

COMMISSION OPINION

of 12 June 1995

addressed to the Netherlands Government concerning a draft temporary law on cargo allocation in north-south inland waterway services

(95/217/EC)

Pursuant to Article 1 of the Council Decision of 21 March 1962 instituting a procedure for prior examination and consultation in respect of certain laws, regulations and administrative provisions concerning transport proposed in the Member States⁽¹⁾, as amended by Decision 73/402/EEC⁽²⁾, the Netherlands Government notified the Commission by letter dated 15 July 1994 of a draft temporary law on cargo allocation in North-South inland waterway services.

The letter from the Netherlands Government reached the Commission on 25 July 1994. The Netherlands Government notified the other Member States of the draft law on 12 September 1994.

Pursuant to Article 2 of the abovementioned Council Decision, the Commission hereby delivers the following opinion :

1. The Commission finds that the objective of the proposed law is to establish a temporary chartering system for part of the inland waterway cargo transport services from the Netherlands to Belgium or France, with a view to gradual deregulation of this market, while maintaining its stability. The draft law provides for the introduction of a rotation system for allocating cargo and chartering services. This will be mandatory and will be administered by the public authorities. In particular, the tariffs and conditions of carriage together with the administrative and operating procedures for this system will be regulated. In addition, the draft law provides for liberalization of the tariffs and conditions of carriage for some of the traffic covered by the law plus incentives to form commercial groupings. The law will expire on 1 January 2000 or on an earlier date set by Royal Decree.

The cargo-allocation system introduced by the draft law will replace the voluntary rotation system currently administered by the operator's association 'Vereniging Toerbeurt Noord-Zuid', which will cease its activities.

It will cover a volume of traffic accounting for most of the services chartered under this rotation system at the moment.

2. The Commission finds that the draft law provides for the possibility of repeal of the law in the event of the adoption of Community legislation on liberalization of systems of chartering by rotation.

3. From the economic point of view, the Commission considers that introduction of the new temporary mandatory cargo-allocation system provided for by the draft law must create no obstacles to the liberalization of the inland waterway market advocated in the Commission's report on 9 June 1994 on the organization of the inland waterway transport market and systems of chartering by rotation. No such system could be contemplated without strict guarantees that the branch of the market concerned will switch definitively to a system based on free competition within an effectively limited period. The Commission realizes that the plan is to extend chartering by rotation to a greater volume of cargo, but notes with interest the clauses contained in the draft law on liberalization and greater competition in the inland waterways sector. It also notes that the law proposed would be temporary. The provision made in the draft law for this system to end definitively on 1 January 2000 would be compatible with the objectives of liberalization of the inland waterway market set in the abovementioned report from the Commission and could fit in with the timetable envisaged for liberalization of this market in another Member State.

However, the Commission notes that the draft law imposes the obligation to apply a system of chartering by rotation with fixed tariffs and conditions of carriage as the general rule and presents the liberalization clauses only by way of derogation therefrom. To provide fuller guarantees that the transition of this sector of the market concerned will be completed by the date envisaged for ending the system, the Commission recommends that the Netherlands Government amend the draft law to this effect, i.e. that

⁽¹⁾ OJ No 23, 3. 4. 1962, p. 720/62.

⁽²⁾ OJ No L 347, 17. 12. 1973, p. 48.

it establish the general principle of liberalization of the North-South market first and then set out the rules on the cargo-allocation system envisaged thereafter, by way of derogation from this general principle and for a limited period ending on 1 January 2000.

It also recommends the Netherlands Government to take positive accompanying measures to facilitate the social changes necessitated by the liberalization envisaged, taking due account of the relevant Community legislation.

4. Out of concern to ensure a more effective transition to free competition by the time limit envisaged and to encourage commercial cooperation between the inland waterway operators concerned, the Commission requests the Netherlands Government to make the following amendments to the draft law:
 - Article 11 (2) of the draft gives the Minister of Transport the possibility to release some of the services provided by commercial groupings from the constraints of the rotation system. The Commission requests that this possibility be made mandatory for such services and that this obligation be incorporated in the text of the law;
 - Article 12 of the draft provides for the possibility of chartering cargo by draw. The Commission

requests that this procedure for selecting the boats by drawing lots be replaced by a selection procedure based on the prices quoted by the carriers.

5. Subject to the foregoing points and conditions, the Commission considers that this draft law is not incompatible with the general transport policy.
6. The Commission calls on the Netherlands Government in any event to notify it, before they enter into force, of the measures adopted to implement the proposed law, particularly those provided for in Articles 7, 9, 10, 12 and 14, and reserves the right to express its opinion on them.
7. The Commission is sending this opinion to the other Member States.

Done at Brussels, 12 June 1995.

For the Commission

Neil KINNOCK

Member of the Commission
