

Article 5

1. If the Council has not adopted the proposal on coordinated action within a period of two months, Member States may apply national counter-measures unilaterally or as a group, if the situation so requires.

2. However, Member States may, in cases of urgency, take the necessary national counter-measures on a provisional basis even within the two month period as set out in paragraph 1.

3. National counter-measures taken in pursuance of this Article shall be notified immediately to the Commission and to the other Member States.

Article 6

During the period in which the counter-measures are to apply the Member States and the Commission shall consult each other in accordance with the consultation procedure established by Decision 77/587/EEC every three months or earlier if the need arises, in order to discuss the effects of the counter-measures in force.

Article 7

This Regulation shall enter into force on 1 July 1986.

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

Draft Council Regulation applying the principle of freedom to provide services to sea transport

(85/C 212/03)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the draft Regulation submitted by the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas, within the Community, the principle of freedom to provide services does not yet apply to shipping;

Whereas the abolition as between Member States of obstacles to the free movement of services is laid down by Article 3 of the Treaty as one of the activities of the Community;

Whereas in accordance with Article 61 of the Treaty freedom to provide services in the field of maritime transport is to be governed by the provisions of the Title relating to transport;

Whereas the application of this principle within the Community is also a necessary condition for effectively pursuing in relation to third countries a policy aiming at safeguarding to the maximum extent possible the continuing application of commercial principles in shipping;

Whereas Council Regulation (EEC) No 954/79 ⁽¹⁾ preserves, *inter alia*, within conferences competitive

access to that part of cargo liner shipping which is not restricted by commitments to national shipping lines of third countries under the United Nations Convention on a Code of Conduct for Liner Conferences, when ratified by Member States;

Whereas, taking into account the fact that the Code of Conduct has not yet been ratified by all Member States and that certain third countries are not likely to ratify it, the Code is not yet applied in all Community trades nor is it likely to apply in the future in some of these trades;

Whereas the Code of Conduct applies only to liner conferences and the cargo carried by their members, and not to independent lines or to shipping companies operating in the field of bulk or tramp shipping, where the Community aims at maintaining a regime of free and fair competition;

Whereas Community ship owners are increasingly faced with new restrictions, imposed by third countries, on the freedom to provide sea transport services for shippers established in their own country, in other Member States or in the third countries concerned, which may have harmful effects on the Community trades as a whole;

Whereas some of the abovementioned restrictions are incorporated in bilateral agreements between third countries and some Member States, while other restrictions, such as those pertaining to sea transport between ports within the same country, are reflected in similar provisions in the legislation or in administrative practices of some Member States;

Whereas therefore the principle of freedom to provide services should now be applied to maritime transport so as to abolish progressively existing restrictions and avoid the introduction of new restrictions within the Community;

⁽¹⁾ OJ No L 121, 17. 5. 1979, p. 1.

Whereas provision should be made for reasonable transitional periods in accordance with the sensitivity of the type of transport concerned,

HAS ADOPTED THIS REGULATION:

Article 1

1. Restrictions on freedom to provide sea transport services within the Community shall be abolished by 1 July 1986 in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

2. In the case, however, of the sea transport services specified in Article 3 (1) restrictions existing before 1 July 1986 may be retained, but shall be progressively abolished during a period which shall end five years after the adoption of this Regulation and in the case of cabotage 10 years after the adoption thereof.

In the case of cabotage between specific regions, however, the 10-year period shall not apply where its application would cause particular difficulties. In such cases, the Member States concerned shall inform the Commission, which shall before the end of the 10th year after the adoption of this Regulation present specific proposals which take account of these difficulties, for the progressive abolition of the relevant restrictions.

Article 2

For the purposes of this Regulation:

- freedom to provide sea transport services shall include the provision of sea transport services between a Member State and a third country;
- services shall be considered as *sea transport services* where they are normally provided for remuneration and shall in particular include:
 - (a) the carriage of passengers or goods by sea between ports in any one Member State, including overseas territories of that State (cabotage);
 - (b) the carriage of passengers or goods by sea between any port in a Member State and installations or structures on the continental shelf of that Member State (off-shore supply services);
 - (c) the carriage of passengers or goods by sea between any port in a Member State and any port in another Member State (intra-Community shipping services);
 - (d) the carriage of passengers or goods by sea by a shipping company established in a Member State between the ports of another Member State and ports in a third country (cross-trading).

Article 3

1. The sea transport services referred to in Article 1 (2) are:

- cabotage;
- off-shore supply services;
- cross-trading where the third country concerned is a State-trading country listed in the Annex or one with which the Member State concerned has concluded a bilateral agreement which limits the freedom to provide sea transport services;
- the carriage of certain goods wholly or partly reserved to ships flying the national flag.

2. Member States which make use of the possibility provided for in Article 1 (2) shall notify the relevant provisions to the Commission which shall publish appropriate details in the *Official Journal of the European Communities*.

Article 4

Notwithstanding the application of the principle of freedom to provide services to sea transport services, a Member State may, where necessary, in order to maintain sufficient sea transport services in the case of cabotage between the mainland and its islands and between its islands, impose public service obligations as a condition for the right to provide the service.

Article 5

The Council may, acting unanimously on a proposal of the Commission, extend the provisions of this Regulation to nationals of a third country who provide sea transport services and are established in the Community.

Article 6

Without prejudice to the provisions of the Treaty relating to the right of establishment, the person providing a sea transport service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 7

During the transitional period provided for in Article 1 (2), a Member State may not, without the unanimous approval of the Council, make the various provisions governing the subject when this Regulation enters into force less favourable in their direct or indirect effect on shipping companies established in other Member States as compared with shipping companies which are established in that State.

Article 8

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of Article 1 (1).

Article 9

The provisions of Articles 55 to 58 of the Treaty shall apply to the matters covered by this Regulation.

Article 10

Member States shall, before adopting laws, regulations or administrative provisions in implementation of Article 1 (2) and Article 4 consult the Commission and send to the latter any such measures so adopted.

Article 11

This Regulation shall enter into force on 1 July 1986.

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

*BILAG — ANHANG — ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — ALLEGATO — BIJLAGE**Liste over de i artikel 3 omhandlede statshandelslande**Liste der Staatshandelsländer nach Artikel 3**Πίνακας των χωρών κρατικού εμπορίου που αναφέρονται στο άρθρο 3**List of State-trading countries referred to in Article 3**Liste des pays à commerce d'État visés à l'article 3**Lista dei paesi a commercio di stato di cui all'articolo 3**Lijst der in artikel 3 bedoelde landen met staatshandel*

Bulgarien	Bulgarien	Βουλγαρία	Bulgaria	Bulgarie	Bulgaria	Bulgarije
Polen	Polen	Πολωνία	Poland	Pologne	Polonia	Polen
Rumænien	Rumänien	Ρουμανία	Romania	Roumanie	Romania	Roemenië
Tjekkosllovakiet	Tschechoslowakei	Τσεχοσλοβακία	Czechoslovakia	Tchécoslovaquie	Cecoslovacchia	Tsjechoslowakije
USSR	UdSSR	ΕΣΣΔ	USSR	Union soviétique	URSS	USSR
Tyske demokratiske Republik	Deutsche Demokratische Republik	Λαϊκή Δημοκρατία της Γερμανίας	German Democratic Republic	République démocratique allemande	Repubblica democratica tedesca	Duits Democratische Republiek
Folkerepublikken Kina	Volksrepublik China	Λαϊκή Δημοκρατία της Κίνας	People's Republic of China	République populaire de Chine	Repubblica popolare cinese	Volksrepubliek China
Vietnam	Vietnam	Βιετνάμ	Vietnam	Viêt-nam	Vietnam	Viêtnam