

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(81) 396 final

Brussels, 31 July 1981

Proposal for a
COUNCIL REGULATION (EEC)
applying Articles 85 and 86 of the Treaty (rules on competition
applying to undertakings) to air transport

(submitted to the Council by the Commission)

COM(81) 396 final

EXPLANATORY MEMORANDUM

1. Council Regulation No 17 of 6 February 1962¹, the first Regulation implementing Articles 85 and 86, does not apply to air and sea transport, by virtue of Council Regulation No 141 of 26 November 1962 and Council Regulation No 1017/68 of 19 July 1968². At present, air and sea transport are consequently the only branches of the economy where there are no detailed rules applying the competition provisions.

Yet there is no doubt that air and sea transport are subject to the provisions of Articles 85 and 86. In its Judgment of 4 April 1974 in Case 167/73 (Commission v. French Republic), the Court of Justice held that air and sea transport remain, on the same basis as the other modes of transport, subject to the general rules of the Treaty³, although they are, by virtue of Article 84(2), so long as the Council has not decided otherwise, excluded from Title IV of the Treaty, relating to the common transport policy. The Judgment of 12 October 1978 (Commission v. Belgium), confirms that these general rules include in particular the competition rules⁴.

In short, the provisions of Articles 85 and 86 apply to air and sea transport but detailed rules of application do not yet exist.

2. In this field, pending the entry into force of such rules, Articles 88 and 89 provide the only legal basis for action by the Member States or the Community:

- under Article 88, the authorities in Member States shall rule on the admissibility of agreements and on abuse of a dominant position in accordance with the law of their country and with Articles 85, in particular paragraph 3, and 86;

¹ OJ No 13 of 21 February 1962, p. 204/62

² OJ No 124 of 28 November 1962, p. 2751/62 and OJ No 175 of 23 July 1968, p. 1

³ ECR 1975, p. 371

⁴ ECR 1978, p. 1881

- Article 89 requires the Commission, in cooperation with the competent authorities in the Member States, who shall give it their assistance, to investigate cases of suspected infringement of the principles of the rules of competition. If it finds that there has been an infringement it shall propose appropriate measures to bring it to an end. If the infringement is not brought to an end, the Commission shall record it in a reasoned decision. It may authorise Member States to take the measures needed to remedy the situation.

3. This has two consequences.

The Commission currently has not the power to enforce the rules of competition efficiently and consistently vis-a-vis the airlines. In order to conduct investigations and secure the termination of infringements, it is dependent on the cooperation of the appropriate national authorities.

On the other hand, in the absence of an implementing regulation, Articles 85 and 86 are directly and fully applicable in each Member State. The national courts have jurisdiction to hear complaints relating to business conduct contrary to those Articles and either to forbid such conduct or not.

It follows that there is a risk that Community law will be interpreted in a manner diverging from one Member State to another and that adequate account will not be taken of the specific features of the activities concerned; this could act to the disadvantage of airlines and passengers. The attention that air transport is already receiving among public opinion in the Community is clear evidence that this risk is a real one.

The desire to have Articles 85 and 86 applying uniformly throughout the Community and to ensure that both carriers and users enjoy a sufficient degree of legal security, in itself warrants the adoption of a Regulation applying the rules of competition to air transport.

II.

4. More consistency in the application of Articles 85 and 86 would also make for the objective emphasised in the Commission memorandum to the Council of 16 July 1979 regarding a Community contribution to the development of air transport services. Whether it is a question of the productivity and hence the competitiveness of Community airlines or of offering Community nationals air transport facilities that meet their needs more closely at a better price, this Regulation will have a helpful contribution to make, in parallel with other measures to be taken under a Community policy on air transport.

Community public opinion and the European Parliament¹ are showing increasing keenness on having some kind of action taken here. The Commission is aware of this expectation and that is one of the reasons why it is proposing that the Council adopt this Regulation, as envisaged in its memorandum.

5. But the Commission is not unaware of the limits to the action it can take. Its ambition is not to use the competition rules as a means of introducing an air transport policy that the Community does not yet have. But these rules, in conjunction with other measures called for in the memorandum (freer access to the market, more flexible fare-setting arrangements) should help to create more competitive structural conditions, which are themselves a better guarantee of a more efficient Community air transport industry.

The main structural feature of the industry is the heavy influence exerted by governments, particularly by means of a vast complex of bilateral agreements relating to allocations of routes, fares and capacities; while other forms of air transport may be somewhat more competitive, there is very little competition in scheduled services, particularly so far as fares are concerned.

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¹European Parliament, 16 October 1980. Debate and resolution on the Schwarzenberg and Hoffmann reports.

Moreover, most of the airlines, and certainly all the big airlines, are within the category of "public undertakings" and "undertakings to which Member States grant special or exclusive rights" within the meaning of Article 90(1) of the EEC Treaty.

Articles 85 and 86, and consequently the provisions of the Regulation, will apply to all airlines whether they are in the public sector, the private sector or mixed, to the extent that their conduct is the result of autonomous business policy and is not imposed by State measures. If, however, the activity of these undertakings is the result of governmental instructions, the legal appreciation will be different. In this case the Commission will have to examine whether Article 90 is applicable. The first paragraph of this provision prohibits Member States from enacting or maintaining in force any measure contrary to the rules contained in the Treaty, in particular the competition rules. Article 90(3) goes on to provide that in the exercise of its own powers the Commission may address appropriate directives or decisions to Member States to have such measures removed. A specific problem, however, arises in the field of tariff fixing. The information the Commission at present has indicates that in most cases this is the sole responsibility of Member States. It follows that the activity of the Governments corresponds in general to an autonomous price fixing measure and not to a concertation between firms. When this is the case, there is no ground in principle to scrutinize the activity of States or companies on the basis of Article 85. Should, however, the Commission find that the Governments' responsibility corresponds in fact to a delegation to the firms to determine the rates to be applied and that this gives rise to an infringement of Article 90 and/or Article 85 of the Treaty, the Commission will have to take the necessary action under those provisions.

The present regulation does not prejudice the application of Article 90.

6. Likewise the Regulation will be without prejudice to the Commission's power under Article 90(2) of the Treaty, giving derogations from the prohibition on certain restrictive practices and certain forms of abuse of dominance if it is found that their prohibition would obstruct the performance in law or in fact of the particular tasks assigned to airline companies

which are entrusted with the provision of services of general economic interest, provided that trade is not affected to such an extent as would be contrary to the interests of the Community. But the benefit of this derogation could only be given case by case, for the time being, and subject to the interpretation placed upon the law by the Court of Justice.

7. Regarding those markets where direct or indirect State intervention is strongest, the direct application of Articles 85 and 86 to airlines via this Regulation will initially be limited, but will grow in importance as measures are taken at Community level to relax state controls regarding access to the market and capacity.

This gradual approach would also be desirable for other reasons - and particularly the interaction between the position of an airline in the Community market and on intercontinental routes - for the European airlines would in any case be given the time they need to adapt to the competition rules.

In the international context the Commission would also take into consideration the possible problems arising from the existence of agreements between Member States and third countries whether bilateral or multilateral, and between their airlines. The Commission will also have to respect the principle of comity when applying Art. 85 and 86 to third countries airlines acting under instruction from their governments.

8. Since circumstances are changing all the time the Commission feels that for the moment all it can propose is a procedural Regulation giving it the necessary powers to investigate and punish infringements so that its decisions will be complied with.

Initially a flexible approach fully complying with Articles 85 and 86 will have to be made to the specific problems that arise in air transport and to the inevitable changes in the context within which the industry works.

For this reason, and also because it must begin by acquiring some practical experience, the Commission considers that it should not involve itself at this stage in defining certain categories of agreements or concerted practices which either may not be caught by Article 85(1) or may qualify for group exemption under Article 85(3). The Commission will however continue to reflect on this problem and will look for a solution.

In this regard the Commission would seek to apply in a realistic way, taking account of the specific nature of the sector, the principles underlying its own administrative practice and the jurisprudence of the Court concerning agreements and abusive practices in other industries.

9. Consequently, the basic provisions of the Regulation simply define the scope (Article 1) and exclude certain technical agreements (Article 2).

Regarding the procedural rules (Articles 3 to 22), it has been thought appropriate to take over the structure and wording of Regulation No.1017/68, which applies Articles 85 and 86 to forms of transport, other than air or sea transport. This Regulation to some extent reflects specific features of the transport market as a whole; in particular it adopts the idea of flexibility and simplifies the procedural arrangements.

Whereas under Regulation No. 17 Article 85(3) is applicable only if firms have notified their agreements and applied for exemption and the Commission has then taken a decision on their case, Regulation No.1017/68 enables agreements, decisions and restrictive practices satisfying the tests of Article 5 of the latter Regulation - itself inspired by Article 85(3) - to be regarded as outside the prohibition in Article 85(1) without any action by the Community authorities being necessary for the purpose. But if firms wish to know exactly where they stand they can apply to the Commission for a formal exemption under Article 85, and in certain circumstances the absence of a reply from the Commission means they have the exemption.

Article 5 of the present Regulation adopts the same procedure.

Proposal for a

REGULATION (EEC) OF THE COUNCIL

applying Articles 85 and 86 of the Treaty (rules on competition applying to undertakings) to air transport

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 87 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas:

The rules on competition form part of the Treaty's general provisions which also apply to air transport.

The rules for applying these provisions are either specified in the chapter on competition or fall to be determined by the procedures laid down therein.

It follows from Article 1 of Regulation No 141 that Council Regulation No 17 does not apply to air transport.

The procedural rules laid down in Regulation (EEC) No 1017/68 apply to surface transport only.

At present, therefore, the Commission has no direct means of investigating cases of suspected infringement of Articles 85 or 86 of the Treaty.

The Commission likewise has no powers to take Decisions and impose penalties to secure the removal of infringements.

To remedy this situation a regulation applying the rules of competition to air transport should be adopted, analogous to the regulations covering other forms of transport and other sectors of the economy.

Such a regulation must provide for appropriate procedures, decision-making powers and penalties to ensure compliance with the prohibitions laid down in Article 85(1) and in Article 86, together with detailed rules for the application of Article 85(3).

For this purpose account should be taken of the provisions laid down by Regulation No 1017/68 as regards inland transport, reflecting certain specific features of the transport industry taken as a whole.

Given the peculiar features of air transport, it will in the first instance be for firms themselves to see that their agreements, decisions and concerted practices conform to the competition rules, and notification to the Commission need not be compulsory.

In certain cases firms may wish to apply to the Commission for confirmation that their agreements, decisions and concerted practices are in conformity with the law, and a simplified procedure should be laid down for such cases.

The present regulation does not prejudge the application of Article 90 of the Treaty.

HAS ADOPTED THIS REGULATION :

Article 1

Scope of the Regulation

1. This Regulation lays down rules applying Articles 85 and 86 of the Treaty to air transport.
2. It shall apply only to international air transport from or to one or more Community airports.

Article 2

Exemption for technical agreements

1. The prohibition laid down in Article 85(1) of the Treaty shall not apply to agreements, decisions or concerted practices the object and effect of which is to apply technical improvements or to achieve technical cooperation by means of:
 - (a) the establishment or application of standards or types of aircraft, equipment, supplies or fixed installations;
 - (b) the exchange, pooling or joint maintenance of aircraft, parts, equipment or fixed installations and the exchange or pooling of personnel;

- (c) the organisation and execution of successive, complementary, substitute or combined transport operations, and the fixing and application of inclusive rates and conditions for such operations;
- (d) the coordination of timetables with the aim of meeting passengers' needs more closely;
- (e) the grouping of single consignments;
- (f) the establishment or application of uniform rules as to the structure of transport tariffs and their conditions of application, provided that such rules do not directly or indirectly fix transport rates and conditions;
- (g) the issue of tickets accepted by different airlines and the consequent provision of a common refund scheme.

Article 3

Procedures on complaint or on the Commission's own initiative

Acting on receipt of a complaint or on its own initiative, the Commission shall initiate procedures to terminate any infringement of the provisions of Articles 85(1) or 86 of the Treaty.

Complaints may be submitted by:

- a) Member States;
- b) natural or legal persons who claim a legitimate interest.

Article 4

Result of procedures on complaint or on the Commission's own initiative

1. Where the Commission finds that there has been an infringement of Articles 85(1) or 86 of the Treaty, it may by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end.

Without prejudice to the other provisions of this Regulation, the Commission may, before taking a decision under the preceding subparagraph, address to the undertakings or associations of undertakings concerned recommendations for termination of the infringement.

2. If the Commission, acting on a complaint received, concludes that on the evidence before it there are no grounds for intervention under Articles 85(1) or 86 of the Treaty or Article 8 of this Regulation, in respect of any agreement, decision or practice, it shall issue a decision rejecting the complaint as unfounded.

3. If the Commission, whether acting on a complaint received or on its own initiative, concludes that an agreement, decision or concerted practice satisfies the provisions both of Article 85(1) and of Article 85(3) of the Treaty, it shall issue a decision applying Article 85(3). Such decision shall indicate the date from which it is to take effect. This date may be prior to that of the decision.

Article 5

Application of Article 85(3)-objections

1. Undertakings and associations of undertakings which seek application of Article 85(3) in respect of agreements, decisions and concerted practices falling within the provisions of Article 85(1) to which they are parties may submit applications to the Commission.

2. If the Commission judges an application admissible and is in possession of all the available evidence, and no action under Article 3 has been taken against the agreement, decision or concerted practice in question, then it shall publish as soon as possible in the Official Journal of the European Communities a summary of the application and invite all interested third parties to submit their comments to the Commission within thirty days. Such publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

3. Unless the Commission notifies applicants, within ninety days from the date of such publication in the Official Journal of the European Communities, that there are serious doubts as to the applicability of Article 85(3), the agreement, decision or concerted practice shall be deemed exempt, in so far as it conforms with the description given in the application, from the prohibition for the time already elapsed and for a maximum of three years from the date of publication in the Official Journal of the European Communities.

If the Commission finds, after expiry of the ninety-day time limit, but before expiry of the three-year period, that the conditions for applying Article 85(3) are not satisfied, it shall issue a decision declaring that the prohibition in Article 85(1) is applicable. Such decision may be retroactive where the parties concerned have given inaccurate information or where they abuse the exemption from the provisions of Article 85(1).

4. If, within the ninety-day time limit, the Commission notifies applicants as referred to in the first subparagraph of paragraph 3, it shall examine whether the provisions of Article 85(1) and of Article 85(3) are satisfied.

If it finds that the provisions of Article 85(1) and of Article 85(3) are satisfied it shall issue a decision applying Article 85(3). The decision shall indicate the date from which it is to take effect. This date may be prior to that of the application.

Article 6

Duration and revocation of decisions applying Article 85(3)

1. Any decision applying Article 85(3) taken under Articles 4 or 5 shall indicate the period for which it is to be valid; normally such period shall not be less than six years. Conditions and obligations may be attached to the decision.
2. The decision may be renewed if the conditions for applying Article 85(3) continue to be satisfied.
3. The Commission may revoke or amend its decision or prohibit specified acts by the parties:
 - (a) where there has been a change in any of the facts which were basic to the making of the decision;
 - (b) where the parties commit a breach of any obligation attached to the decision;
 - (c) where the decision is based on incorrect information or was induced by deceit;
 - (d) where the parties abuse the exemption from the provisions of Article 85(1) granted to them by the decision.

In cases falling within (b), (c) or (d), the decision may be revoked with retroactive effect.

Article 7

Powers

Subject to review of its decision by the Court of Justice, the Commission shall have sole power:

- to issue decisions pursuant to Article 85(3).

The authorities of the Member States shall retain the power to decide whether any case falls within the provisions of Article 85(1) or Article 85(3), until such time as the Commission has initiated a procedure with a view to formulating a decision in the case in question or has sent notification as provided for in the first subparagraph of Article 5(3).

Article 8

Liaisons with the authorities of the Member States

1. The Commission shall carry out the procedures provided for in this Regulation in close and constant liaison with the competent authorities of the Member States; these authorities shall have the right to express their views on such procedures.
2. The Commission shall immediately forward to the competent authorities of the Member States copies of the complaints and applications, and of the most important documents sent to it or which it sends out in the course of such procedures.
3. The Advisory Committee on Restrictive Practices and Monopolies in the Transport Industry established by Article 16(3) of Regulation (EEC) No 1017/68 of the Council shall be consulted prior to the taking of any decision following upon a procedure under Article 3 or of any decision under the second subparagraph of Article 5(3), or under the second subparagraph of paragraph 4 of the same Article. The Advisory Committee shall also be consulted prior to adoption of the implementing provisions provided for in Article 21.
4. Consultation shall take place and the Committee will deliver its opinion in accordance with the rules laid down in Article 16(5) and (6) of the Regulation referred to in paragraph (3) of this Article.

Article 9

Consideration by the Council of questions of principle concerning the common transport policy raised in connection with specific cases

1. The Commission shall not give a decision in respect of which consultation as laid down in Article 8 is compulsory until after the expiry of twenty days from the date on which the Advisory Committee has delivered its Opinion.

2. Before the expiry of the period specified in paragraph 1, any Member State may request that the Council be convened to examine with the Commission any question of principle concerning the common transport policy which such Member State considers to be involved in the particular case for decision.

The Council shall meet within thirty days from the request by the Member State concerned for the sole purpose of considering such questions of principle.

The Commission shall not give its decision until after the Council meeting.

3. Further, the Council may at any time, at the request of a Member State or of the Commission, consider general questions raised by the implementation of the competition policy in the air transport sector.

4. In all cases where the Council is asked to meet to consider under paragraph 2 questions of principle or under paragraph 3 general questions, the Commission shall, for the purposes of this Regulation, take into account the policy guidelines which emerge from that meeting.

Article 10

Inquiries into air transport sectors

1. If trends in transport, fluctuations in or inflexibility of transport rates, or other circumstances, suggest that competition in air transport is being restricted or distorted within the common market in a specific geographical area, or over one or more transport links, or in respect of the carriage of passengers or goods belonging to one or more specific categories, the Commission may decide to conduct a general inquiry into the sector concerned, in the course of which it may request transport undertakings in that sector to supply the information and documentation

necessary for giving effect to the principles formulated in Articles 85 and 86 of the Treaty.

2. When making inquiries pursuant to paragraph 1, the Commission shall also request undertakings or groups of undertakings whose size suggests that they occupy a dominant position within the common market or a substantial part thereof to supply such particulars of the structure of the undertakings and of their behaviour as are requisite to an appraisal of their position in the light of the provisions of Article 86 of the Treaty.

3. Article 8(2) to (4) and Articles 9, 11, 12 and 13 shall apply.

Article 11

Requests for information

1. In carrying out the duties assigned to it by this Regulation, the Commission may obtain all necessary information from the Governments and competent authorities of the Member States and from undertakings and associations of undertakings.
2. When sending a request for information to an undertaking or association of undertakings, the Commission shall at the same time forward a copy of the request to the competent authority of the Member State in whose territory the seat of the undertakings is situated.
3. In its request, the Commission shall state the legal basis and the purpose of the request, and also the penalties provided for in Article 14(1)(b) for supplying incorrect information:
4. The owners of the undertakings or their representatives and, in the case of legal persons, companies or firms, or of associations having no legal personality, the person authorised to represent them by law or by their constitution; shall be bound to supply the information requested.
5. Where an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the Commission, or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in Article 14(1)(b) and Article 15(1)(c), and the right to have the decision reviewed by the Court of Justice.

6. The Commission shall at the same time forward a copy of its decision to the competent authority of the Member State in whose territory the seat of the undertaking or association of undertakings is situated.

Article 12

Investigations by the authorities of the Member States

1. At the request of the Commission, the competent authorities of the Member States shall undertake the investigations which the Commission considers to be necessary under Article 13(1), or which it has ordered by decision pursuant to Article 13(3). The officials of the competent authorities of the Member States responsible for conducting these investigations shall exercise their powers upon production of an authorisation in writing issued by the competent authority of the Member State in whose territory the investigation is to be made. Such authorisation shall specify the subject matter and purpose of the investigation.

2. If so requested by the Commission or by the competent authority of the Member State in whose territory the investigation is to be made, the officials of the Commission may assist the officials of such authority in carrying out their duties.

Article 13

Investigating powers of the Commission

1. In carrying out the duties assigned to it by this Regulation, the Commission may undertake all necessary investigations into undertakings and associations of undertakings. To this end the officials authorised by the Commission are empowered:

- (a) to examine the books and other business records;
- (b) to take copies of or extracts from the books and business records;
- (c) to ask for oral explanations on the spot;
- (d) to enter any premises, land and vehicles of undertakings.

2. The officials of the Commission authorised for the purpose of these investigations shall exercise their powers upon production of an authorisation in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 14(1)(c) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the Commission shall inform the competent authority of the Member State in whose territory the same is to be made of the investigation and of the identity of the authorised officials.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 14(1)(c) and Article 15(1)(d) and the right to have the decision reviewed by the Court of Justice.

4. The Commission shall take decisions referred to in paragraph 3 after consultation with the competent authority of the Member State in whose territory the investigation is to be made.

5. Officials of the competent authority of the Member State in whose territory the investigation is to be made, may at the request of such authority or of the Commission, assist the officials of the Commission in carrying out their duties.

6. Where an undertaking opposes an investigation ordered pursuant to this Article, the Member State concerned shall afford the necessary assistance to the officials authorised by the Commission to enable them to make their investigation. Member States shall apply, mutatis mutandis, the measures taken pursuant to Article 21(6) of Regulation (EEC) No 1017/68 of the Council.

Article 14

Fines

1. The Commission may by decision impose on undertakings or associations of undertakings fines of from one hundred to five thousand units of account where, intentionally or negligently:

- (a) they supply incorrect or misleading information in connection with an application pursuant to Article 5; or
- (b) they supply incorrect information in response to a request made pursuant to Article 10 or to Article 11(3) or (5), or do not supply information within the time limit fixed by a decision taken under Article 11(5); or
- (c) they produce the required books or other business records in incomplete form during investigations under Article 12 or Article 13, or refuse to submit to an investigation ordered by decision issued in implementation of Article 13(3).

2. The Commission may by decision impose on undertakings or associations of undertakings fines of from one thousand to one million units of account, or a sum in excess thereof but not exceeding 10% of the turnover in the preceding business year of each of the undertakings participating in the infringement, where either intentionally or negligently:

- (a) they infringe Article 85(1) or Article 86 of the Treaty, or do not comply with an obligation imposed under Article 8(1) of this Regulation;
- (b) they commit a breach of any obligation imposed pursuant to Article 6(1).

In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

3. Article 8(3) and (4) and Article 9 shall apply.

4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of criminal law nature.

Article 15

Periodic penalty payments

1. The Commission may by decision impose on undertakings or associations of undertakings periodic penalty payments of from fifty to one thousand units of account per day, calculated from the date appointed by the decision, in order to compel them:
 - (a) to put an end to an infringement of Article 85(1) or Article 86 of the Treaty the termination of which it has ordered pursuant to Article 4;
 - (b) to refrain from any act prohibited under Article 6 (3);
 - (c) to supply complete and correct information which it has requested by decision taken pursuant to Article 11(5);
 - (d) to submit to an investigation which it has ordered by decision taken pursuant to Article 13(3).
2. Where the undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the Commission may fix the total amount of the periodic penalty payment at a lower figure than that which would arise under the original decision.
3. Article 8(3) and (4) and Article 9 shall apply.

Article 16

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty to review decisions whereby the Commission has fixed a fine or periodic penalty payment; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 17

Unit of account

For the purpose of applying Articles 14 to 16 the unit of account shall be that adopted in drawing up the budget of the Community in accordance with Articles 207 and 209 of the Treaty.

Article 18

Hearing of the parties and of third persons

1. Before taking decisions as provided for in Articles 4, 5 (3), second subparagraph, and 5(4), 6 (3), 14 and 15, the Commission shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the Commission has taken objection.

2. If the Commission or the competent authorities of the Member States consider it necessary, they may also hear other natural or legal persons. Applications to be heard on the part of such persons where they show a sufficient interest shall be granted.

3. Where the Commission intends to give negative clearance pursuant to Article 85(3) of the Treaty, it shall publish a summary of the relevant agreement, decision or concerted practice and invite all interested third parties to submit their observations within a time limit which it shall fix being not less than one month. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 19

Professional secrecy

1. Information acquired as a result of the application of Articles 10 to 13 shall be used only for the purpose of the relevant request or investigation.

2. Without prejudice to the provisions of Articles 18 and 20, the Commission and the competent authorities of the Member States, their officials and other servants shall not disclose information acquired by them as a result of the application of this Regulation and of the kind covered by the obligation of professional secrecy.

3. The provisions of paragraphs 1 and 2 shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 20

Publication of decisions

1. The Commission shall publish the decisions which it takes pursuant to Articles 4, 5 (3), second subparagraph, 5 (4) and 6 (3).
2. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 21

Implementing provisions

The Commission shall have power to adopt implementing provisions concerning the form, content and other details of complaints pursuant to Article 3, applications pursuant to Article 5 and the hearings provided for in Article 18(1) and (2).

Article 22

Entry into force, existing agreements

1. This Regulation shall enter into force on
2. Notwithstanding the provisions of paragraph 1, Article 86 of the Treaty shall enter into force on the day following the publication of this Regulation in the Official Journal of the European Communities.

3. The prohibition in Article 85(1) of the Treaty shall apply from ... to all agreements, decisions and concerted practices which were in existence at the date of entry into force of this Regulation or which came into being between that date and the date of publication of this Regulation in the Official Journal of the European Communities.

4. Paragraph 3 shall not be invoked against undertakings or associations of undertakings which, before the day following publication of this Regulation in the Official Journal of the European Communities, shall have terminated any agreements, decisions or concerted practices to which they are party.

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