Amended proposal for a Council Regulation on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between shipping companies

(91/C 334/12)

COM(91) 520 final

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 5 December 1991)

EXPLANATORY MEMORANDUM

1. On 25 June 1990 the Commission submitted a proposal for a Council Regulation enabling it to grant a block exemption to consortia agreements under the competition rules [1].

2. At its plenary session of 22 October 1991 the European Parliament approved the Commission's proposal subject to certain amendments.

3. The Commission has decided to accept some amendments proposed and it amends its proposal accordingly.

[1] OJ No C 167, 10. 7. 1990, p. 9 — COM(90) 260 final.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Title	Title
Proposal for a Council Regulation on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between shipping companies	Proposal for a Council Regulation on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)
Fifth recital	Fifth recital
Whereas users of the shipping services offered by consortia can obtain a share of the benefits resulting from the improvements in productivity and service, by means of, *inter alia*, regularity, cost reductions derived from higher levels of capacity utilization, better service quality stemming from improved vessels and equipment, and efficient door-to-door transport;	Whereas users of the shipping services offered by consortia can obtain a share of the benefits resulting from the improvements in productivity and service, by means of, *inter alia*, regularity, cost reductions derived from higher levels of capacity utilization, better service quality stemming from improved vessels and equipment;

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Sixth recital	
Whereas most consortia deal with multi-modal transport operations which fall partly within the scope of Council Regulation (EEC) No 4056/86 (1) and partly under Council Regulation (EEC) No 1017/68 (2) and, in so far as containers are concerned, partly under Council Regulation No 17/62 (3).	Delete.
(1) OJ No L 378, 31. 12. 1986, p. 4. (2) OJ No L 175, 23. 7. 1968, p. 1. (3) OJ No 13, 21. 2. 1962, p. 204/62.	
Eleventh recital	Eleventh recital
Whereas pursuant to Article 11 (4) of Council Regulation (EEC) No 4056/86, Article 11 (4) of Council Regulation (EEC) No 1017/86, and Article 6 of Council Regulation No 17, the Commission may provide that a decision taken in accordance with Article 85 (3) of the Treaty shall apply with retroactive effect; whereas it is desirable that the Commission be empowered to adopt, by regulation, provisions to the like effect;	Whereas pursuant to Article 11 (4) of Council Regulation (EEC) No 4056/86 (1) the Commission may provide that a decision taken in accordance with Article 85 (3) of the Treaty shall apply with retroactive effect; whereas it is desirable that the Commission be empowered to adopt, by regulation, provisions to the like effect;
	(1) OJ No L 378, 31. 12. 1986, p. 4.
Article 1	*Article 1*
Paragraph 1	Paragraph 1
1. Without prejudice to the applications of Regulation (EEC) No 4056/86, Regulation (EEC) No 1017/68 and Regulation No 17, the Commission may, by regulation and in accordance with Article 85 (3) of the Treaty, declare that Article 85 (1) shall not apply to categories of agreements between undertakings, decisions of associations of undertakings and concerted practices that have as an object to promote or establish cooperation in the joint operation of maritime transport services or of combined maritime and land transport services.	1. Without prejudice to the application of Regulation (EEC) No 4056/86, the Commission may by regulation and in accordance with Article 85 (3) of the Treaty, declare that Article 85 (1) shall not apply to categories of agreements between undertakings, decisions of associations of undertakings and concerted practices that have as an object to promote or establish cooperation in the joint operation of maritime transport services between liner shipping companies aimed at rationalizing their operations by means of technical, operational and/or commercial arrangements — with the exception of price fixing — (known in shipping circles as consortia).
Article 2	*Article 2*
Paragraph 1	Paragraph 1
1. The Regulation pursuant to Article 1 shall be made for a specified period.	1. The Regulation pursuant to Article 1 shall be made for a period of five years, from the date when it enters into force.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Article 5	*Article 5*
1. Before publishing the draft regulation and before adopting the regulation the Commission shall consult:	1. Before publishing the draft regulation and before adopting the regulation the Commission shall consult the Advisory Committee on Agreements and Dominant Position in Maritime Transport established by Article 15 (3) of Regulation (EEC) No 4056/86.
(a) the Advisory Committee on Agreements and Dominant Position in Maritime Transport established by Article 15 (3) of Regulation (EEC) No 4056/86;	
(b) the Advisory Committee on Restrictive Practices and Monopolies in the Transport Industry established by Article 16 (3) of Regulation (EEC) No 1017/68;	
(c) the Advisory Committee on Restrictive Practices and Monopolies established by Article 10 (3) of Regulation 17.	
2. Paragraphs 5 and 6 of the said provisions, relating to consultation with the Advisory Committees shall apply, it being understood that joint meetings with the Commission shall take place not earlier than one month after dispatch of the notice convening them.	2. Paragraphs 5 and 6 of the said provision, relating to consultation with the Advisory Committee shall apply, it being understood that joint meetings with the Commission shall take place not earlier than one month after dispatch of the notice convening them.
Article 6	*Article 6*
Paragraph 1	Paragraph 1
Second indent	Second indent
— in the event of failure by such persons to observe those recommendations, and depending on the gravity of the breach concerned, adopt a decision that either prohibits them from carrying out, or requires them to perform specific acts or, while withdrawing the benefit of the block exemption which they enjoyed, grants them an individual exemption in accordance with Article 11 (4) of Regulation (EEC) No 4056/86, Article 11 (4) of Regulation (EEC) No 1017/68 and Article 6 of Regulation No 17, as appropriate, or withdraws the benefit of the block exemption which they enjoyed.	— in the event of failure by such persons to observe those recommendations, and depending on the gravity of the breach concerned, adopt a decision that either prohibits them from carrying out, or requires them to perform specific acts or, while withdrawing the benefit of the block exemption which they enjoyed, grants them an individual exemption in accordance with Article 11 (4) of Regulation (EEC) No 4056/86, ot withdraws the benefit of the block exemption which they enjoyed.

ORIGINAL PROPOSAL	AMENDED PROPOSAL
Paragraph 2	Paragraph 2
2. Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that in any particular case an agreement, decision or concerted practice to which the block exemption granted by the regulation adopted pursuant to Article 1 applies, nevertheless has effects which are incompatible with Article 85 (3) or are prohibited by Article 86, it may withdraw the benefit of the block exemption from those agreements, decisions or concerted practices and take all appropriate measures for the purpose of bringing these infringements to an end, pursuant to Article 13 of Regulation (EEC) No 4056/86, Article 13 of Regulation (EEC) No 1017/68 and Article 8 of Regulation No 17, as appropriate.	2. Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that in any particular case an agreement, decision or concerted practice to which the block exemption granted by the regulation adopted pursuant to Article 1 applies, nevertheless has effects which are incompatible with Article 85 (3) or are prohibited by Article 86, it may withdraw the benefit of the block exemption from those agreements, decisions or concerted practices and take all appropriate measures for the purpose of bringing these infringements to an end, pursuant to Article 13 of Regulation (EEC) No 4056/86.