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## MINUTES

### **Hearing "Impact of economic crisis on inland waterway transport sector" 16 and 17 November 2009**

#### **Participants**

There were 80 participants from the following bodies:

Member States: Austria, Belgium, Bulgaria, France, Germany, Netherlands, Poland, Romania,

Inland navigation associations: European Barge Union (EBU), European Skippers' organisation (ESO) and member organisations

River Commissions: Central Commission for the Navigation on the Rhine (CCNR)

Banking Sector: European Investment Bank (EIB), Ostfriesische Volksbank/BFS

Research institutes: ECORYS, NEA

**Chair:** Jean-Eric Paquet (DG TREN)

#### **Introduction**

The purpose of this hearing was to give the inland waterway transport sector (IWT) the opportunity to voice its views about the effects of the economical crisis on IWT and to discuss possible measures.

COM gave a short overview over the problems of IWT, together with an explanation of the situation in the other transport modes.

One year after the outbreak of the economic crises, which started as a banking crisis, the economic downturn is still leaving its marks. The crisis has created the deepest and most widespread recession in the post-war era. In such an economic downturn it is evident that the transport sector, which is largely driven by economic activities, is suffering severely of the consequences.

Like the other transport modes, inland waterway transport, which is closely linked to the industrial production, feels the effects directly. The main indicators, volumes, capacity, freight rates, revenues are indeed worrying, more or less, for all modes.

According to the International Road Transport Union (IRU), domestic road freight transport has decreased by 10-20% and international transport by 20 to 30%. Rail freight

volumes have decreased by nearly 25 % between the first quarter 2008 and the first quarter 2009. Also maritime transport is hit severely by falling volumes. The situation is particularly dramatic in some sectors, such as for car carriers (70% and more) and for general container traffic (up to 30% or even more).

In the inland waterway transport sector, transport volumes decreased by 21%. Almost all sectors were affected to some extent.

The capacity of the transport sector was already considered high before the crisis, but as a consequence of the falling volumes during the recession, the capacity has become even higher and has already resulted in a number of bankruptcies, e.g. in the road sector. The maritime sector, and also IWT, will face in addition a high increase of capacities due to the extensive ordering of vessels prior to the recession. The new capacity will be hitting the market in the near future. At the same time, investments in the freight transport sector have dropped to nearly zero; a recovery is not yet foreseeable. This difficult situation also affects revenues in a way that many operators are facing losses, although larger companies may sometimes be in a better position.

Reference was also made to the European Economic Recovery Plan (EERP) launched by COM in order to restore confidence of the markets and to boost economic growth. As part of the Programme, 500 mio € will be brought forward from the TEN-T programme to encourage and speed up investments in transport infrastructures, including the inland waterway network.

Also in accordance with the Recovery Plan, Member States are allowed temporarily to grant € 500.000 per undertaking without notifying to the Commission under certain conditions (de minimis). Other possibilities include loan guarantees and subsidised interest rates. These schemes are also fully applicable to the transport sector. In line with the principles enunciated in the European Economic Recovery Plan, the Member States' recovery programmes constitute the main thrust against the crisis encompassing financial rescue packages, fiscal stimuli, temporary support to hard-hit sectors and targeted support to vulnerable groups.

The European Investment Bank has mobilised quickly its resources to provide a timely response to the financial and economic crisis, in particular to SMEs, taking the form of additional annual lending of €15 billion per year in 2009 and 2010.

Independently of these horizontal temporary measures, which are basically meant to have a short term effect, the Commission is pursuing its policy to promote inland navigation, in particular through the implementation of the NAIADES Action programme (e.g. improvement of framework conditions, reduction of administrative and regulatory barriers, etc.)

Looking forward, after a year of economic downturn, the recession seems to be at a turning point. Thanks to the massive measures to mitigate the effects of the crisis, the indicators are starting to show positive signs again. With regard to the transport sector, the most positive indications are that, economic activities have slightly increased during the last quarter, the decline of volumes seems to have come to a halt, the confidence of the sector is improving and it seems to be willing to accept the challenge.

**Development of Transport Demand (Market Observation) – Presentation by CCNR**

## PRESENTATION CCNR

CCNR's presentation showed the development of transports on inland waterways during the last months for the following product groups:

- Chemicals
- Ores and Metal wastes
- Iron and Steel products
- Fossil Fuels
- Container
- Mineral Oil Products
- Fertilizer

It can be said that the reduction of transport volumes in inland navigation is more pronounced than the drop of the total economic activity, because of its close link with the industrial activity. The development of industrial products is much more volatile than the aggregated economic development.

There is nevertheless a difference in the development of transport of dry cargo, container and mineral oil products. In the dry cargo sector, e. g. agricultural products, there has been a sharp decrease. On the other hand, container transport has regained last year's level by July 2009 and recovery is under way due to rising demand in Asia. Concerning mineral oils, there was even a small increase compared to 2008, because of the lowering oil price.

As regards the supply side in the tanker fleet, an increase of capacity of tanker vessels can be observed. There will be a significant overcapacity in the next five years [due to the entry into market of double hull ships until 2018, while single hull vessels will not be removed as quickly as necessary].

In the dry cargo fleet, there is also overcapacity to be expected. As transport levels of 2008 will not be reached before 2012, the equilibrium of supply and demand will only be established by then.

Mr. Wolz (ESO/BDS) asked for the source of the information, that by 2012 the levels of 2008 would be reached again. CCNR admitted that this is an assumption based on economic research.

Ms. Beckschäfer (ESO/BDS) asked, whether it was true that the capacity for dry cargo would increase by another 20% within the next years, as indicated by Dutch banks. CCNR responded that it is difficult to have precise indicators for the number of ships that will actually enter the market. It is for sure that ships have been ordered before the beginning of the economic crisis. Whether they will actually enter the market depends on the ability of investors to actually finance the vessels. Furthermore, a difference has to be made between tanker and dry cargo transport. Whereas the first sector is mainly influenced by the obligation to replace single by double hull vessels, the latter one is dependant on the events on the freight side and consequently on financing possibilities created by them. For the moment the number of ships to enter the market in the next two years is difficult to predict precisely.

Mr Hovestadt (ESO/CBOB) asked, whether political decisions in Germany and the Netherlands on nuclear energy were included in CCNR's outlook. CCNR replied that it looks as if the new German government would stick to nuclear energy, but the role of coal and the related transport operations would remain stable for the near future. As coal will have to be more and more imported via the seaports of Rotterdam and Antwerp, this could even lead to an increase in the demand for transport.

Luxembourg asked whether the development of freight rates will inevitably follow the one of the demand for transport. CCNR replied that rates in the dry cargo sector rates followed almost immediately the development on the demand side, whereas this was the case only with some delay in the tanker sector.

## **Professional Organisations (EBU, ESO) – Statements by the Profession**

### STATEMENT EBU

Mr. Grulois from the European Barge Union (EBU) recalled that Europe is suffering from an economic crisis which recently led to a recession. Transport is closely connected to the economic situation and development of the industry. Consequently the transport industry has fallen in an economic crisis as well, which has severe consequences for the sector as such. Furthermore, transport follows trade patterns. Since the economic crisis seriously effects world trade, transport and inland navigation are suffering from an enormous decrease of volume since the beginning of 2009, in particular the dry cargo sector. Meanwhile the situation has serious effects on the economic situation of the inland navigation industry.

As regards the market situation, reference was made to the findings by CCNR mentioned above.

IWT plays an important role within the European transport policy. However, it suffered from an underestimation during the past decades. Where inland waterway freight transport reaches shares up to 40 % in some Member States, the overall share of inland waterway freight transport within the European freight transport by inland modes only makes up some 5,3 %. Research has proven that inland waterway transport can grow tremendously on various waterways, due to considerable free capacity in infrastructure. IWT has turned out to be the most environmentally-sound, energy efficient and safe mode of goods and passengers transport as well and offers the best possible safety guarantees. It is therefore regarded as important to overcome the crisis in the sector and to avoid a collapse of the industry.

EBU proposed the following actions:

- Banks should support the industry concerning the question of paying back loans
- Financial burdens, such as port fees, should be lowered
- The fleet capacity should not increase
- For the tanker sector, the out phasing of single hull vessels until 2019 should be closely monitored
- TEN-T as well as national financial contributions should be dedicated to IWT infrastructure

### STATEMENT ESO

Mr. Veldman (European Skippers' Organisation/ESO) admitted that the sector itself had no viable answer to the crisis. Since the second half of 2008, a big discrepancy has emerged between the freight to be transported and fleet capacity. This is being aggravated by the continuing influx of new vessels. An improvement to the situation is not to be expected in the short run, endangering the rentability of a big number of undertakings.

According to ESO it has to be asked, whether the current crisis was not caused at least partly by the structure of the IWT sector.

The crisis is seen as a structural one, which is why ESO called upon the other Member States to join the Netherlands in their request to COM to declare the crisis and to take suitable measures to tackle it.

ESO has identified the following problems to be the most pressing ones:

- The economic downturn combined with a decrease of demand for transport operations
- The increase of capacity by new vessels
- The obligation to replace single by double hull vessels in the tanker sector
- The removal of transitional provisions on technical requirements

Finally, the following measures were proposed to be taken at EU-level:

- Temporary immobilization of vessels
- Old-for-new
- Early retirement of skippers

The Committee foreseen in Article 8 of Directive 1996/75/EC should assess the necessary measures. In order to get viable results, a market survey would also be useful.

Mr. Jaegers (EBU/BDB) reminded that the tanker sector faced a hard time until August 2009 due to low oil prices and reduced demand for transport operations. Since September, there has been an increase in freight rates due to the low water situation. Given the recent rise of water levels, prices are expected to decrease again, which shows the volatility of the tanker transport sector. The findings of CCNR are correct insofar, as the market will be negatively influenced by incoming vessels. It has to be made sure, that single hull vessels are being removed, while new double hull vessels continue to be produced.

Furthermore, COM is asked to explain, how the € 20mio, included in the inland navigation fund reserved for the tanker fleet, could be used to remove between 100 and 200 single hull vessels from the market. Finally, customers (mineral oil and chemical industry) should encourage the use of double hull tankers.

Mr. Schlieter (ESO/BDS) expressed that the most important question is, whether the economic crisis is solely responsible for the current situation or not. The BDS is of the opinion that without the economic crisis a situation comparable to the current one would have developed in the course of next year and that an improvement of the situation can not be reached by the market itself. Therefore, the employment of the crisis mechanism is regarded as necessary.

Ms. Fluitsma (ESO/ASV) asked that the participants of the meeting would have to deal with the question, whether the free market is capable of dealing with the current situation.

Concerning remarks on EU transport policy and infrastructure, COM reminded that competences in this field are shared, according to the principle of subsidiarity between the Community and Member States.

Mr. Heidenstecker (EBU/ERSTU) referred to the fact that undertakings from Eastern Europe are particularly suffering from the crisis due to modernisation of the fleet in Western Europe. COM is called upon to support the modal split in favour of inland navigation. Furthermore, it should support the development and maintenance of the infrastructure. Member States should be encouraged to ease the liquidity problems of IWT undertakings by contingent liability or credits. Temporary national capacity measures should be considered by the Member States. Furthermore, there should be a pan-European register to monitor new vessels.

Finally he stated that the crisis was not a structural one, but basically inflicted by shipowners and producers. Therefore, professional organisations should ask for reasonable measures and skippers should stop to sail for prices lower than the costs.

Mr. Schwarz (EBU/BDB) contested the benefits of scrapping of vessels and the "old-for-new rule".

Mr. Carpentier (ESO/CNBA) expressed to be in favour of the "old-for-new rule" and of an intervention of the EU at fiscal level.

## STATEMENT ESC

Mr. Slotema (ESC) recalled that liberalisation has been an outstanding success in the IWT sector and welcomed accompanying measures, but warned of returning to regulatory instruments such as bottom prices. Looking at the expectations of financiers from the banking sector, it had to be recognized, that the current crisis is not a structural, but a cyclical one. Therefore, the authorities should not intervene further than the carrying out of a market research among all participants.

Concerning the crisis plan proposed by the Dutch industry, Mr. Slotema pointed out that the plan had already been qualified by the Dutch competition authority as cartel-like measures, an opinion which is shared by ESC. He also recalled that the crisis would not only concern IWT, but all modes of transport. Therefore, it would be sufficient if IWT undertakings benefit from the general measures put in place by the EU and national governments to combat the economic crisis. He suggested that it would be important for shippers to increase cooperation and that a reliable market observation system should be put in place.

COM reminded that competition rules would play an important role in the assessment and a level playing field needs to be kept. Analysis The question would also be whether the crisis is an economic recession or a structural crisis.

Mr. Veldman (ESO) agreed that further market research would be necessary in order to identify possible measures to combat the crisis. It would be vital to increase cooperation

between shippers in order to be able to immobilize vessels, because most IWT undertakings consist of one ship only.

Mr. Jaegers (EBU/BDB) basically agreed with ESO, that cooperation between undertakings was necessary. However, a regulation of the market, would only help road transport as history has shown.

Referring to cartels he recalled that Directive 1996/75/EC on the system of chartering and pricing in national and international inland waterway transport in the Community foresees measures, which are absolutely in line with competition legislation, especially concerning the capacity on the market.

Mr. Kasteel (EBU/Interstream Barging B.V) stated that transparency concerning new ships is essential in order to take the right measure on capacity. The remarks of Mr. Jaegers concerning the use of the reserve fund are being supported.

Mr. Witkowski (ZPAS) reported about the situation on the Polish inland navigation market, which benefits from old western European ships being replaced by new ones in their country of origin.

## CZ STATEMENT

Mr. Aster from the Czech shipper's association agreed to the findings of Mr. Witkowski and Mr. Heidenstecker. Additionally he reported about problems for the Czech IWT with NGOs and the ministry of environmental affairs. Some of the NGOs were allegedly supported by undertakings of other modes of transport, leading to unfair competition. Furthermore, the Elbe is not being sufficiently used as inland waterway, as the infrastructure of that river is insufficient. In order to combat the crisis, the EU should continue to work on the internalisation of external costs in road transport and consider the sustainability of transport modes in the framework of TEN-T. Finally, he asked for direct financial support out of the EU-budget.

## **Member States (Tour de Table)**

Bulgaria reported that the situation is roughly the same as in the rest of Europe. The most important problem was the collapse of the iron producing plant Kremikovzi, leading to a reduction of total cargo turnover of 33 %. Another reason is that some of the shippers prefer to use the road transport sector for the transport of goods to Central and Western Europe.

Several measures, such as the building of intermodal terminals or the improvement of the logistics chain were taken by the government. BG supports very much the EU's strategy for the development of the Danube region.

Romania brought into mind the Danube-Black Sea canal, which is the third biggest in the world. Traffic on that canal has significantly decreased due to the economical crisis. All in all, traffic on the Romanian part of the Danube decreased by 33%.

France reported to have put in place an infrastructure programme for the inland waterways. Especially, the French economic recovery programme dedicated €100 mio to the IWT infrastructure network. France has also faced a severe drop in the IWT sector but nevertheless it was firmly stated, that an overcapacity could not be seen at all at national level, therefore the crisis mechanism should not be applied.

Germany reported the IWT sector to be in a heavy crisis, but there were positive signs, especially due to the structural programmes of the federal government to support the economy (two programmes of more than € 100 bio.). Investment in infrastructure has increased by 50%. Furthermore, in September 2009 a programme to modernize the fleet and in November 2009 another one – in cooperation with NL and with the assistance of COM – to promote AIS transponders, has been implemented.

The new government will continue to follow this path, as the modal shift is part of the coalition agreement.

Austria reported a severe decrease in the transport of goods and freight rates on the upper Danube. Investments in new vessels can not be financed and a recovery is not in sight. The situation is regarded as a severe disturbance to the overall economic situation, which is not specific to IWT. Consequently, no special measures have been taken for the sector. Austria is very much engaged in the field of infrastructure and River Information Services (RIS), in order to improve the framework conditions. An introduction of measures, such as scrapping premiums or the "old-for new-rule" was not supported, be it by the public authority or the sector itself. What could be supported is the use of the reserve fund, if there is unanimity among the professional organisations.

The Netherlands mentioned the letter submitted to COM on 13 November 2009, by which, with reference to Directive 1996/75/EC the Dutch authorities asked COM to "declare" the crisis. All in all, the situation in the Netherlands was comparable to the other Member States, with severe drops in freight rates and volumes. Difference is the number of new ships still entering the Dutch market. The situation would not improve in the near future, leading to liquidity problems for about 80 to 90% of the undertakings. According to NL, the crisis is a structural one, with the new capacity not being needed before 2014/15.

COM confirmed the receipt of the letter and told that it would be carefully considered.

Concerning the market situation, Belgium confirmed the findings of the CCNR in terms of a severe reduction of demand and freight rates in the sector. The fleet capacity will increase by 8% in the coming years, but nevertheless there are some positive signs of recovery of the economy. Belgium has not taken any special measures to assist the sector, but IWT would benefit from the general stimulation programmes.

Poland referred to the "Odra 2006" programme to develop inland navigation along that river. Problems were reported with NGOs and the ministry for environmental affairs concerning the development of the inland waterway infrastructure, which is responsible for the maintenance of the waterways.

The Belgian shippers association asked the Netherlands, which measures should be taken to combat the crisis. The Netherlands replied that this is on the one side for COM to reflect, as well as on the other hand for the discussion on the next day.

Ms. Fluitsma (ESO/ASV) recalled that only 15% of the skippers supported lay-off measures.

## **Banking Sector**

## PRESENTATION EIB

Mr. O'Sullivan (European Investment Bank/EIB) told that no specific action was taken for IWT in the remit of EIB. Nevertheless the EIB has given a large response to the economical crisis. In particular, annual loan signatures have increased by 21% to €57bn in 2008. Another significant increase of the lending volume is expected in 2009.

Within that response, the EIB supports all modes of transport, the EIB claims to put special emphasis on environmentally friendly ones. Nevertheless, the EIB is traditionally seen as an infrastructure lender and the biggest share of loans is given to road and rail projects. In IWT, the EIB is currently supporting a project at the Duisburg port with about €60 mio.

A strong commitment is also being given to the funding of TEN.

Finally, the overall lending policy of the EIB pays particular attention to SMEs. Loans are generally only given in cooperation with the commercial banking sector.

Ms. Hacksteiner (EBU) asked EIB, whether it could support the industry via a system of guaranties?

Mr. O'Sullivan responded to this question as well as to an earlier one posed by a Dutch skipper, that EIB had to apply banking standards and therefore cannot support financially unviable businesses. If there is a need for subventions, this would not be part of EIB's mandate, so these funds would have to come from somewhere else.

Mr. Wolz (ESO/BDS) recalled that the problem is not about financing, but about the low earnings of the sector.

Mr Bruhns of the Ostfriesische Volksbank/BFS stated that in order to correctly judge the situation, one has to be aware of the fact that we are in the middle of an economic and financial crisis, which has led to a sharp decrease of the production of steel as well as of the production and the construction industries. Due to this crisis many undertakings have problems of liquidity. Aggravating, the vessel capacity outbalances the demand for transportation. This does not only affect IWT, but also maritime transport.

There seem to be three possible solutions:

- Layoffs: Scrapping is not a solution as long as it is not ensured that it is not just the old (small) ships that are being scrapped, while at the same time the tonnage capacity increases because of the bigger size of the new ones. There should be a halt to new constructions.
- "Pooling" of undertakings (but experience shows that it only works to a limited extent) because of lack of solidarity.
- Deferral of the payback of loans and providing of additional resources to undertakings. There should be assistance for skippers who have problems in the current economic crisis with liquidity, that is not caused by their own fault.

Finally, there are some small signs of hope that exports could increase soon.

Concerning the question of Ms. Beckschäfer (ESO/BDS), why it needs state guaranties to delay the payback of loans for basically financially viable undertakings, Mr. Bruhns replied that it would be difficult for a bank to take the risk of another bad year for IWT. The problem gets even more difficult, if third parties are concerned. After all, there should be a solution for enterprises, which were financially stable until 2007/2008, covering all parts of the economy. It is also difficult get guaranties for loans from the German Kreditbank für Wiederaufbau (KfW) because of the time it takes that bank to assess applications.

Mr. Jaegers (EBU/BDB) stressed that it has become more and more difficult even for financially viable undertakings to obtain financial resources from commercial banks.

Mr. Veldman (ESO) stated that the question is, how the inland navigation sector can achieve better revenues, in order to increase the liquidity of undertakings.

Mr. Wolz (ESO/BDS) – referring to Mr. Jaegers – agreed that it has become more difficult for undertakings to obtain loans, but that this unwillingness of banks was caused by the low earnings of the IWT.

COM agreed that the banks can not provide the magic formula, how to cure the sector, but they are nevertheless a key player.

### **Future Prospects – Views of Transport Economic Institutes**

#### **PRESENTATION ECORYS**

ECORYS showed in its presentation that IWT faced a huge reduction of demand, combined with overcapacity. However, looking at other sectors, the situation is not exceptional and one of the questions was, how the economy would recover from the current situation.

All in all, IWT decreased by 20%. The dry cargo sector faced an overcapacity of 20-30% and a fall of freight rates by 50 to 70%. ECORYS showed that the situation was not unique to the inland navigation sector, but similar developments could be observed for example in road and maritime transport.

One of the major problems identified was the inflexible cost structure of the sector.

As with the rest of the economy, long term prospects are good, with slow, but more sustainable growth, due to large investments in inland ports, promotion of intermodal transport and large investments into the modernisation of the fleet.

#### **PRESENTATION NEA**

NEA carried out studies for Rabobank, CCNR and Crisisberaad (crisis council of the Dutch IWT industry). It had no exact numbers for Europe and therefore referred to the situation in NL.

According to their findings, road and rail transport faced an even more severe downturn in 2009, whereas the expected growth will be higher than for IWT. However, the latter decreased to levels which were for the last time reached in 2003/2003. IWT seems to be

in a disadvantageous situation compared to those two sectors, as it consists mainly of small enterprises, is facing an overcapacity and is a capital intensive sector.

The small size of undertakings leads to a situation, where the sector can not react flexibly enough to a situation of inflowing capacity.

In the dry cargo sector, between 2003 and 2008 the market situation developed well, with 2008 being the best year concerning the relation between cost price and freight rates. After that, severe drop was observed at the end of 2008. An advantage for IWT could on the other hand be seen in an excellent fit with the trends that will dominate the agenda in the next decade (reliability, sustainability, modern fleet).

The first quarter of 2009 again showed a slight improvement of the situation, but according to NEA this was caused basically by the low water situation of that time and freight rates are expected to drop again.

Concerning the liquid cargo sector, the findings presented earlier by Mr. Jaegers were confirmed.

On the supply side, since 1975 in Netherlands, Belgium, Germany and France the fleet capacity decreased by 75%. Between 1975 and 2007 the tonnage capacity decreased by 50%. However, new vessels with increasing tonnage capacity will soon enter the market (until 2016 the average tonnage per vessel will increase from 583t to 1400t). All in all, the capacity increased by 4% compared to 2004.

A similar situation could be witnessed in the tanker sector with the exception that the capacity will even increase more in the coming years than in the dry cargo sector, as there is the obligation to replace single by double hull vessels.

For the dry cargo sector, NEA expects supply and demand to be in a balance not before around 2015. However, in the long run NEA expects a prosperous development of the economy as a whole as well as of the inland waterway sector, with slower, but more sustainable growth rates. This will be encouraged by the advantages, which IWT has to offer:

- Reliability and capacity of waterway network
- Sustainability: low CO<sub>2</sub> and energy consumption
- Economies of scale, low costs
- Modern fleet available

Mr. Jaegers (BDB) and Mr. Slotema (ESC) raised the question, how ECORYS calculated the shipping rate.

Mr. Veldman (ESO) doubted the conclusions of ECORYS about the positive prospects for the IWT sector. Concerning the statement of NEA, he criticised that any information on the turnover is missing. Furthermore, there are some uncertainties concerning the calculation of the capacity (tons or ton kilometres).

ECORYS admitted that IWT is a special sector, but calculations and outlooks had to be made bearing in mind possible decisions with an influence on the market, but nevertheless they have to be in line with general competition rules.

NEA replied that data on the turnover are available, but are expected to be presented by the Dutch Crisisberaad the following day.

Concerning the calculation of productive hours ECORYS and NEA informed that waiting times at terminals are not included in the calculation.

To CCNR it seems unclear, whether there will be an overcapacity in the medium term. ECORYS replied that this would mainly depend on the development of the economy.

Mr Jaegers (EBU/BDB) explained that for the tanker sector 2008 was an exceptional situation due to the high oil price. On the other hand, due to the economic crisis the sector faced severe difficulties since 2009. Consequently, for a sector as volatile as the tanker shipping, it is extremely difficult to make predictions about overcapacities.

Mr. Slotema (ESC) asked for explanations on the cost price by ECORYS

Ms. Fluitsma (ASV) called upon the EU to adopt a suitable transport policy to support ITW, in order to learn from the crisis and move to a more sustainable transport system. This should include the fact, that IWT is a special sector, which can not react with enough flexibility to changes in capacity. Finally, the arrival of new ships does not mean automatically that there will be more transport operations.

COM concluded the first day of the meeting by thanking the participants, giving an outlook on the discussion on the set of possible measures that could be taken to support the sector, which was scheduled for the next day and thanked all contributors and stakeholders for their valuable information. President Barroso will make the decarbonisation and sustainability a major point for the incoming Commission, and concrete actions also concerning inland navigation could also be expected, therefore, the prospects for IWT from a political point of view are encouraging.

The following questions should be discussed the next day:

- What measures do we need in an economic crisis?
- What measures do we need in a structural crisis?
- Which actors are needed for strategic measures?
- How can the work be divided between European and national level?

### **"Serious Market Disturbance" and "Suitable Measures" – Presentation of Directive 1996/75/EC and Regulation (EC) No 718/99**

#### **[PRESENTATION DG TREN](#)**

There are two legal instruments, which are relevant for inland waterway transport: Directive 1996/75/EC and Regulation (EC) No 718/99.

According to Art. 1(d) of Directive 1996/75/EC 'serious market disturbance' shall mean the emergence, in the inland waterway transport market, of problems specific to that market likely to cause a serious and potentially persistent excess of supply over demand, thereby posing a serious threat to the financial stability and survival of a large number of inland waterway carriers, unless the short and medium-term forecasts for the market in

question indicate substantial and lasting improvements. This means that if other sectors are concerned in a similar way, the crisis can not be regarded as "specific". Furthermore it needs to be a long lasting "structural" overcapacity, without foreseeable improvements in the near future.

Following Article 7, the event of a serious disturbance in the inland waterway transport market, COM may, at the request of a Member State, take suitable measures, and in particular measures designed to prevent any new increase in the transport capacity on offer on the market in question.

The Directive refers explicitly to measures related to the regulation of the fleet capacity.

The request from a Member State for suitable measures to be taken must be accompanied by all the information needed to assess the economic situation in the sector in question, such as the indication of the average costs and prices for the different types of transport, the rate of utilization of the hold or the forecast demand.

In the decision, COM shall be assisted by a committee of MEMBER STATES experts.

The second legal basis is Regulation (EC) No 718/1999, which established the link between Directive 1996/75/EC and the use of the reserve fund.

Currently, the reserve fund foresees around € 13mio for dry cargo and € 20mio for the tanker fleet.

The Regulation offers two alternatives for the reserve fund to be used:

1. It may be used in connection with measures under Article 7 of the Directive in the course of improvement measures, such as scrapping premiums or the reactivation of the old-for-new rule. The measures have to be organised at Community level.

This means that in the event of serious disturbance on the market, as defined in Article 7 of Directive 96/75/EC and, at the request of a Member State, after the Committee referred to in Article 8 of the Directive has given its opinion, the Commission may reactivate the "old-for-new" rule for a limited period, in accordance with Article 7 of the said Directive, accompanied or not by structural improvement measures. Under such structural improvement measures owners of vessels, who scrap a vessel, may receive a scrapping premium at the rate set by the Commission from the fund, insofar as the financial resources are available.

2. The reserve fund may also be used, without the existence of a market disturbance if the professional organisations representing the IWT sector (EBU, ESO) unanimously suggest accompanying measures such as early retirement or transfer (to another economy) of skippers, vocational training, retraining, setting up of trade organisations or encouraging the technical adaptation of vessels. Those measures, which are not of a regulatory nature, shall take the form of a Community wide action.

In any case, the decisions reached by the Commission shall take account of the need to avoid any distortion of competition to an extent which is contrary to the common interest.

[PRESENTATION DG COMP](#)

Concerning competition law, Articles 81 and 82 TEC apply to IWT as well as the specialised Regulation (EC) No 169/2009.

Article 81 TEC contains a prohibition of agreements that have the object or effect of restricting competition, for example on prices. Article 82 prohibits an abuse of a dominant position. Basically, the sector has to make a self-assessment on agreements possibly in conflict with competition rules, based upon case law of the European Court of Justice and guidance by COM.

Regulation (EC) No 169/2009 is a codified version of Regulation 1017/68, containing no substantive changes, but only combining all amendments occurred since 1968. Furthermore, it provides exceptions for 2 specific types of cooperations in the inland waterway sector:

- Exception for technical cooperation

This exception contributes to improving productivity. Commercial cooperation is not covered (in particular no cooperation on prices).

- Groupings of SMEs

This exception allows for the creation and operation of groupings with a view to carry on transport activities. It enhances the competitiveness of smaller operators by joining forces and is only meant for SMEs (2 quantitative thresholds):

- total capacity of 500.000t/grouping and
- individual capacity of 50.000t/operator)

Finally, there is a possibility for COM to intervene.

These exceptions are of course subject to a very narrow interpretation.

A special provision for "crisis cartels" no longer exists.

The question of Mr. Wolz (ESO/BDS), whether the second exception would also comprise the adherence to existing groupings was replied to in a positive manner.

COM made it clear following a question of a Dutch participant that price fixing agreements, setting down the price Of each market player can not be based upon Article 2 (1c) of the Regulation.

Ms Beckschäfer (ESO/BDS) contested the interpretation of COM concerning the specificity of the market disturbance. She expressed the opinion that the fact that a crisis was also present in other sectors would not mean, that it could not be "specific" to the inland navigation sector, but one also had to look at the effects the crisis has on the sector.

Concerning the measures to be taken, she stated that capacity measures were not the only ones permitted under the existing rules.

COM replied that if other sectors are concerned in a similar way, one could not speak of a specific market disturbance, such as a general economic crisis. Concerning the measures to be taken, refer in first instance to fleet capacity regulating measures. Measures on prices are clearly not possible under Directive 1996/75/EC.

Following question by Luxembourg, COM declared that in order to start the procedure under Directive 1996/75/EC a request by a Member State is indeed necessary. The Dutch letter will have to be checked for compliance with the Directive. Once a decision is taken, COM would have three months to take a decision with the assistance of the committee.

## **Presentation of the Dutch Request and Proposed Measures**

### [PRESENTATION CRISISBERAAD](#)

The Netherlands referred to the information of the day before as well as their letter to COM and suggested to see the presentation of the Dutch Crisisberaad.

The Dutch Crisisberaad showed the evolution of the Dutch IWT market and concluded, that supply and demand would not match again but before 2014/15. It declared that IWT was in a steep structural crisis. Admittedly, there was no consensus in NL on the measures to be taken. However they proposed that layoffs should be supported. All in all, the measures to be taken should cost around €153 mio., the financing of which has not yet been decided upon, but contribution by those who benefit from layoff premiums etc. would be foreseen.

The plan of Crisisberaad was contested by several participants of the meeting. Ms Beckschäfer (ESO/BDS) for example pointed out that the overcapacity was at least partly homemade by the Netherlands and that financing by the sector is a tricky issue, as speculators could profit from that financing. She furthermore asked if, as now other ships are asked to pay, those ships which benefit from the arrangement, would be inclined to share future profits.

Ms. Fluitsma (ESO/ASV) also contested Crisisberaad's point of view that the proposed co-financing by the undertakings would be supported by the sector.

Mr. Slotema (ESC) reminded that the Dutch authorities did not entirely support the plan of Crisisberaad, that the Dutch competition authority was very negative about it and issued the opinion, that it could have influence on prices for consumers.

Mr Jaegers (EBU/BDB) asked, whether financing would be voluntary for skippers or not. Crisisberaad proposed that everyone, benefiting from the system, should pay a fair share, but the question will need further clarification.

Crisisberaad admitted that mistakes had been made in the course of last year, followed by an unforeseen economic crisis. It was reminded that a return to the old system of minimum prices was not possible anymore, as COM just confirmed. Concerning support from NL authorities, the government was still discussing, but parliament at least supported the plan. An official opinion of the Dutch competition authority is not available so far.

The Dutch delegation declared that the measures would have to be discussed and should be in compliance with competition rules. In particular, the Dutch government has made

an agreement by the competition authority a precondition to supporting the plan of Crisisberaad.

Austria stated that in order to use the reserve fund, an agreement between the representatives of the profession would be necessary.

The representatives of the Belgian and German skippers declared, that they could hardly imagine that their Members would contribute financially to the solution of a crisis not caused by them.

Mr. Veldman (ESO) said that it is clear that IWT is in a severe crisis, which was partly caused by the sector itself, as too many big vessels have been ordered in the near past. Further thinking about solutions is necessary, which is why the plan of Crisisberaad would just be one contribution to the discussion.

Ms Hacksteiner (EBU), France, Luxembourg and Belgium considered the plan as work in progress and announced that they would only be able to present an official position, as soon as a written version was available.

Crisisberaad promised to provide the final figures the week after the meeting and will provide the plan to the Member States.

COM reminded that any plan would have to be in line with EU competition rules as well as legislation on non-discrimination.

## **Conclusions**

COM concluded that this two-days meeting was important in order to get a better insight into the impacts of the economic crisis on the IWT sector. The meeting was meant as a hearing and the results will be assessed carefully.

COM takes also note of the Dutch letter as well as of the plans and proposals that have been presented. They will now be assessed thoroughly in the framework of the committee under Directive 1996/75/EC.

Maximilian Bauernfeind