

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(81) 423 final

Brussels, 13 October 1981

Proposal for a Council regulation (EEC) laying down detailed rules
for the application of articles 85 and 86 of the Treaty to maritime
transport (presented by the Commission to the Council)

COM(81) 423 final

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(81) 423 final/2

Brussels, 5 november 1981

APPLIES TO THE ENGLISH
VERSION ONLY.

PROPOSAL FOR A COUNCIL REGULATION (EEC)

laying down detailed rules for the application of articles 85
and 86 of the Treaty to maritime transport

(presented by the Commission to the Council)

COM(81) 423 final/2

EXPLANATORY MEMORANDUM

1. Council Regulation No 17 of 6 February 1962¹, the first Regulation implementing Articles 85 and 86, does not apply to sea and air transport, by virtue of Council Regulation No 141 of 26 November 1962 and Council Regulation No 1017/68 of 19 July 1968². At present, sea and air transport are consequently the only branches of the economy where there are no detailed rules applying the competition provisions.

Yet there is no doubt that air and sea transport are subject to the provisions of Articles 85 and 86. In its Judgment of 4 April 1974 in Case 167/73 (Commission v. French Republic), the Court of Justice held that sea and air transport remain, on the same basis as the other modes of transport, subject to the general rules of the Treaty³, although they are, by virtue of Article 84(2), so long as the Council has not decided otherwise, excluded from Title IV of the Treaty, relating to the common transport policy. The Judgment of 12 October 1978 (Commission v. Belgium), confirms that these general rules include in particular the competition rules⁴.

In short, the provisions of Articles 85 and 86 apply to sea and air transport but detailed rules of application do not yet exist.

2. In this field, pending the entry into force of such rules, Articles 88 and 89 provide the only legal basis for action by the Member States or the Community:

- under Article 88, the authorities in Member States shall rule on the admissibility of agreements and on abuse of a dominant position in accordance with the law of their country and with Articles 85, in particular paragraph 3, and 86;

¹OJ No 13 of 21 February 1962, p. 204/62

²OJ No 124 of 28 November 1962, p. 2751/62 and OJ No 175 of 23 July 1968, p. 1

³ECR 1974, p. 371

⁴ECR 1978, p. 1881

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EXPLANATORY MEMORANDUM

I.

1. Giving judgment in Case 167/73 (Commission v French Republic) on 4 April 1974, the Court of Justice upheld the Commission's view that, although under Article 84(2) sea and air transport were not covered by the provisions of Title IV relating to the common transport policy until such time as the Council decided to include them, nevertheless they were, on the same basis as other modes of transport, subject to the general provisions of the Treaty¹. The judgment in Case 156/77 (Commission v Belgium) on 12 October 1978 confirms that these provisions include in particular the competition rules². The sea transport sector is accordingly subject to the provisions of Articles 85 and 86.

But Council Regulation No 141 of 26 November 1962³ provides that Regulation No 17 of 6 February 1962⁴, the first Regulation implementing Articles 85 and 86, does not apply to transport, while Regulation No 1017/68 of 19 July 1968⁵ applies the rules of competition only to transport by rail, road and inland waterway. Sea and air transport are consequently the only branches of the economy where there are no detailed rules applying the competition rules.

2. In this field, pending the entry into force of such rules, Articles 88 and 89 provide the legal basis for action by the Member States or the Community:

- under Article 88, the authorities in Member States shall rule on the admissibility of agreements and on abuse of a dominant position in accordance with the law of their country and with Article 85, in particular para 3, and Article 86;

¹E.C.R. 371

²E.C.R. 1881

³OJ No 124, 28 November 1962, p. 2751/62

⁴OJ No 13, 21 February 1962, p. 204/62

⁵OJ No L 175, 23 July 1968, p. 1

- Article 89 requires the Commission, in cooperation with the competent authorities in the Member States, who shall give it their assistance, to investigate cases of suspected infringement of the principles of the rules of competition. If it finds that there has been an infringement it shall propose appropriate measures to bring it to an end. If the infringement is not brought to an end, the Commission shall record it in a reasoned decision. It may authorize Member States to take the measures needed to remedy the situation.

3. This has two consequences.

The Commission currently has not the power to enforce the rules of competition efficiently and consistently in the sea transport sector. In order to conduct investigations and secure the termination of infringements, it is dependent on the cooperation of the appropriate national authorities.

On the other hand, in the absence of an implementing regulation, Articles 85 and 86 are directly and fully applicable in each Member State. The national courts have jurisdiction to hear complaints relating to business conduct contrary to those Articles and either to forbid such conduct or not.

Concerning particularly the sea transport sector, there is a risk therefore that there will be developed within the Community legal decisions which on the one hand are not coherent between one Member State and another, and which will also not take sufficient account of the specific character of the business concerned, which could react to the disadvantage of both ship-owners and users. The fact that the Commission has already received three formal complaints about liner conferences shows that this risk is real.

The need therefore to apply Articles 85 and 86 in a consistent fashion throughout the Community and to assure shipowners as well as users of transport a sufficient degree of legal security, requires in itself the adoption of a regulation applying the rules of competition in the sea transport sector.

4. In these circumstances the Commission has already made clear when it submitted to the Council a proposal for a regulation, that on the ratification by Member States of the UN Convention relating to a Code of Conduct for Liner Conferences¹ it was not, in principle, opposed to Liner Conferences subject to a detailed examination of the way they function.

When it adopted its regulation² the Council considered that it is recognised that the stabilising role of conferences, by its nature, guarantees regular services to shippers, but that it is necessary to avoid possible breaches of the rules of competition of the Treaty by the conferences. It therefore invited the Commission to present to it a proposal for a regulation concerning the application of these rules to sea transport.

II.

OUTLINE OF THE DRAFT

1. Article 87 of the EEC Treaty constitutes the legal basis for the proposed regulation.

Paragraph 2(c) of that Article requires the Council, on a proposal from the Commission to define, if need be, in the various branches of the economy, the scope of the provisions of Articles 85 and 86. The same article foresees in paragraph 2(b) the need for the adopted rules to take account of the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other.

The Commission has therefore, after a detailed examination of the organisation and the functioning of the agreements in the sea transport sector, proposed these detailed rules, respecting the principles set out in Articles 85 and 86 while taking account of the peculiarities of this sector. In particular, taking into account the experience the Commission has at the present time in the sea transport sector, it proposes to exclude the sector of bulk transportation from the field of application of this regulation.

The proposed regulation does not prejudice either the adoption of measures pursuant to Article 84(2), with a view to defining the elements of a Community policy in the sector of sea transport, or the applicability of the measures already adopted pursuant to that article, in particular Regulation (EEC) No 954/79.

¹ COM(77)686 final, 15 December 1977

² OJ No L 151, 17 May 1979

It equally takes account of the fact that by virtue of Council Regulation (EEC) No 954/79 concerning the ratification by Member States of the United Nations Convention on a Code of Conduct for Liner Conferences, a considerable number of Conferences serving the Community will be subject to the Code. It is thus important that without prejudice to any measures which might complete or define the Code the regulation should avoid any contradiction with it or with the related regulations.

2. Article 85 of the Treaty sets out the principle of prohibition concerning agreements which may restrict free competition. The consequence of that principle is that the prohibition on agreements (Article 85(1)) constitutes the rule and that exemptions can only be granted if the agreement satisfies all the conditions set out in Article 85(3) of the Treaty. The exemption implies that the agreements remain in that respect under the supervision of the Commission. Furthermore, if one or several enterprises are in a dominant position the Commission must ensure that Article 86, prohibiting any abuse of a dominant position, is respected.

The Commission has recognised two major categories of agreements which might benefit from a general exemption: agreements between ship-owning companies concerning the provision of regular services, called "Liner services" (mainly conferences) and the agreements between the shippers, their representatives or their associates and the conferences, concerning the use of these services.

Furthermore, the regulation foresees a legal exemption (that is, the recognition that the agreements in question are not agreements within the meaning of Article 85(1)), for all the purely technical agreements between shipowners. The list of agreements set out in Article 3 of Regulation (EEC) No 1017/68 has been repeated with the necessary amendments.

3. The rules on procedure in the regulation should give the Commission direct powers to investigate the companies and direct means of action against them if it finds out that they have been acting in a way which would not justify an exemption or would justify the revocation of an exemption given pursuant to Article 85(3), or would constitute an abuse of a dominant position according to Article 86.

These procedural rules reflect, including necessary changes, the provisions already set out in Council Regulation (EEC) No. 1017/68.

III.

COMMENTARY ON THE ARTICLES

Article 1

In view of the jurisprudence of the Court (1) the regulation affects all sea transport services other than bulk which may affect trade between Member States. In principle it applies to all sea transport to or from a Community port, even if it concerns transport between the Community and a third country. Restrictive or abusive practices on lines between the Community and third countries may in fact affect trade between Member States by influencing the competitive position of the ports and the undertakings in their area of influence, even if potential, and by disturbing the usual flows of transport at Community level of both exports and imports.

Article 2

The list of exceptions hardly differs from that of Article 3 of Regulation (EEC) No. 1017/68. Account has been taken in particular of the fact this regulation only applies to one mode of transport.

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- (1) cf. considerations put forward by the Court in the following judgements :
1. Case 22/71, Béguelin Import v. SAGL Import-Export European Court's Reports 1971, Volume XVII, 949, p. 959, paragraphs 10 and 11.
 2. Case 48/69 Imperial Chemical Industries Ltd. v. Commission 1972, European Court's Reports Volume XVIII, 619, p. 665-666.
 3. Cases 6 and 7/73, Commercial Solvents v. Commission 1974, European Court's Reports 223, p. 254-256.
 4. Case 36/74, Walrave and Koch v. Union Cycliste Internationale 1974, European Court's Reports, 1405, p. 1421.

Article 3

Article 85(3) of the Treaty permits the exemption of a category of agreements from the prohibition set out in Article 85(1). It seems advisable to grant such an exemption by category to all conference agreements between shipowners. The conferences represent a considerable part of the transport committed to regular sea services throughout the world, and the fact that UNCTAD has devised a "Code of Conduct for Liner Conferences" implies in principle the recognition on a world-wide level of their beneficial role.

The exemption concerns the fixing of prices and so-called rationalisation agreements.

As far as prices are concerned, account must be taken of the fact that sea transport, more than any other mode of transport, is characterised by considerable fluctuations, both business and seasonal, in demand for cargo capacity. To this first cause of instability in the level of freight is added, as far as capacity is concerned, a cause which all modes of transportation have in common, that is the very considerable price variations resulting from marginal offers by shipowners wishing to avoid return voyages in ballast or to complete their cargoes.

The instability of freight which would result from the total absence of market regulation would be unfavourable to carriers and users:

- to the carriers who could not base themselves on any forecasts of profitability in order to run, maintain and renew their fleets and who could not give the users a reliable service at fixed prices;
- to the users who could only count on transport under certain conditions, who would be submitted to excessive and unforeseeable variations in freight rates and who, in the longer term, would suffer from a gradual deterioration of the service offered because the fleet had not been modernised.

Both the shipowners and the users try, through price agreements, to introduce some stability in ocean freights.

Rationalization agreements are the logical consequence of price agreements. In order to avoid competition extending to offers of capacity available but also to ensure a proper service for "difficult" ports, the shipowners have concluded agreements concerning calls and capacity. The most elaborate agreements foresee a sharing of tonnage and even revenues, which assures a regular transport of the merchandise alongside, even that which is the least remunerative.

Article 4

A certain number of conditions are imposed on members of conferences. The general disposition of Article 79(1) of the Treaty which prohibits discrimination on the sole ground of country of origin or destination of the goods transported has been retained. Furthermore, the conditions imposed concerning fidelity agreements, by which the conferences try to secure for a certain period the custom of the shippers or forwarding agents, have as their object that the last mentioned:

1. retain their freedom to chose their carriers and their port;
2. may release themselves from their commitment within a reasonable time period, and
3. may not have imposed upon them clauses or types of agreements which would restrict their freedom too much.

Finally in order to avoid encroaching on an area regulated by Council Regulation (EEC) No 1017/68 one condition protects the freedom of choice of the users so far as land legs are concerned.

Article 5

A certain number of obligations is laid on the members of conferences: Prices and the conditions must be transparent: it must be possible for the users to have easy access to them. Furthermore, taking account of the fact that the rules on competition contain principles that are part of public order in the Community, the Commission must be informed about the results of private processes of arbitration, in order to avoid that these processes are not used to evade the application of the competition rules.

Article 6

It is advisable to exempt possible agreements between shippers on the one hand, normally represented by their shippers' Councils, or freight forwarders, normally represented by their associations, and on the other hand conferences, insofar as their recommendations can be described as agreements which result from consultations between them, and which have no binding force. This in effect recognises the beneficial character of consultations which bring shipowners and users together and gives them, in the Community, the legal security which has been refused them in certain countries.

Article 7

This article repeats a standard provision which appears in all regulations containing group exemptions providing for the withdrawal of the group exemption while keeping open the possibility for the agreement in question to benefit from an individual exemption.

However, on account of the special role and the economic importance of Liner Conferences provision has been made for the Commission to send recommendations to the interested parties before taking decisions.

Article 8

The Commission recognises that it was convenient while respecting the basic principles of the competition rules of the Treaty, so far as their territorial field of application is concerned (theory of effect), as well as the limits laid down by the Treaty by way of exemption, to provide for procedures which would prevent possible conflicts with the laws of certain third countries concerning competition, in the case where such conflicts could be prejudicial to the important commercial and maritime interests of the Community. The present article provides that if a problem should arise the Commission will, at the earliest opportunity, undertake consultations with the authorities of third countries. Furthermore it will report to the Council within a period of three years and make proposals for ^{such} amendments to the regulation as may be necessary.

Articles 9 to 28

As far as the rules of procedure are concerned, it has seemed advisable to repeat the structure and the wording of Regulation No 1017/68, which established the general rules of application of Articles 85 and 86 to transport other

than air and sea transport. To a certain extent the regulation takes into account the specific features of the whole of the transport sector, notably by streamlining procedures and making them more flexible.

Thus, under Regulation No 17, the application of Article 85(3) requires notification of agreement by undertakings, application for exemption by them and an individual decision by the Commission. Regulation No 1017/68 however, requires that agreements, decisions and concerted practices which satisfy the conditions of its Article 5 - closely following Article 85(3) of the Treaty - can be made by the interested parties without intervention by the Community authorities. If for reasons of legal security the undertakings consider it necessary, they can apply to the Commission in order to benefit from the aforesaid Article 5, the expiry of certain time limits being equivalent under certain conditions to the granting of an exemption by the Commission. Article 11 of this Regulation adopts the procedure of Regulation No 1017/68.

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Two declarations have been drafted regarding this Regulation. The first is meant to reconcile the dispute machinery of the UN Liner Code and EEC Regulation 954 with procedural action under the present Regulation. The second is intended to bring out the special characteristics of the shipping sector in the assessment of the situations referred to in Article 86 of the Treaty. They will be transmitted to the Council for inclusion in its Minutes and will be published in the Official Journal at the time of publication of the draft Regulation.

DECLARATIONS WHICH THE COMMISSION COULD FORMALLY HAVE INSCRIBED
IN THE RECORDS OF THE COUNCIL

Declaration concerning Article 25(3) of the Code of Conduct
for Liner Conferences

"Before deciding to commence any procedure for the application of the present Regulation, the Commission shall have regard also to the consultation and conciliation procedures of the Convention on a Code of Conduct for Liner Conferences and to the procedures for settling disputes envisaged by Council Regulation (EEC) N° 954/79 of 15 May 1979."

Declaration on the application of Article 86 to the shipping sector

"As regards the application of Article 86 to the shipping sector, the Commission notes that the behaviour which is prohibited by this Article (abuse of a dominant position) is by its nature of a serious kind. This is underlined by the fact that this Article, unlike Article 85 in its third paragraph, makes no provision for its rules to be declared inapplicable. In applying this Article and in particular in deciding what constitutes an abuse of a dominant position the Commission will have regard also to the particularities of the shipping sector, such as its market structure, its international dimension, the possible effects of provisions of international conventions to which Member States are contracting parties, the presence of competition coming from state trading countries and the aspirations of developing countries."

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Council Regulation (EEC) No of Laying
down detailed rules for the application of Articles 85 and 86 of the
Treaty to maritime transport

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 87 thereof,

having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

1. Whereas the rules on competition form part of the Treaty's general provisions which also apply to maritime transport; whereas detailed rules for applying those provisions are set out in the Chapter of the Treaty dealing with the rules on competition or are to be determined by the procedures laid down therein;
2. Whereas according to Council Regulation No 141¹, Council Regulation No 17² does not apply to transport, and whereas Council Regulation (EEC) No 1017/68³ applies to inland transport only; whereas, consequently, the Commission has no means at present of investigating directly cases of suspected infringement of Articles 85 and 86 in maritime transport; whereas, moreover, the Commission lacks such powers of its own to take decisions or impose penalties as are necessary for it to bring to an end infringements established by it;
3. Whereas this situation necessitates the adoption of a regulation applying the rules of competition to maritime transport similar to the regulations covering other inland transport and other sectors of the economy; whereas in the last recital to Council Regulation (EEC) No 954/79 concerning the ratification by Member States of the United Nations Convention on a Code of Conduct for Liner Conferences⁴ the Community laid down an important element of its policy concerning maritime transport; whereas this element will include the application of the Code of Conduct to a considerable number of Conferences serving the Community, while many other Conferences serving the Community probably will not come under the Code; whereas the Council has foreseen the future participation of the Community in the Convention on the Code; whereas the regulation applying the competition rules to maritime transport foreseen in the last recital of Regulation (EEC) No 954/79, should take account of the adoption of the Code; whereas, as far as Conferences adhering to the Code of Conduct are concerned, the regulation should, while avoiding contradictions with the Code, if necessary complete or make it more precise.

¹ OJ No 124, 28 November 1962, p. 2751

² OJ No 58, 10 July 1962, p. 1655

³ OJ No L 175, 23 July 1968, p. 1

⁴ OJ No L 121, 17 May 1979, p. 1

4. Whereas taking account of the present experience which the Commission has concerning maritime transport, it appears preferable to exclude bulk transportation from the field of application of this regulation;
5. Whereas this regulation must be inspired by the double necessity, on the one hand to provide for implementing rules that enable the Commission to assure that competition is not unduly distorted within the Common Market, and on the other based to avoid an excessive regulation of the sector;
6. Whereas this regulation must define the scope of the provisions of Articles 85 and 86 of the Treaty, taking into account the distinctive characteristics of maritime transport; whereas restrictive practices or abuses concerning maritime transport between third countries or within a Member State are unlikely as a general rule appreciably to affect trade between Member States; whereas, trade between Member States on the other hand, is very likely to be affected where such restrictive practices or abuses concern international transport, including intra-Community transport, from or to Community ports; whereas such restrictive practices or abuses may influence competition, firstly, between ports in different Member States by altering their respective catchment areas, and secondly, between activities in those catchment areas, and disturb trade patterns within the Common Market; whereas, consequently, the regulation should apply solely to the latter restrictive practices and abuses;
7. Whereas certain types of technical agreements, decisions and concerted practices may be excluded from the prohibition on restrictive practices on the ground that they do not, as a general rule, restrict competition;
8. Whereas provision should be made for block exemption of liner conferences; whereas, as the last recital to Council Regulation (EEC) No 954/79 states, liner conferences have a stabilizing effect, assuring shippers of reliable services; whereas they contribute generally to providing adequate efficient scheduled maritime transport services and give fair consideration to the interests of users; whereas such results cannot be obtained without the cooperation that shipping companies promote within conferences in relation to rates and, where appropriate, availability of capacity or allocation of cargo for shipment, and even income; whereas in most cases conferences continue to be subject to effective competition from both non-conference scheduled services and tramp services and, in certain circumstances, from other modes of transport; whereas, moreover, the mobility of fleets, which is a characteristic feature of the structure of availability in the shipping field, subjects conferences to constant competition which

they are unable as a rule to eliminate as far as a substantial proportion of the shipping services in question is concerned;

8. Whereas, however, in order to prevent conferences from engaging in practices which are incompatible with Article 85(3) of the Treaty, certain conditions and obligations should be attached to the exemption;
9. Whereas the aim of the conditions must be to prevent conferences from imposing restrictions on competition which are not indispensable to the attainment of the objectives on the basis of which exemption is granted; whereas, to this end, conferences must not, in respect of a given route, apply rates and conditions of carriage which are differentiated solely by reference to the country of origin or destination of the goods carried and thus causes within the Community deflections of trade that are harmful to certain ports, shippers, carriers or providers of services ancillary to transport; whereas, furthermore, loyalty agreements should be permitted only in accordance with rules which do not restrict excessively the freedom of users and consequently competition in the shipping industry, without prejudice, however, to the right of a conference to impose penalties on users who seek by improper means to evade the obligation of loyalty required in exchange for the rebates, reduced freight rates or commission granted to them by the conference; whereas users must be free to determine the undertakings to which they have recourse in respect of inland transport or quayside services not covered by the freight charge or by other charges agreed with the shipping line;
10. Whereas certain obligations should also be attached to the exemption; whereas in this respect users must at all times be in a position to acquaint themselves with the rates and conditions of carriage applied by members of the conference, since in the case of inland transport organised by shippers, the latter continue to be subject to Council Regulation (EEC) No 1017/68 applying rules of competition to transport by rail, road and inland waterway; whereas provision should be made

that awards given at arbitration and recommendations made by conciliators and accepted by the parties be notified forthwith to the Commission in order to enable it to verify that conferences are not thereby exempted from the conditions provided for in the regulation and thus do not infringe the Community public policy of Articles 85 and 86.

12. Whereas consultations between users or associations of users and conferences are liable to secure more efficient operation of maritime transport services which takes better account of users' requirements; whereas, consequently, certain restrictive practices which could ensue from such consultations should be exempted;
13. Whereas there can be no exemption if the conditions set out in Article 85(3) are not satisfied; whereas the Commission must therefore have power to take the appropriate measures where an agreement or concerted practice owing to special circumstances proves to have certain effects incompatible with Article 85(3); whereas, in view of the specific role fulfilled by the conferences in the sector of the liner services, the reaction of the Commission must be progressive and proportionate; whereas the Commission must consequently have power first to address recommendations, then to take decisions;
14. Whereas the automatic nullity provided for in Article 85(2) applies only to the elements of the agreement caught by the prohibition of Article 85(1) and applies to the agreement in its entirety only if those elements do not appear to be severable from the whole of the agreement; whereas the Commission must therefore, if it finds an infringement to the block exemption, either specify what elements of the agreement are caught by the prohibition and consequently automatically void, or indicate the reasons why those elements are not severable from the rest of the agreement and why the agreement is therefore void in its entirety;

15. Whereas, in view of the characteristics of international maritime transport, account should be taken of the fact that the application of this regulation to certain restrictive practices or abuses may result in conflicts with the laws and rules of certain third countries and prove harmful to important Community trading and shipping interests; whereas provision should be made therefore that in such cases the Commission will endeavour to seek with the third countries concerned solutions capable of safeguarding those interests;
16. Whereas the regulation must make provision for the procedures, decision-making powers and penalties that are necessary to ensure compliance with the prohibitions laid down in Article 85(1) and Article 86, as well as the conditions governing the implementation of Article 85(3);
17. Whereas account should be taken in this respect of the procedural provisions of Regulation (EEC) No 1017/68 applicable to inland transport operations which takes account of certain distinctive features of transport operations viewed as a whole;
18. Whereas, in particular, in view of the special characteristics of maritime transport, it is primarily the responsibility of undertakings to see to it that their agreements, decisions and concerted practices conform to the rules on competition, and consequently their notification to the Commission need not be made compulsory;
19. Whereas in certain circumstances undertakings may, however, wish to apply to the Commission for confirmation that their agreements, decisions and concerted practices are in conformity with the provisions in force; whereas a simplified procedure should be laid down for such cases;

HAS ADOPTED THIS REGULATION :

SECTION 1

SUBSTANTIVE PROVISIONS

Article 1

Subject matter and scope of the regulation

1. This regulation lays down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport.
2. It shall apply only to international maritime transport operations other than bulk transports from or to one or more Community ports.

Article 2

Statutory exception for technical agreements

1. The prohibition laid down in Article 85(1) of the Treaty shall not apply to agreements, decisions or concerted practices whose sole object and effect is to achieve technical improvements or cooperation by means of:
 - (a) the introduction or uniform application of standards or types in respect of vessels and other means of transport, equipment, supplies or fixed installations;
 - (b) the exchange or pooling, for the purpose of operating transport services, of vessels and other modes of transport, staff, equipment or fixed installations;

- (c) the organisation and execution of successive or supplementary maritime transport operations and the establishment and application of inclusive rates and conditions for such operations;
 - (d) the coordination of transport timetables for connecting routes;
 - (e) the bulking of individual consignments;
 - (f) the establishment or application of uniform rules concerning the structure and the conditions governing the application of transport on condition that such rules do not directly or indirectly fix rates and conditions of carriage;
2. The Commission shall, if necessary, submit to the Council proposals for the amendment of the list contained in paragraph 1 of this article.

Article 3

Exemption for agreements between carriers concerning the operation of scheduled maritime transport services.

1. A liner conference means a group of vessel-operating carriers which provides liner services for the carriage of cargo or passengers on a particular route or routes within specified geographical limits and which jointly fixes freight rates and any other conditions for those services.
2. Agreements, decisions and concerted practices of all or part of the members of a conference or of several conferences are hereby exempted from the prohibition in Article 85(1) of the Treaty, subject to the conditions imposed by Article 4 of this regulation, when they have one or more of the following objects:

- (a) the fixing of the above-mentioned rates and conditions of carriage and, as the case may be;
- (b) the coordination of shipping timetables, sailing dates or dates of calls;
- (c) the determination of the frequency of sailings or calls;
- (d) the coordination or allocation of sailings or calls among members of the conference;
- (e) the regulation of the carrying capacity offered by each member;
- (f) the allocation of cargo or revenue among members.

Article 4

Conditions attaching to exemption

The exemption provided for in Article 3 shall be granted subject to the following conditions:

1. A conference shall not, within the common market, cause detriment to certain ports, shippers, carriers or providers of services ancillary to transport by applying for the carriage of the same goods and over the same transport link, rates and conditions of carriage which differ according to the country of origin or destination of the goods carried.
2. Where a conference shall offer shippers or forwarding agents the opportunity of entering into loyalty agreements entitling them to rebate or reduced rates of freight, or where a conference offers forwarding agents the opportunity of concluding loyalty agreements entitling them to commission:
 - (a) Each conference shall offer shippers or forwarding agents a system of immediate rebates or the choice between such a system and a system of deferred rebates.

Under the system of immediate rebates each of the parties shall be entitled to terminate the loyalty agreement at any time without penalty and subject to a period of notice of not more than six months.

Under the system of deferred rebates neither the loyalty period on the basis of which the rebate is calculated nor the subsequent loyalty period required before payment of the rebate may exceed six months.

- (b) A conference may not refuse to enter into a new loyalty agreement on the ground that a shipper has previously terminated such an agreement.
- (c) The conference shall, after having consulted those concerned, their representative or their associations, draw up a list of circumstances in which shippers or forwarding agents are released from their obligation of loyalty. These shall include:
- circumstances in which consignments are dispatched from or to a port not served by the conference, and
 - those in which waiting time at a port exceeds a period to be determined for each port and for each commodity or class of commodities following consultation of the shippers and forwarding agents directly concerned with the proper servicing of the port.

The conference shall however be informed, in advance, by the shipper or forwarding agent, within a specified period, of his intention to dispatch the consignment from a port not served by the conference or to make use of a non-conference vessel at a port served by the conference as soon as he has been able to establish from the published schedule of sailings that the maximum waiting period will be exceeded.

- (d) Loyalty arrangements shall apply:
- only to consignments of goods covered by the conference tariff for shipment solely from the ports served by the conference, and

- in respect of which the shipper or forwarding agent is entitled or able to determine the carrier under the contract for the purchase, sale or transfer of the goods;

(e) The conference shall not prohibit the shipper or forwarding agent from using modes of transport other than maritime transport, nor may it deprive the shipper or forwarding agent of the right to choose the port of consignment and the carrier from among the ports served by it and the vessels that it operates.

The conference shall nevertheless be entitled to impose penalties on a shipper or forwarding agent in respect of any improper use made of the provisions of subparagraphs (c), (d) and (e) above with a view to evading his obligation of loyalty.

3. Shippers, forwarding agents and consignees shall be entitled to approach the undertakings of their choice in respect of inland transport operations and quayside services not covered by the freight charge or charges on which the shipping line and the shippers or forwarding agents have agreed.

Article 5

Obligations attaching to exemption

The exemption provided for in Article 3 shall be granted subject to the following obligations:

1. Users shall at all times be enabled to acquaint themselves with the rates and conditions of carriage applied by members of the conference; particulars to be specified shall include the conditions governing loading and unloading, the exact extent of the services covered by the freight charge or by any other charge levied by the shipping line, and customary practice in such matters.

2. Awards given at arbitration and recommendations made by conciliators that are accepted by the parties shall be notified forthwith to the Commission when they resolve disputes relating to the practices of conferences referred to in Article 4.

Article 6

Exemption for agreements between shippers and conferences concerning the use of scheduled maritime transport services

The prohibition laid down in Article 85(1) of the Treaty shall not apply to agreements, decisions and concerted practices between shippers or forwarding agents, or between the latter or their associations, on the one hand, and conferences, on the other, concerning the quality, rates and conditions of scheduled maritime transport services.

Article 7

Monitoring of exempted agreements

Where the persons concerned are in breach of an obligation which, pursuant to Article 5, attaches to the exemption provided for in Article 3 of this regulation, or where, owing to special circumstances, agreements, decisions or concerted practices which qualify for the exemption provided for in Articles 3 or 6 of this regulation, have nevertheless effects which are incompatible with the conditions laid down in Article 85(3) of the Treaty, the Commission may, in order to put an end to those effects or breaches and under the conditions laid down in Section II of this regulation,

- address recommendations to the persons concerned,

- in the event of failure to observe such recommendations and depending upon the gravity of the incompatible effects or breaches concerned, adopt a decision that either will prohibit them from carrying out or require them to perform specific acts, or, while withdrawing the block exemption which they enjoyed, will grant them an individual exemption according to Article 10(4) of this regulation, or will withdraw the block exemption which they enjoyed.

Article 8

Conflicts of international law

Where the application of this regulation to certain restrictive practices or clauses is liable to enter into conflict with the provisions laid down by law, regulation or administrative action of certain third countries which would compromise important Community trading and shipping interest, the Commission shall, at the earliest opportunity, undertake with the competent authorities of the third countries concerned, consultations aimed at reconciling as far as possible the above mentioned interest with the respect of Community Law.

The Commission shall, within three years of the entry into force of this regulation, report to the Council on experience gained in this regard and make proposals for such amendments to the regulation as may be necessary in the light of that experience.

SECTION II

RULES OF PROCEDURE

Article 9

Procedures on complaint or on the Commission's own initiative

Acting on receipt of a complaint or on its own initiative, the Commission shall initiate procedures to terminate any infringement of the provisions of Articles 85(1) or 86 of the Treaty or to enforce Article 7 of this Regulation.

Complaints may be submitted by:

- a) Member States;
- b) natural or legal persons who claim a legitimate interest.

Article 10

Result of procedures on complaint or on the Commission's own initiative

1. Where the Commission finds that there has been an infringement of Articles 85(1) or 86 of the Treaty, it may by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end.

Without prejudice to the other provisions of this Regulation, the Commission may, before taking a decision under the preceding subparagraph, address to the undertakings or associations of undertakings concerned recommendations for termination of the infringement.

2. Paragraph 1 shall apply also to cases falling within Article 7.

3. If the Commission, acting on a complaint received, concludes that on the evidence before it there are no grounds for intervention under Articles 85(1) or 86 of the Treaty or Article 7 of this Regulation, in respect of any agreement, decision or practice, it shall issue a decision rejecting the complaint as unfounded.

4. If the Commission, whether acting on a complaint received or on its own initiative, concludes that an agreement, decision or concerted practice satisfies the provisions both of Article 85(1) and of Article 85(3) of the Treaty, it shall issue a decision applying Article 85(3). Such decision shall indicate the date from which it is to take effect. This date may be prior to that of the decision.

Article 11

Application of Article 85(3)-objections

1. Undertakings and associations of undertakings which seek application of Article 85(3) in respect of agreements, decisions and concerted practices falling within the provisions of Article 85(1) to which they are parties may submit applications to the Commission.

2. If the Commission judges an application admissible and is in possession of all the available evidence, and no action under Article 9 has been taken against the agreement, decision or concerted practice in question, then it shall publish as soon as possible in the Official Journal of the European Communities a summary of the application and invite all interested third parties to submit their comments to the Commission within thirty days. Such publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

3. Unless the Commission notifies applicants, within ninety days from the date of such publication in the Official Journal of the European Communities, that there are serious doubts as to the applicability of Article 85(3), the agreement, decision or concerted practice shall be deemed exempt, in so far as it conforms with the description given in the application, from the prohibition for the time already elapsed and for a maximum of three years from the date of publication in the Official Journal of the European Communities.

If the Commission finds, after expiry of the ninety-day time limit, but before expiry of the three-year period, that the conditions for applying Article 85(3) are not satisfied, it shall issue a decision declaring that the prohibition in Article 85(1) is applicable. Such decision may be retroactive where the parties concerned have given inaccurate information or where they abuse the exemption from the provisions of Article 85(1).

4. If, within the ninety-day time limit, the Commission notifies applicants as referred to in the first subparagraph of paragraph 3, it shall examine whether the provisions of Article 85(1) and of Article 85(3) are satisfied.

If it finds that the provisions of Article 85(1) and of Article 85(3) are satisfied it shall issue a decision applying Article 85(3). The decision shall indicate the date from which it is to take effect. This date may be prior to that of the application.

Article 12

Duration and revocation of decisions applying Article 85(3)

1. Any decision applying Article 85(3) taken under Article 10(4) or under the second subparagraph of Article 11(4) shall indicate the period for which it is to be valid; normally such period shall not be less than six years. Conditions and obligations may be attached to the decision.

2. The decision may be renewed if the conditions for applying Article 85(3) continue to be satisfied.

3. The Commission may revoke or amend its decision or prohibit specified acts by the parties:

(a) where there has been a change in any of the facts which were basic to the making of the decision;

(b) where the parties commit a breach of any obligation attached to the decision;

(c) where the decision is based on incorrect information or was induced by deceit;

(d) where the parties abuse the exemption from the provisions of Article 85(1) granted to them by the decision.

In cases falling within (b), (c) or (d), the decision may be revoked with retroactive effect.

Article 13

Powers

Subject to review of its decision by the Court of Justice, the Commission shall have sole power:

- to impose obligations pursuant to Article 7 ;
- to issue decisions pursuant to Article 85(3).

The authorities of the Member States shall retain the power to decide whether any case falls within the provisions of Article 85(1) or Article 85(3), until such time as the Commission has initiated a procedure with a view to formulating a decision in the case in question or has sent notification as provided for in the first subparagraph of Article 11(3).

Article 14

Liaisons with the authorities of the Member States

1. The Commission shall carry out the procedures provided for in this Regulation in close and constant liaison with the competent authorities of the Member States; these authorities shall have the right to express their views on such procedures.
2. The Commission shall immediately forward to the competent authorities of the Member States copies of the complaints and applications, and of the most important documents sent to it or which it sends out in the course of such procedures.
3. The Advisory Committee on Restrictive Practices and Monopolies in the Transport Industry established by Article 16(3) of Regulation (EEC) No 1017/68 of the Council shall be consulted prior to the taking of any decision following upon a procedure under Article 9 or of any decision under the second subparagraph of Article 11(3), or under the second subparagraph of paragraph 4 of the same Article. The Advisory Committee shall also be consulted prior to adoption of the implementing provisions provided for in Article 27.
4. Consultation shall take place and the Committee will deliver its opinion in accordance with the rules laid down in Article 16(5) and (6) of the Regulation referred to in paragraph (3) of this Article.

Article 15

Consideration by the Council of questions of principle concerning the common transport policy raised in connection with specific cases

1. The Commission shall not give a decision in respect of which consultation as laid down in Article 14 is compulsory until after the expiry of twenty days from the date on which the Advisory Committee has delivered its Opinion.

2. Before the expiry of the period specified in paragraph 1, any Member State may request that the Council be convened to examine with the Commission any question of principle concerning the common transport policy which such Member State considers to be involved in the particular case for decision.

The Council shall meet within thirty days from the request by the Member State concerned for the sole purpose of considering such questions of principle.

The Commission shall not give its decision until after the Council meeting.

3. Further, the Council may at any time, at the request of a Member State or of the Commission, consider general questions raised by the implementation of the competition policy in the sea transport sector.

4. In all cases where the Council is asked to meet to consider under paragraph 2 questions of principle or under paragraph 3 general questions, the Commission shall, for the purposes of this Regulation, take into account the policy guidelines which emerge from that meeting.

Article 16

(deleted)

Article 17

Requests for information

1. In carrying out the duties assigned to it by this Regulation, the Commission may obtain all necessary information from the Governments and competent authorities of the Member States and from undertakings and associations of undertakings.
2. When sending a request for information to an undertaking or association of undertakings, the Commission shall at the same time forward a copy of the request to the competent authority of the Member State in whose territory the seat of the undertakings is situated.
3. In its request, the Commission shall state the legal basis and the purpose of the request, and also the penalties provided for in Article 20(1)(b) for supplying incorrect information:
4. The owners of the undertakings or their representatives and, in the case of legal persons, companies or firms, or of associations having no legal personality, the person authorised to represent them by law or by their constitution, shall be bound to supply the information requested.
5. Where an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the Commission, or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in Article 20(1)(b) and Article 21(1)(c) and the right to have the decision reviewed by the Court of Justice.

6. The Commission shall at the same time forward a copy of its decision to the competent authority of the Member State in whose territory the seat of the undertaking or association of undertakings is situated.

Article 18

Investigations by the authorities of the Member States

1. At the request of the Commission, the competent authorities of the Member States shall undertake the investigations which the Commission considers to be necessary under Article 19(1), or which it has ordered by decision pursuant to Article 19(3). The officials of the competent authorities of the Member States responsible for conducting these investigations shall exercise their powers upon production of an authorisation in writing issued by the competent authority of the Member State in whose territory the investigation is to be made. Such authorisation shall specify the subject matter and purpose of the investigation.

2. If so requested by the Commission or by the competent authority of the Member State in whose territory the investigation is to be made, the officials of the Commission may assist the officials of such authority in carrying out their duties.

Article 19

Investigating powers of the Commission

1. In carrying out the duties assigned to it by this Regulation, the Commission may undertake all necessary investigations into undertakings and associations of undertakings. To this end the officials authorised by the Commission are empowered:

- (a) to examine the books and other business records;
- (b) to take copies of or extracts from the books and business records;
- (c) to ask for oral explanations on the spot;
- (d) to enter any premises, land and vehicles of undertakings.

2. The officials of the Commission authorised for the purpose of these investigations shall exercise their powers upon production of an authorisation in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 20(1)(c) in cases where production of the required books or other business records is incomplete.

In good time before the investigation, the Commission shall inform the competent authority of the Member State in whose territory the same is to be made of the investigation and of the identity of the authorised officials.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 20(1)(c) and Article 21(1)(d) and the right to have the decision reviewed by the Court of Justice.

4. The Commission shall take decisions referred to in paragraph 3 after consultation with the competent authority of the Member State in whose territory the investigation is to be made.

5. Officials of the competent authority of the Member State in whose territory the investigation is to be made, may at the request of such authority or of the Commission, assist the officials of the Commission in carrying out their duties.

6. Where an undertaking opposes an investigation ordered pursuant to this Article, the Member State concerned shall afford the necessary assistance to the officials authorised by the Commission to enable them to make their investigation. Member States shall apply, mutatis mutandis, the measures taken pursuant to Article 21(6) of Regulation (EEC) No 1017/68 of the Council.

Article 20

Fines

1. The Commission may by decision impose on undertakings or associations of undertakings fines of from one hundred to five thousand units of account where, intentionally or negligently:

- (a) they supply incorrect or misleading information, or in an application in a communication pursuant to Article 5(2) pursuant to Article 11; or
- (b) they supply incorrect information in response to a request made pursuant to article 17 (3) or (5), or do not supply information within the time limit fixed by a decision taken under Article 17(5); or
- (c) they produce the required books or other business records in incomplete form during investigations under Article 18 or Article 19, or refuse to submit to an investigation ordered by decision issued in implementation of Article 19(3).

2. The Commission may by decision impose on undertakings or associations of undertakings fines of from one thousand to one million units of account, or a sum in excess thereof but not exceeding 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement, where either intentionally or negligently:

- (a) they infringe Article 85(1) or Article 86 of the Treaty, or do not comply with an obligation imposed under Article 7 of this Regulation;
- (b) they commit a breach of any obligation imposed pursuant to Article 5 or to Article 12 (1).

In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

3. Article 14 (3) and (4) and Article 15 shall apply.

4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of criminal law nature.

Article 21

Periodic penalty payments

1. The Commission may by decision impose on undertakings or associations of undertakings periodic penalty payments of from fifty to one thousand units of account per day, calculated from the date appointed by the decision, in order to compel them:

(a) to put an end to an infringement of Article 85(1) or Article 86 of the Treaty the termination of which it has ordered pursuant to Article 10 or to comply with an obligation imposed pursuant to Article 8 ;

(b) to refrain from any act prohibited under Article 12(3);

(c) to supply complete and correct information which it has requested by decision taken pursuant to Article 17(5);

(d) to submit to an investigation which it has ordered by decision taken pursuant to Article 19(3).

2. Where the undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the Commission may fix the total amount of the periodic penalty payment at a lower figure than that which would arise under the original decision.

3. Article 14(3) and (4) and Article 15 shall apply.

Article 22

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty to review decisions whereby the Commission has fixed a fine or periodic penalty payment; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 23

Unit of account

For the purpose of applying Articles 20 to 22 the unit of account shall be that adopted in drawing up the budget of the Community in accordance with Articles 207 and 209 of the Treaty.

Article 24

Hearing of the parties and of third persons

1. Before taking decisions as provided for in Articles 10, 11(3), second subparagraph, and 11(4), 12(3), 20 and 21, the Commission shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the Commission has taken objection.
2. If the Commission or the competent authorities of the Member States consider it necessary, they may also hear other natural or legal persons. Applications to be heard on the part of such persons where they show a sufficient interest shall be granted.
3. Where the Commission intends to give negative clearance pursuant to Article 85(3) of the Treaty, it shall publish a summary of the relevant agreement, decision or concerted practice and invite all interested third parties to submit their observations within a time limit which it shall fix being not less than one month. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 25

Professional secrecy

1. Information acquired as a result of the application of Articles 16 to 19 shall be used only for the purpose of the relevant request or investigation.
2. Without prejudice to the provisions of Articles 24 and 26, the Commission and the competent authorities of the Member States, their officials and other servants shall not disclose information acquired by them as a result of the application of this Regulation and of the kind covered by the obligation of professional secrecy.

3. The provisions of paragraphs 1 and 2 shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 26

Publication of decisions

1. The Commission shall publish the decisions which it takes pursuant to Articles 10, 11(3), second subparagraph, 11(4) and 12(3).
2. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 27

Implementing provisions

The Commission shall have power to adopt implementing provisions concerning the scope of the obligation of communication pursuant to Article 5(2) the form, content and other details of complaints pursuant to Article 9, applications pursuant to Article 11 and the hearings provided for in Article 24(1) and (2).

Article 28

Entry into force

This Regulation shall enter into force on

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

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