

EXPLANATORY MEMORANDUM TO
THE EC COMPETITION LAW (ARTICLES 84 AND 85) ENFORCEMENT
REVOCATION REGULATIONS 2007

2007 No. 1846

1. This explanatory memorandum has been prepared by Department of Trade & Industry and is laid before Parliament by Command of Her Majesty.

2. Description

This Order revokes the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 (the “2001 Regulations”). The Order also makes certain repeals, revocations and a consequential amendment, all of which follow from the revocation of the 2001 Regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

None

4. Legislative Background

4.1 This revocation follows the repeal of two EC Regulations relating to exemptions from the enforcement of competition law at an EU-wide level, one in respect of aviation between the EU and third countries (Regulation (EEC) No 3975/87) and the other in respect of tramp shipping and cabotage (Regulation (EEC) No 4056/86). Following the repeals, these industries became subject to the direct EU-wide enforcement of competition law under Council Regulation (EC) No 1/2003, and consequently the domestic regime implemented under the EC Competition Law (Articles 84 and 85) Enforcement Regulations 2001 became obsolete.

4.2 The repeal of Regulation (EEC) No 3975/87 was effected via Council Regulation (EC) No 411/2004. The measures contemplated by Regulation (EEC) No 3975/87 were submitted to Parliament for scrutiny on 1 November 2000 in EM 11848/00 *Proposal for a Council Regulation on the implementation of the rules on competition laid down in Articles 81 & 82 of the Treaty & amending Regulations (EEC) no 1017/68 (EEC), no 2988/74 (EEC), no 4056/86 (EEC) & no 3975/87*. This was considered by the House of Commons European Scrutiny Committee and cleared (Report 40, Item 21672, Session 01/02). The Lords Select Committee on the EU cleared it in Sub-Committee E on 13 April 2002 (Progress of Scrutiny, 21/10/01, Session 01/02).

4.3 DTI submitted an EM (13808/04 + ADD 1) on 11 November 2004 relating to the *White Paper on the Review of Regulation 4056/86 applying the EC competition rules to maritime transport - Annex to the White Paper on the review of Regulation 4056/86 applying the EC competition rules to maritime transport - Commission Staff Working Document*. The Lords Select Committee on the EU cleared it by letter to the Minister dated 8 December 2004 (Progress of Scrutiny, 13/12/04, Session 04/05). The Commons European Scrutiny Committee, cleared it on 13 January 2006 and considered it relevant

to the debate on EM 16106/05 + ADD 1 (Report 16, Item 26053, Session 05-06) which was held on 6 March 2006 on "Competition: Maritime Transport".

4.4 The repeal of Regulation (EEC) No 4056/86 was effected via Council Regulation (EC) No 1419/2006. The measures contemplated by Council Regulation (EC) No 1419/2006 were submitted to The Commons European Scrutiny Committee for scrutiny on 18 January 2006 in EM16106/05 +ADD1 "*Proposal for a Council Regulation repealing Regulation (EEC) no 4056/86 laying down detailed rules for the application of Articles 85 & 86 to maritime transport, and amending Regulation (EC) No. 1/2003 as regards the extension of its scope to include cabotage and international tramp services and Commission Staff Working document thereto - Impact Assessment*". The Commons European Scrutiny Committee considered it for debate (Report 16, Item 27139, Session 05-06). The debate was held on 6 March 2006 in European Standing Committee C on "Competition - Maritime Transport", together with EM 13808/04 + ADD 1 relating to the "White Paper on the Review of Regulation 4056/86". The Lords Select Committee on the EU cleared it from Sub-Committee B by letter to the Minister dated 19 July 2006 (Progress of Scrutiny, 26/7/06, Session 05-06).

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

In my view the provisions of the EC Competition Law (Articles 84 and 85) Enforcement Revocation Regulations 2007 are compatible with the Convention rights.

7. Policy background

7.1 The 2001 Regulations relate to the enforcement of EU competition law by the UK competition authorities. They cover only aviation between the EU and third countries (which was the subject of Regulation (EEC) No 3975/87) and tramp shipping and cabotage (which were the subject of Regulation (EEC) No 4056/86).

7.2 Regulation (EEC) No 3975/87 was repealed with effect from 1 May 2004 and Regulation (EEC) No 4056/86 was repealed with effect from 18 October 2006. These repeals brought both sectors within EC competence. This means that any competition cases in these sectors will be enforced under EU competition provisions. The 2001 Regulations are therefore now redundant.

7.3 Consideration was given to amending the 2001 Regulations in 2004, at the time of the repeal of Regulation (EEC) no 3975/87. However, as the Commission then came forward with proposals to bring the tramp shipping sector within competence of the EU, it was decided that it would be more resource effective to wait until the tramp shipping proposals were completed so that the 2001 Regulations could simply be revoked.

7.4 The EC are currently working on draft guidelines for the tramp shipping and cabotage industry. The guidelines aim to help tramp shipping and cabotage services to

assess whether their agreements are compatible with Articles 81. They will set out the principles that the European Commission will follow when defining markets and assessing cooperation agreements in the maritime transport services sectors directly affected by the changes brought about by the repeal of Regulation (EEC) No 4056/86. The Commission have said that they will consult industry on the draft guidelines in September 2007 before publishing next year

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

8.2 There is no impact on the public sector.

9. Contact

9.1 Sayida Husain at the Department of Trade & Industry Tel: 020 7215 6773 or e-mail: Sayida.husain@dti.gsi.gov.uk can answer any queries regarding the instrument.