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COUNCIL REGULATION (EEC) No 479/92

of 25 February 1992

on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)

(OJ L 55, 29.2.1992, p. 3)

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
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on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Parliament ([2]),

Having regard to the opinion of the Economic and Social Committee ([3]),

Whereas Article 85 (1) of the Treaty may in accordance with Article 85 (3) thereof be declared inapplicable to categories of agreements, decisions and concerted practices which fulfil the conditions contained in Article 85 (3);

Whereas, pursuant to Article 87 of the Treaty, the provisions for the application of Article 85 (3) of the Treaty should be adopted by way of Regulation; whereas, according to Article 87 (2) (b), such a Regulation must lay down detailed rules for the application of Article 85 (3), taking into account the need to ensure effective supervision, on the one hand, and to simplify administration to the greatest possible extent on the other; whereas, according to Article 87 (2) (d), such a Regulation is required to define the respective functions of the Commission and of the Court of Justice;

Whereas liner shipping is a capital intensive industry; whereas containerization has increased pressures for cooperation and rationalization; whereas the Community shipping industry needs to attain the necessary economies of scale in order to compete successfully on the world liner shipping market;

Whereas joint-service agreements between liner shipping companies with the aim of rationalizing their operations by means of technical, operational and/or commercial arrangements (described in shipping circles as consortia) can help to provide the necessary means for improving the productivity of liner shipping services and promoting technical and economic progress;

Having regard to the importance of maritime transport for the development of the Community's trade and the role which consortia agreements can fulfil in this respect, taking account of the special features of international liner shipping;

Whereas the legalization of these agreements is a measure which can make a positive contribution to improving the competitiveness of shipping in the Community;

Whereas users of the shipping services offered by consortia can obtain a share of the benefits resulting from the improvements in productivity and service, by means of, *inter alia*, regularity, cost reductions derived from higher levels of capacity utilization, and better service quality stemming from improved vessels and equipment;

Whereas the Commission should be enabled to declare by way of Regulation that the provisions of Article 85 (1) of the Treaty do not apply to certain categories of consortia agreements, decisions and concerted practices, in order to make it easier for undertakings to cooperate in ways which are economically desirable and without adverse effect from the point of view of competition policy;

([1]) OJ No C 167, 10. 7. 1990, p. 9.
([2]) OJ No C 305, 25. 11. 1991, p. 39.
([3]) OJ No C 69, 18. 3. 1991, p. 16.

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Whereas the Commission, in close and constant liaison with the competent authorities of the Member States, should be able to define precisely the scope of these exemptions and the conditions attached to them;

Whereas consortia in liner shipping are a specialized and complex type of joint venture; whereas there is a great variety of different consortia agreements operating in different circumstances; whereas the scope, parties, activities or terms of consortia are frequently altered; whereas the Commission should therefore be given the responsibility of defining from time to time the consortia to which a group exemption should apply;

Whereas, in order to ensure that all the conditions of Article 85 (3) of the Treaty are met, conditions should be attached to group exemptions to ensure in particular that a fair share of the benefits will be passed on to shippers and that competition is not eliminated;

Whereas pursuant to Article 11 (4) of 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 [1] the Commission may provide that a decision taken in accordance with Article 85 (3) of the Treaty shall apply with retroactive effect; whereas it is desirable that the Commission be empowered to adopt, by Regulation, provisions to that effect;

Whereas notification of agreements, decisions and concerted practices falling within the scope of this Regulation must not be made compulsory, it being primarily the responsibility of undertakings to see to it that they conform to the rules on competition, and in particular to the conditions laid down by the subsequent Commission Regulation implementing this Regulation;

Whereas there can be no exemption if the conditions set out in Article 85 (3) of the Treaty are not satisfied; whereas the Commission should therefore have power to take the appropriate measures where an agreement proves to have effects incompatible with Article 85 (3) of the Treaty; whereas the Commission should be able first to address recommendations to the parties and then to take decisions,

HAS ADOPTED THIS REGULATION:

Article 1

1. Without prejudice to the application of Regulation (EEC) No 4056/86, the Commission may by regulation and in accordance with Article 85 (3) of the Treaty, declare that Article 85 (1) of the Treaty shall not apply to certain categories of agreements between undertakings, decisions of associations of undertakings and concerted practices that have as an object to promote or establish cooperation in the joint operation of maritime transport services between liner shipping companies, for the purpose of rationalizing their operations by means of technical, operational and/or commercial arrangements — with the exception of price fixing (consortia).

2. Such regulation adopted pursuant to paragraph 1 shall define the categories of agreements, decisions and concerted practices to which it applies and shall specify the conditions and obligations under which, pursuant to Article 85 (3) of the Treaty, they shall be considered exempted from the application of Article 85 (1) of the Treaty.

Article 2

1. The regulation adopted pursuant to Article 1 shall apply for a period of five years, calculated as from the date of its entry into force.

[1] OJ No L 378, 31. 12. 1986, p. 4.

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2. It may be repealed or amended where circumstances have changed with respect to any of the facts which were basic to its adoption.

Article 3

The regulation adopted pursuant to Article 1 may include a provision stating that it applies with retroactive effect to agreements, decisions and concerted practices which were in existence at the date of entry into force of such regulation, provided they comply with the conditions established in that regulation.

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Article 3a

A Regulation pursuant to Article 1 may stipulate that the prohibition cointained in Article 85 (1) of the Treaty shall not apply, for such a period as fixed by that Regulation, to agreements, decisions and concerted practices already in existence at the date of accession to which Article 85 (1) applies by virtue of the accession of Austria, Finland and Sweden and which do not satisfy the conditions of Article 85 (3). 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 4

Before adopting its regulation, the Commission shall publish a draft thereof to enable all the persons and organizations concerned to submit their comments within such reasonable time limit as the Commission shall fix, but in no case less than one month.

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Article 5

Before publishing the draft Regulation and before adopting the Regulation, the Commission shall consult the Advisory Committee referred to in Article 14 of 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]).

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Article 7

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

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

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