

Article 2

1. The criterion of ships flying the flag of a Member State may only be added to the three criteria referred to in Article 1 if the Member State concerned:

- allows shipping lines of other Member States which take advantage of the right of establishment or, subject to reciprocal treatment, shipping lines of other OECD countries which are established in the Member State concerned, to enter ships in the national register, or
- otherwise secures equal treatment, including recognition as a national shipping line, for shipping lines of other Member States, which take advantage of the right of establishment or, subject to reciprocal treatment, shipping lines of other OECD countries

which are established in the Member State concerned.

2. The Commission shall certify whether reciprocal treatment exists for the purposes of this Article.

Article 3

Member States shall, after consulting the Commission, adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 1986. They shall inform the Commission and the other Member States of the measures taken.

Article 4

This Directive is addressed to the Member States.

Amendments to the proposal for a Council Regulation laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport

(85/C 212/06)

The following Articles are substituted for Articles 1 to 8 in the text originally submitted on 16 October 1981.

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 to one or more shippers on the basis of a charter-party or a booking note, for non-regularly scheduled and/or non advertised sailings;
- (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, within the framework of an agreement or arrangement of whatever nature, jointly fix uniform or common freight rates and any other conditions for those services;

- (c) *Transport user* means an undertaking or association of undertakings (shippers, consignees, forwarders, etc.) which has entered into, or which demonstrates an intention to enter into, a contractual or other arrangement with a conference or shipping line for the shipment of goods.

*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 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 and 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 a conference or of several conferences are hereby exempted from the prohibition in Article 85 (1) of the Treaty, subject to the condition imposed by Article 4, when they have one or more of the following objects:

- (a) the fixing of rates and conditions of carriage, and, as the case may be;
- (b) the coordination of shipping timetables, sailing dates or dates of calls;
- (c) the determination of the frequency of sailings or calls;
- (d) the coordination or allocation of sailings or calls among members of the conference;
- (e) the regulation of the carrying capacity offered by each member;
- (f) the allocation of cargo or revenue among members.

Article 4

Condition attaching to exemption

The exemption provided for in Article 3 shall be granted subject to the condition that a conference 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 conference rates and conditions of carriage which differ according to the country of origin or destination or port of loading or discharge, if such an application cannot be justified economically.

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 issues of general 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. Fidelity arrangements

Where a conference offers transport users the opportunity of entering into loyalty agreements entitling them to rebate or reduced rates of freight or as the case may be to commission:

- (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 agreement at any time without penalty and subject to a period of notice of not more than six months.
 - 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.
- (b) In no event shall the spread between immediate rebates and deferred rebates be more than 3 % of the freight rate.
- (c) A conference may not refuse to enter into a new loyalty agreement on the ground that a transport user has previously terminated such an agreement, unless the transport user concerned has not paid penalties due to breach of previous agreement.
- (d) The loyalty agreement shall apply only to shipments of goods covered by the conference tariff in respect of which the transport user is entitled or able to determine the carrier under the contract for the purchase, sale or transfer of the goods.
- (e) A conference shall not prohibit the transport users from using modes of transport other than sea transport nor may it deprive them of the right to choose the port of loading or of discharge and the carrier from among the ports served by it and the operators, who are members of the conference.
- (f) The conference shall, after having consulted 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;
 - (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 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 shall, 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.

- (g) The conference shall nevertheless be entitled to impose penalties on a transport user in respect of any improper use made of the provisions of (d) to (f) above with a view to evading his obligation of loyalty. The penalties shall not exceed two-thirds of the freight charge on the particular shipment, computed at the rate provided under the agreement.

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 at all times 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 of awards 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 concerted practices between transport users on the one hand and conferences on the other concerning rates, conditions and quality of liner services are hereby exempted from the prohibition laid down in Article 85 (1) of the Treaty.

Article 7

Monitoring of exempted agreements

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 Section II:

- address recommendations to the persons concerned;
- in the event of failure by such persons to observe those recommendations and depending upon the gravity of the breach concerned, adopt a decision that either prohibits them from carrying out or requires them to perform specific acts or, while withdrawing the benefit of the block exemption which they enjoyed, grants them an individual exemption according to Article 10 (4) or withdraws the benefit of the block exemption which they enjoyed.

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, under the conditions laid down in Section II and depending upon the gravity of the situation, takes the measures described in (c) below.

- (b) Special circumstances are created by:

- (i) 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 ships);

- (ii) Acts of conferences or a change of market conditions in a given trade which result in the absence of actual and potential competition;

- (iii) Acts of conferences which may prevent technical or economic progress or consumer participation in the benefits.

- (c) (i) If, as a result of special circumstances as set out in (b), there are effects other than those foreseen in (ii) the Commission may take any of the measures described in paragraph 1;

- (ii) If, however, the special circumstances result in the elimination of competition contrary to

Article 85 (3) (b) of the Treaty the Commission shall withdraw the benefit of the block exemption and shall, at the same time, rule on whether and, if so, under what additional conditions and obligations an individual exemption should be granted to the relevant Conference agreement;

If competition is 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.

Article 8

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.

2. Where the number or the nature of such consultations give rise to the need for the Commission to negotiate an arrangement with the competent authorities of the third country concerned as respects the exercise of their powers the Commission shall take the appropriate measures.

3. Where it appears that an amendment to the powers of the competent authorities of the third country or to this Regulation is desirable, the Commission shall ask the Council for authority to negotiate in accordance with directives which it shall establish. Amendments to this Regulation shall be confined to the conditions and obligations under which an exemption is given to liner conferences and shall ensure that a proper balance is maintained between the shipping and shipowning interests of the Community.

Draft Council Regulation on unfair pricing practices in maritime transport

(85/C 212/07)

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 there is reason to believe, *inter alia*, on the basis of the information system referred to in Council Decision 78/774/EEC⁽¹⁾, that the competitive participation of the fleets of Member States in international liner shipping is adversely affected by certain unfair practices of shipping lines of third countries;

Whereas such practices consist of continuous charging of freight rates for the transport of certain selected commodities which are lower than the lowest freight charged for the same commodities by an established and representative non-conference shipowner;

Whereas such pricing practices are made possible by non-commercial advantages enjoyed by the lines concerned, either because they are government owned or controlled, or because they have preferential access to cargo through national legislation or because they operate ships flying the flag of countries which have not ratified and do not implement certain international safety conventions;

Whereas the Community should be able to take redressive action against such pricing practices;

Whereas there are no internationally-agreed rules as to what constitutes an unfair price in the maritime transport field;

Whereas appropriate factors relevant for the determination of injury should be set out;

⁽¹⁾ OJ No 258, 21. 9. 1978, p. 35.