

COUNCIL REGULATION (EC) No 1216/1999
of 10 June 1999
amending Regulation No 17: first Regulation implementing Articles 81 and 82 of
the Treaty (*)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 83 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⁾,

(1) Whereas Article 4(2) of Regulation No 17 ⁽⁴⁾ dispenses a number of agreements, decisions and concerted practices from the requirement of notification prior to exemption under Article 4(1);

(2) Whereas this dispensation relates in particular to agreements, decisions and concerted practices where the only parties thereto are undertakings from one Member State and the agreements, decisions or practices do not relate either to imports or exports between Member States, or where not more than two undertakings are party thereto and the agreements only restrict the freedom of one party to the contract in determining the prices or conditions of business on which the goods he has obtained from the other party to the contract may be resold; whereas this dispensation does not cover not agreements caught by Articles 81(1) of the Treaty which are entered into by two or more undertakings, each operating, for the purposes of the agreement, at a different level of the production or distribution chain, and which relate to the conditions under which the parties may purchase, sell or resell certain goods or services ('vertical agreements');

(3) Whereas on 22 January 1997 the Commission published a Green Paper on Vertical Restraints in EC Competition Policy which generated a wide-ranging public debate on the application of Article 81(1) and (3) of the Treaty to vertical agreements;

whereas the response from Member States, the European Parliament, the Economic and Social Committee, the Committee of the Regions and interested parties has been generally in favour of reform of Community competition policy in this area;

(4) Whereas any such reform must meet the two requirements of ensuring effective protection of competition and providing adequate legal certainty for firms; whereas, in order to achieve these objectives, the Commission has been empowered by the Council to declare, by regulation and in accordance with Article 81(3) of the Treaty, that Article 81(1) is not applicable to categories of vertical agreements;

(5) Whereas reform of the regulatory framework applicable to vertical agreements must in addition take account of the need to simplify administrative supervision which would result in a reduction of the number of notifications of vertical agreements; whereas there should be a reduction of the incentive to notify vertical agreements which are in compliance with the policy of the Commission and the case-law of the Court of Justice and the Court of first instance; whereas, to achieve that objective, the Commission should be empowered to grant individual exemption for vertical agreements caught by Article 81(1) of the Treaty from the date on which they were entered into;

(6) Whereas the requirement of notification prior to exemption imposes on firms which are party to vertical agreements an unnecessary administrative burden;

(7) Whereas the agreements referred to in Article 4(2) of Regulation No 17 are dispensed from the requirement of notification prior to exemption; whereas the purpose of this dispensation is to reduce the number of notifications, which enables the Commission to concentrate its efforts on supervising those restrictive agreements which are the most damaging to competition; whereas, therefore, this amendment does not entail any relaxation in the supervision which the Commission has a duty to exercise under Article 81(1);

(*) Editorial Note: The title of Regulation No 17 has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Articles 85 and 86 of the Treaty.

⁽¹⁾ OJ C 365, 26.11.1998, p. 30.

⁽²⁾ Opinion delivered on 15 April 1999 (not yet published in the Official Journal).

⁽³⁾ OJ C 116, 28.4.1999.

⁽⁴⁾ OJ 13, 21.2.1962, p. 204/62. Regulation as last amended by the 1994 Act of Accession.

- (8) Whereas the scope of Article 4(2) of Regulation No 17 should therefore be extended, and all vertical agreements should be dispensed from the requirement of notification prior to exemption,

HAS ADOPTED THIS REGULATION:

Article 1

Point 2 of Article 4(2) of Regulation No 17 shall be replaced by the following:

- '2. (a) the agreements or concerted practices are entered into by two or more undertakings, each operating, for the purposes of the agreement, at a different level of the production or distribution chain, and relate to the conditions under which the parties

may purchase, sell or resell certain goods or services;

- (b) not more than two undertakings are party thereto, and the agreements only impose restrictions on the exercise of the rights of the assignee or user of industrial property rights, in particular patents, utility models, designs or trade marks, or of the person entitled under a contract to the assignment, or grant, of the right to use a method of manufacture or knowledge relating to the use and to the application of industrial processes'.

Article 2

This Regulation shall enter into force on the third 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.

Done at Luxembourg, 10 June 1999.

For the Council

The President

K.-H. FUNKE
