

European Communities

EUROPEAN PARLIAMENT

386

Working Documents

1976 - 1977

8 November 1976

DOCUMENT 382/76

Report

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

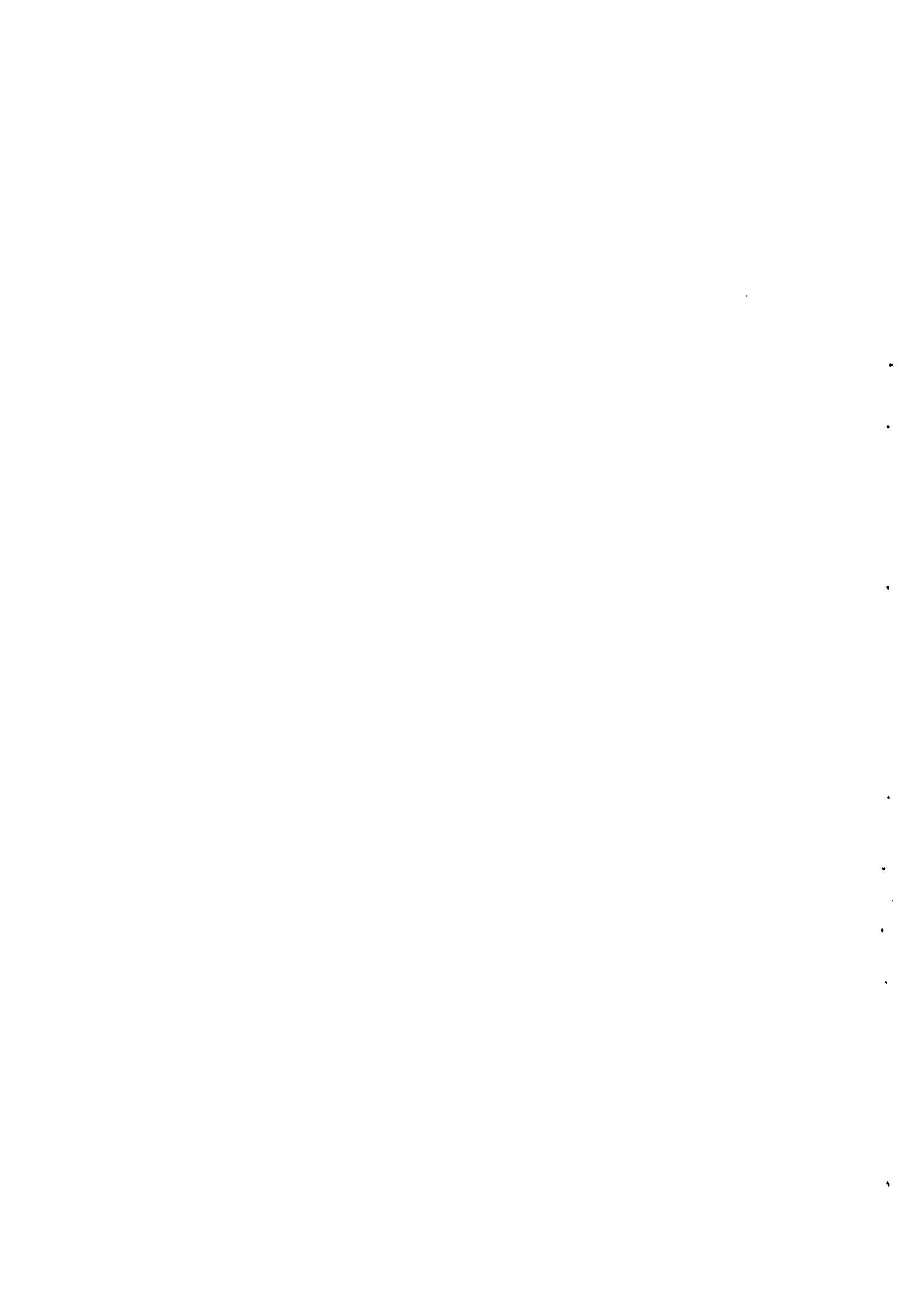
on the proposal from the Commission of the European Communities to the
Council (Doc. 262/76) for a regulation concluding the ~~Agreement~~ establishing a
European laying-up fund for inland waterway vessels, and adopting the provisions
for its implementation

Rapporteur: Mr W. ALBERS

PE 45.840/fin.

1.2.1

English Edition



By letter of 9 August 1976 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 concluding the Agreement establishing a European laying-up fund for inland waterway vessels, and adopting the provisions for its implementation.

The President of the European Parliament referred this proposal to the Committee on Regional Policy, Regional Planning and Transport.

On 15 September 1976 the Committee on Regional Policy, Regional Planning and Transport appointed Mr Albers rapporteur.

It considered this proposal at its meetings of 1 October and 20 October 1976 and unanimously adopted the motion for a resolution and explanatory statement.

Present: Mr Evans, chairman; Mr Albers, rapporteur; Mr De Clercq, Mr Delmotte, Mr Ellis, Mr Gerlach, Mr Hamilton, Mr Martinelli, Mr Mursch, Mr Noè, and Mr Seefeld.

CONTENTS

	<u>Page</u>
A. MOTION FOR A RESOLUTION	5
B. EXPLANATORY STATEMENT	
I. General observations	6
II. The Agreement	
(a) History	7
(b) Content	8
(c) Aim	13
(d) Problems	14
III. The proposal for a regulation	14
IV. Conclusions	15

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

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
 - having been consulted by the Council pursuant to Article 75 of the EEC Treaty (Doc. 262/76),
 - having regard to the report of the Committee on Regional Policy, Regional Planning and Transport (Doc. 382 / 76)
1. Welcomes the laying-up scheme, together with the special laying-up fund, as an effective means of solving the problem of cyclical over-capacity in inland navigation;
 2. Points out, however, that for effective control of capacity in inland navigation this laying-up scheme must be supplemented as soon as possible by a consistent set of measures designed to remedy the structural over-capacity in this sector of transport;
 3. Welcomes the fact that the Community has succeeded in reaching an agreement with the Swiss Confederation;
 4. Consequently approves the Commission's proposal and the relevant Agreement and Statute establishing a European laying-up fund for inland waterway vessels.

¹

OJ No. C 208, 3.9.1976, p.2

EXPLANATORY STATEMENTI. General observations

1. The intention of the present proposal is to create the machinery to solve one of the biggest problems, if not the biggest problem, faced by inland navigation for several years, namely the periodic surplus of shipping capacity.

2. On many previous occasions¹ the European Parliament's transport committee has stressed the seriousness of this problem and urged the Council and Commission to take the steps required to counter the problem of over-capacity as rapidly as possible.

3. In fact this over-capacity represents the main obstacle to the smooth operation of the internal navigation market. The lack of balance between supply and demand has naturally had repercussions on price formation and may, if allowed to continue, lead to a collapse of freight charges.

The capacity problem not only causes price distortions; it can also give rise to ruinous competition and of course seriously erodes the profitability of inland navigation undertakings.

It also represents a threat to employees' social conditions and security.

4. The sole aim of the proposed provisions, as set out in Article 1 of the Agreement, is to reduce 'temporary imbalance between supply and demand in respect of carrying capacity'.

Although your rapporteur welcomes the laying-up provisions in the conviction that the proposed measures can indeed contribute to a rationalization of inland navigation, he is aware that a cyclical capacity policy designed to give effective control of the carrying capacity available is not enough in itself.

5. The Committee on Regional Policy, Regional Planning and Transport therefore urges the Council forthwith to promulgate a set of measures which will effectively solve the structural over-capacity in inland navigation.

¹ See, inter alia, the following reports: Kapteyn (Doc. 108/61), Müller-Hermann (Doc. 18/62), Faller (Doc. 75/62), Brunhes (Doc. 132/62), De Gryse (Doc. 115/65), Carcaterra (Doc. 8/67), Meister (Doc. 29/72), De Clercq (Doc. 90/76) and Albers (Doc. 91/76).

One way of relieving the structural capacity problem in this transport sector would be to formulate a breaking-up scheme to apply to Community waterways.

A permanent balance between supply and demand in respect of carrying capacity will only be achieved when a consistent conjunctural and structural policy is pursued with regard to capacity.

6. To take account of the structural under-capacity in the associated developing countries and the resulting congestion which causes protracted delays in ports in these countries, your rapporteur proposed that the possibility of exporting inland waterway vessels to developing countries should be considered. The Commission stated that in view of the high costs involved, such an operation would be difficult to carry out.

II. The Agreement

(a) History

7. On 13 October 1971 the Commission submitted to the Council a proposal on the opening of negotiations for an agreement between the EEC and Switzerland on the implementation of arrangements for the temporary laying-up of goods vessels (Doc. 159/71).

On behalf of the former Transport Committee Mr Meister drew up a report in favour of the proposal (Doc. 29/72) which was adopted by the plenary assembly of the European Parliament in May 1972.

8. Most of the amendments proposed by Mr Meister in his report were incorporated by the Council in its decision of 28 December 1972 on the opening of these negotiations with the Swiss Confederation.

These amendments referred, inter alia, to the joint management of the laying-up fund by the Community and Switzerland and the taking up of loans by the fund itself rather than by the individual parties to the Agreement.

9. The negotiations with Switzerland opened on 22 February 1973 and after settlement of the last remaining issue (whether the headquarters of the fund was to be in Strasbourg or Duisburg), they were rounded off on 9 July 1976 with the initialling of the draft agreement.

10. The Agreement establishing a European laying-up fund for inland waterway vessels derives from the resolution of the Council of the European Communities of 27 January 1970 which indicated the basis for the elimination of imbalances in the inland navigation market.

11. To complete this history reference is also made to Mr Seefeld's Written Question on the laying up of shipping on the Rhine¹. This question clearly illustrates the importance attached by the European Parliament to the Agreement.

¹ Written Question No. 438/74, OJ No. C 4, 8.1.1975, p. 14.

(b) Content of the Agreement

12. The Agreement as such contains 7 articles and was initialled by the Commission of the European Community, Belgium, the Federal Republic of Germany, France, Luxembourg, the Netherlands, the United Kingdom and Switzerland.

The Statute of the European Laying-up Fund for Inland Waterway Vessels, which forms an integral part of the Agreement, contains, on the other hand, 53 articles divided into ten chapters.

13. As remarked during an initial exchange of views in committee, the explanatory memorandum in the Commission's document is extremely brief; the present report therefore takes a closer look at the organisation and operation of the European laying-up fund.

- general provisions

14. By virtue of Article 1 (of the Statute) the Fund is to be an international public institution which shall enjoy the most extensive legal capacity accorded to legal persons. The Fund shall be non-profit-making.

15. The Headquarters of the Fund shall be at Duisburg in the Federal Republic of Germany, but the Fund shall open a branch office in each State to which the Agreement applies (Article 2).

Article 3 governs the fiscal and financial rights and obligations of the Fund vis-à-vis the national authorities.

16. Article 4 lays down the territorial scope of the Agreement. The waterways of the Fund mainly comprise the Rhine and Moselle basins, all Dutch waterways and some tributaries of the Rhine in the Federal Republic of Germany.

Article 5 provides for the possible extension of the territorial scope of the Agreement.

17. A characteristic of the Agreement is that it applies to vessels used or intended to be used for the carriage of goods whether on the owner's own account or for hire or reward, laden or unladen, whether operational or laid up or under repair.

Article 6 defines the types of vessel to which the Agreement applies, while Article 7 contains the usual exemptions.

Article 8 lays down exemptions in respect of the area to which the Agreement applies in Belgium and France.

- payment of contributions

18. Chapter II of the Statute (Articles 9 - 14) covers the imposition, the amount, details of payment and other pertinent provisions on the contributions payable by vessels on the waterways of the Fund.

19. Each vessel subject to the provisions of the Statute will pay a contribution calculated on the basis of its tonnage or engine-power for each day on which the vessel is in the area covered by the Fund.

The basic rate of contribution is calculated with regard to the available reserves of the Fund, the foreseeable amount of laying-up compensation to be paid out and the operating expenses of the Fund.

Owners of vessels may opt to pay a period contribution irrespective of the number of days on which the vessel is actually on the waterways concerned, and this entitles them to a certain reduction of the total amount of daily contributions payable.

- certificates and register

20. All vessels on the waterways of the Fund shall carry a log book or an exemption certificate (Chapter III. Articles 15-18).

These documents must make it possible to ascertain when a vessel has entered or left the area to which the Fund applies, for the purposes of calculating the daily contributions, or entitlement to laying-up payments.

The log book provides information relevant to the market situation and thus contributes to greater transparency of the inland navigation market.

- laying up

21. As soon as it is ascertained that there is too much carrying capacity available then - as far as the financial resources of the Fund permit - this excess carrying capacity is to be laid up (Article 19).

The excess shall be determined by reference to the following factors: the total tonnage or engine power unemployed for transport purposes due to the market situation; the average period spent waiting for freight; the expected short-term development of demand for carrying capacity; the average daily rates and conditions of carriage and the profitability of inland waterway carriers in general (Article 20).

22. It is important to note that laying-up is to be organised on a voluntary basis (Article 21(1)).

23. The laying-up compensation is to be calculated in the same way as the daily contribution: by multiplying the vessel's equivalent tonnage or equivalent engine power by a basic rate.

The basic rate shall be fixed at a 'level which will encourage those concerned to lay up sufficient vessels to restore the situation to normal' (Article 23(3)). This means that account should also be taken of the average freight charges, costs saved by laying up and the amount of wages and social security contributions which still have to be paid.

24. Article 24 stipulates the conditions and method of payment of the laying-up compensation, together with conditions under which the owner of the vessel would forfeit or have to repay compensation.

25. Article 25 is a most important social provision, laying down that persons employed as members of the crew shall not be dismissed solely because the vessel is laid up.

- organisation of the Fund

26. The Fund has a distinctive institutional structure, made up of:

- a Supervisory Board;
- a Board of Management, and
- a Fund Tribunal

27. The Supervisory Board shall consist of one representative each from Belgium, Denmark, Germany, France, Italy, Luxembourg, the Netherlands, the United Kingdom, Switzerland and the Commission, the latter acting as chairman. The Commission will also provide secretarial services.

The Secretary-General of the Central Committee for the Navigation of the Rhine may attend the meetings as an observer. The chairman shall not be entitled to vote. Each of the other members shall have one vote and apart from a few exceptions decisions shall be taken by a simple majority, provided, however, that this majority includes the votes of at least three of the following representatives: Belgium, Germany, France, the Netherlands and Switzerland (Article 27).

28. The powers of the Supervisory Board derive from its duty to safeguard the public interest (Article 29(1)) and ensure that the aims and provisions of the Agreement are observed.

29. In practice this means that the principal tasks of the Supervisory Board will be the following:

- adjustments to the Statute resulting from possible extensions of the geographical area covered by the Agreement (Article 5(2));
- specification of the categories of vessels exempt from the provisions of the Agreement (Article 7(1));
- adoption of alterations proposed by the Board of Management to the basic rate and/or the adjustment coefficient for the calculation of the daily contributions (Article 10(3 - 6));
- laying down standard forms for log books and exemption certificates and conditions for their issue and use (Article 17);
- deciding on amendments to provisions in respect of log books (Article 11 (5)) and to provisions in respect of payment of daily contributions (Article 13(6));
- ensuring that the laying up regulations are properly observed (Article 22);
- deciding on the Board of Management's proposal for the annual budget (Article 30(1,2)) and approving the annual accounts of the Fund (Article 30(3));
- in respect of decisions by the Board of Management concerning the length of laying-up periods and the rate of compensation: giving approval to such decisions, or requesting different measures, or deciding itself upon other appropriate laying-up measures (Article 31(2,3));
- in the event of the Board of Management failing to act, the Supervisory Board may act on its own initiative and issue provisions relating to the length of laying-up periods and rates of compensation (Article 32);
- adoption of the general provisions for the implementation of the Statute (Article 33(1));
- decisions relating to matters not expressly delegated to other organs of the Fund (Article 33(2));
- appointing and dismissing the director of the Fund, on proposals from the Board of Management (Article 34);
- appointment of two independent auditors and two deputy auditors to examine the accounts of the Fund (Article 37(1));

- notification to national authorities of decisions relating to laying-up periods and compensation;
- in the event of termination of the Agreement: appointment of one or more liquidators to close the accounts (Article 52(1)) and taking all additional measures required to liquidate the assets of the Fund (Article 52(4)).

30. The BOARD OF MANAGEMENT consists of 15 members: 4 German, 4 Dutch, 2 Belgian, 2 French, 2 Swiss and 1 Luxembourger, each appointed by their own government on the basis of proposals from the trade organisations representing inland waterway carriers, for a period of two years (Article 28).

The Board of Management shall elect from among its members a chairman and one or more vice-chairmen. The Board shall be convened by the chairman or by the vice-chairman senior in age and shall meet at least twice a year.

It shall take decisions by a two-thirds majority of the votes cast (each member has one vote).

31. The powers of the Board of Management concern the financial management and administration of the Fund and ensuring that the decisions of the Supervisory Board are carried out. (Article 29(2)).

Inter alia, the Board of Management shall prepare proposals for the annual budget of the Fund (Article 30(1)) and for the determination of the laying-up periods and rates of compensation (Article 31(1)). It also decides, subject to conditions laid down by the Supervisory Board, on the raising of loans (Article 51).

32. Working with the Board of Management is a Director, responsible for the day-to-day administration and financial management of the Fund. He shall ensure that the Boards' decisions are carried out and represents the Fund in all legal and administrative proceedings. He also provides secretarial services for the Board of Management and - subject to the limits imposed by the budgets of the Fund - determines the size of its staff. (Article 34).

33. The FUND TRIBUNAL shall consist of seven judges (one each from Belgium, Germany, France, Luxembourg, the Netherlands, the United Kingdom and Switzerland). Appointed for a period of five years, the judges shall elect the President of the Tribunal from among their number (art. 42(2)).

The Fund Tribunal shall sit when convened by its President; the judgements it issues shall contain the reasons on which they are based.

34. Powers: generally speaking, the Tribunal has to ensure that the law is observed in the interpretation and application of the Agreement. (Article 42(1)).

In practice this means that the Tribunal shall investigate the legality of decisions and acts of the organs of the Fund, in other words it shall deal with actions on grounds of lack of competence, infringement of relevant provisions, misuse of powers, etc., and shall be able to declare such decisions or acts void.

The Tribunal shall also have powers in respect of infringements or failure to fulfil obligations by one of the parties to the Agreement (Articles 43 and 45).

35. The Tribunal shall also have jurisdiction to give preliminary rulings concerning the interpretation of the Agreement and the Statute and on actions and decisions of organs of the Fund¹.

- other provisions

36. The Statute also contains a number of provisions governing, inter alia, the languages to be used (Article 38) and the publication of the decisions of the organs of the Fund (Articles 39 and 40).

Chapter VII lays down conditions for the implementation of decisions, assistance by national authorities and penalties (Articles 46-48). Chapter VIII (Articles 49-51) contains the financial provisions: the budget, revenue (made up of contributions and interest from investments), expenditure (laying-up costs and operation of the Fund) and the possibility of taking up loans.

Chapter IX contains further details on the possible winding-up of the Fund and the ensuing problems of liquidation (Article 52).

37. Finally, Chapter X governs the constitution and commencement date of the various organs of the Fund (Article 53).

(c) Aim

38. As explained in the introduction, the aim of the Agreement is to reduce temporary imbalance between supply and demand in respect of carrying capacity. Article 1 of the Agreement explicitly states that the aim of the Fund shall not be to fix a 'permanent minimum level for freight rates during all periods of slack demand or of remedying structural imbalance'.

¹ The Reservation noted by the Swiss delegation is dealt with below.

39. Temporary excess capacity is mainly the result of seasonal fluctuations or when water levels on the inland waterways concerned are high enough to allow maximum loading of vessels.

40. The Agreement will apply to about 13,000 vessels representing a total gross deadweight of 11 million metric tons. The tugs and pusher craft concerned generate a total engine power of over 800,000 h.p.

Added to this a large part of the Belgian fleet also uses the waterways of the Fund.

(d) problems

- the Swiss reservation

41. The Swiss delegation recorded a reservation in respect of the Agreement.

The Swiss reservation concerns Article 44 of the Statute and the powers of the Fund Tribunal in respect of preliminary rulings, and in particular the word 'appellate' in the second subsection of Article 44 and the whole of the third subsection of Article 44.

42. Discussions are in progress on the reservation - which is connected with the Swiss policy of neutrality - and it is expected that it will be withdrawn before the Agreement is signed.

Otherwise the reservation of the Swiss Confederation will be recorded in a protocol and Article 6 of the proposal for a regulation will be amended accordingly.

- consultation of the Court of Justice

43. Pursuant to Article 228(1), second paragraph of the EEC Treaty, the Commission of the European Communities has asked the Court of Justice to give its opinion as to whether the Agreement is compatible with the provisions of the Treaty establishing the European Economic Community.

According to a Commission representative the Court's opinion can be expected by the end of 1976.

III. The proposal for a regulation

44. In the proposal for a regulation the Commission of the European Communities proposes that the President of the Council shall deposit as far as the Community is concerned the act of notification of the conclusion of the Agreement (Article 2).

Article 3 states that any extension of the term of the Agreement shall be subject to a decision taken by the Council. Under Article 4 any extension of the territorial scope of the Statute shall be subject to prior approval by the Council acting by a qualified majority.

45. Article 5 lays down a joint consultation procedure for problems raised before the Supervisory Board of the Fund which are of fundamental significance for the further evolution of the common transport policy of the EEC. This procedure should give the Council of the European Communities the opportunity to take a prior decision on such questions, acting by a qualified majority.

46. Article 6 covers the appointment of judges to the Fund Tribunal. On the basis of this article the Court of Justice shall nominate from among its own members the judges for Belgium, the Federal Republic of Germany, France, Luxembourg, the Netherlands and the United Kingdom.

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

IV. Conclusions

47. The Committee on Regional Policy, Regional Planning and Transport heartily welcomes the present proposal for a regulation and the annexed Agreement and Statute, in the belief that the proposed arrangements will indeed contribute to evening out temporary surpluses of cargo capacity and consequently represents a promising way of dealing with the greatest problem facing inland navigation.

48. The proposed scheme for the laying-up of goods vessels will also help to bring greater transparency to the sector concerned and increase the profitability and improve operating conditions for inland waterway undertakings, as well as improving social conditions in inland navigation.

49. Although Article 1 of the Agreement establishing a European laying-up fund expressly states that the 'Fund may not however be used with the aim of fixing a permanent minimum level for freight rates during all periods of slack demand' its implications for inland waterway transport rates are quite clear.

The application of the Agreement will amount to an indirect tariff policy measure. Depressed rates resulting from temporary over-supply of carrying capacity will after all be eliminated to some extent by the laying-up of vessels. The scheme must also make it possible to restore the balance between supply and demand, and consequently the normal level of freight charges in the transport sector, more rapidly.

50. Your committee urges the Council to formulate as soon as possible equally effective measures to remedy the problem of structural over-capacity in inland navigation.