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COMMISSION REGULATION (EEC) No 417/85
of 19 December 1984
on the application of Article 85 (3) of the Treaty to categories of specialization agreements

(OJ L 53, 22.2.1985, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Commission Regulation (EEC) No 151/93 of 23 December 1992	L 21	8	29.1.1993
►**M2**	Commission Regulation (EC) No 2236/97 of 10 November 1997	L 306	12	11.11.1997

Amended by:

►**A1**	Act of Accession of Spain and Portugal	L 302	23	15.11.1985
►**A2**	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

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COMMISSION REGULATION (EEC) No 417/85

of 19 December 1984

on the application of Article 85 (3) of the Treaty to categories of specialization agreements

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 85 (3) of the Treaty to categories of agreements, decisions and concerted practices [1], as last amended by the Act of Accession of Greece, and in particular Article 1 thereof,

Having published a draft of this Regulation [2],

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

(1) Regulation (EEC) No 2821/71 empowers the Commission to apply Article 85 (3) of the Treaty by Regulation to certain categories of agreements, decisions and concerted practices falling within the scope of Article 85 (1) which relate to specialization, including agreements necessary for achieving it.

(2) Agreements on specialization in present or future production may fall within the scope of Article 85 (1).

(3) Agreements on specialization in production generally contribute to improving the production or distribution of goods, because undertakings concerned can concentrate on the manufacture of certain products and thus operate more efficiently and supply the products more cheaply. It is likely that, given effective competition, consumers will receive a fair share of the resulting benefit.

(4) Such advantages can arise equally from agreements whereby each participant gives up the manufacture of certain products in favour of another participant and from agreements whereby the participants undertake to manufacture certain products or have them manufactured only jointly.

(5) The Regulation must specify what restrictions of competition may be included in specialization agreements. The restrictions of competition that are permitted in the Regulation in addition to reciprocal obligations to give up manufacture are normally essential for the making and implementation of such agreements. These restrictions are therefore, in general, indispensable for the attainment of the desired advantages for the participating undertakings and consumers. It may be left to the parties to decide which of these provisions they include in their agreements.

(6) The exemption must be limited to agreements which do not give rise to the possibility of eliminating competition in respect of a substantial part of the products in question. The Regulation must therefore apply only as long as the market share and turnover of the participating undertakings do not exceed a certain limit.

(7) It is, however, appropriate to offer undertakings which exceed the turnover limit set in the Regulation a simplified means of obtaining the legal certainty provided by the block exemption.

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[1] OJ No L 285, 29. 12. 1971, p. 46.
[2] OJ No C 211, 11. 8. 1984, p. 2.

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This must allow the Commission to exercise effective supervision as well as simplifying its administration of such agreements.

(8) In order to facilitate the conclusion of long-term specialization agreements, which can have a bearing on the structure of the participating undertakings, it is appropriate to fix the period of validity of the Regulation at 13 years. If the circumstances on the basis of which the Regulation was adopted should change significantly within this period, the Commission will make the necessary amendments.

(9) Agreements, decisions and concerted practices which are automatically exempted pursuant to this Regulation need not be notified. Undertakings may none the less in an individual case request a decision pursuant to Council Regulation No 17 ([1]), as last amended by the Act of Accession of Greece,

HAS ADOPTED THIS REGULATION:

Article 1

Pursuant to Article 85 (3) of the Treaty and subject to the provisions of this Regulation, it is hereby declared that Article 85 (1) of the Treaty shall not apply to agreements on specialization whereby, for the duration of the agreement, undertakings accept reciprocal obligations:

(a) not to manufacture certain products or to have them manufactured, but to leave it to other parties to manufacture the products or have them manufactured; or

(b) to manufacture certain products or have them manufactured only jointly.

Article 2

1. ►M1 Article 1 shall also apply to the following restrictions of competition: ◄

(a) an obligation not to conclude with third parties specialization agreements relating to identical products or to products considered by users to be equivalent in view of their characteristics, price and intended use;

(b) an obligation to procure products which are the subject of the specialization exclusively from another party, a joint undertaking or an undertaking jointly charged with their manufacture, except where they are obtainable on more favourable terms elsewhere and the other party, the joint undertaking or the undertaking charged with manufacture is not prepared to offer the same terms;

▼M1

(c) an obligation to grant other parties the exclusive right, within the whole or a defined area of the common market, to distribute products which are the subject of the specialization, provided that intermediaries and users can also obtain the products from other suppliers and the parties do not render it difficult for intermediaries and users to thus obtain the products;

(d) an obligation to grant one of the parties the exclusive right to distribute products which are the subject of the specialization provided that that party does not distribute products of a third undertaking which compete with the contract products;

(e) an obligation to grant the exclusive right to distribute products which are the subject of the specialization to a joint undertaking or to a third undertaking, provided that the joint undertaking or third undertaking does not manufacture or distribute products which compete with the contract products;

([1]) OJ No 13, 21. 2. 1962, p. 204/62.

▼M1

(f) an obligation to grant the exclusive right to distribute within the whole or a defined area of the common market the products which are the subject of the specialization to joint undertakings or third undertakings which do not manufacture or distribute products which compete with the contract products, provided that users and intermediaries can also obtain the contract products from other suppliers and that neither the parties nor the joint undertakings or third undertakings entrusted with the exclusive distribution of the contract products render it difficult for users and intermediaries to thus obtain the contract products.

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2. Article 1 shall also apply where the parties undertake obligations of the types referred to in paragraph 1 but with a more limited scope than is permitted by that paragraph.

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2a. Article 1 shall not apply if restrictions of competition other than those set out in paragraphs 1 and 2 are imposed upon the parties by agreement, decision or concerted practice.

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3. Article 1 shall apply notwithstanding that any of the following obligations, in particular, are imposed:

(a) an obligation to supply other parties with products which are the subject of the specialization and in so doing to observe minimum standards of quality;

(b) an obligation to maintain minimum stocks of products which are the subject of the specialization and of replacement parts for them;

(c) an obligation to provide customer and guarantee services for products which are the subject of the specialization.

Article 3

▼M1

1. Article 1 shall apply only if

(a) the products which are the subject of the specialization together with the participating undertakings' other products which are considered by users to be equivalent in view of their characteristics, price and intended use do not represent more than 20 % of the market for all such products in the common market or a substantial part thereof; and

(b) the aggregate turnover of all the participating undertakings does not exceed ECU 1 000 million.

2. If pursuant to point (d), (e) or (f) of Article 2 (1), one of the parties, a joint undertaking, a third undertaking or more than one joint undertaking or third undertaking are entrusted with the distribution of the products which are the subject of the specialization, Article 1 shall apply only if:

(a) the products which are the subject of the specialization together with the participating undertakings' other products which are considered by users to be equivalent in view of their characteristics, price and intended use do not represent more than 10 % of the market for all such products in the common market or a substantial part thereof; and

(b) the aggregate annual turnover of all the participating undertakings does not exceed ECU 1 000 million.

3. Article 1 shall continue to apply if the market shares and turnover referred to in paragraphs 1 and 2 are exceeded during any period of two consecutive financial years by not more than one-tenth.

4. Where the limits laid down in paragraph 3 are also exceeded, Article 1 shall continue to apply for a period of six months following the end of the financial year during which they were exceeded.

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Article 4

1. The exemption provided for in Article 1 shall also apply to agreements involving participating undertakings whose aggregate turnover exceeds the limits laid down in ►M1 Article 3 (1) (b), (2) (b) and (3) ◄ on condition that the agreements in question are notified to the Commission in accordance with the provisions of Commission Regulation No 27 [1], and that the Commission does not oppose such exemption within a period of six months.

2. The period of six months shall run from the date on which the notification is received by the Commission. Where, however, the notification is made by registered post, the period shall run from the date shown on the postmark of the place of posting.

3. Paragraph 1 shall apply only if:

(a) express reference is made to this Article in the notification or in a communication accompanying it; and

(b) the information furnished with the notification is complete and in accordance with the facts.

4. The benefit of paragraph 1 may be claimed for agreements notified before the entry into force of this Regulation by submitting a communication to the Commission referring expressly to this Article and to the notification. Paragraphs 2 and 3 (b) shall apply *mutatis mutandis*.

5. The Commission may oppose the exemption. It shall oppose exemption if it receives a request to do so from a Member State within three months of the forwarding to the Member State of the notification referred to in paragraph 1 or of the communication referred to in paragraph 4. This request must be justified on the basis of considerations relating to the competition rules of the Treaty.

6. The Commission may withdraw the opposition to the exemption at any time. However, where the opposition was raised at the request of a Member State and this request is maintained, it may be withdrawn only after consultation of the Advisory Committee on Restrictive Practices and Dominant Positions.

7. If the opposition is withdrawn because the undertakings concerned have shown that the conditions of Article 85 (3) are fulfilled, the exemption shall apply from the date of notification.

8. If the opposition is withdrawn because the undertakings concerned have amended the agreement so that the conditions of Article 85 (3) are fulfilled, the exemption shall apply from the date on which the amendments take effect.

9. If the Commission opposes exemption and the opposition is not withdrawn, the effects of the notification shall be governed by the provisions of Regulation No 17.

Article 5

1. Information acquired pursuant to Article 4 shall be used only for the purposes of this Regulation.

2. The Commission and the authorities of the Member States, their officials and other servants shall not disclose information acquired by them pursuant to this Regulation of a kind that is covered by the obligation of professional secrecy.

3. 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.

[1] OJ No 35, 10. 5. 1962, p. 1118/62.

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Article 6

For the purpose of calculating total annual turnover within the meaning of Article 3 (1) (b), ►M1 and (2) (b) ◄ the turnovers achieved during the last financial year by the participating undertakings in respect of all goods and services excluding tax shall be added together. For this purpose, no account shall be taken of dealings between the participating undertakings or between these undertakings and a third undertaking jointly charged with manufacture ►M1 or sale. ◄

Article 7

1. ►M1 For the purposes of Article 3 (1) and (2) and Article 6, participating undertakings are: ◄

(a) undertakings party to the agreement;

(b) undertakings in which a party to the agreement, directly or indirectly:

— owns more than half the capital or business assets,

— has the power to exercise more than half the voting rights,

— has the power to appoint at least half the members of the supervisory board, board of management or bodies legally representing the undertakings, or

— has the right to manage the affairs;

(c) undertakings which directly or indirectly have in or over a party to the agreement the rights or powers listed in (b);

(d) undertakings in or over which an undertaking referred to in (c) directly or indirectly has the rights or powers listed in (b).

2. Undertakings in which the undertakings referred to in paragraph 1 (a) to (d) directly or indirectly jointly have the rights or powers set out in paragraph 1 (b) shall also be considered to be participating undertakings.

Article 8

The Commission may withdraw the benefit of this Regulation, pursuant to Article 7 of Regulation (EEC) No 2821/71, where it finds in a particular case that an agreement exempted by this Regulation nevertheless has effects which are incompatible with the conditions set out in Article 85 (3) of the Treaty, and in particular where:

(a) the agreement is not yielding significant results in terms of rationalization or consumers are not receiving a fair share of the resulting benefit; or

(b) the products which are the subject of the specialization are not subject in the common market or a substantial part thereof to effective competition from identical products or products considered by users to be equivalent in view of their characteristics, price and intended use.

Article 9

This Regulation shall apply *mutatis mutandis* to decisions of associations of undertakings and concerted practices.

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Article 9a

The prohibition in Article 85 (1) of the Treaty shall not apply to the specialization agreements which were in existence at the date of the accession of the Kingdom of Spain and of the Portuguese Republic and which, by reason of this accession, fall within the scope of Article 85 (1), if, before 1 July 1986, they are so amended that they comply with the conditions laid down in this Regulation.

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As regards agreements to which Article 85 of the Treaty applies as a result of the accession of Austria, Finland and Sweden, the preceding paragraph shall apply *mutatis mutandis* on the understanding that the

▼A2

relevant dates shall be the date of accession of those countries and six months after the date of accession respectively. However, this paragraph shall not apply to agreements which at the date of accession already fall under Article 53 (1) of the EEA Agreement.

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Article 10

1. This Regulation shall enter into force on 1 March 1985. It shall apply until ►M2 31 December 2000 ◄.

2. Commission Regulation (EEC) No 3604/82 [1] is hereby repealed.

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

[1] OJ No L 376, 31. 12. 1982, p. 33.