



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.11.2007
COM(2006) 753 final

2007/0265 (CNS)

Proposal for a

COUNCIL REGULATION

**on the application of Article 81(3) of the Treaty to certain categories of agreements,
decisions and concerted practices between liner shipping companies (consortia)**

(Codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Regulation (EEC) No 479/92 of 25 February 1992 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)³. The new Regulation will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bringing them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex I to this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Regulation (EEC) No 479/92 and the instruments amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex II to the codified Regulation.

↓ 479/92 (adapted)

Proposal for a

COUNCIL REGULATION

on the application of Article 81 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)

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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Whereas:

↓

- (1) Council Regulation (EEC) No 479/92 of 25 February 1992 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia)³ has been substantially amended several times⁴. In the interests of clarity and rationality the said Regulation should be codified.
-

↓ 479/92 Recital 1 (adapted)

- (2) Article 81 (1) of the Treaty may in accordance with Article 81 (3) thereof be declared inapplicable to categories of agreements, decisions and concerted practices which fulfil the conditions contained in Article 81 (3).

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ L 55, 29.2.1992, p. 3. Regulation as last amended by Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p. 1).

⁴ See Annex I.

↓ 479/92 Recital 2 (adapted)

- (3) Pursuant to Article 83 of the Treaty, the provisions for the application of Article 81 (3) of the Treaty should be adopted by way of Regulation or Directive. According to Article 83 (2)(b), these provisions must lay down detailed rules for the application of Article 81 (3), taking into account the need to ensure effective supervision, on the one hand, and to simplify administration to the greatest possible extent on the other. According to Article 83 (2)(d), these provisions are required to define the respective functions of the Commission and of the Court of Justice.

↓ 479/92 Recital 3

- (4) Liner shipping is a capital intensive industry. Containerisation has increased pressures for cooperation and rationalisation. The Community shipping industry needs to attain the necessary economies of scale in order to compete successfully on the world liner shipping market.

↓ 479/92

- (5) 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 utilisation, and better service quality stemming from improved vessels and equipment.

↓ 479/92 Recitals 8 and 9
(adapted)

- (6) The Commission should be enabled to declare by way of Regulation that the provisions of Article 81 (1) of the Treaty do not apply to certain categories of consortia agreements, decisions and concerted practices, in order to make it easier for undertakings to cooperate in ways which are economically desirable and without adverse effect from the point of view of competition policy. The Commission, in close and constant liaison with the competent authorities of the Member States, should be able to define precisely the scope of these exemptions and the conditions attached to them.

↓ 479/92 Recital 10

- (7) Consortia in liner shipping are a specialised and complex type of joint venture. There is a great variety of different consortia agreements operating in different circumstances. The scope, parties, activities or terms of consortia are frequently altered. The Commission should therefore be given the responsibility of defining from time to time the consortia to which a group exemption should apply.

↓ 479/92 Recital 11 (adapted)

- (8) In order to ensure that all the conditions of Article ~~81~~ (3) of the Treaty are met, conditions should be attached to group exemptions to ensure in particular that a fair share of the benefits will be passed on to shippers and that competition is not eliminated,

↓ 479/92

HAS ADOPTED THIS REGULATION:

Article 1

↓ 479/92 (adapted)

1. The Commission may by regulation and in accordance with Article ~~81~~ (3) of the Treaty, declare that Article ~~81~~ (1) of the Treaty shall not apply to certain 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, for the purpose of rationalising their operations by means of technical, operational or commercial arrangements — with the exception of price fixing (consortia).

2. Such regulation adopted pursuant to paragraph 1 shall define the categories of agreements, decisions and concerted practices to which it applies and shall specify the conditions and obligations under which, pursuant to Article ~~81~~ (3) of the Treaty, they shall be considered exempted from the application of Article ~~81~~ (1) of the Treaty.

↓ 479/92

Article 2

1. The regulation adopted pursuant to Article 1 shall apply for a period of five years, calculated as from the date of its entry into force.

2. It may be repealed or amended where circumstances have changed with respect to any of the facts which were basic to its adoption.

Article 3

The regulation adopted pursuant to Article 1 may include a provision stating that it applies with retroactive effect to agreements, decisions and concerted practices which were in existence at the date of entry into force of such regulation, provided they comply with the conditions established in that regulation.

↓ 1994 Act of Accession Art. 29 and Annex I, p. 56 (adapted)

Article 4

⊗ The ⊗ Regulation ⊗ adopted ⊗ pursuant to Article 1 may stipulate that the prohibition contained in Article ⊗ 81 ⊗ (1) of the Treaty shall not apply, for such a period as fixed by that Regulation, to agreements, decisions and concerted practices already in existence at ⊗ 1 January 1995, ⊗ to which Article ⊗ 81 ⊗ (1) applies by virtue of the accession of Austria, Finland and Sweden and which do not satisfy the conditions of Article ⊗ 81 ⊗ (3). However, this Article shall not apply to agreements, decisions and concerted practices which ⊗ as at 1 January 1995 ⊗ already ⊗ fell ⊗ under Article 53(1) of the EEA Agreement.

↓ 479/92 Art. 4 (adapted)

Article 5

Before adopting ⊗ the ⊗ Regulation ⊗ pursuant to Article 1 ⊗, the Commission shall publish a draft thereof to enable all the persons and organisations concerned to submit their comments within such reasonable time limit as the Commission shall fix, but in no case less than one month.

↓ 1/2003 Art. 42 pt. 1 (adapted)

Article 6

Before publishing the draft Regulation and before adopting the Regulation ⊗ pursuant to Article 1 ⊗, the Commission shall consult the Advisory Committee on Restrictive Practices and Dominant Positions referred to in Article 14 of Council Regulation (EC) No 1/2003 .

↓

Article 7

Regulation (EEC) No 479/92 is repealed.

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.

↓ 479/92 Art. 7 (adapted)

Article 8

This Regulation shall enter into force on ⊗ the twentieth day following that of its publication in the *Official Journal of the European Union*. ⊗.

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

Done at Brussels,

*For the Council
The President*



ANNEX I

Repealed Regulation with list of its successive amendments

Council Regulation (EEC) No 479/92
(OJ L 55, 29.2.1992, p.3)

Council Regulation (EC) No 1/2003
(OJ L 1, 4.1.2003, p. 1)

Article 42 only

1994 Act of Accession, Article 29 and Annex I,
point IIIA.4
(OJ C 241, 29.8.1994, p. 56)

ANNEX II

CORRELATION TABLE

Regulation (EEC) No 479/92	This Regulation
Articles 1, 2 and 3	Articles 1, 2 and 3
Article 3a	Article 4
Article 4	Article 5
Article 5	Article 6
-	Article 7
Article 7	Article 8
-	Annex I
-	Annex II