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COUNCIL REGULATION (EEC) No 4056/86

of 22 December 1986

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

(OJ L 378, 31.12.1986, p. 4)

Amended by:

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►**M1**	Council Regulation (EC) No 1/2003 of 16 December 2002	L 1	1	4.1.2003

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►**A1**	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
►**A2**	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

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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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 Articles 84 (2) 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 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;

Whereas according to Council Regulation No 141 ([3]), Council Regulation No 17 ([4]) does not apply to transport; whereas Council Regulation (EEC) No 1017/68 ([5]) 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;

Whereas this situation necessitates the adoption of a Regulation applying the rules of competition to maritime transport; whereas Council Regulation (EEC) No 954/79 of 15 May 1979 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conference ([6]) will result in the application of the Code of Conduct to a considerable number of conferences serving the Community; whereas the Regulation applying the rules of competition 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 subject to the Code of Conduct are concerned, the Regulation should supplement the Code or make it more precise;

Whereas it appears preferable to exclude tramp vessel services from the scope of this Regulation, rates for these services being freely negotiated on a case-by-case basis in accordance with supply and demand conditions;

Whereas this Regulation should take account of the necessity, on the one hand to provide for implementing rules that enable the Commission to ensure that competition is not unduly distorted within the common market, and on the other hand to avoid excessive regulation of the sector;

Whereas this Regulation should define the scope of the provisions of Articles 85 and 86 of the Treaty, taking into account the distinctive characteristics of maritime transport; whereas trade between Member States may be affected where restrictive practices or abuses concern international maritime transport, including intra-Community transport, from or to Community ports; whereas such restrictive practices or

([1]) OJ No C 172, 2. 7. 1984, p. 178; OJ No C 255, 13. 10. 1986, p. 169.
([2]) OJ No C 77, 21. 3. 1983, p. 13; OJ No C 344, 31. 12. 1985, p. 31.
([3]) OJ No 124, 28. 11. 1962, p. 2751/62.
([4]) OJ No 13, 21. 2. 1962, p. 204/62.
([5]) OJ No L 175, 23. 7. 1968, p. 1.
([6]) OJ No L 121, 17. 5. 1979, p. 1.

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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 certain types of technical agreement, 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;

Whereas provision should be made for block exemption of liner conferences; whereas 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 income; whereas in most cases conferences continue to be subject to effective competition from both non-conference scheduled services and, in certain circumstances, from tramp services and from other modes of transport; whereas 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;

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;

Whereas the aim of the conditions should 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 should 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 cause within the Community deflections of trade that are harmful to certain ports, shippers, carriers or providers of services ancillary to transport; whereas, furthermore, loyalty arrangements should be permitted only in accordance with rules which do not restrict unilaterally 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;

Whereas certain obligations should also 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 transports organized by shippers, the latter continue to be subject to Regulation (EEC) No 1017/68; 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 provisions of Articles 85 and 86;

Whereas consultations between users or associations of users and conferences are liable to secure a 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;

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

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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 should be progressive and proportionate; whereas the Commission should consequently have the power first to address recommendations, then to take decisions;

Whereas the automatic nullity provided for in Article 85 (3) in respect of agreements or decisions which have not been granted exemption pursuant to Article 85 (3) owing to their discriminatory or other features applies only to the elements of the agreement covered 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 should therefore, if it finds an infringement of the block exemption, either specify what elements of the agreement are 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;

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 consultations and, where appropriate, negotiations authorized by the Council should be undertaken by the Commission with those countries in pursuance of the maritime transport policy of the Community;

Whereas this Regulation should 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 application of Article 85 (3);

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;

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;

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 I

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 services.

2. It shall apply only to international maritime transport services from or to one or more Community ports, other than tramp vessel services.

3. For the purposes of this Regulation:

(a) tramp vessel services means the transport of goods in bulk or in break-bulk in a vessel chartered wholly or partly to one or more shippers on the basis of a voyage or time charter or any other

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form of contract for non-regularly scheduled or non-advertised sailings where the freight rates are freely negotiated case by case in accordance with the conditions of supply and demand;

(b) liner conference means a group of two or more vessel-operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner services;

(c) transport user means an undertaking (e.g. shippers, consignees, forwarders, etc.) provided it has entered into, or demonstrates an intention to enter into, a contractual or other arrangement with a conference or shipping line for the shipment of goods, or any association of shippers.

Article 2

Technical agreements

1. The prohibition laid down in Article 85 (1) of the Treaty shall not apply to agreements, decisions and 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, space on vessels or slots and other means of transport, staff, equipment or fixed installations;

(c) the organization and execution of successive or supplementary maritime transport operations and the establishment or application of inclusive rates and conditions for such operations;

(d) the coordination of transport timetables for connecting routes;

(e) the consolidation of individual consignments;

(f) the establishment or application of uniform rules concerning the structure and the conditions governing the application of transport tariffs.

2. The Commission shall, if necessary, submit to the Council proposals for the amendment of the list contained in paragraph 1.

Article 3

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

Agreements, decisions and concerted practices of all or part of the members of one or more liner conferences are hereby exempted from the prohibition in Article 85 (1) of the Treaty, subject to the condition imposed by Article 4 of this Regulation, when they have as their objective the fixing of rates and conditions of carriage, and, as the case may be, one or more of the following objectives:

(a) the coordination of shipping timetables, sailing dates or dates of calls;

(b) the determination of the frequency of sailings or calls;

(c) the coordination or allocation of sailings or calls among members of the conference;

(d) the regulation of the carrying capacity offered by each member;

(e) the allocation of cargo or revenue among members.

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Article 4

Condition attaching to exemption

The exemption provided for in Articles 3 and 6 shall be granted subject to the condition that the agreement, decision or concerted practice shall not, within the common market, cause detriment to certain ports, transport users or carriers by applying for the carriage of the same goods and in the area covered by the agreement, decision or concerted practice, rates and conditions of carriage which differ according to the country of origin or destination or port of loading or discharge, unless such rates or conditions can be economically justified.

Any agreement or decision or, if it is severable, any part of such an agreement or decision not complying with the preceding paragraph shall automatically be void pursuant to Article 85 (2) of the Treaty.

Article 5

Obligations attaching to exemption

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

1. *Consultations*

   There shall be consultations for the purpose of seeking solutions on general issues of principle between transport users on the one hand and conferences on the other concerning the rates, conditions and quality of scheduled maritime transport services.

   These consultations shall take place whenever requested by any of the abovementioned parties.

2. *Loyalty arrangements*

   The shipping lines' members of a conference shall be entitled to institute and maintain loyalty arrangements with transport users, the form and terms of which shall be matters for consultation between the conference and transport users' organizations. These loyalty arrangements shall provide safeguards making explicit the rights of transport users and conference members. These arrangements shall be based on the contract system or any other system which is also lawful.

   Loyalty arrangements must comply with the following conditions:

   (a) Each conference shall offer transport users 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 arrangement at any time without penalty and subject to a period of notice of not more than six months; this period shall be reduced to three months when the conference rate is the subject of a dispute;

      — 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; this period shall be reduced to three months where the conference rate is the subject of a dispute.

   (b) The conference shall, after consulting the transport users concerned, set out:

      (i) a list of cargo and any portion of cargo agreed with transport users which is specifically excluded from the scope of the loyalty arrangement; 100 % loyalty arrangements may be offered but may not be unilaterally imposed;

      (ii) a list of circumstances in which transport users are released from their obligation of loyalty; these shall include:

         — circumstances in which consignments are dispatched from or to a port in the area covered by the conference

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but not advertised and where the request for a waiver can be justified, 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 transport users directly concerned with the proper servicing of the port.

The conference must, however, be informed in advance by the transport user, within a specified period, of his intention to dispatch the consignment from a port not advertised 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.

3. *Services not covered by the freight charges*

Transport users 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 transport user have agreed.

4. *Availability of tariffs*

Tariffs, related conditions, regulations and any amendments thereto shall be made available on request to transport users at reasonable cost, or they shall be available for examination at offices of shipping lines and their agents. They shall set out all the conditions concerning loading and discharge, the exact extent of the services covered by the freight charge in proportion to the sea transport and the land transport or by any other charge levied by the shipping line and customary practice in such matters.

5. *Notification to the Commission of awards at arbitration and recommendations*

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 and in points 2 and 3 above.

Article 6

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

Agreements, decisions and concerned practices between transport users, on the one hand, and conferences, on the other hand, and agreements between transport users which may be necessary to that end, concerning the rates, conditions and quality of liner services, as long as they are provided for in Article 5 (1) and (2) are hereby exempted from the prohibition laid down in Article 85 (1) of the Treaty.

Article 7

Monitoring of exempted agreements

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1. *Breach of an obligation*

Where the persons concerned are in breach of an obligation which, pursuant to Article 5, attaches to the exemption provided for in Article 3, the Commission may, in order to put an end to such breach and under the conditions laid down in Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty [1] adopt a decision that either prohibits them from carrying out or requires them to perform certain specific acts, or withdraws the benefit of the block exemption which they enjoyed.

[1] OJ L 1, 4.1.2003, p. 1.

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2. *Effects incompatible with Article 85 (3)*

(a) Where, owing to special circumstances as described below, agreements, decisions and concerted practices which qualify for the exemption provided for in Articles 3 and 6 have nevertheless effects which are incompatible with the conditions laid down in Article 85 (3) of the Treaty, the Commission, on receipt of a complaint or on its own initiative, ►M1 under the conditions laid down in Regulation (EC) No 1/2003 ◄, shall take the measures described in (c) below. The severity of these measures must be in proportion to the gravity of the situation.

(b) Special circumstances are, *inter alia*, created by:

(i) acts of conferences or a change of market conditions in a given trade resulting in the absence or elimination of actual or potential competition such as restrictive practices whereby the trade is not available to competition; or

(ii) acts of conference which may prevent technical or economic progress or user participation in the benefits;

(iii) acts of third countries which:

— prevent the operation of outsiders in a trade,

— impose unfair tariffs on conference members,

— impose arrangements which otherwise impede technical or economic progress (cargo-sharing, limitations on types of vessels).

(c) (i) If actual or potential competition is absent or may be eliminated as a result of action by a third country, the Commission shall enter into consultations with the competent authorities of the third country concerned, followed if necessary by negotiations under directives to be given by the Council, in order to remedy the situation.

If the special circumstances result in the absence or elimination of actual or potential competition contrary to Article 85 (3) (b) of the Treaty the Commission shall withdraw the benefit of the block exemption. ►M1 At the same time it shall decide, in accordance with Article 9 of Regulation (EC) No 1/2003, whether to accept commitments offered by the undertakings concerned with a view, *inter alia*, to obtaining access to the market for non-conference lines. ◄

(ii) If, as a result of special circumstances as set out in (b), there are effects other than those referred to in (i) hereof, the Commission shall take one or more of the measures described in paragraph 1.

Article 8

Effects incompatible with Article 86 of the Treaty

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2. Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that in any particular case the conduct of conferences benefiting from the exemption laid down in Article 3 nevertheless has effects which are incompatible with Article 86 of the Treaty, it may withdraw the benefit of the block exemption and take, ►M1 pursuant to Regulation (EC) No 1/2003 ◄, all appropriate measures for the purpose of bringing to an end infringements of Article 86 of the Treaty.

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Article 9

Conflicts of international law

1. 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 interests, 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 abovementioned interest with the respect of Community law. The Commission shall inform the ►M1 Advisory Committee referred to in Article 14 of Regulation (EC) No 1/2003 ◄ of the outcome of these consultations.

2. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with an ►M1 Advisory Committee referred to in Article 14 of Regulation (EC) No 1/2003 ◄ and within the framework of such directives as the Council may issue to it.

3. In exercising the powers conferred on it by this Article, the Council shall act in accordance with the decision-making procedure laid down in Article 84 (2) of the Treaty.

SECTION II

RULES OF PROCEDURE

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Article 13

Duration and revocation of decisions applying Article 85 (3)

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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; or

(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.

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Article 26

Implementing provisions

The Commission shall have power to adopt implementing provisions concerning the scope of the obligation of communication pursuant to Article 5 (5) ►M1 ——————— ◄.

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Article 26a

The prohibition in Article 81(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 or at the date of accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia and which, by reason of accession, fall within the scope of Article 81(1) if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in Articles 3 to 6 of this Regulation. However, this Article 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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Article 27

Entry into force

This Regulation shall enter into force on 1 July 1987.

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