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⁽¹⁾ Submitted by the Commission as an opinion under the terms of Article 155.

**Draft Council regulation suspending the application
of Articles 85 to 94 of the Treaty establishing
the European Economic Community to sea and air transport**

(Proposal submitted by the Commission to the Council as an opinion
under the terms of Article 155 on 17 July 1962)

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community and in particular Article 84 (2) thereof;

Having regard to the opinion of the Commission;

Having regard to the opinion of the Economic and Social Committee;

Having regard to the opinion of the European Parliament;

Whereas appropriate provisions may have to be made in view of the special aspects of sea and air transport; whereas explicit reference to this possibility is made in Article 84 (2) of the Treaty; and whereas, before any adaptations that may be needed are made, or before Articles 85 to 94 are automatically applied to these types of transport, the current situation in this field should be investigated in conjunction with the Member States;

Whereas such an investigation should establish whether appropriate provisions are needed that will enable the aims of the Treaty to be pursued and at the same time be adapted to the special circumstances of sea and air transport; and whereas the measures to be adopted should take account of the fact that these types of transport largely operate over a greater area than the Community;

Whereas, however, the application of Articles 85 to 94 should be suspended during the period required for this study so as to avoid causing inconvenience to the undertakings concerned by a succession of different legal systems if such special measures should prove necessary;

Whereas, however, the special aspects of sea and air transport warrant the suspension of Article 85 only with respect to agreements, decisions and concerted practices directly concerned with the supply of a transport service;

Whereas this period of suspension will make it possible either to prepare the necessary special provisions or to find that sea and air transport undertakings can be subjected wholly or partly, without inconvenience, to the general legal system flowing from Articles 85 to 94 and from measures adopted in implementation thereof; and whereas in the latter case the application of Article 85 to all agreements, decisions and concerted practices would require that the transitional system instituted by Regulation No. 17 be adapted to take account of the time-limits laid down in the present Regulation,

Has adopted the present regulation :

Article 1

The application of Articles 85 to 94 of the Treaty to sea and air transport shall be suspended until 31 December 1964.

Article 2

However, the suspension of the application of Article 85 of the Treaty and of any measures taken or to be taken in pursuance thereof shall affect only agreements, decisions and concerted practices between sea and air transport undertakings, the purpose or effect of which is to fix transport terms and conditions, to restrict or control the supply of transport and to share out transport markets.

Article 3

The Commission shall investigate in conjunction with the Member States the current situation in sea and air transport.

Article 4

1. On the basis of the investigation provided for in the foregoing Article, the Commission shall submit to the Council, before 1 January 1964, proposals for the

appropriate provisions to which reference is made in Article 84 (2) of the Treaty with regard to competition in sea and air transport.

2. If no appropriate provisions have been made by 1 January 1965, Articles 85 to 94 and any measures taken in pursuance thereof, shall apply *in toto* to sea and air transport.

In this case, Articles 5, 6 (2), 7 (1) and 15 (5 *b*) of Regulation No. 17 shall be applicable to the agreements, decisions and concerted practices referred to in Article 2 of the present Regulation and in force on 1 January 1965, provided that the Commission is notified thereof by 1 July 1965. However, Article 7 (1) of Regulation No. 17 shall be applicable to the agreements, decisions and concerted

practices referred to in Article 2 of the present Regulation and in force on 1 January 1965 which come into the categories referred to in Article 4 (2) of Regulation No. 17, provided that the Commission is notified thereof by 1 January 1966.

Article 5

Provisions to be made in accordance with Article 4 (1) of the present regulation shall be referred to the Economic and Social Committee and to the European Parliament for their opinions.

Article 6

The present regulation shall be binding in all its parts and directly enforceable in all Member States.

Explanatory memorandum

1. In its memorandum of 12 November 1960 on the applicability to transport of the rules of competition set out in the Treaty establishing the EEC and on the interpretation and application of the Treaty in relation to sea and air transport, and in its memorandum to the Council dated 10 April 1961 on the general lines of the common transport policy, the Commission put forward the economic and legal reasons for which it considers the general rules of the Treaty, with the exception of Articles 74 to 83, to be applicable to sea and air transport.

2. With respect to the rules of competition, however, the Commission suggested in its memorandum of 12 November 1960 that an investigation should be made to determine whether, pending a general settlement adapting the rules of the Treaty to sea and air transport, the application of Articles 85 to 94 to these two types of transport should be suspended by a Council decision under Article 84 (2).

3. Although no full investigation has yet been made of the various problems that would arise in applying Articles 85 to 94, and any measures taken in implementation thereof, to sea and air transport, it is clear that these types of transport — particularly in view of their world-wide ramifications — have distinctive features that justify an assumption that the Articles in

question cannot be applied to them without modification.

4. In the traffic of the big shipping companies, which together share about 80 % of world sea transport, time-tables and freight rates are negotiated at shipping conferences and made binding on all parties. These conferences are held against the background of an oligopolistic marine freight market, and this leads to unfair undercutting.

Furthermore, the special economic importance of shipping companies in highly industrialized States has induced the latter to grant various subsidies to these companies.

Conditions in air transport are similar to those in sea transport, which is why most of the big airline companies are members of the International Air Transport Association. This Association co-ordinates time-tables and fixes tariffs, which are binding on all member companies. There is a trend towards the conclusion of agreements and mergers between airlines, and within the EEC some companies are now forming an association known as Air Union.

In this field, too, in view of the special economic importance of airline companies and in order to promote technical development Governments subsidize their airlines,

particularly in the form of grants to balance their operational accounts.

5. On a careful examination of the situation there are grounds for fearing that the full application of the rules of competition set out in the Treaty to sea and air transport may cause serious disturbances in view of the special aspects of these two types of transport. For this reason, in order that such appropriate provisions as may prove necessary may be worked out, it seems advisable to suspend for a specified period the application of Articles 85 to 94 and of any regulations made thereunder.

6. Moreover the European Parliament and the Economic and Social Committee have stressed the need to draw up special rules of competition for transport wherever the general rules of competition are not compatible with the special features of the sector and may hinder transport operations.

7. The special aspects of sea and air transport, however, do not warrant the suspension of the application of Article 85 with respect to agreements, decisions and concerted practices that do not directly

concern the supply of a transport service. Such agreements, decisions and concerted practices must therefore continue to be subject to the application of Article 85 and measures taken or to be taken thereunder.

8. If, after the situation has been investigated together with the Member States, appropriate provisions have not been made during the period of suspension, Articles 85 to 94 of the Treaty will apply *in toto* to sea and air transport. Should this be the case, the transitional arrangements made by Regulation No. 17 will also have to be adjusted, taking into account the dates on which Article 85 would be applicable to all agreements, decisions and concerted practices between the transport undertakings referred to in Article 84 (2).

9. Article 84 (2) leaves to the discretion of the Council the procedure for making such appropriate provisions as it may decide on. It would seem normal to adopt the same procedure as that laid down in Article 75 for the provisions on the implementation of the common transport policy.

**Draft Council directive on authorized weights
and dimensions of commercial road vehicles
operating between Member States**

and

**Draft Council resolution on additional technical requirements
applicable to commercial road vehicles
operating between Member States**

(Proposal submitted by the Commission to the Council on 7 September 1962)

Draft Council directive on authorized weights and dimensions of commercial road vehicles operating between Member States

The Council of the European Economic Community,

Having regard to the provisions of the Treaty and in particular Article 75 thereof;

Having regard to the proposal of the Commission;

Having regard to the opinion of the Economic and Social Committee;

Having regard to the opinion of the European Parliament;

Whereas certain discrepancies between the regulations at present governing weights and dimensions of commercial vehicles in the Member States are liable to distort the conditions of competition and be a hindrance to traffic between the Member States;

Whereas the maximum weights and dimensions and certain technical definitions for the various types of commercial vehicles operating between the member countries should be fixed in a uniform manner as part of the common transport policy;

Whereas these limits must be such as to enable commercial vehicles to be used rationally and economically, with due regard for requirements in respect of road maintenance and of safety and reliability in operation;

Whereas it is necessary to allow time for carriers to adapt themselves to the new provisions;

Whereas additional technical requirements which are of importance for road safety and reliability will have to be laid down at a later date;

Has adopted the present directive :

Article 1

From 1 January 1965 commercial road vehicles operating between the territories of Member States shall conform to the following specifications of weight and dimensions :

I — Maximum length

Single vehicle: 12 metres

Articulated vehicle: 15 metres

Vehicle train: 17.20 metres

II — Maximum width

2.50 metres

III — Maximum height

4 metres

IV — Maximum weight

1) Per axle :

a) single: 10 metric tons

b) twin: 16 metric tons, provided that the load on the wheels of either axle of the combination does not exceed 10 metric tons

2) Gross weight :

a) single vehicle :

— with two axles: 16 metric tons

— with more than two axles: 22 metric tons

b) articulated vehicle: 36 metric tons

c) vehicle train: 38 metric tons.

Article 2

a) A single axle weight shall be defined as the total weight transmitted to the road by all wheels the centres of which can be included between two parallel, transverse, vertical planes 1 metre apart.

b) A twin axle weight shall be defined as the total weight transmitted to road by the wheels of one pair of axles, the distance between their centre-lines being not less than 1 metre but less than 2 metres.

Article 3

The Member States may lay down provisions which depart from those of the present directive in respect of vehicles used for special transport purposes.

Article 4

Notwithstanding the provisions of Article 1, Member States shall authorize commercial vehicles registered before 1 January 1965 to operate their territories until 31 December 1974 even if the vehicles do not conform to the specifications laid down in Article 1.

Article 5

The Member States shall make the necessary statutory and administrative provisions to give effect to the present directive not later than 31 December 1963.

The Member States shall inform the Commission not later than 31 December 1963 of the statutory and administrative provisions they have made to give effect to the present directive.

Uniform additional technical requirements may be laid down not later than 30 June 1963.

Article 6

The present directive is addressed to all Member States.

Draft Council resolution on additional technical requirements applicable to commercial road vehicles operating between Member States

The Council of the European Economic Community,

Whereas Article 5 of the Council directive on weights and dimensions of commercial road vehicles authorized to operate between Member States states that additional technical requirements may subsequently be laid down,

Whereas it may be necessary to lay down in the near future uniform additional technical requirements concerning *inter alia* :

minimum ratios of engine power to gross weight,
minimum ratios of weight on the driving-axle to gross weight,
minimum ratio of the load on the towing vehicle to the load on the trailer,

limits for the path described in cornering, maximum dimensions of body overhangs, agrees to make the appropriate regulations at latest by 30 June 1963; invites the Commission to submit proposals for this purpose before 1 January 1963.

**Draft Council regulation suspending the application
of Article 85 of the Treaty establishing
the European Economic Community and of any provisions made
or to be made thereunder to road,
rail and inland-waterway transport**

(Proposal submitted by the Commission to the Council on 27 September 1962)

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 75, 85 and 87 (2c) thereof;

Having regard to the provisions made pursuant to Article 87;

Having regard to the proposal of the Commission;

Having regard to the opinion of the Economic and Social Committee;

Having regard to the opinion of the European Parliament;

Whereas, under the common transport policy and in view of the special aspects of transport referred to in Article 75 of the Treaty, it may prove necessary in respect of the types of transport referred to in Article 84 (1) to make different provisions in implementation of Article 85 of the Treaty from those made or to be made for other sectors of the economy;

Whereas, therefore, the application of Article 85 and of measures taken or to be taken pursuant thereto may later be followed by the application of rules of competition taking account of other measures to be adopted in order to give effect to a common transport policy, and whereas the application to transport undertakings of a succession of systems during a relatively

brief period is liable to have harmful consequences for those undertakings and to give rise to serious economic difficulties in the transport sector;

Whereas a period of about two years should suffice to enable the institutions of the Community, in consultation with the Member States, to work out ways of applying Article 85 which, while upholding the principles of that Article, will enable a common transport policy to be put into effect;

Whereas, in consequence, it is appropriate that the application of Article 85 and measures taken or to be taken thereunder to the transport undertakings referred to in Article 84 (1) be suspended until 1 January 1965;

Whereas, however, the implementation of the common transport policy and the special aspects referred to in Article 75 warrant the suspension of Article 85 only with respect to agreements, decisions and concerted practices directly concerned with the supply of a transport service;

Whereas, to enable the Council within the specified period to make special provision for applying the rules of competition to road, rail and inland-waterway transport undertakings, while having regard to the common transport policy, the Commission must submit its proposals to the Council in good time, that is to say before 1 January 1964,

Has adopted the present regulation :

Article 1

The application of Article 85 and of any regulations made or to be made thereunder to road, rail and inland-waterway transport shall be suspended until 1 January 1965.

Article 2

Suspension of the application of Article 85 of the Treaty and of regulations made or to be made thereunder shall, however, concern only such agreements, decisions and concerted practices between road, rail and inland-waterway transport undertakings as have the purpose or effect of fixing transport terms and conditions, restrict-

ing or controlling the supply of transport or sharing transport markets.

Article 3

In order to enable the Council to make special provision for the application of the rules of competition to road, rail and inland-waterway transport undertakings with due regard to the common transport policy, the Commission shall submit its proposals to the Council before 1 January 1964.

Article 4

The present regulation shall come into force on 31 October 1962. It shall be binding in all its parts and directly enforceable in all Member States.