be taken only of sailing days and mixed-duty days'. It therefore fails to stipulate what provisions are to govern days devoted exclusively to loading and unloading. The Commission is therefore requested to change the wording so that this period of work may also be taken into account.
- c. Paragraph 3 fixes the daily spreadover for continuous sailing at 8 hours. This is not correct, since it is the daily uninterrupted spreadover which must not exceed 8 hours.

29. Article 11 fixes the duration of continuous work at the helm at a maximum of 4 hours. The employers have objected that this is far too low, but our committee cannot accept this, since sailing today involves great stress in consequence of the size of the vessels, the intensity of the traffic and the weather conditions.

The second point in this article is that 4 hours' work at the helm shall be followed by a break. The length of this break is not indicated and it ought to be since it does not come within the scope of Article 15, which deals with breaks.

30. Article 12 fixes the maximum permissible period for observation of the radar screen at 7 hours per spreadover (or 7 hours per 24-hour period for continuous sailing). Continuous observation of the radar screen shall not exceed 2 hours' duration and must be followed by a rest period of 30 minutes.

On this point, too, there was a difference of opinion between the employers' and employees' representatives. It was for instance stated that the maximum duration of work at the radar screen in French Rhine navigation was 6 hours with a net break of 1 hour and it was the opinion of some doctors that half-an-hour was the most anyone could manage in fog.

In the opinion of our committee, the proposal should at all events state that the radar screen may only be manned by a competent and qualified crew member. The limits which have been fixed seem reasonable under normal sailing conditions.

31. Article 13 permits derogations from the provisions concerning the length of spreadover, rest periods and breaks when a crew member falls ill and his work has to be taken over by another and also when the vessel or its cargo is in danger.

The Committee on Social Affairs, Employment and Education accepts the need for this, but would like to see the provision that the derogation remain valid until the vessel reaches 'a stopping place appropriate to the circumstances' amended to 'the next suitable moorings' in order to prevent any attempt to get round the provision.

32. Article 14 deals with the daily rest period and has prompted some very negative comments, especially from the employers' side.

- (a) The rest period during daytime sailing is discussed in paragraph 1 and amounts to ten consecutive hours during the eight summer months and twelve consecutive hours during the four winter months. According to paragraph 3, the rest period must be taken between 6. p.m. and 8 a.m., which in the employers' view would mean in practice that a normally manned ship could neither sail, load or unload in ten or twelve hours between 6 p.m. and 8 a.m. They also point out that the introduction of rigid nightly rest periods would probably have an unacceptable effect on this form of transport as regards its competitiveness with other forms.

In our committee's opinion the cost analyses carried out by INTERFIDES clearly show that the provisions of Article 14 would increase costs, but that is a price that has to be paid for the improved social protection and security which the regulation represents.

- (b) Unfortunately, the individual paragraphs of Article 14 are not quite complete. Paragraph 2 on semi-continuous sailing, for instance, gives no information on total daily rest periods, whereas paragraph 1, on

daytime sailing, lays down that the average daily rest should be not less than 12 hours calculated over a period of 12 consecutive weeks. As regards continuous sailing, paragraph 4 states that the total daily rest must be at least 12 hours in a period of 24 hours, which, in our committee's opinion, should also apply to semi-continuous sailing.

On the other hand, the Committee on Social Affairs, Employment and Education cannot accept that paragraph 4 on continuous sailing also permits the total daily rest to be 24 hours in a period of 48 hours. Such a provision is not only at variance with the provisions on nightly rest but also makes it possible to assign the crew 24 consecutive hours of work.

33. Article 15 deals with official breaks, which generally seem far too short. Our committee feels that a 30-minute break during an eight-hour working day is not consonant with the desire for social improvement that was the Commission's objective when it drew up the proposal for a regulation.

34. Article 16 lays down the rules governing rest days which replaces weekly rest periods. In its explanatory memorandum on this article, the Commission explains that the vessels cannot for instance be inoperative on Sunday since that would be 'incompatible with the flexibility necessary for efficient operation of the vessels'. Our committee is not completely convinced by this argument since many other industries are in the same situation inasmuch as a whole day's stoppage per week, although economically disadvantageous, has to be observed so that the workers' right to a weekly rest day may be respected. Nevertheless, it has to be allowed that workers themselves generally prefer a number of consecutive rest days that they can spend at home rather than one free day a week that they often have to spend far from home.

It is laid down that crew members should have at least 78 rest days a year, to which our committee has no objections. But paragraph 2 on semi-continuous or continuous sailing, providing for one rest day for every two days worked, ought to state that a rest day is 24 hours long. This could be included in Article 1 of the regulation, which does not define the term 'rest day'.

Such a definition is particularly necessary since paragraph 3 lays down that any regular rest period must begin not later than 8 p.m. and comprise 'at least 36 consecutive hours'. This wording is also unfortunate since the intention must be for only the first part of a regular rest period to comprise at least 36 consecutive hours, whereas every



subsequent part must comprise at least 24 hours. The Commission is therefore asked to amend the wording accordingly.

35. Article 17 grants crew members a minimum of 30 days of annual leave and public holidays a year.

The Commission itself states that the figure of 30 days has been arrived at by adding 8 public holidays to 22 days of annual leave, in other words four weeks. Since account has thus been taken of the general introduction of four weeks' paid leave in accordance with the Council's recommendation<sup>1</sup>, our committee can approve this provision.

36. Article 18 on work in ports occasions no special comments since our committee notes with satisfaction that local provisions apply if they are more favourable to crew members than the provisions of the regulation for working hours and rest periods.

37. Article 19 deals solely with self-employed boatmen and merely states that Articles 16 and 17 concerning rest days, annual leave and public holidays are not applicable but that self-employed boatmen should take 78 rest days a year.

The employers have pointed out that, because of the more flexible rules for self-employed boatmen, shipowners are faced with higher costs, which means distortion of competition. This is undeniably true, since self-employed boatmen do not have to take the minimum of 30 days of annual leave and public holidays a year to which crew members are entitled under Article 17.

It must, however, be admitted that this proposal still represents a considerable step forward since it prevents self-employed boatmen from sailing day in day out throughout the year, which not only constitutes unfair competition to shipowners but is extremely dangerous from a traffic-safety point of view.

In its explanatory memorandum, the Commission states that the reason for the exemption for self-employed boatmen is 'that simpler arrangements have to be made ... in regard to periodic rest'. Despite various requests, the Commission has not yet, however, given any further details about these simpler arrangements and our committee therefore requests it to do so as soon as possible with a view to eliminating any form of distortion of competition in this sector.

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<sup>1</sup> OJ No. L 199, 30.7.1975

38. Article 20 allows for the maintenance of existing social arrangements that are more favourable to crew members than the maximum and minimum requirements laid down in the regulations.

- (a) The Danish version<sup>+</sup> of the first subparagraph of paragraph 1 of the Commission's text states that these more favourable provisions 'may remain applicable'. In our committee's opinion, this wording is wrong, since the intention must be for the more favourable provisions to continue to remain in force, otherwise implementation of the regulation would represent a step backwards socially. These words should therefore be replaced by 'shall remain applicable'.
- (b) The second subparagraph of paragraph 1 allows Member States to introduce in the future new arrangements containing more favourable provisions for crew members. The Committee on Social Affairs, Employment and Education fully support this provision and recommends that the Commission should at suitable intervals, on the basis of the report on 'the situation concerning the matters referred to in this article' mentioned in paragraph 3, revise the regulations so that the introduction of more favourable provisions in any one Member State is used as a starting point for harmonization at Community level.
- (c) Paragraph 2, which is very clumsily worded, lays down that the more favourable conditions should not apply to 'members of crews engaged in international transport on board vessels registered in another State'.

The Commission has given its own interpretation of this provision, according to which the more favourable social arrangements applicable in one Member State are not applicable to foreign crews engaged in international transport within the territory of that State. On the other hand more favourable social arrangements applicable in one Member State should also apply to foreign transport vessels when the port of shipment and the port of destination are both on that Member State's territory and for Community vessels engaged in international transport both inside and outside the Community.

The Committee on Social Affairs, Employment and Education wonders, however, why foreign vessels should be excluded from the provisions for larger crews and more favourable social provisions introduced by a Member State for safety reasons in its territory, and therefore recommends that the Commission should word Article 20 in such a way that all vessels are subject to those provisions.

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<sup>+</sup> translator's note: this does not apply to the English text.

39. Article 21 lays down that control measures in the form of a log book and an individual record book should be introduced. The models for these will not, however, appear until 18 months after the adoption of the regulation.

Our committee regards this as quite irrational since the control measures should be available as soon as the regulation is introduced. The delay is particularly hard to understand since employee representatives have repeatedly pointed out, when dealing in the joint advisory committee with social problems in the inland waterway transport sector, that Community social provisions on the transport of goods by inland waterway should enter into force at the same time as the control provisions.

The Committee on Social Affairs, Employment and Education therefore urges the Commission to expedite the preparation of the record books so that they can be used as soon as the regulation enters into force.

40. Article 22 leaves it to the Member States to set up or designate the authorities responsible for ensuring the implementation of the provisions concerning crew composition.

In the explanatory memorandum on this article, the Commission mentions the 'Commissions for the inspection of shipping on the Rhine' as the model for these authorities but as the employees have pointed out that these commissions do not allow for participation by workers or their representatives, the Commission should stress that both sides of industry should be consulted, as laid down in the explanatory memorandum on Article 7, which deals with derogations as regards the composition of crew.

41. Under Article 23 the Commission must forward to the Council and the European Parliament a report on the implementation of the regulation by the Member States and our committee welcomes this.

42. Article 24 leaves it to the individual Member States to adopt provisions on control measures and penalties.

In our committee's opinion, this involves a risk that some Member States might get round the regulation by introducing smaller penalties, which would in fact result in distortion of competition.

Since both sides of industry and the Commission have stated that penalties should be harmonized, the Committee on Social Affairs, Employment and Education urges the Commission to draw up relevant proposals, since control and penalty provisions should enter into force at the same time as the regulation if it is to have any meaning.

### III. CONCLUSION

The Committee on Social Affairs, Employment and Education,

1. Welcomes the proposal as an important step towards improving social conditions in the inland waterway goods transport sector;
2. Regrets however that the harmonization of provisions on working hours and rest periods, which should have been introduced by 31 December 1968 at the latest, were not the subject of a Commission proposal until 10 September 1975;
3. Also regrets that the proposal does not conform to the Council Decision of 13 May 1965 since it does not include provisions on overtime and excludes passenger transport, thus placing the crew members of such vessels in a less favourable position;
4. Points out that, although the draft regulation departs from the provisions currently applicable to Rhine navigation both favourably and unfavourably, it will on the whole bring about a substantial improvement in the social provisions on inland waterway transport;
5. Considers it essential for the Commission, on the basis of the cost analyses already made, to carry out a thorough assessment of the industry's chances of survival, such an assessment being of particular importance to self-employed boatmen, and feels that a system of premiums for the laying-up of unprofitable vessels combined with retraining courses for the younger persons involved and early retirement arrangements for the older ones could help to solve these problems;
6. Is of the opinion that the cook should also be included in the list of crew members and that the qualifications required of him and of the stoker should be specified;
7. Urges the Commission to lay down that time spent on loading and/or unloading should also be taken into account when calculating the average daily spreadover;
8. Considers 8 consecutive hours of nightly rest for semi-continuous sailing to be incorrect, since crew members are in fact entitled to 12 consecutive hours of rest;

9. Feels that it should be clearly stated that crew members must spend their uninterrupted rest period for continuous sailing on board, and not merely that they may dispose freely of their time;

10. Welcomes the fact that the proposal provides for shorter working hours than the Rhine provisions in force, but nevertheless considers the reduction inadequate since the normal working week relating to goods transport by inland waterway should bear reasonable comparison with that applicable to other forms of transport;

11. Urges the Commission to establish formal contact with the Central Commission for the Navigation of the Rhine as soon as possible, with a view to reducing to an absolute minimum, the transitional period in which the regulation does not apply to Swiss vessels on the Rhine;

12. Further urges the Commission to open negotiations with third countries that will be using the Community's inland waterways once the Rhine-Main-Danube Canal is opened, so that competition rules can be laid down that place all undertakings in this sector on an equal footing;

13. Declares itself opposed to the exemption of vessels of less than 150 metric tons, since the same conditions should apply to all crew members regardless of the type of vessel on which they are employed; moreover the Rhine provisions set the limit at 15 metric tons and it would therefore be most appropriate to apply a 15-ton limit on all waterways for competition, safety and social reasons;

14. Is of the opinion that the requirements concerning individual crew members' education and experience are far too lax in view of developments in navigation, its increased intensity, higher speeds and dangerous loads; the boatman should therefore be able to give evidence of several years' experience in navigating inland waterways and the deckhand should have received a diploma at the end of his attendance at a training establishment; furthermore, the requirements as to length of past experience for the performance of specific duties should in no case be lower than the provisions applicable to the Rhine;

15. Also considers that the age limit for the ship's boy should not be less than 16 years to ensure that it is not lower than the general school-leaving age;

16. Is of the opinion that only emergency situations can justify a crew member being called upon to perform duties other than those which fall within the scope of his specific functions;

17. Fears that the Member States' right to apply derogations as regards the composition of crews could dangerously undermine the regulation and therefore believes that any derogation should apply only after tripartite negotiations;

18. Considers it unreasonable that Member States, acting independently and without the prior approval of the Commission should be able to reduce crew composition on the introduction of more modern technical equipment, since the latter could in fact involve greater psychological stress and thus necessitate shorter working hours and larger crews; the sole basis for derogations from the provisions should therefore be social and transport safety considerations;

19. Regards the provision excluding women from the occupation as discriminatory and in conflict with the principle of equality between male and female workers; the whole article should therefore be deleted and replaced by national provisions for the protection of women workers during and after pregnancy;

20. Is of the opinion that the situation that would arise if the boatman, the helmsman, the motorman or several other crew members were suddenly absent is so dangerous that very specific provisions are required so that the vessel, the crew and other vessels would not be exposed to unnecessary danger;

21. Considers that the length of the daily spreadover should be the subject of further discussion, and that a provision should be inserted setting a reasonable maximum on the total length of spreadovers per week;

22. Regards the 4 hours' continuous work at the helm provided for to be reasonable, but points out that it must be followed by a rest period, the exact length of which must be specified;

23. Is of the opinion that 2 hours' continuous observation of the radar screen is too long for safety in unfavourable weather conditions, and insists that the radar screen should be used only by a competent and qualified crew member;

24. Agrees with the need to temporarily derogate from the provisions on the length of working hours, rest periods and official breaks as a result of sickness or danger to the vessel or its cargo, but nevertheless wishes the derogation to be limited to the nearest suitable mooring place;

25. Is aware that the introduction of a daily rest period of 10 or 12 consecutive hours for a normally manned vessel will increase costs but is of the opinion that this is a price that has to be paid for the necessary improvements in social protection and safety;
26. Considers the rest periods provided for to be far too short, since a 30-minute break in an 8-hour working day is not consonant with the desire for improvement in social conditions that underlies this proposal for a regulation;
27. Agrees in principle to the introduction of rest days instead of weekly rest periods, since it is in the workers' own interests to be able to spend a number of consecutive rest days at home;
28. Approves of the possibility of maintaining and/or introducing arrangements containing more favourable provisions for crew members which, when the regulation is revised, should be used as the starting point for forward-looking harmonization throughout the Community;
29. Urges the Commission to expedite preparation of the record books so that they can be used as soon as the regulation enters into force.
30. Insists that both sides of industry should be consulted within the bodies responsible for ensuring the implementation of the provisions concerning crew composition.
31. Is of the opinion that, by leaving Member States to lay down the provisions governing control measures and penalties, there is a risk of evasion and consequent distortion of competition; the Commission is therefore urged to draw up proposals for harmonizing penalty provisions as soon as possible so that they can enter into force at the same time as the regulation.

