

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)

COUNCIL REGULATION (EC) No 169/2009

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applying rules of competition to transport by rail, road and inland waterway

(Codified version)

(Text with EEA relevance)

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,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

Whereas:

- (1) Regulation (EEC) No 1017/68 of the Council of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway<sup>(3)</sup> has been substantially amended several times<sup>(4)</sup>. In the interests of clarity and rationality the said Regulation should be codified.
- (2) Rules of competition for transport by rail, road and inland waterway are part of the common transport policy and of general economic policy.
- (3) Rules of competition for those sectors should take account of the distinctive features of transport.
- (4) Since the rules of competition for transport derogate from the general rules of competition, it should be made possible for undertakings to ascertain what rules apply in any particular case.
- (5) The system of rules on competition for transport 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.
- (6) In order to ensure that trade between Member States is not affected or competition within the internal 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

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**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. (See end of Document for details) View outstanding changes

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instances of abuse of a dominant position within the internal market which could have such effects.

- (7) 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 cooperation may be exempted from the prohibition on restrictive agreements since they contribute to improving productivity. 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.
- (8) In order that an improvement may be fostered in the sometimes too dispersed structure of the industry in the road and inland waterway sectors, exemption from the prohibition on restrictive agreements should also be granted in the case of 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. 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. The Commission should, 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. 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 relevant conditions laid down in this Regulation.
- (9) 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.
- (10) Therefore, undertakings should be allowed to conclude or operate agreements without declaring them. 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,

HAS ADOPTED THIS REGULATION:

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- (1) [OJ C 219 E, 28.8.2008, p. 67.](#)
- (2) [OJ C 161, 13.7.2007, p. 100.](#)
- (3) [OJ L 175, 23.7.1968, p. 1.](#)
- (4) See Annex I.

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**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\(5\)](#)