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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 4055/86

of 22 December 1986

applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries

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 ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas the abolition, as between Member States, of obstacles to freedom of movement for 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 the continuing application of commercial principles in shipping;

Whereas Council Regulation (EEC) No 954/79 ⁽³⁾ preserves, *inter alia*, within conferences competitive access to that part of cargo liner shipping which is not covered 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 fair and free competition;

Whereas the Community fully endorses Resolution No 2 adopted by the United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences and which states that in the interests of sound development of liner shipping services, non-conference shipping liners should not be prevented from operating as long as they adhere to the principle of fair competition on a commercial basis;

Whereas the Member States affirm their commitment to a freely competitive environment as being an essential feature of the dry and liquid bulk trades and are convinced that the introduction of cargosharing in these trades will have a serious effect on the trading interests of all countries by substantially increasing transportation costs;

Whereas Community shipowners are increasingly faced with new restrictions, imposed by third countries, on the freedom to provide maritime 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 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 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 between Member States and between Member States and

⁽¹⁾ OJ No C 255, 13. 10. 1986, p. 169.

⁽²⁾ OJ No C 172, 2. 7. 1984, p. 178.

⁽³⁾ OJ No L 121, 17. 5. 1979, p. 1.

third countries so as progressively to abolish existing restrictions and prevent the introduction of new restrictions;

Whereas the structure of the Community shipping industry is such as to make it appropriate that the provisions of this Regulation should also apply to nationals of the Member States established outside the Community and to shipping companies established outside the Community and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Freedom to provide maritime transport services between Member States and between Member States and third countries shall apply in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

2. The provisions of this Regulation shall also apply to nationals of the Member States established outside the Community and to shipping companies established outside the Community and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation.

3. The provisions of Articles 55 to 58 and 62 of the Treaty shall apply to the matters covered by this Regulation.

4. For the purpose of this Regulation, the following shall be considered 'maritime transport services between Member States and between Member States and third countries' where they are normally provided for remuneration:

(a) *intra-Community shipping services:*

the carriage of passengers or goods by sea between any port of a Member State and any port or off-shore installation of another Member State;

(b) *third-country traffic:*

the carriage of passengers or goods by sea between the ports of a Member State and ports or off-shore installations of a third country.

Article 2

By way of derogation from Article 1, unilateral national restrictions in existence before 1 July 1986 on the carriage of certain goods wholly or partly reserved for vessels flying the

national flag, shall be phased out at the latest in accordance with the following timetable:

- carriage between Member States by vessels flying the flag of a Member State: 31 December 1989
- carriage between Member States and third countries by vessels flying the flag of a Member State: 31 December 1991
- carriage between Member States and between Member States and third countries in other vessels: 1 January 1993

Article 3

Cargo-sharing arrangements contained in existing bilateral agreements concluded by Member States with third countries shall be phased out or adjusted in accordance with the provisions of Article 4.

Article 4

1. Existing cargo-sharing arrangements not phased out in accordance with Article 3 shall be adjusted in accordance with Community legislation and in particular:

- (a) where trades governed by the United Nations Code of Conduct for Liner Conferences are concerned, they shall comply with this Code and with the obligations of Member States under Regulation (EEC) No 954/79;
- (b) where trades not governed by the United Nations Code of Conduct for Liner Conferences are concerned, agreement shall be adjusted as soon as possible and in any event before 1 January 1993 so as to provide for fair, free and non-discriminatory access by all Community nationals, as defined in Article 1, to the cargo-shares due to the Member States concerned.

2. National action in pursuance of paragraph 1 shall be notified immediately to the Member States and the Commission. The consultation procedure established by Council Decision 77/587/EEC shall apply.

3. Member States shall report to the Commission on progress made on the adjustments referred to in paragraph 1 (b), initially every six months and subsequently every year.

4. When difficulties arise in the process of adjusting agreements to bring them into conformity with paragraph 1 (b), the Member State concerned shall inform the Council and the Commission. In cases where agreements are incompatible with paragraph 1 (b) and where the Member State concerned so asks, the Council shall, acting on a proposal from the Commission, take appropriate action.

Article 5

1. Cargo-sharing arrangements in any future agreements with third countries are prohibited other than in those exceptional circumstances where Community liner shipping

companies would not otherwise have an effective opportunity to ply for trade to and from the third country concerned. In these circumstances such arrangements may be permitted in accordance with the provisions of Article 6.

2. In cases where a third country seeks to impose cargo sharing arrangements on Member States in liquid or dry bulk trades, the Council shall take the appropriate action in accordance with Regulation (EEC) No 4058/86 concerning coordinated action to safeguard free access to cargoes in ocean trades ⁽¹⁾.

Article 6

1. If a Member State's nationals or shipping companies, as defined in Article 1, paragraphs 1 and 2, are experiencing, or are threatened by, a situation where they do not have an effective opportunity to ply for trade to and from a particular third country, the Member State concerned shall inform the other Member States and the Commission as soon as possible.

2. The Council, acting by qualified majority on a proposal of the Commission, shall decide on the necessary action. Such action may include, in the circumstances envisaged in Article 5 (1), the negotiation and conclusion of cargo-sharing arrangements.

3. If the Council has not decided on the necessary action within six months of a Member State providing information under paragraph 1, the Member State concerned may take such action as may for the time being be necessary to preserve an effective opportunity to ply for trade in accordance with Article 5 (1).

4. Any action taken under paragraph 3 shall be in accordance with Community law and provide for fair, free and non-discriminatory access to the relevant cargo shares by nationals or Community shipping companies, as defined in Article 1 (1) and (2).

5. National action in pursuance of paragraph 3 shall be notified immediately to the Member States and the Commission. The consultation procedure established by Council Decision 77/587/EEC shall apply.

Article 7

The Council, acting in accordance with the conditions laid down in the Treaty, may extend the provisions of this Regulation to nationals of a third country who provide maritime transport services and are established in the Community.

Article 8

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

Article 9

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) and (2).

Article 10

Member States shall, before adopting laws, regulations or administrative provisions in implementation of this Regulation consult the Commission and shall communicate to the latter any such measures so adopted.

Article 11

The Council, acting in accordance with the provisions laid down in the Treaty, shall review this Regulation before 1 January 1995.

Article 12

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 22 December 1986.

For the Council

The President

G. SHAW

⁽¹⁾ See page 21 in this Official Journal.