

COMMISSION OPINION

of 22 February 1982

addressed to the Government of Denmark regarding implementation of Regulation (EEC) No 954/79 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a code of conduct for liner conferences

(82/154/EEC)

1. In a letter dated 16 November 1981, the Minister of Industry of Denmark submitted the following documents for the opinion of the Commission under Article 6 of the above Regulation :

- (i) a draft act on liner conferences ;
- (ii) a draft order on liner conferences.

2. Having examined these documents, the Commission considers that they give rise to the following observations :

General form of the draft legislation

The order repeats (in fact it re-enacts) the directly applicable provisions already contained in the Council Regulation. In this connection it is relevant to note the remarks of the Court of Justice in Case 39/72, *Commission v. Italy* [1973] 1 ECR, 101, where the Court said in paragraphs 17 and 18 of the judgment :

'In substance the same decree, apart from some procedural provisions of a national character, confines itself to reproducing the provisions of the Community Regulations.

By following this procedure, the Italian Government has brought into doubt both the legal nature of the applicable provisions and the date of their coming into force.

According to the terms of Articles 189 and 191 of the Treaty, Regulations are, as such, directly applicable in all Member States and come into force solely by virtue of their publication in the *Official Journal of the European Communities*, as from the date specified in them, or in the absence thereof, as from the date provided in the Treaty.

Consequently, all methods of implementation are contrary to the Treaty, which would have the result of creating an obstacle to the direct effect of Community Regulations and of jeopardizing their simultaneous and uniform application in the whole of the Community.

Moreover, the implementing measures provided both by Law No 935 and by the decree of 22 March 1972 do not take into account the extension of the time allowed for slaughter by Regulation (EEC) No 580/70, so that Italian farmers have been misled as regards the extension of the time allowed for the slaughter of cows which have calved between 1 April and 30 May 1970.

The default of the Italian Republic has thus been established by reason not only of the delay in putting the system into effect but also of the manner of giving effect to it provided by the decree.'

In principle, therefore, the reproduction of a Community Regulation in national legislation is objectionable. In the present case, however, the intention of the Danish Government is merely to provide a comprehensive code of legislation which will be more intelligible to the reader than would be provisions scattered in several instruments (the relevant provisions of the code of conduct on liner conferences are also reproduced). In these circumstances the Danish draft legislation could be made acceptable, but only on the condition that it is made clearly apparent that the draft contains provisions reproduced from a Council Regulation and that they are identified. The relevant provisions could for example be printed in italics, the significance of which would be indicated by a footnote.

Act on liner conferences

Section 4

It would seem preferable to delete the reference to 'Danish Courts of Law'. It may happen for example that a Court other than Danish may be called upon to apply Danish law with reference to liner conferences.

Section 5

These provisions will be subject to those in the Convention on jurisdiction and enforcement of judgments in civil and commercial matters.

Section 11

The Council Regulation applies generally to Denmark and this provision cannot be regarded as disapplying it.

Order*Article 4 (2)*

A better view would seem to be that a contract term in a conference agreement etc. which is

contrary to the Regulation or Code is void, not merely avoidable.

3. Subject to the abovementioned observations, the Commission hereby delivers a favourable opinion on the proposed legislation.

Done at Brussels, 22 February 1982.

For the Commission

Giorgios CONTOGEOGRIS

Member of the Commission
