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REGULATION (EEC) No 1017/68 OF THE COUNCIL
of 19 July 1968
applying rules of competition to transport by rail, road and inland waterway

(OJ L 175, 23.7.1968, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**A1**	Act of Accession of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland	L 73	14	27.3.1972
►**A2**	Act of Accession of Greece	L 291	17	19.11.1979
►**A3**	Act of Accession of Austria, Sweden and Finland	C 241	21	29.8.1994
	(adapted by Council Decision 95/1/EC, Euratom, ECSC)	L 1	1	1.1.1995

Corrected by:

►**C1** Corrigendum, OJ L 999, 1.1.1973, p. 28 (1017/68)

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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REGULATION (EEC) No 1017/68 OF THE COUNCIL

of 19 July 1968

applying rules of competition to transport by rail, road and inland waterway

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 75 and 87 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament [1];

Having regard to the Opinion of the Economic and Social Committee [2];

Whereas Council Regulation No 141 [3] exempting transport from the application of Regulation No 17 provides that the said Regulation No 17 [4] shall not apply to agreements, decisions and concerted practices in the transport sector the effect of which is to fix transport rates and conditions, to limit or control the supply of transport or to share transport markets, nor to dominant positions, within the meaning of Article 86 of the Treaty, on the transport market;

Whereas, for transport by rail, road and inland waterway, Regulation No 1002/67/CEE [5] provides that such exemption shall not extend beyond 30 June 1968;

Whereas the establishing of rules of competition for transport by rail, road and inland waterway is part of the common transport policy and of general economic policy;

Whereas, when rules of competition for these sectors are being settled, account must be taken of the distinctive features of transport;

Whereas, since the rules of competition for transport derogate from the general rules of competition, it must be made possible for undertakings to ascertain what rules apply in any particular case;

Whereas, with the introduction of a system of rules on competition for transport, it is desirable that such rules should apply equally to the joint financing or acquisition of transport equipment for the joint operation of services by certain groupings of undertakings, and also to certain operations in connection with transport by rail, road or inland waterway of providers of services ancillary to transport;

Whereas, in order to ensure that trade between Member States is not affected or competition within the common market distorted, it is necessary to prohibit in principle for the three modes of transport specified above all agreements between undertakings, decisions of associations of undertakings and concerted practices between undertakings and all instances of abuse of a dominant position within the common market which could have such effects;

Whereas certain types of agreement, decision and concerted practice in the transport sector the object and effect of which is merely to apply technical improvements or to achieve technical co-operation may be exempted from the prohibition on restrictive agreements since they contribute to improving productivity; whereas, in the light of experience following application of this Regulation, the Council may, on a proposal from the Commission, amend the list of such types of agreement;

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[1] OJ No 205, 11.12.1964, p. 3505/64.
[2] OJ No 103, 12.6.1965, p. 1792/65.
[3] OJ No 124, 28.11.1962, p. 2751/62.
[4] OJ No 13, 21.21.1962, p. 204/62.
[5] OJ No 306, 16.12.1967, p. 1.

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Whereas, in order that an improvement may be fostered in the sometimes too dispersed structure of the industry in the road and inland waterway sectors, there should also be exempted from the prohibition on restrictive agreements those agreements, decisions and concerted practices providing for the creation and operation of groupings of undertakings in these two transport sectors whose object is the carrying on of transport operations, including the joint financing or acquisition of transport equipment for the joint operation of services; whereas such overall exemption can be granted only on condition that the total carrying capacity of a grouping does not exceed a fixed maximum, and that the individual capacity of undertakings belonging to the grouping does not exceed certain limits so fixed as to ensure that no one undertaking can hold a dominant position within the grouping; whereas the Commission must, however, have power to intervene if, in specific cases, such agreements should have effects incompatible with the conditions under which a restrictive agreement may be recognised as lawful, and should constitute an abuse of the exemption; whereas, nevertheless, the fact that a grouping has a total carrying capacity greater than the fixed maximum, or cannot claim the overall exemption because of the individual capacity of the undertakings belonging to the grouping, does not in itself prevent such a grouping from constituting a lawful agreement, decision or concerted practice if it satisfies the conditions therefor laid down in this Regulation;

Whereas, where an agreement, decision or concerted practice contributes towards improving the quality of transport services, or towards promoting greater continuity and stability in the satisfaction of transport needs on markets where supply and demand may be subject to considerable temporal fluctuation, or towards increasing the productivity of undertakings, or towards furthering technical or economic progress, it must be made possible for the prohibition to be declared not to apply, always provided, however, that the agreement, decision or concerted practice takes fair account of the interests of transport users, and neither imposes on the undertakings concerned any restriction not indispensable to the attainment of the above objectives nor makes it possible for such undertakings to eliminate competition in respect of a substantial part of the transport market concerned, having regard to competition from alternative modes of transport;

Whereas it is desirable until such time as the Council, acting in pursuance of the common transport policy, introduces appropriate measures to ensure a stable transport market, and subject to the condition that the Council shall have found that a state of crisis exists, to authorise, for the market in question, such agreements as are needed in order to reduce disturbance resulting from the structure of the transport market;

Whereas, in respect of transport by rail, road and inland waterway, it is desirable that Member States should neither enact nor maintain in force measures contrary to this Regulation concerning public undertakings or undertakings to which they grant special or exclusive rights; whereas it is also desirable that undertakings entrusted with the operation of services of general economic importance should be subject to the provisions of this Regulation in so far as the application thereof does not obstruct, in law or in fact, the accomplishment of the particular tasks assigned to them, always provided that the development of trade is not thereby affected to such an extent as would be contrary to the interests of the Community; whereas the Commission must have power to see that these principles are applied and to address the appropriate directives or decisions for this purpose to Member States;

Whereas the detailed rules for application of the basic principles of this Regulation must be so drawn that they not only ensure effective supervision while simplifying administration as far as possible but also meet the needs of undertakings for certainty in the law;

Whereas it is for the undertakings themselves, in the first instance, to judge whether the predominant effects of their agreements, decisions or concerted practices are the restriction of competition or the economic benefits acceptable as justification for such restriction and to decide accordingly, on their own responsibility, as to the illegality or legality of such agreements, decisions or concerted practices;

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Whereas, therefore, undertakings should be allowed to conclude or operate agreements without declaring them; whereas this exposes such agreements to the risk of being declared void with retroactive effect should they be examined following a complaint or on the Commissions's own initiative, but does not prevent their being retroactively declared lawful in the event of such subsequent examination;

Whereas, however, undertakings may, in certain cases, desire the assistance of the competent authorities to ensure that their agreements, decisions or concerted practices are in conformity with the rules applicable; whereas for this purpose there should be made available to undertakings a procedure whereby they may submit applications to the Commission and a summary of each such application is published in the *Official Journal of the European Communities*, enabling any interested third parties to submit their comments on the agreement in question; whereas, in the absence of any complaint from Member States or interested third parties and unless the Commission notifies applicants within a fixed time limit, that there are serious doubts as to the legality of the agreement in question, that agreement should be deemed exempt from the prohibition for the time already elapsed and for a further period of three years;

Whereas, in view of the exceptional nature of agreements needed in order to reduce disturbances resulting from the structure of the transport market, once the Council has found that a state of crisis exists undertakings wishing to obtain authorisation for such an agreement should be required to notify it to the Commission; whereas authorisation by the Commission should have effect only from the date when it is decided to grant it; whereas the period of validity of such authorisation should not exceed three years from the finding of a state of crisis by the Council; whereas renewal of the decision shoulddepend upon renewal of the finding of a state of crisis by the Council; whereas, in any event, the authorisation should cease to be valid not later than six months from the bringing into operation by the Council of appropriate measures to ensure the stability of the transport market to which the agreement relates;

Whereas, in order to secure uniform application within the common market of the rules of competition for transport, rules must be made under which the Commission, acting in close and constant liaison with the competent authorities of the Member States, may take the measures required for the application of such rules of competition;

Whereas for this purpose the Commission must have the co-operation of the competent authorities of the Member States and be empowered throughout the common market to request such information and to carry out such investigations as are necessary to bring to light any agreement, decision or concerted practice prohibited under this Regulation, or any abuse of a dominant position prohibited under this Regulation.

Whereas, if, on the application of the Regulation to a specific case, a Member State is of the opinion that a question of principle concerning the common transport policy is involved, it should be possible for such questions of principle to be examined by the Council; whereas it should be possible for any general questions raised by the implementation of the competition policy in the transport sector to be referred to the Council; whereas a procedure must be provided for which ensures that any decision to apply the Regulation in a specific case will be taken by the Commission only after the questions of principle have been examined by the Council, and in the light of the policy guidelines that emerge from that examination;

Whereas, in order to carry out its duty of ensuring that the provisions of this Regulation are applied, the Commission must be empowered to address to undertakings or associations of undertakings recommendations and decisions for the purose of bringing to an end infringements of the provisions of this Regulation prohibiting certain agreements, decisions or practices;

Whereas compliance with the prohibitions laid down in this Regulation and the fulfilment of obligations imposed on undertakings and associa-

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tions of undertakings under this Regulation must be enforceable by means of fines and periodic penalty payments;

Whereas undertakings concerned must be accorded the right to be heard by the Commission, third parties whose interests may be affected by a decision must be given the opportunity of submitting their comments beforehand, and it must be ensured that wide publicity is given to decisions taken;

Whereas it is desirable to confer upon the Court of Justice, pursuant to Article 172, unlimited jurisdiction in respect of decisions under which the Commission imposes fines or periodic penalty payments;

Whereas it is expedient to postpone for six months, as regards agreements, decisions and concerted practices in existence at the date of publication of this Regulation in the *Official Journal of the European Communities*, the entry into force of the prohibition laid down in the Regulation, in order to make it easier for undertakings to adjust their operations so as to conform to its provisions;

Whereas, following discussions with the third countries signatories to the Revised Convention for the Navigation of the Rhine, and within an appropriate period of time from the conclusion of those discussions, this Regulation as a whole should be amended as necessary in the light of the obligations arising out of the Revised Convention for the Navigation of the Rhine;

Whereas the Regulation should be amended as necessary in the light of the experience gained over a three-year period; whereas it will in particular be desirable to consider whether, in the light of the development of the common transport policy over that period, the scope of the Regulation should be extended to agreements, decisions and concerted practices, and to instances of abuse of a dominant position, not affecting trade between Member States;

HAS ADOPTED THIS REGULATION:

Article 1

Basic provision

The provisions of this Regulation shall, in the field of transport by rail, road and inland waterway, apply both to all agreements, decisions and concerted practices which have as their object or effect the fixing of transport rates and conditions, the limitation or control of the supply of transport, the sharing of transport markets, the application of technical improvements or technical co-operation, or the joint financing or acquisition of transport equipment or supplies where such operations are directly related to the provision of transport services and are necessary for the joint operation of services by a grouping within the meaning of Article 4 of road or inland waterway transport undertakings, and to the abuse of a dominant position on the transport market. These provisions shall apply also to operations of providers of services ancillary to transport which have any of the objects or effects listed above.

Article 2

Prohibition of restrictive practices

Subject to the provisions of Articles 3 to 6, the following shall be prohibited as incompatible with the common market, no prior decision to that effect being required; all agreements between undertakings, decisions by associations of undertakings and concerted practices liable to affect trade between Member States which have as their object or effect the prevention, restriction or distortion of ►C1 competition ◄ within the common market, and in particular those which:

(a) directly or indirectly fix transport rates and conditions or any other trading conditions;

(b) limit or control the supply of transport, markets, technical development or investment;

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(c) share transport markets;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of additional obligations which, by their nature or according to commercial usage, have no connection with the provision of transport services.

Article 3

Exception for technical agreements

1. The prohibition laid down in Article 2 shall not apply to agreements, decisions or concerted practices the object and effect of which is to apply technical improvements or to achieve technical co-operation by means of:

(a) the standardisation of equipment, transport supplies, vehicles or fixed installations;

(b) the exchange or pooling, for the purpose of operating transport services, of staff, equipment, vehicles or fixed installations;

(c) the organisation and execution of successive, complementary, substitute or combined transport operations, and the fixing and application of inclusive rates and conditions for such operations, including special competitive rates;

(d) the use, for journeys by a single mode of transport, of the routes which are most rational from the operational point of view;

(e) the co-ordination of transport timetables for connecting routes;

(f) the grouping of single consignments;

(g) the establishment of uniform rules as to the structure of tariffs and their conditions of application, provided such rules do not lay down transport rates and conditions.

2. The Commission shall, where appropriate, submit proposals to the Council with a view to extending or reducing the list in paragraph 1.

Article 4

Exemption for groups of small and medium-sized undertakings

1. The agreements, decisions and concerted practices referred to in Article 2 shall be exempt from the prohibition in that Article where their purpose is:

— the constitution and operation of groupings of road or inland waterway transport undertakings with a view to carrying on transport activities;

— the joint financing or acquisition of transport equipment or supplies, where these operations are directly related to the provision of transport services and are necessary for the joint operations of the aforesaid groupings;

always provided that the total carrying capacity of any grouping does not exceed:

— 10 000 metric tons in the case of road transport,

— 500 000 metric tons in the case of transport by inland waterway.

The individual capacity of each undertaking belonging to a grouping shall not exceed 1 000 metric tons in the case of road transport or 50 000 metric tons in the case of transport by inland waterway.

2. If the implementation of any agreement, decision or concerted practice covered by paragraph 1 has, in a given case, effects which are incompatible with the requirements of Article 5 and which constitute an abuse of the exemption from the provisions of Article 2, undertakings or associations of undertakings may be required to make such effects cease.

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Article 5

Non-applicability of the prohibition

The prohibition in Article 2 may be declared inapplicable with retroactive effect to:

— any agreement or category of agreement between undertakings,

— any decision or category of decision of an association of undertakings, or

— any concerted practice or category of concerted practice which contributes towards:

— improving the quality of transport services; or

— promoting greater continuity and stability in the satisfaction of transport needs on markets where supply and demand are subject to considerable temporal fluctuation; or

— increasing the productivity of undertakings; or

— furthering technical or economic progress;

and at the same time takes fair account of the interests of transport users and neither:

(a) imposes on the transport undertakings concerned any restriction not essential to the attainment of the above objectives; nor

(b) makes it possible for such undertakings to eliminate competition in respect of a substantial part of the transport market concerned.

Article 6

Agreements intended to reduce disturbances resulting from the structure of the transport market

1. Until such time as the Council, acting in pursuance of the common transport policy, introduces appropriate measures to ensure a stable transport market, the prohibition laid down in Article 2 may be declared inapplicable to any agreement, decision or concerted practice which tends to reduce disturbances on the market in question.

2. A decision not to apply the prohibition laid down in Article 2, made in accordance with the procedure laid down in Article 14, may not be taken until the Council, either acting by a qualified majority or, where any Member State considers that the conditions set out in Article 75 (3) of the Treaty are satisfied, acting unanimously, has found, on the basis of a report by the Commission, that a state of crisis exists in all or part of a transport market.

3. Without prejudice to the provisions of paragraph 2, the prohibition in Article 2 may be declared inapplicable only where:

(a) the agreement, decision or concerted practice in question does not impose upon the undertakings concerned any restriction not indispensable to the reduction of disturbances; and

(b) does not make it possible for such undertakings to eliminate competition in respect of a substantial part of the transport market concerned.

Article 7

Invalidity of agreements and decisions

Any agreement or decision prohibited under the foregoing provisions shall be automatically void.

Article 8

Prohibition of abuse of dominant positions

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as trade between Member States may be affected thereby.

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Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair transport rates or conditions;

(b) limiting the supply of transport, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the provision of transport services.

Article 9

Public undertakings

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the provisions of the foregoing Articles.

2. Undertakings entrusted with the operation of services of general economic importance shall be subject to the provisions of the foregoing Articles, in so far as the application thereof does not obstruct, in law or in fact, the accomplishment of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

3. The Commission shall see that the provisions of this Article are applied and shall, where necessary, address appropriate directives or decisions to Member States.

Article 10

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 Article 2 or of Article 8 or to enforce Article 4 (2).

Complaints may be submitted by:

(a) Member States;

(b) natural or legal persons who claim a legitimate interest.

Article 11

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

1. Where the Commission finds that there has been an infringement of Article 2 or Article 8, it may by decision require the undertakings or associations of undertakings concerned to bring such an 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 4 (2).

3. If the Commission, acting on a complaint received, concludes that on the evidence before it there are no grounds for intervention under Article 2, Article 4 (2) or Article 8 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 2 and of Article 5, it shall issue a decision applying Article 5. Such a decision shall indicate

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the date from which it is to take effect. This date may be prior to that of the decision.

Article 12

Application of Article 5 — objections

1. Undertakings and associations of undertakings which seek application of Article 5 in respect of agreements, decisions and concerted practices falling within the provisions of Article 2 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 10 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 5, 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 5 are not satisfied, it shall issue a decision declaring that the prohibition in Article 2 is applicable. Such a decision may be retroactive where the parties concerned have given inaccurate information or where they abuse the exemption from the provisions of Article 2.

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 2 and of Article 5 are satisfied.

If it finds that the provisions of Article 2 and of Article 5 are satisfied it shall issue a decision applying Article 5. The decision shall indicate the date from which it is to take effect. This date may be prior to that of the application.

Article 13

Duration and revocation of decisions applying Article 5

1. Any decision applying Article 5 taken under Article 11 (4) or under the second subparagraph of Article 12 (4) shall indicate the period for which it is to be valid; normally such a 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 5 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 2 granted to them by the decision.

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

Article 14

Decisions applying Article 6

1. Any agreement, decision or concerted practice covered by Article 2 in respect of which the parties seek application of Article 6 shall be notified to the Commission.

2. Any decision by the Commission to apply Article 6 shall have effect only from the date of its adoption. It shall state the period for which it is to be valid. Such a period shall not exceed three years from the finding of a state of crisis by the Council provided for in Article 6 (2).

3. Such decision may be renewed by the Commission if the Council again finds, acting under the procedure provided for in Article 6 (2), that there is a state of crisis and if the other conditions laid down in Article 6 continue to be satisfied.

4. Conditions and obligations may be attached to the decision.

5. The decision of the Commission shall cease to have effect not later than six months from the coming into operation of the measures referred to in Article 6 (1).

6. The provisions of Article 13 (3) shall apply.

Article 15

Powers

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

— to impose obligations pursuant to Article 4 (2);

— to issue decisions pursuant to Article 5 and 6.

The authorities of the Member States shall retain the power to decide whether any case falls within the provisions of Article 2 or Article 8, 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 12 (3).

Article 16

Liaison 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. An Advisory Committee on Restrictive Practices and Monopolies in the Transport Industry shall be consulted prior to the taking of any decision following upon a procedure under Article 10 or of any decision under the second subparagraph of Article 12 (3), or under the second subparagraph of paragraph 4 of the same Article, or under paragraph 2 or paragraph 3 of Article 14. The Advisory Committee shall also be consulted prior to adoption of the implementing provisions provided for in Article 29.

4. The Advisory Committee shall be composed of officials competent in the matter of restrictive practices and monopolies in transport. Each Member State shall appoint two officials to represent it, each of whom, if prevented from attending, may be replaced by some other official.

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5. Consultation shall take place at a joint meeting convened by the Commission; such a meeting shall be held not earlier than fourteen days after dispatch of the notice convening it. This notice shall, in respect of each case to be examined, be accompanied by a summary of the case together with an indication of the most important documents, and a preliminary draft decision.

6. The Advisory Committee may deliver an opinion notwithstanding that some of its members or their alternates are not present. A report of the outcome of the consultative proceedings shall be annexed to the draft decision. It shall not be made public.

Article 17

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 16 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 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 18

Inquiries into transport sectors

1. If trends in transport, fluctuations in or inflexibility of transport rates, or other circumstances, suggest that competition in transport is being restricted or distorted within the common market in a specific geographical area, or over one or more transport links, or in respect of the carriage of passengers or goods belonging to one or more specific categories, the Commission may decide to conduct a general inquiry into the sector concerned, in the course of which it may request transport undertakings in that sector to supply the information and documentation necessary for giving effect to the principles formulated in Articles 2 to 8.

2. When making inquiries pursuant to paragraph 1, the Commission shall also request undertakings or groups of undertakings whose size suggests that they occupy a dominant position within the common market or a substantial part thereof to supply such particulars of the structure of the undertakings and of their behaviour as are requisite to an appraisal of their position in the light of the provisions of Article 8.

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3. Article 16 (2) to (6) and Articles 17, 19, 20 and 21 shall apply.

Article 19

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 22 (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 22 (1) (b) and Article 23 (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 20

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 21 (1), or which it has ordered by decision pursuant to Article 21 (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 21

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:

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(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 22 (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 22 (1) (c) and Article 23 (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, after consultation with the Commission, take the necessary measures to this end before 1 January 1970. ►**A1** New Member States shall, after consulting the Commission, take the necessary measures to this end within six months from the date of accession. ◄ ►**A2** The Hellenic Republic shall, after consultation with the Commission, take the necessary measures to this end within a period of six months following accession. ◄

Article 22

Fines

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

(a) they supply incorrect or misleading information in an application pursuant to Article 12 or in a notification pursuant to Article 14; or

(b) they supply incorrect information in response to a request made pursuant to Article 18 or to Article 19 (3) or (5), or do not supply information within the time limit fixed by a decision taken under Article 19 (5); or

(c) they produce the required books or other business records in incomplete form during investigations under Article 20 or Article 21, or refuse to submit to an investigation ordered by decision issued in implementation of Article 21 (3).

2. The Commission may by decision impose on undertakings or associations of undertakings fines of 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:

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(a) they infringe Article 2 or Article 8; or

(b) they commit a breach of any obligation imposed pursuant to Article 13 (1) or Article 14 (4).

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

3. Article 16 (3) to (6) and Article 17 shall apply.

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

Article 23

Periodic penalty payments

1. The Commission may by decision impose on undertakings or associations of undertakings periodic penalty payments of 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 2 or Article 8 of this Regulation the termination of which it has ordered pursuant to Article 11 or to comply with an obligation imposed pursuant to Article 4 (2);

(b) to refrain from any act prohibited under Article 13 (3);

(c) to supply complete and correct information which it has requested by decision taken pursuant to Article 19 (5);

(d) to submit to an investigation which it has ordered by decision taken pursuant to Article 21 (3).

2. Where the undertakings or associations of undertakings have satisfied the obligation which 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 16 (3) to (6) and Article 17 shall apply.

Article 24

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 25

Unit of account

For the purpose of applying Articles 23 to 24 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 26

Hearing of the parties and of third persons

1. Before taking decisions as provided for in Articles 11, 12 (3), second subparagraph, and 12 (4), 13 (3), 14 (2) and (3), 22 and 23, 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 of 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 5 or Article 6, it shall publish a summary of the relevant agreement, decision or concerted practice and invite all inter-

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ested 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 27

Professional secrecy

1. Information acquired as a result of the application of Articles 18, 19, 20 and 21 shall be used only for the purpose of the relevant request or investigation.

2. Without prejudice to the provisions of Articles 26 and 28, 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 28

Publication of decisions

1. The Commission shall publish the decisions which it takes pursuant to Articles 11, 12 (3), second subparagraph, 12 (4), 13 (3) and 14 (2) and (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 29

Implementing provisions

The Commission shall have power to adopt implementing provisions concerning the form, content and other details of complaints pursuant to Article 10, applications pursuant to Article 12, notifications pursuant to Article 14 (1) and the hearings provided for in Article 26 (1) and (2).

Article 30

Entry into force, existing agreements

1. This Regulation shall enter into force on 1 July 1968.

2. Notwithstanding the provisions of paragraph 1, Article 8 shall enter into force on the day following the publication of this Regulation in *the Official Journal of the European Communities*.

3. The prohibition in Article 2 shall apply from 1 January 1969 to all agreements, decisions and concerted practices falling within Article 2 which were in existence at the date of entry into force of this Regulation or which came into being between that date and the date of publication of this Regulation in the *Official Journal of the European Communities*.

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The prohibition in Article 85 (1) of the Treaty shall not apply to agreements, decisions and concerted practices which were in existence at the date of accession of Austria, Finland and Sweden and which, by reason of that accession, fall within the scope of Article 85 (1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in Articles 4 and 5 of this Regulation. This subparagraph shall not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53 (1) of the EEA Agreement.

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4. Paragraph 3 shall not be invoked against undertakings or associations of undertakings which, before the day following publication of this Regulation in the *Official Journal of the European Communities*, shall

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have terminated any agreements, decisions or concerted practices to which they are party.

Article 31

Review of the Regulation

1. Within six months of the conclusion of discussions with the third countries signatories to the Revised Convention for the Navigation of the Rhine; the Council, on a proposal from the Commission, shall make any amendments to this Regulation which may prove necessary in the light of the obligations arising out of the Revised Convention for the Navigation of the Rhine.

2. The Commission shall submit to the Council, before 1 January 1971, a general report on the operation of this Regulation and, before 1 July 1971, a proposal for a Regulation to make the necessary amendments to this Regulation.

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