

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 15 December 1977

PROPOSAL FOR A COUNCIL REGULATION
CONCERNING ACCESSION TO THE UNITED
NATIONS CONVENTION ON A CODE OF
CONDUCT FOR LINER CONFERENCES.

(Submitted by the Commission to the Council)

EXPLANATORY MEMORANDUMThe new proposal

1. On 17 June 1975 the Commission forwarded to the Council a proposal for a Council Decision concerning common action by Member States on the United Nations Convention on a Code of Conduct for Liner Conferences (doc. COM(75) 302 final). The proposal suggested the lines on which negotiations might be conducted with third countries about reservations and amendments to the Convention, with a view to subsequent accession to the amended Convention by the Community and the Member States.

2. At its session of 4 November 1976 the Council of Ministers, while unable to reach agreement on the Commission's proposal, recognized the desirability of reaching as soon as possible a common approach to the Convention. The Commission's present proposal is made in this context. It replaces the earlier proposal and takes account of the detailed discussions which have taken place in the Council of that proposal and of alternative solutions to the problems of liner shipping. This new proposal is for ratification of or accession to the present Convention subject to a reservation and other special arrangements for the Community and certain arrangements for the OECD area.

Policy considerations

3. In formulating this new proposal the Commission has been conscious of the fact that in order to take proper account of the Community's shipping and broader commercial, economic and political interests a wide range of divergent tendencies at the level of the Member States and at Community level have to be reconciled, and consideration has to be given to the possible repercussions of a common Community policy on liner services on the Community's trading partners, in particular other industrialised countries and the developing countries.

4. The Community's liner shipping plays a vital rôle in the Community's own external trade relations and also in the cross-trades between third countries. The Community should pursue the objective of securing and maintaining for its liner shipping industry the fullest fair opportunity to compete for the carriage of world trade.

5. As to trade among market economy countries, the Commission takes the view that the Community's interests will best be served if relationships continue to develop on the basis of the principle of free circulation of shipping services in

international trade on a commercial basis. At the same time the Commission acknowledges the Community's special commitment to contribute towards the prosperity of developing countries and to take full account of their needs and problems in the field of shipping. The Community also needs to defend the opportunities for its shipping and trade against government discrimination, quasi-monopolistic competition and other discriminatory practices from state trading and some other third countries.

6. The Commission considers that in view of the world wide activities of the Community's liner shipping industry and the interest of all trading nations in the efficiency of liner services, it is in the general interest for these services to be developed on principles accepted world wide or on as wide a basis as possible. The United Nations Convention is designed to constitute a world wide framework, but in the Commission's view it does not fully meet the Community's economic and shipping interests. The Commission also takes the view that certain elements in the Convention are incompatible with the Treaty.

7. In discriminating between national shipping lines and third country lines, the Convention is contrary to the provisions of the Treaty on the right of establishment.

8. The question also arises whether the ratification of or accession to the Convention is compatible with the competition rules of the EEC Treaty. The Commission recognises the stabilizing rôle of liner conferences in ensuring reliable services in a volatile transport market. It is not therefore in principle opposed to liner conferences, subject to a detailed examination of their operation. In this context the Commission will send the Council a draft Regulation concerning the application of the competition rules of the Treaty to sea transport.

9. The Convention, as it stands now, does not provide for the accession of the Community. However, it deals with subjects where Community law applies and the Community as such must be enabled to accede to the Convention as soon as possible. The Commission realizes that a renegotiation of the Convention before its entry into force is very improbable for various reasons. It therefore proposes that the Commission should be authorised to negotiate an amendment

of the Convention to permit ratification by the Community, but without specifying what would be the appropriate moment for this. It is also proposed that on a proposal from the Commission the Council should decide on other amendments to be sought, e.g. at the first review conference after entry into force of the Convention, relating inter alia to general freight rate increases, the settlement of disputes procedure, bilateral traffic based on intergovernmental agreements and competition by non-conference lines.

10. Ratification of the Liner Conference Code Convention by the Member States would bring the Convention into force. The Commission believes that ratification, subject to the special arrangements proposed, would be in the Community's shipping and trading interest : it would bring into operation a potentially world wide instrument and thus help to inhibit the proliferation of bilateral agreements often contrary to the Community's interests; at the same time the special arrangements proposed would preserve a commercial approach to liner conference shipping in the OECD area. In relation to the developing world the Convention would permit the growth of developing countries' fleets while inhibiting excessive preference in favour of national fleets. Finally, it could limit the cargo shares falling to state trading countries' liner companies where these are members of conferences.

Comments on individual articles

Article 1

This article provides for the Member States to ratify or accede to the Code of Conduct subject to the result of negotiations with other OECD countries about extending to them the principle of cargo allocation on a commercial basis, and to the adoption of a Regulation concerning the application of the competition rules to liner conferences. The ratification or adhesion is to be accompanied by a reservation relating to the definition of "national shipping line".

Article 2

This article provides for "national shipping line" to be defined in broader terms than in the Code itself, so as to cover in relation to any given Member State served by a particular conference not only shipping lines native to that state but also other Member States' lines established there under the Treaty.

Article 3

This article provides, where a liner conference operates a pool, for the cargo falling to conference lines established under the

EEC Treaty in the EEC to be distributed among them - unless they agree otherwise - on a commercial basis reflecting certain criteria. Disagreements among the lines concerned are to be settled by arbitration.

Article 4

Under this article a Member State national line is required to consult other Member State lines in the same conference before expressing a position on a matter defined in the conference agreement and affecting the trade of the national line's country.

Article 5

This article provides for the Commission to negotiate with other OECD countries the extension of the commercial cargo allocation arrangements provided for in Article 3 to those countries' lines in conferences serving those countries.

Article 6

Ratification of or accession to the Code by the Member States is to take place within one year of the agreement of all other OECD Member States to the extension referred to in Article 5 and the adoption of a Council Regulation on the application of the competition rules of the Treaty to agreements entered into under the Code. But if one or more OECD countries does not agree to the extension, the Council is to decide specifically, on a Commission proposal, whether ratification or adhesion should nevertheless take place.

Article 7

This article provides for the Commission to negotiate the accession of the Community as such to the Code Convention. This negotiation should take place as early as practicable and in any case not later than the first review conference provided for in Art.52(1) of the Convention.

Article 8

This article concerns future amendments to the Code in order to effect improvements likely to be in the Community's interests.

Articles 9 and 10.

No comment.

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PROPOSAL FOR A REGULATION

The Council of the European Communities

Having regard to the Treaty establishing the European Economic Community, and in particular article 84.2 thereof;

Having regard to the proposal of the Commission;

Having regard to the opinion of the European Parliament;

Whereas a Convention on a Code of Conduct for Liner Conferences (Code of Conduct) is open for ratification or accession following its preparation by a conference convened under the auspices of the United Nations Conference on Trade and Development;

Whereas the Code of Conduct contains in particular provisions relating to the membership of liner conferences, cargo sharing between shipping lines, relations between shipping lines and shippers, the procedure for modifying freight rates and the settlement of disputes;

Whereas the application of these provisions, both in the Community and by third countries, would affect the framework in which liner shipping is exercised and in particular the interests of shipping lines and shippers established in the Community;

Whereas the Community should pursue the objective of securing and maintaining for its liner shipping industry a substantial level of activity in world shipping, particularly having regard to the Community's trading interests;

Whereas the Community is determined to continue to contribute towards the prosperity of developing countries and to take full account of their interests and problems in the field of shipping and whereas the Code of Conduct is a valuable means whereby these interests can be furthered and these problems resolved;

Whereas in the case of those states whose shipping policies are based on the principle of a market economy mutual arrangements should be entered into to maintain the free circulation of shipping services in international trade in

fair competition on a commercial basis;

Whereas certain articles of the Code of Conduct affect the functioning of the provisions of the Treaty establishing the European Economic Treaty, whereas the Code of Conduct makes no provision for the participation of the Community but whereas nevertheless it is desirable for the Member States to participate in the Code of Conduct in anticipation of the later conclusion of it by the Community;

Whereas it is necessary to make special arrangements for membership of liner conferences, for the redistribution of the shares of cargo falling to the shipping lines which are members of a liner conference and established in the Community and for consultation between those lines; and whereas the adoption of a Regulation concerning the application of the competition rules of the EEC Treaty to liner conference agreements is a prerequisite to participation of Member States in the Code of Conduct;

Whereas the development of common policy in the shipping sector and the other aspects of the Treaty affected by the Code of Conduct necessitate that the Community becomes a contracting party to the Code of Conduct when this can be negotiated;

Whereas the Member States should adopt a common position on amendments to the Code of Conduct;

HAS ADOPTED THIS REGULATION

Article 1

1. Member States shall, subject to and in accordance with article 6 of this Regulation, ratify or accede to the Code of Conduct.
2. Member States shall inform the Secretary General of the United Nations by writing that their ratification or accession has taken place in accordance with this Regulation.
3. The instrument of ratification or adhesion shall be accompanied by the reservation set out in Annex I to this Regulation.

Article 2

For the purpose of the Code of Conduct a "national shipping line" shall be regarded as including any shipping line established under the Treaty establishing the European Economic Community in the Member State whose trade is served by

the liner conference in question.

Article 3

1. Where a liner conference operates a pool in accordance with Article 2 of the Code of Conduct the shipping lines which are members of the conference and established under the Treaty establishing the European Economic Community in that Community shall, unless otherwise agreed by them, distribute amongst themselves their shares of the cargo in accordance with the present article.
2. The cargo shall be distributed by agreement between the shipping lines concerned. The share allocated to each shipping line shall be determined by the application of commercial principles and shall in particular take account of :
 - the volume of cargo carried by the conference and generated by the Member States whose trade is served by the conference;
 - past performance of the shipping lines in the trade covered by the pool;
 - the volume of cargo carried by the conference and shipped through the ports of Member States.
3. If the shipping lines cannot reach agreement on the distribution of cargo between themselves in accordance with paragraph 2 the matter shall be settled by arbitration in accordance with Annex II.
4. The provisions of this article shall be without prejudice to the application of the rules of competition to sea transport.

Article 4

A shipping line which is a member of a liner conference serving the trade of a Member State and which is established in that Member State shall, before expressing a position on a matter concerning the trade of the Member State and defined in the conference agreement, consult all other members of the conference who are established in the European Economic Community.

Article 5

The Commission is authorised to negotiate with the Member States of the Organisation for Economic Cooperation and Development, other than the Member States of the European Economic Community, an agreement whereby the arrangements specified in article 3 shall be extended, in relation to the liner conferences serving the trade of those States, to the shipping lines which are established in those States and members of those conferences.

Article 6

The ratification or accession of Member States to the Code of Conduct shall take place within one year after the conclusion of the agreement envisaged by article 5 and the adoption of a Regulation by the Council concerning the application of the competition rules to agreements entered into under the Code of Conduct. If, however, one or more Member States of the Organisation for Economic Cooperation and Development are not willing to participate in such an agreement, the Council shall decide, acting by qualified majority on the proposal of the Commission, whether the Member States shall ratify or accede to the Code of Conduct and the period within which this should take place.

Article 7

The Commission is authorised to open negotiations with the non-Member States party or entitled to become a party to the Code of Conduct with a view to the accession of the Community to the Code.

The Commission shall conduct these negotiations in accordance with the directives in Annex III.

Article 8

The Council shall decide, acting by qualified majority on the proposal of the Commission, the scope and implementation of the common action of Member States with respect to amendment of the Code of Conduct and shall in particular in the case of a review conference decide the common action of Member States in relation to amendments concerning:

- a) the procedure for general freight rate increases;
- b) the procedure for settlement of disputes;
- c) the competition of lines not members of a liner conference;
- d) bilateral traffic based on inter-governmental agreements.

Article 9

Member States shall, in good time, and after consulting the Commission, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Regulation.

Article 10

This Regulation shall enter into force on the 1978, except in the case of articles 2, 3 and 4, which shall enter into force on a date to be decided by the Commission having regard to entry into force of the Code of Conduct in relation to the conferences concerned.

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

Done at Brussels,

For the Council

ANNEX I

Reservation

For the purpose of the Code of Conduct a "national shipping line" shall be regarded as including any shipping line established under the EEC Treaty in the Member State whose trade is served by the liner conference in question.

ANNEX II

Arbitration

Unless the parties to the dispute agree on the appointment of a single arbitrator, the matter in dispute shall be referred to the decision of a panel of arbitrators, one to be appointed by each party. If one of the parties fails to appoint an arbitrator within 21 days after notice of the first appointment, the arbitrators nominated by the other parties shall act as the arbitrators. A panel of arbitrators shall decide the matter in dispute by majority vote, but may decide instead by unanimous vote to appoint an umpire.

Where an even number of arbitrators is appointed and they are unable to agree on the matter in dispute an umpire shall be appointed. Where in such a case the arbitrators are within one month unable to agree on the choice of an umpire he shall be appointed at the request of a party to the dispute by the President of the International Chamber of Commerce.

The Decision of the arbitrator, arbitrators or umpire shall be final and binding upon all parties concerned.

The arbitrator or arbitrators shall lay down their own rules of procedure including a reasonable scale of fees.

ANNEX III

Directives for negotiation

The Code of Conduct shall be amended in such a way as to permit the European Economic Community to accede to it.

