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Proposal for a  
DECISION OF THE COUNCIL

concerning common action by the Member States in  
respect of the United Nations Convention on a Code  
of Conduct for Liner Conferences

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(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

BACKGROUND

On 17 July 1974 the Commission forwarded to the Council a proposal for a Council Decision concerning common action by the Member States in respect of the United Nations Convention on a Code of Conduct for Liner Conferences (COM (74) 1112 final). This Decision provides in particular that the Council shall, acting on a proposal from the Commission, define before 30 June 1975, the form of the common action to be implemented as regards the possible conclusion of the Convention.

The Convention is open for signature until 30 June 1975, and will thereafter remain open for accession. It will enter into force 6 months from the date on which not less than 24 States, having at least 25% of the world's general cargo tonnage, have acceded to it. The following States have signed the Convention so far: the Philippines, Iran, Ecuador, Guatemala, Yugoslavia, Gabon and Indonesia.

The principal reasons for the initiative taken by the Commission with regard to this Convention are set out in Document COM (74)1112 final. These reasons, which are still valid, derive from the need to observe the EEC Treaty and to safeguard the economic and political interests of the Community in general.

On 18 October 1974, the Commission considered it necessary to send a note to the Foreign Ministers of the Member States in order to inform them of its views on the compatibility of the Code of Conduct with the EEC Treaty. The Commission stressed in particular that Articles 7, 52, 85, 86 and 113 of the EEC Treaty were or might be incompatible with the Code of Conduct. To sign the Convention on the Code of Conduct might therefore constitute a failure to fulfil the obligations assumed by the Member States under the EEC Treaty. The Commission also informed them of the attempts it would be making to find solutions enabling the interests of the States to be reconciled with the provisions of the Treaty, and stated that it proposed calling meetings of experts for this purpose.

On 26 November 1974, the Council Working Party on Transport Questions examined the proposal for a Council Decision on the Code of Conduct. Without prejudice to the final position adopted with regard to this proposal, the Working Party agreed that the Member States should not take any action before 30 April 1975 which might prejudice possible Community action.

As a result of this agreement, arrived at within the Working Party the Commission called two meetings of experts to examine questions raised by the Code of Conduct.

The first meeting took place on 17 January 1975 and was devoted mainly to an examination of legal questions relating to the compatibility of the Code of Conduct with the EEC Treaty. The experts examined in particular the working document prepared by Commission staff on this subject. The Commission staff profited from this exchange of views, which enabled the experts and the Commission staff to compare in a very constructive atmosphere their assessment of the immediate problem and of the application of the Treaty to maritime transport in general.

Following this meeting, Commission staff drafted a second working document which served as a basis for a meeting held on 13 and 14 February 1975. This working document set out three working hypotheses for Community action :

- (a) signature of the Convention, while reserving the right to define, limit or amend the scope of certain provisions with regard to the Member States and the Community by appropriate means ;
- (b) exclusion of any possibility of the Convention's being signed by the Member States and/or the Community ;
- (c) renegotiation of the Convention in order to produce a text compatible with the special interests of the Common Market and the obligations arising under the Treaty.

In view of the complexity of the subject, the Commission staff considered that it would assist discussion if it based its explanatory text mainly on hypothesis (a) (signature, with reservations, of the Convention by the Community), without prejudice to the other alternatives, on which it sought the opinions of the experts. The working proposals or hypotheses gave rise in particular to various reservations which might prove necessary from the point of view of observing the Treaty, or desirable from the economic or political point of view. The experts considered these reservations, but it was not possible to reach agreement on them in view of the differences of opinion as to their legal necessity or their economic or political advisability. The experts also expressed diverging opinions on solution (b) (not ratifying the Convention).

They were all of the opinion that solution (c) (renegotiation) was hardly realistic at present.

Basically, the Commission remains convinced that the Convention in its present form affects obvious and major interests of the common market, and gives rise to a number of legal difficulties and economic and political imperfections which must be resolved on a Community basis.

#### COMPATIBILITY OF THE CODE OF CONDUCT WITH THE TREATY

As to the legal difficulties, the Commission considers that they arise in particular in regard to incompatibility between the following provisions of the Code of Conduct and certain Articles of the Treaty:

<u>Provisions of the Code of Conduct</u>	<u>Articles of the Treaty</u>
(the references in brackets are to the text of the Code of Conduct)	
- Membership (Chapter II, Article 1)	7, 52, 85
- Participation in the trade (Chapter II, Article 2)	7, 52, 85
- Relations with shippers (Chapter III)	85, 86
- Definition of Contracting Parties (Chapter VII)	113, 114

Other legal difficulties are also raised, for example, by the definition of the "competent authority", which should include the Commission of the European Communities in the context of the Code of Conduct and insofar as the Treaty provides, and in particular those Articles

relating to competition rules.

#### PARTICULAR INTEREST TO THE COMMON MARKET

The Commission has already stated, in the proposal for a Council Decision on the Code of Conduct, the reasons why it considers the Code of Conduct to be of special importance to the common market. This conviction has been strengthened by the discussions with the government experts.

Clearly identification of the most favourable course for the economic interests of the Community and the member countries, taken together, is an important aspect of the development of action in common in the matter. The Commission will seek to do what it can towards assessing those interests in which it counts on the co-operation of member state administrations.

#### CONCLUSIONS

While recognising the interest of the Community in a universally acceptable Code of conduct, the Commission considers that the economic and political disadvantages of some of the provisions of the Code of Conduct in its present form are liable to outweigh the advantages. If the fact is considered, along with the unfavourable balance of advantages and disadvantages, that parts of the Code are incompatible with the Treaty, the only possible solutions that remain appear to be to sign the Convention subject to quite considerable reservations, to fail to ratify the Convention, or to fail to ratify the Convention, at the same time proposing its renegotiation. In view of the present situation it does not seem possible to abide by the suggestion in the proposed decision relating to the Code of Conduct (COM (74) 1112 final) i.e. to define a common action before 30 June 1975.

The meetings between the experts and the Commission departments have not yet led to defining a form of common action which would ensure that the Treaty is observed and the interests of the common market safeguarded.

It is vital, while waiting for a course of common action to be implemented, that the Member States do not ratify or accede to the Convention on the Code of Conduct, nor sign subject to ratification, or to reservations based on obligations arising under the EEC Treaty.

In view of the differing views of the Member States on the Code of Conduct, the definition of the form of a common action will necessarily take time.

It thus seems very difficult to reach agreement within the Community on possible reservations although the possibility of reaching such agreement should not be excluded. However, it is clear that defining the form of positive common action in respect of the Code of Conduct could depend upon this and that any conclusion of the Convention should be the result of concerted action by the Community and the Member States.

It would nevertheless appear equally difficult, at least at present, to reject a priori any signing of the Convention on a Community basis. Consideration of this issue should include an examination of several aspects concerning the Community and the EEC Treaty. For example objections have been raised at intra-community level with regard to certain practices of liner conferences, in particular with regard to conditions of participation. The Community might usefully examine if and in what way failure to sign the Code of Conduct might be accompanied by some modus vivendi in relation to the objections referred to above. This would also need time.

It would not appear advisable at present, from the point of view of relations with third countries, to entirely abandon the possibility of signing the Convention. However, the uncertainties in this connection will be reduced when a clearer picture emerges of the extent to which various third countries are acceding to it.

Finally, the alternative of "renegotiation" suffers the same difficulties as "non ratification" vis-à-vis third countries, except in so far as a possible commitment to participate positively in any renegotiation might constitute a palliative to a purely negative refusal to sign.

The search for a form of common action necessarily requires time, whether it is a matter of drawing up possible Community action or clarification of an international situation which is to some extent confused.

In this connection, the Community might consider the desirability of consulting interested third countries.

For these reasons, the Commission considers that the Community should engage in a series of intensive discussions in order to define its interests and the form of a common action as quickly as possible. It also considers that the Community should continue these efforts even beyond 30 June 1975, which is the last date set for signing the Convention.

In accordance with current practice, as codified in the Vienna Convention, it is possible to conclude a Treaty by acceding to it, even after the expiry of the last date set for signing, and such accession may, at any time, be accompanied by reservations. The Code of Conduct expressly refers to the possibility of acceding after 30 June 1975 and remains silent on the question of reservations, which, according to current international practice and following the Vienna Convention, means that in principle such reservations are admissible.

#### COMMON ACTION

For the reasons set out above, and taking full account of the need to define a form of common action as soon as possible, the Commission considers that since defining the form of such action requires time, and since 30 June 1975 is not a final date, the Member States should

- adopt a common action with regard to the Code of Conduct;
- refrain, pending implementation of such common action, from taking any action with regard to the Code of Conduct;
- actively seek a means of agreement as soon as possible, and in any event not later than one year from the date of adoption of this proposal for a Decision.

The Commission proposes to make an active and positive contribution towards the search for this common action.



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Proposal for a Decision of the Council concerning common action by the Member States in respect of the United Nations Convention on a Code of Conduct for Liner Conferences

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 116 thereof;

Having regard to the proposal from the Commission;

Whereas the question of the operation of liner conferences has been treated by UNCTAD, and whereas UNCTAD's work has resulted in the drawing up of a Convention on a Code of Conduct for Liner Conferences ;

Whereas that Convention is aimed in particular at laying down certain internationally-applicable rules relating to cargo sharing, the accession of shipping lines to conferences and the relations between transporters and shippers;

Whereas the application of such internationally-applicable rules affects the terms on which transport is effected, both within the Community and with non-member countries, and whereas such rules would affect in particular the interests of the shipping lines and shippers of the Member States;

Whereas, regardless of the problem of the incompatibility of certain provisions of this Convention with the obligations arising from the Treaty, and of the participation of the Community, its entry into force is of particular interest to the common market, and whereas common action on the part of the Member States is required in this connection;

Whereas the definition of the positions which the Member States will adopt as part of their common action requires careful examination, and whereas in the meantime they must abstain from any action which could prejudice or affect the implementation of their subsequent common action;

Whereas there are difficulties in defining the form of the common action before the final date of 30 June 1975 specified in the proposal for a Decision of the Council concerning common action by the Member States in respect of the United Nations Convention on a Code of Conduct for Liner Conferences, submitted to the Council by the Commission on 17 July, 1974 (COM(74)1112 final);

HAS ADOPTED THIS DECISION:

Article 1

1. Without prejudice to such other possible action as the Community may take, the Council shall within one year from the adoption of this Decision, acting on a proposal from the Commission, define the form of the common action to be implemented as regards the possibility of the Member States becoming parties to the Convention on a Code of Conduct for Liner Conferences.
2. Pending the Decision referred to in paragraph 1, the Member States shall refrain from signing, ratifying or acceding to the above-mentioned Convention.
3. In order to facilitate definition of the form of the common action referred to in paragraph 1, the Member States shall actively seek a means of agreement enabling the differences underlying their differing positions with regard to the Convention on the Code of Conduct to be resolved.

Article 2

This Decision is addressed to the Member States.

Done at

For the Council