

Council Regulation (EC) No 169/2009 of 26 February 2009
applying rules of competition to transport by rail, road and
inland waterway (Codified version) (Text with EEA relevance)

Article 1

Scope

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 cooperation, 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 3 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 those objects or effects.

Article 2

Exception for technical agreements

1 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 cooperation by means of:

- a the standardisation of equipment, transport supplies, vehicles or fixed installations;
- 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 coordination 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 3

Exemption for groups of small and medium-sized undertakings

1 Agreements, decisions and concerted practices as referred to in Article 81(1) of the Treaty shall be exempt from the prohibition in that Article where their purpose is:

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- (a) the constitution and operation of groupings of road or inland waterway transport undertakings with a view to carrying on transport activities;
- (b) 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:

- (i) 10 000 metric tons in the case of road transport;
- (ii) 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.

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.

Article 4

Repeal

Regulation (EEC) No 1017/68, as amended by the Regulation listed in Annex I, Part A, is repealed, with the exception of Article 13(3), which continues to apply to decisions adopted pursuant to Article 5 of Regulation (EEC) No 1017/68 prior to 1 May 2004 until the date of expiration of those decisions.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 5

Entry into force, existing agreements

1 This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

2 The prohibition in Article 81(1) of the Treaty shall not apply to agreements, decisions and concerted practices which were in existence at the date of accession of Austria, Finland and Sweden or at the date of accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia and which, by reason of accession, fall within the scope of Article 81(1) of the Treaty if, within six months from the date of accession, they are so amended that they comply with the conditions laid down in Article 3 of this Regulation. This paragraph does not apply to agreements, decisions and concerted practices which at the date of accession already fall under Article 53(1) of the EEA Agreement.

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

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Done at Brussels, 26 February 2009.

For the Council

The President

I. LANGER

Changes to legislation:

There are outstanding changes not yet made to Council Regulation (EC) No 169/2009. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- Art. 2(1) words substituted by S.I. 2019/93 Sch. 3 para. 3(2)(a)
- Art. 2(2) omitted by S.I. 2019/93 Sch. 3 para. 3(2)(b)
- Art. 3(1) words substituted by S.I. 2019/93 Sch. 3 para. 3(3)(a)
- Art. 3(2) omitted by S.I. 2019/93 Sch. 3 para. 3(3)(b)
- Art. 5(2) omitted by S.I. 2019/93 Sch. 3 para. 3(4)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Signature omitted by S.I. 2019/93 Sch. 3 para. 3(5)