

▼B**REGULATION (EEC) No 1017/68 OF THE COUNCIL****of 19 July 1968****applying rules of competition to transport by rail, road and inland waterway**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 75 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 Council Regulation No 141 ⁽³⁾ exempting transport from the application of Regulation No 17 provides that the said Regulation No 17 ⁽⁴⁾ shall not apply to agreements, decisions and concerted practices in the transport sector the effect of which is to fix transport rates and conditions, to limit or control the supply of transport or to share transport markets, nor to dominant positions, within the meaning of Article 86 of the Treaty, on the transport market;

Whereas, for transport by rail, road and inland waterway, Regulation No 1002/67/CEE ⁽⁵⁾ provides that such exemption shall not extend beyond 30 June 1968;

Whereas the establishing of rules of competition for transport by rail, road and inland waterway is part of the common transport policy and of general economic policy;

Whereas, when rules of competition for these sectors are being settled, account must be taken of the distinctive features of transport;

Whereas, since the rules of competition for transport derogate from the general rules of competition, it must be made possible for undertakings to ascertain what rules apply in any particular case;

Whereas, with the introduction of a system of rules on competition for transport, it is desirable that such rules should apply equally to the joint financing or acquisition of transport equipment for the joint operation of services by certain groupings of undertakings, and also to certain operations in connection with transport by rail, road or inland waterway of providers of services ancillary to transport;

Whereas, in order to ensure that trade between Member States is not affected or competition within the common market distorted, it is necessary to prohibit in principle for the three modes of transport specified above all agreements between undertakings, decisions of associations of undertakings and concerted practices between undertakings and all instances of abuse of a dominant position within the common market which could have such effects;

Whereas certain types of agreement, decision and concerted practice in the transport sector the object and effect of which is merely to apply technical improvements or to achieve technical co-operation may be exempted from the prohibition on restrictive agreements since they contribute to improving productivity; whereas, in the light of experience following application of this Regulation, the Council may, on a proposal from the Commission, amend the list of such types of agreement;

Whereas, in order that an improvement may be fostered in the sometimes too dispersed structure of the industry in the road and inland

⁽¹⁾ OJ No 205, 11.12.1964, p. 3505/64.

⁽²⁾ OJ No 103, 12.6.1965, p. 1792/65.

⁽³⁾ OJ No 124, 28.11.1962, p. 2751/62.

⁽⁴⁾ OJ No 13, 21.2.1962, p. 204/62.

⁽⁵⁾ OJ No 306, 16.12.1967, p. 1.

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waterway sectors, there should also be exempted from the prohibition on restrictive agreements those agreements, decisions and concerted practices providing for the creation and operation of groupings of undertakings in these two transport sectors whose object is the carrying on of transport operations, including the joint financing or acquisition of transport equipment for the joint operation of services; whereas such overall exemption can be granted only on condition that the total carrying capacity of a grouping does not exceed a fixed maximum, and that the individual capacity of undertakings belonging to the grouping does not exceed certain limits so fixed as to ensure that no one undertaking can hold a dominant position within the grouping; whereas the Commission must, however, have power to intervene if, in specific cases, such agreements should have effects incompatible with the conditions under which a restrictive agreement may be recognised as lawful, and should constitute an abuse of the exemption; whereas, nevertheless, the fact that a grouping has a total carrying capacity greater than the fixed maximum, or cannot claim the overall exemption because of the individual capacity of the undertakings belonging to the grouping, does not in itself prevent such a grouping from constituting a lawful agreement, decision or concerted practice if it satisfies the conditions therefor laid down in this Regulation;

Whereas, where an agreement, decision or concerted practice contributes towards improving the quality of transport services, or towards promoting greater continuity and stability in the satisfaction of transport needs on markets where supply and demand may be subject to considerable temporal fluctuation, or towards increasing the productivity of undertakings, or towards furthering technical or economic progress, it must be made possible for the prohibition to be declared not to apply, always provided, however, that the agreement, decision or concerted practice takes fair account of the interests of transport users, and neither imposes on the undertakings concerned any restriction not indispensable to the attainment of the above objectives nor makes it possible for such undertakings to eliminate competition in respect of a substantial part of the transport market concerned, having regard to competition from alternative modes of transport;

Whereas it is desirable until such time as the Council, acting in pursuance of the common transport policy, introduces appropriate measures to ensure a stable transport market, and subject to the condition that the Council shall have found that a state of crisis exists, to authorise, for the market in question, such agreements as are needed in order to reduce disturbance resulting from the structure of the transport market;

Whereas, in respect of transport by rail, road and inland waterway, it is desirable that Member States should neither enact nor maintain in force measures contrary to this Regulation concerning public undertakings or undertakings to which they grant special or exclusive rights; whereas it is also desirable that undertakings entrusted with the operation of services of general economic importance should be subject to the provisions of this Regulation in so far as the application thereof does not obstruct, in law or in fact, the accomplishment of the particular tasks assigned to them, always provided that the development of trade is not thereby affected to such an extent as would be contrary to the interests of the Community; whereas the Commission must have power to see that these principles are applied and to address the appropriate directives or decisions for this purpose to Member States;

Whereas the detailed rules for application of the basic principles of this Regulation must be so drawn that they not only ensure effective supervision while simplifying administration as far as possible but also meet the needs of undertakings for certainty in the law;

Whereas it is for the undertakings themselves, in the first instance, to judge whether the predominant effects of their agreements, decisions or concerted practices are the restriction of competition or the economic benefits acceptable as justification for such restriction and to decide accordingly, on their own responsibility, as to the illegality or legality of such agreements, decisions or concerted practices;

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Whereas, therefore, undertakings should be allowed to conclude or operate agreements without declaring them; whereas this exposes such agreements to the risk of being declared void with retroactive effect should they be examined following a complaint or on the Commission's own initiative, but does not prevent their being retroactively declared lawful in the event of such subsequent examination;

Whereas, however, undertakings may, in certain cases, desire the assistance of the competent authorities to ensure that their agreements, decisions or concerted practices are in conformity with the rules applicable; whereas for this purpose there should be made available to undertakings a procedure whereby they may submit applications to the Commission and a summary of each such application is published in the *Official Journal of the European Communities*, enabling any interested third parties to submit their comments on the agreement in question; whereas, in the absence of any complaint from Member States or interested third parties and unless the Commission notifies applicants within a fixed time limit, that there are serious doubts as to the legality of the agreement in question, that agreement should be deemed exempt from the prohibition for the time already elapsed and for a further period of three years;

Whereas, in view of the exceptional nature of agreements needed in order to reduce disturbances resulting from the structure of the transport market, once the Council has found that a state of crisis exists undertakings wishing to obtain authorisation for such an agreement should be required to notify it to the Commission; whereas authorisation by the Commission should have effect only from the date when it is decided to grant it; whereas the period of validity of such authorisation should not exceed three years from the finding of a state of crisis by the Council; whereas renewal of the decision should depend upon renewal of the finding of a state of crisis by the Council; whereas, in any event, the authorisation should cease to be valid not later than six months from the bringing into operation by the Council of appropriate measures to ensure the stability of the transport market to which the agreement relates;

Whereas, in order to secure uniform application within the common market of the rules of competition for transport, rules must be made under which the Commission, acting in close and constant liaison with the competent authorities of the Member States, may take the measures required for the application of such rules of competition;

Whereas for this purpose the Commission must have the co-operation of the competent authorities of the Member States and be empowered throughout the common market to request such information and to carry out such investigations as are necessary to bring to light any agreement, decision or concerted practice prohibited under this Regulation, or any abuse of a dominant position prohibited under this Regulation.

Whereas, if, on the application of the Regulation to a specific case, a Member State is of the opinion that a question of principle concerning the common transport policy is involved, it should be possible for such questions of principle to be examined by the Council; whereas it should be possible for any general questions raised by the implementation of the competition policy in the transport sector to be referred to the Council; whereas a procedure must be provided for which ensures that any decision to apply the Regulation in a specific case will be taken by the Commission only after the questions of principle have been examined by the Council, and in the light of the policy guidelines that emerge from that examination;

Whereas, in order to carry out its duty of ensuring that the provisions of this Regulation are applied, the Commission must be empowered to address to undertakings or associations of undertakings recommendations and decisions for the purpose of bringing to an end infringements of the provisions of this Regulation prohibiting certain agreements, decisions or practices;

Whereas compliance with the prohibitions laid down in this Regulation and the fulfilment of obligations imposed on undertakings and associa-

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tions of undertakings under this Regulation must be enforceable by means of fines and periodic penalty payments;

Whereas undertakings concerned must be accorded the right to be heard by the Commission, third parties whose interests may be affected by a decision must be given the opportunity of submitting their comments beforehand, and it must be ensured that wide publicity is given to decisions taken;

Whereas it is desirable to confer upon the Court of Justice, pursuant to Article 172, unlimited jurisdiction in respect of decisions under which the Commission imposes fines or periodic penalty payments;

Whereas it is expedient to postpone for six months, as regards agreements, decisions and concerted practices in existence at the date of publication of this Regulation in the *Official Journal of the European Communities*, the entry into force of the prohibition laid down in the Regulation, in order to make it easier for undertakings to adjust their operations so as to conform to its provisions;

Whereas, following discussions with the third countries signatories to the Revised Convention for the Navigation of the Rhine, and within an appropriate period of time from the conclusion of those discussions, this Regulation as a whole should be amended as necessary in the light of the obligations arising out of the Revised Convention for the Navigation of the Rhine;

Whereas the Regulation should be amended as necessary in the light of the experience gained over a three-year period; whereas it will in particular be desirable to consider whether, in the light of the development of the common transport policy over that period, the scope of the Regulation should be extended to agreements, decisions and concerted practices, and to instances of abuse of a dominant position, not affecting trade between Member States;

HAS ADOPTED THIS REGULATION:

Article 1

Basic provision

The provisions of this Regulation shall, in the field of transport by rail, road and inland waterway, apply both to all agreements, decisions and concerted practices which have as their object or effect the fixing of transport rates and conditions, the limitation or control of the supply of transport, the sharing of transport markets, the application of technical improvements or technical co-operation, or the joint financing or acquisition of transport equipment or supplies where such operations are directly related to the provision of transport services and are necessary for the joint operation of services by a grouping within the meaning of Article 4 of road or inland waterway transport undertakings, and to the abuse of a dominant position on the transport market. These provisions shall apply also to operations of providers of services ancillary to transport which have any of the objects or effects listed above.

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Article 3

Exception for technical agreements

1. ►**M1** The prohibition in Article 81(1) of the Treaty ◄ shall not apply to agreements, decisions or concerted practices the object and effect of which is to apply technical improvements or to achieve technical co-operation by means of:

(a) the standardisation of equipment, transport supplies, vehicles or fixed installations;

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- (b) the exchange or pooling, for the purpose of operating transport services, of staff, equipment, vehicles or fixed installations;
 - (c) the organisation and execution of successive, complementary, substitute or combined transport operations, and the fixing and application of inclusive rates and conditions for such operations, including special competitive rates;
 - (d) the use, for journeys by a single mode of transport, of the routes which are most rational from the operational point of view;
 - (e) the co-ordination of transport timetables for connecting routes;
 - (f) the grouping of single consignments;
 - (g) the establishment of uniform rules as to the structure of tariffs and their conditions of application, provided such rules do not lay down transport rates and conditions.
2. The Commission shall, where appropriate, submit proposals to the Council with a view to extending or reducing the list in paragraph 1.

*Article 4***Exemption for groups of small and medium-sized undertakings**

1. ► **M1** Agreements, decisions and concerted practices pursuant to Article 81(1) of the Treaty ◀ shall be exempt from the prohibition in that Article where their purpose is:

- the constitution and operation of groupings of road or inland waterway transport undertakings with a view to carrying on transport activities;
- the joint financing or acquisition of transport equipment or supplies, where these operations are directly related to the provision of transport services and are necessary for the joint operations of the aforesaid groupings;

always provided that the total carrying capacity of any grouping does not exceed:

- 10 000 metric tons in the case of road transport,
- 500 000 metric tons in the case of transport by inland waterway.

The individual capacity of each undertaking belonging to a grouping shall not exceed 1 000 metric tons in the case of road transport or 50 000 metric tons in the case of transport by inland waterway.

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2. If the implementation of any agreement, decision or concerted practice covered by paragraph 1 has, in a given case, effects which are incompatible with the requirements of Article 81(3) of the Treaty, undertakings or associations of undertakings may be required to make such effects cease.

▼B*Article 13***Duration and revocation of decisions applying Article 5****▼M1****▼B**

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;

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(d) where the parties abuse the exemption from the provisions of Article 2 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 30***Entry into force, existing agreements**

1. This Regulation shall enter into force on 1 July 1968.

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*Article 31***Review of the Regulation**

1. Within six months of the conclusion of discussions with the third countries signatories to the Revised Convention for the Navigation of the Rhine; the Council, on a proposal from the Commission, shall make any amendments to this Regulation which may prove necessary in the light of the obligations arising out of the Revised Convention for the Navigation of the Rhine.
2. The Commission shall submit to the Council, before 1 January 1971, a general report on the operation of this Regulation and, before 1 July 1971, a proposal for a Regulation to make the necessary amendments to this Regulation.

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