SINGLE MARKET
INLAND WATERWAYS

INTRODUCTION

A significant part of the European mainland is connected to Community seaports by waterway, making them important trade routes, notably for the movement of bulk and container goods. While a number of Member States have domestic waterway systems, the intra-Community network consists of a substantially fixed infrastructure crossing just six Member States - Austria, Belgium, France, Luxembourg, Germany and the Netherlands - centred around major waterways and encompassing a large part of the Rhine system. It forms part of a wider European network, which takes in Switzerland and is linked to the Danube network in Central and Eastern Europe via the Rhine-Danube canal, which opened in 1992. Within this extended European network, it is now possible to travel from the Black Sea to the North Sea by waterway - although recent conflicts in the Balkans have jeopardised parts of the Danube trade.

The Common Transport Policy on inland waterways

The importance of the Community's waterways was recognised in the 1992 white paper on the future development of the Common Transport Policy. The Commission said: "*Waterways are particularly efficient for bulk traffic but have not yet been widely exploited for other trades; the possibilities are limited by accessibility to suitable, well equipped waterways, such as the Rhine and the Rhone. Evidence available suggests that the overall European waterway network is capable in time of handling much more than the current traffic provided realistic investment is made in maintenance and works to improve the existing network, in particular to remove some major bottlenecks and stimulate transport particularly along the north-south axis and eastwards towards the new lander in Germany, and Central and Eastern Europe.*"

The dominating role of the Rhine Central Commission

Community policy in the waterways sector has, though, been complicated by the fact that it is not the only international body with regulatory powers. The network of Rhine waterways is ruled by the Central Commission for Navigation on the Rhine, governed by the Mannheim Convention of 1868. Only four of the six waterways States (not Austria or Luxembourg) and Switzerland are signatories. Other waterways within the Community are subject to EC rules, but elsewhere in Europe (including the Danube countries, for example), technical and safety standards are set by the United Nations Economic Commission for Europe (UN-ECE) in the form of non-binding recommendations. Because of the importance of the Rhine waterway, and because the Mannheim Convention predates the establishment of the Community, the so-called Rhine rules are well entrenched and tend to set the trend for policy within the UN-ECE and the Community.

As in other inland sectors, the Council was initially reluctant to take action to fulfil its obligations under the Common Transport Policy with regard to waterway transport, notably in terms of laying down common rules on international and cabotage traffic. The Court of Justice's 1985 ruling in the failure to act case brought by the Parliament (Chapter Two) provided an incentive for action, as did the introduction of the Single European Act. But it was not until 1989 that significant Community legislation first took hold. Since then, the Commission has developed policy along two main strands: liberalisation of trade and the removal of commercial barriers, and structural measures aimed at reducing the overcapacity which became severe during the 1980s, and which was exacerbated by the recession of the early 1990s.

This chapter looks first at the liberalisation process, and the measures which have established a framework for the single market in waterway services, as well as at the complementary measures introduced to facilitate intra-Community trade, notably with regard to technical legislation and training. It then goes on to consider the structural improvement programmes which have underpinned the Community's efforts to revitalise the sector. It should be noted, however, that the chapter focuses only on the international waterway network, to which EC rules apply, and not to isolated networks within the Member States. This chapter also looks briefly at the role of competition policy, largely confined to state aid monitoring, and at the Commission's attempts to broaden the scope of its market policy towards several of the countries of Central and Eastern Europe in an effort to exploit the combined EU and Danube-based markets.

The Commission's effort to reduce infrastructure bottlenecks by way of improving the trans-European networks (which is discussed in Chapter Twelve) is a further important element of the European Community's policy towards inland waterways.

Chapter Seven

LIBERALISATION MEASURES TO OPEN UP THE WATERWAYS MARKET

Until the late 1980s, inland waterway transport was dominated by national controls. There were time-consuming frontier checks at borders, cabotage markets remained restricted, and, in several States, access to cargoes was rationed under so-called rotation systems. (Compulsory freight tariffs were fixed by a central authority, and cargoes were distributed between interested carriers on the principle that the operator who had been waiting longest had first refusal for any cargoes which became available.)

Elimination of frontier controls

A first step towards liberalisation of the international network was taken at the EC level in December 1989, with the introduction of a Regulation on the elimination of frontier controls in the field of road and inland waterway transport. It came into force in July 1990 and stipulated that: "*Controls . . . performed pursuant to Community or national law in the fields of road and inland waterway transport between Member States shall no longer be performed as frontier control but solely as part of the normal control procedures applied in a non-discriminatory fashion through the territory of a Member State.*" In the context of waterways, this effectively referred to checks on conformity with technical rules and on navigability licences and authorisations.

Inland waterway cabotage not fully in force until 1995

A year later, in 1991, the Council adopted a further Regulation, which took the major step of largely liberalising cabotage. It stated that "*With effect from 1 January 1993 any carrier of goods or passengers by inland waterway shall be permitted to carry out the national transport of goods or persons by inland waterway for hire or reward in a Member State in which he is not established . . . provided that: he is established in a Member State in accordance with its legislation and, where appropriate, he is entitled there to carry out the international transport of goods or persons by inland waterway. If he fulfils those conditions, he may temporarily carry on cabotage in the Member State concerned without having to set up a registered office or other establishment there.*" Derogations for France and Germany prevented the Regulation coming fully into force until January 1995; nor did it apply, at the time, to routes within the new German lander.

Removal of barriers on pricing and availability of cargoes

Although the 1991 Regulation liberalised access to the national waterway markets, it did nothing to remove restrictions on pricing and the availability of cargoes, stating explicitly that services remained subject to national rules on "rates and conditions governing transport contracts, and chartering and operating procedures". In June 1994, the Commission reported to the Council that, in the long term, there could be no justification for such a system, which, because of differences in national regulatory systems, effectively obliged some shippers to conclude contracts according to the rotation system while others could benefit from a comparatively free market, depending on where they were operating. Progress in dismantling the rotation and tariff systems, however, was resisted by the operators themselves - particularly in France, Belgium and Holland and on the north-south route between them. By 1995, only these three States maintained restrictive systems, and even they were looking to deregulate, but not until 2000.

Communication on a common policy in inland waterways

In May 1995, the Commission put forward both a Communication, on a common policy, and an important package of proposals, at the centre of which was a draft Directive aimed at completing the liberalisation of the waterways market. The Directive on a "system of chartering and pricing in national and international inland waterway transport in the Community" was adopted, by the Council in November 1996, in a form largely unchanged from the Commission's proposal. It stated that, in the field of national and international inland waterway transport in the Community, "contracts shall be freely concluded between the parties concerned and prices freely negotiated".

Full liberalisation delayed until January 2000

Although the Directive came into force in January 1997, full liberalisation was effectively delayed by a clause allowing Member States to retain a system of minimum tariffs and rotation chartering until January 2000. Nevertheless, such restrictions could only be maintained on general cargoes, and not on "oil and gas, liquid cargo and dry bulk freight, special cargoes such as heavy and indivisible loads, container transport, transport within port areas, any kind of own-account transport and any type of transport operation already outside the system of chartering by rotation". Transport requiring goods handling equipment and combined transport operations were also liberalised.

The Directive provides transitional arrangements for areas where the rotation systems still apply so that shippers can enjoy increased flexibility in concluding contracts for multiple voyages using the same vessel. The Directive allows cargoes, which have been offered twice consecutively under the rotation system without finding an operator, to be taken out of the system and freely negotiated. It also states that, after two years (i.e. from 1 January 1999), shippers involved in the rotation chartering systems must be offered a choice of three types of contract: ordinary contracts for single or multiple trips; contracts on a time basis where the carrier makes one or more vessels exclusively available to a customer for a specific period, charged on a daily rate; and tonnage contracts, where the carrier agrees to transport a given tonnage against a payment made on a per-tonne basis.

Freedom to provide inland waterway services

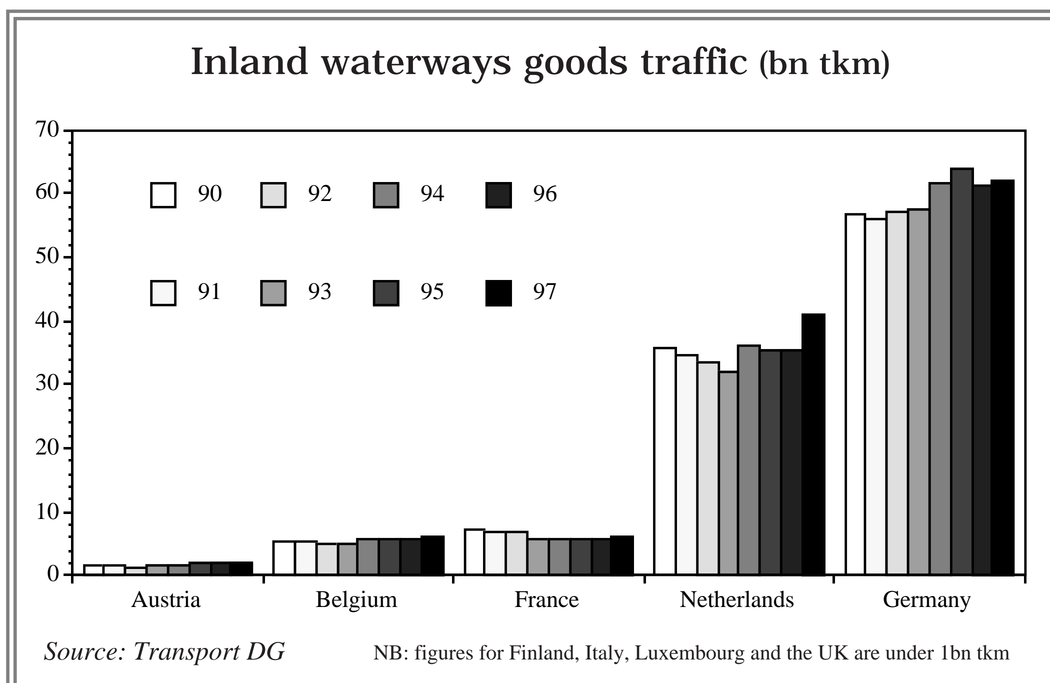
In July 1996, just prior to the adoption of the waterways package, the Council approved a simple Regulation, with only four Articles, establishing common rules on the freedom to provide services in waterway transport. This effectively guarantees operators free access to the market between, or in transit through, Member States without discrimination on grounds of nationality or place of establishment. This legal clarification of Community rules became necessary following the accession of Austria, because of the nature of its bilateral conventions with Germany and the Netherlands.

COMPLEMENTARY ACTIONS IN THE INTERNAL WATERWAYS MARKET

The Community has put in place a range of laws for harmonising vessel operating conditions so as to allow the internal waterways market to function effectively and to ensure fair competition between operators. In 1991, as a first step, the Council adopted a Directive on the reciprocal recognition of national boatmasters' certificates for the carriage of goods and passengers by inland waterway. This enables waterway operators to carry out cross-border services using a single certificate issued in the Member State of origin, without having to apply for further documentation from the competent authorities of other Member States.

Harmonised conditions for boatmasters' certificates

In order to raise safety standards generally, and avoid possible distortions of international competition caused by differing national procedures for granting the licences, a further Directive was adopted, in July 1996, laying down harmonised minimum conditions for the awarding of certificates. The rules apply to the boatmasters of all goods vessels of over 20m in length, and of passenger vessels carrying more than 12 passengers. It stipulates that certificates must conform to a Community model, and can only be granted if the applicant fulfils detailed criteria in terms of physical and mental fitness, professional experience and knowledge. Additional criteria are set for operators sailing passenger vessels or using radar navigation. Such certificates are mutually recognised by the Member States. In deference to the particular status of the Mannheim Convention waterways (see below), Rhine navigation licences issued according to the terms of the Convention are valid for all waterways within the Community.



Source: Transport DG NB: figures for Finland, Italy, Luxembourg and the UK are under 1bn tkm

Technical rules - a prerequisite for fair international competition

A prerequisite for fair international competition in the waterways sector, according to the Commission, is that technical regulations should be harmonised. However, overlapping regulatory systems in Europe - the Mannheim Convention, the UN-ECE, and the Community - have hindered the Commission's ambitions in this regard.

EU regulations outdated by the Rhine rules

Some Community standards have, in fact, been in place since at least 1982, when the Council adopted a Directive - based on the Rhine rules then in force - setting uniform technical rules for Community waterways. The UN-ECE's recommendations were also aligned with the Rhine rules, and temporarily, therefore, compatible technical standards applied to waterway shipping across the whole of the continent. In 1995, though, the Central Commission for Navigation on the Rhine adopted a revised version of the Rhine rules, updating the existing technical standards to improve safety. This left the EU norms outdated and at variance with the Rhine rules, meaning that vessels holding only Community certificates would be unable to operate on the Rhine Navigation. By 1997, the revised Rhine rules had proved effective in practice, to the extent that the UN-ECE began preparing to update its own recommendations in line with them.

The likely implementation of new UN-ECE standards triggered a further problem for the Commission (apart from the redundancy of its own rules). Under the terms of the Europe Agreements, the associated countries linked to the waterways network - Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia - must approximate their domestic laws to those of the Community. In the case of waterways this would mean complying with the requirements of the technical standards Directive. However, many of the countries in question also base their existing law on UN-ECE recommendations, raising the danger that, once the new UN-ECE recommendations had been adopted and followed by the applicant countries, those countries would then be obliged to approximate their laws to Community legislation which, in some areas, would be outdated and incompatible.

Directive to match Mannheim rules to await UN-ECE developments

Thus, in December 1997, the Commission put forward a proposal for a Directive updating the 1982 Community technical standards to match those of the Mannheim Convention. The Commission said, in its explanatory memorandum: "*It is logical that this process should take the form of a revision of the technical requirements in line with the latest Rhine rules, not only because these represent the most up-to-date safety standards which have also proved their worth in practice but, in addition, because this is also the approach being taken by the UN-ECE."* The cost of inaction, it elaborated, would be "an increasing divide between the regimes in force on the Community's waterways and a consequent fracturing of the single market". In addition, the Commission's proposal sought to prevent similar problems arising in future by establishing a mechanism allowing it to be updated in line with future technical progress and changes to the Rhine rules.

Council decision to wait for UN-ECE developments

The European Parliament adopted its first reading on the proposal in October 1998, and called for only a few relatively minor amendments. Subsequently, in 1999, it inherited codecision powers on the dossier. The Council, however, along with other technical waterway measures, such as one on dangerous goods (Chapter Eleven), chose to wait for further developments at the UN-ECE level before taking formal decisions within the Community.

Community control for national scrapping funds

One area of policy which has been tackled with some success at Community level is that of the industry's overcapacity. The decline of the coal and steel industries, which had accounted for much of the sector's core trade, coupled with the long lifespan of vessels launched during times of high demand, led to the available capacity far outstripping demand during the 1980s. The industry's difficulties worsened towards the end of the decade as a consequence of the general economic situation in Europe. Several Member States responded by introducing national scrapping schemes aimed at reducing the number of vessels active on the markets.

However, these schemes failed to achieve the desired result, in part because operators could escape fines imposed on new capacity in one Member State by launching the vessels in another State and then bringing them onto the market of the first. Although there was initial resistance by some Member States to a proposal from the Commission for a Community-wide scrapping scheme, largely because of the budgetary implications, a five year framework Regulation was adopted by the Council and introduced in early 1989.

The Scrapping Regulation created a programme under which national scrapping funds - notably in France, Germany, Belgium and the Netherlands - could be financed by interest free loans from the national authorities. These loans were to be calculated according to the size and type of vessels owned and repaid by the operators through annual contributions to the fund. Under the scheme, owners disposing of old vessels were to be paid a 'scrapping premium', funds permitting. This was complemented by an 'old-for-new' rule under which owners wishing to launch new capacity were obliged either to dispose of a given tonnage of old capacity (based on the capacity of the new vessel and multiplied by a factor - the old-for-new ratio) or to pay a substantial premium to the relevant scrapping fund.

The Community's old-for-new rule

The Commission's role in administering the scrapping funds

The Council's Scrapping Regulation left much of the scheme's administration - such as the setting of the old-for-new - to the Commission, which implements its responsibilities through the adoption of Commission Regulations. The first of these, in 1989, set up a "Group of Experts on Structural Improvements in Inland Waterway Transport" which has helped in the preparation of all subsequent implementing rules and legislation in this area.

The scrapping scheme was relatively successful, although more so in the dry cargo sector than the tanker business, where a temporary rise in liquid cargo prices led many operators to increase the size of their fleets. In November 1994, the Council adopted a Regulation extending the old-for-new system until 1999. The Commission then adopted an implementing Regulation requiring the Member States with waterways to provide the financial resources needed to clear the waiting lists. However, the recession of the early 1990s, and the abolition of tariff controls in Germany, resulted in substantial overcapacity again. Long waiting lists for scrapping premiums developed, and the national funds were unable to cope with the demand.

Council Resolution calling for further structural improvements

In October 1994, while discussing the extension of the old-for-new system, the Council adopted a Resolution saying it was "urgently necessary, for the purpose of reorganising the Western European inland waterway transport market and ensuring the lasting competitiveness of the inland waterway transport sector, . . to take more effective measures than those currently applied, so that a healthy profit situation can be established in the future". It also called on the Commission to submit proposals "with a view to improving the effectiveness of the Regulation on structural improvements".

An accelerated scrapping scheme in preparation for liberalisation

Accordingly, in its May 1995 inland waterways package of proposals (alongside the draft Directive abolishing rotation chartering and tariff fixing), the Commission proposed amending the (recently renewed) Scrapping Regulation and setting up an accelerated scrapping scheme to prepare the market for liberalisation. It envisaged a Community contribution to the scrapping funds in each of the three years 1996-98. However, the Council, when it adopted the Regulation in 1996, only agreed a one-off payment by the Community of Ecu20m for 1996. Under the terms of the revised Regulation, the relevant Member States were instead obliged to make annual contributions to the fund over the period. The contribution of each State was calculated according to the size of its active fleet, and implemented each year by means of a Commission Regulation.

In November 1997, the Commission put forward a report which claimed the scrapping schemes had had a "major socio-economic impact" on the waterways market. It said capacity had been

Contributions to scrapping funds (Ecu m)

	Fleet share 1998 (%)	1996	1997	1998	Total
Austria	1.57	0.68	0.90	0.77	2.35
Belgium	14.62	6.01	7.92	7.16	21.09
Germany	24.77	10.45	13.76	12.14	36.35
France	2.65	0.96	1.26	1.30	3.52
Netherlands	56.39	22.90	30.16	27.36	80.69
Industry		3.0	10.0	15.0	28.0
EU		20.0			20.0
Total	**100**	**64.0**	**64.0**	**63.73**	**192.0**

Source: Preparatory draft for Commission Regulation (EC) 2433/97

reduced without preventing investment in the specialised craft needed to exploit newly-emerging trades; and, at the same time, operators had been able to leave the industry on acceptable terms. The schemes had, the report said, resulted in a reduction in overall waterways capacity of 9.2% between 1990 and 1996, while productivity for each vessel had increased. The most notable improvements were in the dry cargo field, it said, while the tanker sector was suffering from structural changes in the refining industry, and a decline in the use of petroleum products. On the basis of this assessment, the Commission acted immediately to reduce the old-for-new ratio applying to dry cargo vessels from 1.5/1, where it had stood since 1994, to 1.25/1 as of March 1998. The ratio for tanker craft remained at 1.5/1, reflecting the more difficult circumstances of the tanker sector. The ratio for pusher craft remained at 1/1, where it had been set in 1996 in recognition of a need for new investment in the sector.

Achievements of the scrapping schemes

The same report also argued that the scrapping scheme, due to expire in 1999, should be extended. On the one hand, it explained, the scheme provided "the best way of regulating the market, thanks to the automatic offsetting of new capacity by scrapped capacity while in no way inhibiting essential investment" and was supported by the industry. On the other, it said, "the sudden abolition of the old-for-new rule could have the effect of simultaneously triggering a sharp fall in the value of the [waterway] equipment". It did note, however, that there was a need for constraints to be removed, as far as possible, from the operation of the free market as of January 2000.

Old-for-new ratio to be reduced to zero

In September 1998, the Commission proposed a new Regulation setting out a revised policy for controlling waterway capacity. This was subsequently adopted with little controversy (the Parliament accepted the Council's Common Position unamended) by the Council in March 1999. Under the terms of the new Regulation, which came into force in April 1999, the old-for-new mechanism has been retained for a further four years until April 2003 (the Commission had proposed five years) but the old-for-new ratio is to be progressively reduced to zero over the period. Thus, by May 2003, no capacity will need to be scrapped when new vessels are launched, effectively making the old-for-new system redundant. The mechanism will, though, be retained thereafter, to be reactivated by the Commission in the event of "serious disturbances" in the market.

During the four year wind-down period, the ratio for each sector of the market (i.e. tankers, dry cargo vessels, pusher craft) will be adjusted independently at the rate suited to the market situation in each case. A first implementing Commission Regulation was adopted within days of the new regime coming into force. The old-for-new ratios were reduced as follows: to 1/1 for dry cargo; to 1.3/1 for tankers; and to 0.75/1 for pusher craft, with this latter ratio now determined according to engine power rather than capacity.

The Inland Waterways Fund in place from 1999

The Council's March 1999 Regulation, furthermore, requires the Member States to replace their previous national scrapping fund with an "Inland Waterways Fund", with separate accounts for dry cargo carriers, tanker vessels, and pusher craft. These were to be set up with any surplus funds remaining from the scrapping schemes carried out until April 1999, and are to be topped up by special contributions from operators launching vessels. The level of special contributions will decline in line with the phasing out of the old-for-new mechanism.

There is also a mechanism in the Regulation for additional resources to be mobilised, in the event of a serious disturbance in the market, to support remedial measures, similar to those included in the original scrapping schemes. In particular, the Funds could be used to finance scrapping premiums for vessel owners who dispose of part of their capacity, but only if the vessels in question are in a good state of repair and have made at least ten voyages during the previous 24 months. The different national Funds are expected to support one another to ensure that the measures are fairly applied across the EU waterways sector, within the limits of available financial resources.

Court challenges to the EU's scrapping laws

Over the years, the Community's scrapping laws have been subject to the occasional court challenge. In 1995, for example, a German court referred, to the Court of Justice, a claim by two inland waterway operators against the amount of contributions they were obliged to pay to the German scrapping fund, as legitimised by the Community Regulations. The Court of Justice ruled in 1997. It rejected the idea that the Community scheme was not an "appropriate" response to the crisis in the sector, and that it had lost its appropriateness following its adoption (the actual case concerned the year 1990, the first the scheme came into operation). On a third point, the Court ruled that, while the right to property and the freedom to pursue a trade might have been infringed, as the plaintiffs suggested, these rights were not absolute, and should be viewed in relation to their social function.

They could be restricted, provided that the restriction contributed to objectives of common interest and did not constitute "a disproportionate or intolerable interference". The Court ruled that the scrapping funds system fulfilled these criteria, giving the plaintiffs no grounds to oppose them.

Then, in 1998, the Court of First Instance rejected a call by the Rhine container operators, Natural van Dam and Danser Container Line, to have a Commission Decision relating to them annulled. The Commission had refused to exempt the two lines from the old-for-new scrapping scheme in respect of three cargo vessels designed for transporting dangerous goods. The two lines said the vessels would be operating in a new, specialised market and would not contribute to overcapacity in the waterways market. The Court disagreed, noting that the vessels would be able to carry other cargoes, not just dangerous goods.

Competition policy largely restricted to state aid monitoring

Inland waterways are subject to the same general regulatory framework as other inland sectors, notably, Regulation 1017/68, which prohibits restrictive agreements between undertakings in principle, but allows for a wide range of exemptions; the EU's general Regulation for mergers/joint ventures; and Regulation 1107/70, which controls the application of the state aid Treaty Article 77 to the inland transport market. Importantly for the waterways sector, this latter Regulation includes a clause stating that, in the period before adoption of common rules on market access, subsidies can be "granted as an exceptional and temporary measure in order to eliminate, as part of a reorganisation plan, excess capacity causing serious structural problems, and thus to contribute towards meeting more effectively the needs of the transport market".

The moves towards liberalisation in the 1990s, including abolition of tariff controls and rotation chartering, caused severe socio-economic effects in the overcrowded waterways markets of several States. In Germany, for example, the introduction of liberalising legislation in 1994 resulted in tariffs falling 30-60% in a short space of time, resulting in financial hardship for a large number of small operators. As the Community scrapping schemes were introduced and developed during the decade, therefore, the affected States began to set up, and in some cases accelerate, national restructuring programmes, and the Commission was notified of national aid programmes.

Aid to the German, Dutch and French waterways sector

In July 1995, for example, the Commission vetted and approved a German DM160m programme to run until 1998; an extension of the scheme to 1999 was approved by the Commission in 1997 (but without additional funds). In October and November 1995, respectively, the Commission approved a DFl143m programme for the Netherlands and a FFr 39.1m scheme for France. For each of the three programmes, there were two main aid components: a substantial sum to support the scrapping initiatives, and measures to support restructuring, in particular for smaller operators. These latter measures included schemes for operators leaving the profession, as well as for improved management and efficiency. A similar aid scheme, presented by the Belgian province of Wallonia, was passed in 1996. A further injection of FFr57.8m for restructuring in France during 1997-98 was approved in 1997, with a revision in 1998; and an additional Eur5m was approved in 1999.

Wallonia aid scheme approved

In order to ensure fair competition in the increasingly open market, the Commission has also looked at aid given to individual firms. In March 1996, for example, it approved a loan of DM5m, provided by the Berlin regional authorities, to Deutsche Binnenreederei Binnenschiffahrt Spedition Logistik, based in East Germany, which had been privatised in 1993 in the wake of reunification. The restructuring aid was authorised on the grounds that it would help develop the inland waterways transport market.

During 1996, as part of the overall inland waterways package, the Council approved a Regulation, modifying the 1970 rules, to allow Member States to fund investment, until 2000, in waterway terminal infrastructure or in fixed and mobile infrastructures necessary for trans-shipment to and from waterways. The Commission took a first Decision under the terms of this Regulation in October 1997, allowing LFr15.5m in aid to Luxport by the Luxembourg authorities for the acquisition of two cranes for the trans-shipment of rail/road containers to waterway transport.

Regulation on funding investment in infrastructure

Dutch barge control centre opposed, but a Belgian venture approved

Rarely has the Commission found it necessary to act formally against competition abuses in the sector. However, in late 1998, it opened an investigation into a Dutch scheme to help four international container operators finance the setting up of a central coordinating office for waterway transport, to be known as the Barge Control Centre. Notifying the plan to the Commission in late 1997, the Netherlands said it planned to subsidise the start-up costs to the tune

of 50%, on the grounds that it would lead to more efficient handling of containers on the Rhine, without the need for major infrastructure investments. However, the Commission questioned whether operating aids to subsidise administration and training costs could be justified. Such subsidies are in principle forbidden, unless they are designed to achieve goals, in the Community interest, which could not be promoted by market forces alone. At the time of opening the formal investigation, the Netherlands had failed to provide evidence of the need for such subsidies. As of autumn 1999, the Commission was still investigating the Dutch venture.

Investigation into Dutch Barge Control Centre

For a variety of reasons - the lack of full liberalisation and the relatively high level of small operators within the market - the Commission has intervened rarely with regard to restrictive agreements or antitrust activities in the sector; large-scale concentrations and cooperation being more common in the related combined transport markets. However, a proposal, by Stinnes and Haniel, to merge their Belgian businesses for transport of dry bulk goods by inland waterways did attract some attention, largely because the same companies would continue to operate their activities separately in other Member States. Although the Commission decided the venture was not a concentration and that the merger rules did not apply, it noted at the time of the decision in August 1997, that it had some concerns about the independence of the venture from its parent companies. Because of liberalisation, the Commission argued, the venture would essentially be operating in the same market as the parent companies, and should, therefore, be examined under the relevant competition rules. In fact, the Commission decided that the agreement did not fall under Article 81 and that the so-called "notice of agreements of minor importance" applied. The case was closed by comfort letter in July 1999.

Approval for the Stinnes-Haniel joint venture

THE EXTERNAL DIMENSION - A STALLED AGREEMENT WITH THE CEEC

The Community waterways system forms only a part of a wider pan-European network based around the Rhine and the Danube. Until the beginning of the 1990s, traffic between the EU and the CEEC was carried out on the basis of complex bilateral arrangements. In order to establish a more uniform set of rules for traffic between the EU and the CEEC, the Council granted the Commission a mandate, in December 1992, to negotiate a waterways agreement with Poland and the contracting states to the Danube Convention, which were, at the time, Hungary, Czechoslovakia, Romania, Bulgaria, the former USSR, the former Yugoslavia and Austria.

By mid-1994, the political framework in Central and Eastern Europe had changed substantially, with the division of Czechoslovakia and the creation of new Danube states such as Croatia, Serbia, Moldova and the Ukraine. The economic and political differences between many of the Danube states had worsened, and, in some cases, notably in the former Yugoslavia, bilateral relations between them had deteriorated. Reporting to the Transport Council in mid-1994, the Commission expressed its concern that these developments had made it extremely difficult to negotiate a full agreement with all the Danube countries. In response, the Council agreed on a new approach under which negotiations would be carried out initially with the four countries most directly involved in trade with the EU: Poland, the Czech Republic, Hungary and Slovakia, with talks being extended to other countries at a later date if necessary.

Revised mandate for agreement with four countries

On the basis of this mandate, the Commission went on to initial an Agreement with the Czech Republic, Poland and Slovakia in August 1996. Although Hungary had participated fully in the negotiations, it retained reservations over what it considered an imbalance between the regimes for navigation on the Danube and the Rhine (for example with regard to the fact that Danube boatmasters' certificates and technical ships' certificates were not acceptable on the Rhine) and decided not to sign the text. With the negotiations completed, the Agreement was referred back to the national governments and the EU's Council of Ministers for approval and formal signature.

To enable the Council to formally sign the agreement on behalf of the EU, the Commission put forward a draft Decision in December 1996. During its passage through the Parliament's committee stages, however, the EP's rapporteur, MEP Leen van der Waal identified legal problems with the Agreement itself, and recommended that the process of endorsing it be shelved until they had been solved by means of a new protocol. By autumn 1999, no further progress had been made on this dossier.

The problem of the blocked Danube

A serious political problem arose during 1999 as a result of the Nato bombing of Danube bridges in Serbia. By the end of the year, Serbia was continuing refuse to take any action, and the broken bridges were still blocking the international waterway past Novi Sad. The EU, although worried about the situation, was also anxious to avoid allowing Serbia to exploit any Western offers of help - in that such offers might be construed as breaking the UN sanctions. In December, the EU's Council of Ministers promised to make a "contribution" but, before proposing what such a contribution might be, the European Commission was waiting for a suitable plan from the Danube Commission.