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**COUNCIL REGULATION (EEC) No 1101/89
of 27 April 1989
on structural improvements in inland waterway transport**

(OJ L 116, 28.4.1989, p. 25)

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► <u>M1</u> Council Regulation (EEC) No 3572/90 of 4 December 1990	L 353	12	17.12.1990
► <u>M2</u> Council Regulation (EC) No 844/94 of 12 April 1994	L 98	1	16.4.1994
► <u>M3</u> Commission Regulation (EC) No 2812/94 of 18 November 1994	L 298	22	19.11.1994
► <u>M4</u> Council Regulation (EC) No 3314/94 of 22 December 1994	L 350	8	31.12.1994
► <u>M5</u> Council Regulation (EC) No 2819/95 of 5 December 1995	L 292	7	7.12.1995
► <u>M6</u> Council Regulation (EC) No 2254/96 of 19 November 1996	L 304	1	27.11.1996



COUNCIL REGULATION (EEC) No 1101/89
of 27 April 1989
on structural improvements in inland waterway transport

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 75 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the structural overcapacity manifest for some time in the fleets operating on the linked inland waterway networks of Belgium, France, Germany, Luxembourg and the Netherlands appreciably affects, in those countries, the economics of transport services, particularly of the carriage of goods by inland waterway;

Whereas forecasts show no sign of sufficient increase in demand in this sector to absorb this overcapacity in the next few years; whereas in fact the share of the total transport market taken by inland waterway transport is continuing to decline as a result of progressive changes in the basic industries supplied mainly by inland waterway;

Whereas a scrapping scheme coordinated at Community level is the only way to bring about a substantial reduction in overcapacity in the near future and thus improve the structures of inland waterway transport;

Whereas the results of the national vessel-scrapping schemes organized by certain Member States, while positive, have been insufficient, in particular, for want of international coordination of these schemes;

Whereas a common approach, allowing Member States to take joint measures to attain the same objective, is a *sine qua non* for effectively reducing overcapacity; whereas, to this end, scrapping funds should be introduced in the Member States particularly concerned by inland waterway transport and those Member States should administer the funds; whereas undertakings established in other Member States but providing transport services on the linked inland waterways of the Member States concerned must contribute to one of these funds;

Whereas overcapacity generally affects every sector of the inland waterway transport market; whereas the measures to be adopted must, therefore, be generally applicable and cover all cargo vessels and pusher craft; whereas, however, vessel which in non way contribute to the overcapacity on the abovementioned network of linked inland waterways either because of their size or because they are operated solely on closed national markets, could be exempted from these measures; whereas, by contrast, private fleets performing carriage on own account must be included in the system because of their impact on transport markets;

Whereas, in view of the worrying economic and social situation of the sector involving vessels with a dead weight of less than 450 tonnes and in particular the boat owners' financial situation and limited scope for conversion, specific measures are called for, such as special adjustment coefficients for inland waterway vessels or specific improvement measures for the networks most affected; whereas, in the latter case, it is necessary to enable Member States to exclude these vessels from the scope of the Regulation provided that they are made subject to a

⁽¹⁾ OJ No C 297, 22. 11. 1988, p. 13 and
 OJ No 31, 7. 2. 1989, p. 14.

⁽²⁾ OJ No C 326, 19. 12. 1988, p. 54.

⁽³⁾ OJ No C 318, 12. 12. 1988, p. 58.

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national improvement plan which does not create distortions of competition and is consistent with the Treaty provisions on aid;

Whereas, in view of the fundamental differences between the dry cargo and liquid cargo markets, it is advisable to keep separate accounts in each fund for dry cargo carriers and tanker vessels;

Whereas, in the context of an economic policy compatible with the Treaty, responsibility for structural improvements in a given sector of the economy lies primarily with operators in the sector; whereas, therefore, the cost of any system introduced must be borne by the inland waterway transport undertakings; whereas, in order to launch the system on a fully operational basis from the outset, arrangements should be made, however, for the Member States concerned to pay an advance in the form of repayable loans; whereas, in view of the difficult economic situation of the said undertakings, these loans should be interest-free;

Whereas, in accordance with Article 74 of the Treaty, the objectives of the Treaty are to be pursued as regards transport within the framework of a common policy; whereas, as Article 77 makes clear, this policy may include the granting of aids, in particular if they meet the needs of coordination of transport; whereas the Community's action in this area, including aids, must however take into account the various general objectives of Article 3 of the Treaty and in particular that of Article 3 (f), concerning competition; whereas, as with all aidssubject to the rules of Article 92 *et seq* of the Treaty, it is desirable to ensure that the measures provided for in this Regulation and their implementation do not distort, or threaten to distort, competition, in particular by favouring certain undertakings to an extent which is contrary to the common interest; whereas, in order to place the enterprises concerned in similar conditions of competition, the contributions to be paid to the scrapping funds and the scrapping premiums should be set at uniform rates; whereas, likewise, the scrapping programme should be started at the same time, be of the same duration and subject to the same conditions in all the Member States concerned;

Whereas steps should be taken to prevent the gains from the coordinated scrapping scheme being cancelled out by extra capacity coming into service at the same time; whereas temporary measures have to be taken to curb investment without, however, totally blocking access to the inland waterway market or imposing a quota on the national fleets;

Whereas, as part of the proposed system, social measures should be taken to help workers who wish to leave the inland waterway industry or to retrain for jobs in another sector;

Whereas, since the system is a Community one, decisions on its operation must be taken at Community level after consultation with the Member States and the organizations representing the inland waterway transport industry; whereas the requisite power for the adoption of those decisions, as well as for ensuring their implementation and the maintenance of the conditions of competition laid down in this Regulation, must be conferred on the Commission;

Whereas, in order to prevent distortion of competition on the markets in question and to render the proposed system more effective, it is desirable for Switzerland to adopt similar measures for its fleet on the linked inland waterway network of the Member States concerned; whereas Switzerland has shown itself to be willing to adopt such measures,

HAS ADOPTED THIS REGULATION:

Article 1

1. Inland waterway vessels used to carry goods between two or more points by inland waterway in the Member States shall be subject to measures for structural improvements in inland waterway transport under the conditions laid down in this Regulation.

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2. The measures referred to in paragraph 1 shall comprise:
 - the reduction of structural overcapacity by means of scrapping schemes coordinated at Community level,
 - supporting measures to avoid aggravation of existing overcapacity or the emergence of further overcapacity.

Article 2

1. This Regulation shall apply to cargo-carrying vessels and pusher craft providing transport services on own account or for hire or reward and registered in a Member State or, if not registered, operated by an undertaking established in a Member State.

For the purposes of this Regulation, 'undertaking' shall mean any natural or legal person exercising an economic activity on a non-industrial or industrial scale.

2. The following shall be exempt from this Regulation:
 - (a) vessels operating exclusively on national waterways not linked to other waterways in the Community;
 - (b) vessels which, owing to their dimensions, cannot leave the national waterways on which they operate and cannot enter the other waterways of the Community ('prisoner vessels'), provided that such vessels are not likely to compete with vessels covered by this Regulation;
 - (c) — pusher craft with a motive power not exceeding 300 kilowatts,
 - sea-going inland waterway vessels and ship-borne barges used exclusively for international or national transport operations during voyages which include a sea crossing,
 - ferries,
 - vessels providing a non-profit-making public service.
3. Each Member State may exclude its vessels with a dead weight of less than 450 tonnes from the scope of this Regulation if the economic and social situation in the sector of those vessels so requires.

In such cases, the Member State concerned shall communicate to the Commission a national improvement plan under the aid scheme in the six months following the adoption of this Regulation. If the Commission considers the improvement plan incompatible with the common market, paragraph 1 shall apply to the vessels in question.

Article 3

1. Each of the Member States whose inland waterways are linked to those of another Member State and the tonnage of whose fleet is above 100 000 tonnes, hereinafter referred to as 'the Member States concerned', shall set up, under its national legislation and with its own administrative resources, a Scrapping Fund, hereinafter referred to as 'the Fund'.
2. The competent authorities in the Member State concerned shall administer the Fund. Each Member State shall involve its national organizations representing inland waterway carriers in this administration.
3. Each Fund shall consist of two separate accounts, one for dry cargo carriers and pusher craft, the other for tanker vessels.

▼M5

4. Each fund shall be financed by:
 - the contribution referred to in Article 4;
 - the special contributions referred to in Article 8;
 - the financial resources which might be made available by the Member States concerned as part of a scrapping scheme organized at Community level on the basis of harmonized procedures to be fixed;

▼ M5

— the Community contributions referred to in Article 4a.

▼ B*Article 4*

1. For each vessel covered by this Regulation the owner shall pay into one of the Funds set up under Article 3 a contribution fixed in accordance with Article 6.

2. For vessels registered in one of the Member States concerned, the contribution shall be paid into the Fund of the Member State where the vessel is registered. For non-registered vessels operated by an undertaking established in one of these States, the contribution shall be paid into the Fund of the Member State in which the undertaking is established.

3. The contribution for vessels registered in another Member State or for non-registered vessels operated by an undertaking established in another Member State shall be paid into one of the Funds set up in the Member States concerned, at the choice of the vessel owner.

This choice shall be made once only and shall apply to all vessels belonging to the same owner or operated by the same undertaking.

▼ M5*Article 4a*

1. For the year 1995 ► **M6** and the year 1996, ◀ the funds referred to in Article 3 may be financed by contributions from the Community.

2. For 1995 ► **M6** and 1996 ◀ the appropriations entered in the general budget of the European Communities shall be allocated by the Commission, on the basis of the objectives to be achieved and in accordance with the different types and categories of vessels, to the funds according to the requests for scrapping premiums duly entered on the common waiting list.

▼ M6

3. The Member States in question shall jointly make available from their funds sufficient amounts to achieve, along with the Community contribution fixed for the year 1996 only, the structural improvement objectives for the years 1996, 1997 and 1998. The proportionate share of each Member State concerned shall be calculated against the size of its active fleet as compared with that of the Member States' total fleet. These amounts shall be determined by the Commission in conjunction with the authorities of the various scrapping funds.

4. At the beginning of each year during the scrapping operations for 1996, 1997 and 1998, the Commission shall lay down, as part of this Regulation, the procedures for scrapping for the year in progress as a function of available finances, market developments and liberalization measures taken.

▼ B*Article 5*

1. Any owner scrapping a vessel referred to in Article 2 (1) shall receive a scrapping premium from the Fund to which his vessel belongs in so far as the financial means are available, subject to the conditions set out in Article 6. This premium shall be granted only in respect of vessels which the owner proves form part of his active fleet.

Scrapping means the total breaking up of the hull of the vessel.

▼ M2

The active fleet shall include vessels in good working order in respect of which at least three times the annual contribution pursuant to Article 4 (1) has been paid and;

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— which hold:

- either a certificate of waterworthiness issued by the competent national authority or in agreement with the latter, or

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- an authorization to engage in national transport issued by the authority of one of the Member States concerned, and which have made at least one voyage during the year preceding application for the scrapping premium;
- or which have made at least 10 voyages during the year preceding application for the scrapping premium.

▼M4

The conditions of payment set out in Article 5 (1), third indent, introductory section, shall not apply, during a period of three years following the accession of a new Member State, to vessels belonging to the active fleet of that State which, on 28 April 1994, were registered and used by a company established there. The contribution specified in Article 4 (1) must, however, be paid for these vessels as from accession.

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No premium shall be granted in respect of vessels which, as a result of a wreck or other damage suffered, are no longer repairable and are scrapped.

2. There shall be mutual financial support between the Funds with regard to the separate accounts mentioned in Article 3 (3). ►**M5** This shall come into play for all the expenditure and all the resources of the funds referred to in Article 3 (4) so as to guarantee equal treatment in the scrapping operations for all carriers subject to this Regulation, independently of the fund to which the vessel belongs. ◀

Article 6

1. The Commission shall lay down separately for dry cargo carriers, for tankers and for pusher craft:

- the rate of the annual contributions to the Fund for each vessel,
- the rate of the scrapping premiums,
- the period covered by the scrapping schemes, during which scrapping premiums will be paid, and the conditions under which the premiums may be obtained,
- the adjustment coefficients for each type and category of inland waterway vessel. These coefficients shall take account of the particular socio-economic situation regarding vessels with a dead weight of less than 450 tonnes.

2. The contributions and scrapping premiums shall be expressed in ecus; the rates applying shall be the same for each Fund.

3. Contributions and premiums shall be calculated on the basis of either of deadweight tonnage for cargo-carrying vessels or the motive power of the vessel for pusher craft.

4. Contribution rates shall be fixed at a level allowing the Funds sufficient financial resources to make an effective contribution to reducing the structural imbalance between supply and demand in the inland waterway transport sector, taking into account the difficult economic position of this sector.

Contributions shall be paid annually at the start of the year in return for a certificate of payment. The period for which they are paid shall not exceed 10 years.

From 1 March of the year concerned this certificate must be on board the vessel or, in the case of unmanned vessels, on board the pusher craft. For the first year of operation of the system, the date from which the certificate must be on board shall be set by the Commission.

▼M1

For German vessels registered in the territory of the former German Democratic Republic at the date of German unification the contribution shall be obligatory as from 1 January 1991.

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5. The Commission shall lay down the period during which scrapping premiums may be obtained and the conditions for granting these

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premiums on the basis of the objectives to be attained, the vessel types or categories and the financial resources of the Funds.

6. The Commission shall lay down detailed rules for the mutual financial support referred to in Article 5 (2).

7. After consulting the Member States and the organizations representing inland waterways carriers at Community level, the Commission shall set a target date for achieving a substantial reduction in overcapacity and shall take the decisions referred to in paragraphs 1 to 6.

The decisions reached by the Commission shall also take account of the results of observation of the transport markets in the Community and of any foreseeable changes therein, as well as of the need to avoid any distortion of competition to an extent which is contrary to the common interest.

▼M1

8. If within six months of German unification the German Government proposes that a scrapping action be organized for vessels in its fleet that were, prior to unification, registered in the former German Democratic Republic, it shall communicate this request to the Commission. The Commission shall lay down the rules for the scrapping action in accordance with paragraph 7 and on the basis of the same principles as those set out in Commission Regulation (EEC) No 1102/89. ⁽¹⁾

▼B*Article 7*

1. Without prejudice to the provisions of the Treaty on aids and to the rules adopted in implementation thereof, the Member States concerned shall make advance payments, in the form of loans, to the Fund set up in their territory so that a coordinated scrapping scheme can start operating immediately. The sums granted in this way shall be repaid, free of interest, by the Fund, according to a predetermined schedule.

The Funds may also be prefinanced by loans guaranteed by the State, contracted on the capital market, provided that interest on the loan is borne by the State concerned.

2. Obligations borne by a national Fund existing when this Regulation comes into force shall be assumed by the Fund of the Member State concerned.

Owners of vessels who are not subject to this Regulation and who have rights resulting from existing national scrapping schemes may assert those rights *vis-à-vis* the Funds referred to in Article 3 (1) for a period of six months from the end of the scrapping period referred to in Article 6 (5).

Article 8

1. (a) For a period of ►**M2** ten years ◀ from the entry into force of this Regulation, vessels covered by this Regulation which are newly constructed, imported from a third country or which leave the national waterways mentioned in Article 2 (2) (a) and (b) may be brought into service on inland waterways as referred to in Article 3 only where:

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- the owner of the vessel to be brought into service scraps a tonnage of carrying capacity equivalent to one and a half times that of the new vessel, or
- where the owner scraps no vessel, he pays into the Fund covering his new vessel or into the Fund chosen by him in accordance with Article 4 a special contribution equal to the

⁽¹⁾ OJ No L 116, 28. 4. 1989, p. 30.

▼ M3

scrapping premium fixed for a tonnage equal to one and a half times that of the new vessel, or

- where the owner scraps a tonnage smaller than one and a half times that of the new vessel to be brought into service, he pays into the Fund in question a special contribution equivalent to the scrapping premium corresponding at the time to the difference between one and a half times the tonnage of the new vessel and the tonnage scrapped.

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In the case of pusher craft, the concept of 'tonnage' shall be replaced by that of 'motive power'.

Vessels of third countries which have adopted, on the basis of an international instrument, measures similar to those in this Regulation shall be regarded as vessels of the Member States.

- (b) In the case of the vessels referred to in (a) which are put into service on the inland waterways referred to in Article 3 between the entry into force of this Regulation and the setting up of the corresponding national Fund, the special contribution to be paid by the owner in accordance with (a) shall be paid into a special account to be designated by the national authorities of the Member State concerned. The contribution shall be transferred to the Fund as soon as it has been set up.
 - (c) Three years after this Regulation comes into force, the Commission may, if transport markets trends so require, and after consulting the Member States and the organizations representing inland waterway transport at Community level, adjust the ratio between the new tonnage and the old tonnage as referred to in (a).
2. The conditions laid down in paragraph 1 shall also apply to increases in capacity resulting from the lengthening of a vessel or the replacement of pusher-craft engines.
3. (a) The conditions set out in paragraphs 1 and 2 shall not apply to vessels in respect of which the owner proves that:
- construction was under way on the date of entry into force of this Regulation, and that
 - work already carried out represents at least 20 % of the steel weight or 50 tonnes, and that
 - delivery and commissioning is to take place within the six months following entry into force of this Regulation.

▼ M1

The conditions set out in paragraphs 1 and 2 shall also not apply to vessels which were under construction in the former German Democratic Republic before 1 September 1990, if the date of their delivery and commissioning is no later than 31 January 1991.

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- (b) The conditions set out in paragraphs 1 and 2 shall not apply to vessels which, at the time of entry into force of this Regulation, were exempt from this Regulation pursuant to Article 2 (2) (a) and which by reason of a newly-opened navigable link are able to use the other inland waterways of the Community.

▼ M1

The conditions set out in paragraphs 1 and 2 shall apply to vessels which became part of the German fleet upon German unification but which were not registered in the former German Democratic Republic on 1 September 1990.

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- (c) The Commission may, after consulting the Member States and the organizations representing inland waterway transport at Community level, exempt specialized vessels from the scope of paragraph 1
4. A vessel referred to in paragraphs 1 and 2 may not be put into service until the owner has fulfilled the requirements set out in paragraph 1. Where this prohibition is infringed, the national authorities

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may take steps to prevent the vessel concerned from participating in the trade.

5. On the basis of a Commission proposal accompanied by a well-founded report, the Council may take a decision to extend the period referred to in paragraph 1 by a maximum of five years.

The Council shall act on this proposal in accordance with the conditions laid down in the Treaty.

Article 9

The Member States concerned may take measures:

- to make it easier for inland waterway carriers leaving the industry to obtain an early retirement pension or to transfer to another economic activity,
- to grant early retirement pensions to workers leaving the inland waterways as a result of scrapping schemes and to organize vocational training courses or retraining courses.

Article 10

1. Member States shall adopt the measures necessary to implement this Regulation before 1 January 1990 and shall notify the Commission thereof.

These measures shall provide, *inter alia*, for permanent and effective verification of compliance with the obligations imposed on undertakings by this Regulation and the national provisions adopted in implementation thereof, and for appropriate penalties in the event of infringement.

2. Throughout the duration of the scrapping scheme, Member States shall communicate to the Commission every six months all relevant information on progress with the current scheme and, in particular, on the financial position of the Fund, the number of applications to scrap vessels and the tonnage actually scrapped.

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▼M5

The Commission shall ensure that the scrapping funds apply this Regulation uniformly and it shall provide coordination thereof.

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4. Two years after this Regulation enters into force, the Commission shall draw up a report evaluating the effect of the measures referred to in paragraph 1 and submit it to the European Parliament and the Council.

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5. The Member States shall adopt the measures necessary to ensure compliance with the provisions of the fourth subparagraph of Article 6 (4), and the second paragraphs of Article 8 (3) (a) and (b) before 1 January 1991 and notify the Commission thereof.

▼M2

5. The Commission shall submit a report to the European Parliament and the Council by 31 December 1996 evaluating the overall effect of the measures provided for by this Regulation, together with proposals if appropriate.

▼B*Article 11*

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

It shall apply with effect from 1 May 1989.

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