REPORT


Committee on Economic and Monetary Affairs

Rapporteur: Corien Wortmann-Kool
Symbols for procedures

*  Consultation procedure
   majority of the votes cast

**I  Cooperation procedure (first reading)
   majority of the votes cast

**II Cooperation procedure (second reading)
   majority of the votes cast, to approve the common position
   majority of Parliament’s component Members, to reject or amend
   the common position

*** Assent procedure
   majority of Parliament’s component Members except in cases
   covered by Articles 105, 107, 161 and 300 of the EC Treaty and
   Article 7 of the EU Treaty

***I  Codecision procedure (first reading)
   majority of the votes cast

***II Codecision procedure (second reading)
   majority of the votes cast, to approve the common position
   majority of Parliament’s component Members, to reject or amend
   the common position

***III Codecision procedure (third reading)
   majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the
Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in **bold italics**.
Highlighting in *normal italics* is an indication for the relevant departments
showing parts of the legislative text for which a correction is proposed, to
assist preparation of the final text (for instance, obvious errors or omissions
in a given language version). These suggested corrections are subject to the
agreement of the departments concerned.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION


(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2005)0651)¹,
– having regard to Article 83 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0046/2006),
– having regard to Rule 51 of its Rules of Procedure,
– having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Transport and Tourism (A6-0217/2006),

1. Approves the Commission proposal as amended;
2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission
Amendments by Parliament

Amendment 1
RECITAL 3

(3) The liner shipping conference block exemption provided for in Regulation (EEC) No 4056/86 exempts from the prohibition of Article 81(1) of the Treaty agreements, decisions and concerted

¹ Not yet published in OJ.
practices of all or part of the members of one or more liner conferences which fulfil certain conditions. The justification for the block exemption in essence assumes that conferences bring stability, ensuring exporters of reliable services which cannot be achieved by less restrictive means.

However, a thorough review of the industry carried out by the Commission has demonstrated that liner shipping is not unique as its cost structure does not differ substantially from that of other industries. There is therefore no evidence that the industry needs to be protected from competition.

Amendment 2
RECITAL 9

(9) The exclusion from the prohibition of Article 81(1) of the Treaty of purely technical agreements and the procedure for dealing with conflicts of law which may arise are also redundant. Those provisions should therefore also be deleted.

(9) To facilitate transactions in the sector, the guidelines pursuant to Article 1(2), shall provide guidance on questions concerning technical agreements within the meaning of Article 2 of Regulation (EEC) No 4056/86.

Amendment 3
RECITAL 10

(10) In the light of the above, Regulation (EEC) No 4056/86 should be repealed in its entirety.

(10) In the light of the above, Regulation (EEC) No 4056/86 should be repealed in its entirety and the end of the conference block exemption will take effect after a transitional period of two years from the entry into force of this Regulation.

Justification

For the sake of legal clarity it should be explicitly stated that there is a transitional period of two years, as the Commission proposes in Article 1.
Amendment 4
RECITAL 10 A (new)

(10a) Since enforcement of this Regulation will create a conflict of law as regards the accession of certain Member States to the UNCTAD Code of Conduct for Liner Conferences, it is recommended that the Member States should withdraw from the Code, although they cannot be obliged to do so. In view of this situation, a clear-cut procedure needs to be put in place in order to deal with such conflicts of international law as might arise. After repeal of the provisions of Article 9 of Regulation (EEC) No. 4056/86, the legal basis for the Commission to act on the authority of the Council in this field will be maintained, on the basis of Article 300 of the EC Treaty.

Amendment 5
RECITAL 11

(11) Liner conferences are tolerated in several jurisdictions. In this, as in other sectors, competition law is not applied in the same way worldwide. In light of the global nature of the liner shipping industry, the Commission will take all relevant initiatives to advance the removal of the price fixing exemption for liner conferences that exist elsewhere whilst maintaining the exemption for operational co-operation between shipping lines grouped in consortia and alliances, in line with the recommendations of the OECD Secretariat in 2002.

Cabotage and international tramp vessel services have been excluded from the rules implementing Articles 81 and 82 of the Treaty originally laid down in Regulation (EEC) No 4056/86 and subsequently in Regulation (EC) No 1/2003. They are currently the only remaining sectors to be excluded from the Community competition implementing rules. The lack of effective enforcement
powers for those sectors is an anomaly from a regulatory point of view.

(See amendment 9 for Recital 12 a (new).)

Justification

Restructuring of the text because this part is about cabotage and tramp whilst the following recitals are still on liner services.

Amendment 6
RECITAL 11 A (new)

(11a) Together with the guidelines, the Commission will present to the European Parliament a transparent overview of the position of third countries (China, USA, Canada, Japan, Singapore and India) as regards the EU's new policy on liner services (acceptance, adjustment, opposition, negative effects, etc.) and their willingness to adapt their own systems.

Justification

The European Commission should acquire more inside knowledge about the view point and possible reaction of third countries towards the repeal of Reg. No. 4056/86 before the guidelines will be established.

Amendment 7
RECITAL 11 B (new)

(11b) Since Member States may need to adjust their international commitments in the light of the abolition of the conference system, the provisions of Regulation (EEC) No 4056/86 relating to the liner conference block exemption should continue to apply to conferences satisfying the requirements of Regulation (EEC) No 4056/86 on the date of entry into force of this Regulation for a transitional period.
(See amendment 11 for Recital 15.)

Justification

Restructuring of the text because this part is still about liner services.

Amendment 8
RECITAL 11 C (new)

(11c) The UNCTAD code no longer appears to play an important role in the international liner service sector. The need for Member States to denounced the code should not therefore be an obstacle to the revision of the EU's competition regime for liner conferences. However, the Commission should investigate thoroughly the commercial and political implications of such denouncement.

Justification

The EC should examine the implications of the denunciation UNCTAD-code and take, if appropriate, the necessary measures.

Amendment 9
RECITAL 12 A (new)

(12a) Cabotage and international tramp vessel services have been excluded from the rules implementing Articles 81 and 82 of the Treaty originally laid down in Regulation (EEC) No 4056/86 and subsequently in Regulation (EC) No 1/2003. They are currently the only remaining sectors to be excluded from the Community competition implementing rules. The lack of effective enforcement powers for those sectors is an anomaly from a regulatory point of view.

(See amendment 5 for Recital 11.)

Justification

Restructuring of the text because this part is about cabotage and tramp.
Amendment 10
RECITAL 14 A (new)

(14a) Prior in particular to the repeal of Article 32 of Regulation (EC) No 1/2003, the amendment of Regulation (EC) No 1/2003 should be accompanied by the adoption of guidelines for the tramp services sector within the scope of Articles 81 and 82 of the Treaty, in order to provide legal certainty and to take into account the specific characteristics of the sector, in particular for pooling agreements. The guidelines should be issued in close cooperation with the stakeholders, after consultation of the European Parliament.

Justification

In order to give legal certainty guidelines should be established prior to the lifting of the exclusion of art. 32 of Reg. No. 1/2003, see also amendment 14.

Amendment 11
RECITAL 15

(15) Since Member States may need to adjust their international commitments in the light of the abolition of the conference system, the provisions of Regulation (EEC) No 4056/86 relating to the liner conference block exemption should continue to apply to conferences satisfying the requirements of Regulation (EEC) No 4056/86 on the date of entry into force of this Regulation for a transitional period,

(See amendment 7 for Recital 11 b (new).)

Justification

Restructuring of the text because this part is still about liner services.
(15a) In this connection, the Commission should examine whether it is necessary to amend or repeal other EC legislation, such as Council Regulation (EEC) No 954/79 or Council Regulation (EEC) No 4055/86.

Justification

Other EU legislation might have to be adjusted as a consequence of this Regulation.

Amendment 13
ARTICLE 1

Regulation (EEC) No 4056/86 is repealed. However, Article 1 (3) (b) and (c), Articles 3 to 7, Article 8(2) and Article 26 of Regulation (EEC) No 4056/86 shall continue to apply in respect of liner shipping conferences satisfying the requirements of Regulation (EEC) No 4056/86 on the date of entry into force of this Regulation for a transitional period of two years from that date.

Regulation (EEC) No 4056/86 is repealed. However, Article 1 (3) (b) and (c), Articles 3 to 7, Article 8(2) and Article 26 of Regulation (EEC) No 4056/86 shall continue to apply in respect of liner shipping conferences satisfying the requirements of Regulation (EEC) No 4056/86 on the date of entry into force of this Regulation for a transitional period of two years from that date.

The European Commission shall adopt guidelines before the end of the transitional period. The guidelines shall contain, among other things, guidance on the subject matter of Article 2 of Regulation (EEC) No 4056/86, before its repeal. Furthermore, the guidelines shall take particular account of the interests of small and medium-sized ship-owners and those operating in specialised trades.

Amendment 14
ARTICLE 2

Article 32 of Regulation (EC) No 1/2003 is deleted.

Article 32 of Regulation (EC) No 1/2003 shall be repealed.

The European Commission shall adopt guidelines for tramp vessel services before the date on which Article 32 of Regulation (EC) No 1/2003 is repealed.
Justification

To provide legal certainty to the sector the establishment of guidelines for tramp services shall be made compulsory.
EXPLANATORY STATEMENT

A. General background

Maritime transport plays a crucial role in EU trade relations with third countries. Actually, it accounts for about 45% of EU external trade in value terms and about 75% in volume terms. European shipping companies play an increasingly important role in maritime transport and are an important factor for the burgeoning trade relations between Asia and Europe.

The shipping market is divided into two main categories: scheduled ("container liner") and non-scheduled ("tramp") services. The primary legal base for the sector is Council Regulation 4056/86 which lays down detailed rules for the application of Articles 81 and 82 (ex Articles 85 and 86) of the Treaty to maritime transport services. In particular it provides

a) procedural provisions (which became redundant once the maritime sector fell into the scope of the general enforcement rules of Council Regulation (EC) 1/2003) and
b) a "block exemption" for liner shipping conferences allowing them, among other things, to fix freight charges and to manage vessel capacities.

In its proposal the Commission argues that the liner shipping market in general, and liner conferences in particular, has undergone considerable change since the adoption of Regulation 4056/86. More and more traffic is now container based whereby the role of consortia and alliances has increased considerably and this to the detriment of liner conferences. Furthermore, customers of vessel services question the cartel approach of the liner conference system, arguing that it does not deliver cost-saving incentives to the shipping industry.

Cabotage and international tramp vessel services are already deregulated and operate on the basis of the rules of fair competition. Currently these are the only sectors that are excluded from the general competition implementing rules of Regulation 1/2003.

On December 1st 2005 the European Parliament adopted a resolution on the application of competition rules to maritime transport. On the one hand the Parliament recognised the importance of compatibility with the EU rules of competition. On the other hand, the Parliament showed hesitancy towards the possible consequences for the marine transport sector, the implications for other interested parties and possible international consequences. The Parliament stressed the importance of establishing guidelines in order to give legal certainty to the sector.

B. Content of the Commission proposal

1. Liner conferences

In its review of Regulation 4056/86 the Commission has come to the view that the exemption of liner conferences from the general competition rules of Articles 81 and 82 is no longer justified.

The Commission proves that the exemption, which is unlimited in time and does not contain any market share thresholds, neither leads to a higher degree of price stability nor does it assure more reliable services than measures that are less market restrictive.
In more concrete terms, liner conferences do not fulfil the four cumulative conditions\(^1\) laid down in Article 81(3) of the Treaty that would justify the continuation of price fixing and capacity regulation under the block exemption scheme.

As there is no evidence that the industry needs to be protected from competition to provide its services, the Commission would like to propose the repeal of the regulation and its block exemption in its entirety.

1.1. Alternative Framework

The repeal of the block exemption raises the question of whether an alternative framework for cooperation to the liner conference system might be necessary. In this regard, the European Liner Affairs Association (ELAA) suggests installing an “exchange of information system”. The Commission envisages issuing guidelines to assess this matter and set out the extent to which this approach would be compatible with EU competition law.

1.2. International implications

The UNCTAD code of Conduct for Liner Conferences came into effect in 1983 and is the basic legal basis governing regular international maritime services. Nowadays, in practise the UNCTAD-Code is not an important factor anymore in the container liner trade between countries. Several Member States have ratified the UNCTAD Code of Conduct for Liner Conferences. The abolition of the liner conference block exemption will engender incompatibility of the application of the code with EC competition rules. Member States concerned would therefore have to abolish the code.

2. Cabotage and tramp vessel services

The Commission proposes to delete Article 32 of Regulation (EC) No 1/2003 in order to end the exclusion from the general implementing competition rules of cabotage and tramp vessel services. In the Commission’s opinion this change would be of minor consequence as the substantive competition rules (Articles 81 and 82 of the Treaty) already apply to the Cabotage and tramp vessel sector.

As for the liner conferences, the Commission also intends to pave the way for this new regulatory framework by issuing guidelines for the tramp services sector. The guidelines for both liner conferences and tramp services will be drafted and adopted by the Commission. Preparatory work will be taken forward by the European Competition Network (ECN) working party for maritime transport and in close cooperation with the businesses concerned. It is expected that the guidelines will be made public by the end of 2007.

3. Other forms of cooperation in line with EU Competition rules

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\(^1\) The four conditions of Article 81 (3) of the Treaty are:
1. that the exemption contributes to improving the production or distribution of goods or to promoting technical or economic progress,
2. that consumers are allowed a fair share of the resulting benefit,
3. that restrictions are indispensable to the attainment of these objectives;
4. that no party is afforded the possibility of eliminating competition in respect of a substantial part of the products in question.
3.1. Consortia Block Exemption

After repealing Reg. 4056/86 extensive cooperation between liner shipping lines is still allowed under the Consortia Block Exemption provided that carriers engage in a provision of a joint service. This co-operation includes sharing costs but does not include joint price fixing so as to maintain a certain degree of competition between the lines that provide a joint service.

3.2. Discussion agreements

A discussion agreement is a sort of framework agreement by virtue of which carriers are able to coordinate flexibly their competitive conduct on the market in relation to freight rates and other service conditions. The scope and content of such agreements may vary. Discussion agreements concern normally the exchange of sensitive business information between competitors and should therefore respect the settled case law of the court on exchanges of information.

C. Rapporteur's opinion

1. General introduction

In principle your rapporteur can support the repeal and subscribes to the fact that there is no conclusive economic evidence that the assumptions on which the block exemption was justified at the time of its adoption in 1986 are still justified in the present market circumstances and under on the basis of the four cumulative conditions.

Your rapporteur welcomes that other forms of cooperation will be continued (explanatory statement B3). The Commission should however show more awareness of the possible consequences of the repeal of the block exemption.

2.1. Liner conferences

Firstly it is of vital importance to provide legal certainty to the maritime sector affected by this legislation with regard to the question of which practises are or are not allowed under the Treaty rules. Therefore it is of paramount importance to establish guidelines. This should enable operators to adapt to the new regulatory framework and help smooth transition to a competitive regime. These guidelines should be established in cooperation with stakeholders. The repeal of Reg. 4056/86 should be made conditional upon the establishment of guidelines for the sector and the European Parliament will have to be consulted when the guidelines are drafted. Therefore your rapporteur proposes amending Article 1 of the Council Regulation (amendment No. 13).

2.2. The International context

Liner conferences operate in a global context. The repeal of Reg. 4056/86 might have impact on trade with third countries. The Commission is of the view that non-alignment of EU-rules to those of other countries will not have a destabilising effect or lead to protectionist measures. We should however bear in mind existing legal and operating regimes in other parts of the world (China, USA, Japan, Singapore and India). It is therefore useful to acquire more
insight into the position of third countries and assess to what extent third countries have the willingness to adapt their system to the new EU policies. Therefore your rapporteur proposes that the European Commission should come up with a transparent overview of the formal position of third countries with regard to underlying Council Regulation. This information can also be used for the guidelines the Commission will come up with (amendment No. 5).

The repeal of Reg. 4056/86 implies that Member states which joined the UNCTAD code must repeal these bilateral agreements. This could have an impact on the relations with these countries and might be political sensitive. To avoid any negative consequences Member States shall be given the necessary time to end the existing bilateral agreements. The Commission should examine the implications and if necessary assist in finding appropriate solutions in the problems which may arise (amendment No. 7).

3. International tramp services and cabotage

The rapporteur supports the Commission's proposal to bring international tramp vessel and cabotage services within the scope of Reg. No. 1/2003. This is consistent with the competition policy of the EU. This shift should nevertheless be accompanied by the establishment of guidelines for the tramp sector so as to give legal clarity and certainty to the sector and to take into account the its specific characteristics, i.e. pool arrangements. The fact that the Commission has launched a major study of the characteristics of the sector (OJ supplement S 35 of 21 February 2006) and intends to adopt guidelines on how competition rules will apply to tramp vessel pools should therefore be welcomed. The lifting of the exclusion of Art. 32 of Reg. No 1/2003 should be made conditional upon the establishment of guidelines for the sector (amendment No. 14).
7.6.2006

OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM

for the Committee on Economic and Monetary Affairs


Draftsman: Fernand Le Rachinel

SHORT JUSTIFICATION

1. Introduction

Maritime transport has special status in competition law. So although the sector is, in principle, covered by the rules of Community law, it nevertheless benefits from certain exemptions allowing greater freedom of manoeuvre in certain subsections than most other economic sectors enjoy.

The exemptions at issue here are as follows:

a. Liner conferences, as defined in Article 2 of Regulation No 4056/86, are authorised by that regulation.

b. Technical agreements between ship-owners are permitted under Article 2 of regulation 4056/86 if their sole object and effect is to achieve technical improvements and cooperation without restricting competition.

c. Tramp (i.e. non regular) and cabotage services are excluded from the scope of Community competition law by virtue of Article 32 of Regulation (EEC) No 1/2003. To be precise, these two sectors are excluded from the scope of the general competition enforcement rules. Clearly, they have always been included within the scope of the basic primary law rules, namely Articles 81 and 82 of the Treaty.

2. The Commission proposal

The Commission proposed, in Article 1, to repeal Regulation (EC) No 4056/86. Repealing the regulation would abolish the technical agreements which have been a source of continual
disputes between ship-owners and the Commission and the Court of Justice.

Secondly, **liner conferences**, as defined in Articles 1b, 3, 4, 5 and 6, will **no longer be able to exist**. These conferences are based on a block exemption granted to such conferences by Regulation No 4056/86 (EEC), which enabled them to fix prices and regulate capacity, activities which are, in principle, contrary to Community competition law.

Article 2 of the proposed regulation would repeal Article 32 of Regulation (EEC) No 1/2003. Repealing that article would bring **tramp and cabotage services** within the scope of the **general competition enforcement rules** laid down in that regulation.

3. **Draftsman's opinion**

Your draftsman:

- considers that maritime transport services are essential for the development of the European Union's economy.
- considers that all stake holders in the sector, and in particular shippers and ship-owners, consider that the time has come to review the liner conferences' exemption from competition rules.
- welcomes the Commission's proposal for a transitional period of two years after Regulation No 4056/86 is repealed to enable ship-owners and the sector as a whole to adapt to the new competition rules, and notes that both the Commission and the ship-owners regard a two-year transition period as sufficient.
- considers that it is necessary to replace the block exemption by guidelines on the implementation of competition rules in the maritime transport sector, and considers that steps must be taken to ensure that Regulation No 4056/86 is not repealed before the guidelines have been laid down.
- notes that in Mrs Kratsa-Tsagaropoulou's report (A6-314/2005), which was adopted recently following the publication of the Commission's White Paper (COM(2004)675 final) on the same subject, Parliament called on the Commission to proceed with caution when abolishing liner conferences.
- a further point, namely the need to take special account of small and medium-sized ship-owners and of specialised trades should be included in the provisions of the proposed regulation. This point is the subject of the sole amendment proposed by your draftsman.

The EU intends to accord maritime transport a more important place in future. This can be deduced from the Commission's White Paper on transport policy and the Marco Polo II programme it put forward recently.

To achieve that aim, tariffs must change in such a way as to attract new customers, be transparent, switch a proportion of freight away from road transport, and thus help relieve the congestion on our road network. Given that road is probably the most competitive mode of transport, the solution is obvious.
AMENDMENTS

The Committee on Transport and Tourism calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

<table>
<thead>
<tr>
<th>Text proposed by the Commission¹</th>
<th>Amendments by Parliament</th>
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<tr>
<td><strong>Amendment 1</strong></td>
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<td><strong>CITATION 1</strong></td>
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<td>Having regard to the Treaty establishing the European Community, and in particular Article 83 thereof,</td>
<td>Having regard to the Treaty establishing the European Community, and in particular Articles 80 and 83 thereof,</td>
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**Justification**

*The dual legal basis of Regulation (EEC) No 4056/86 must be retained because the repeal of that regulation will affect not only shipping competition, but also coordination and international agreements in the sector.*

**Amendment 2**

**RECITAL 3**

(3) The liner shipping conference block exemption provided for in Regulation (EEC) No 4056/86 exempts from the prohibition of Article 81(1) of the Treaty agreements, decisions and concerted practices of all or part of the members of one or more liner conferences which fulfil certain conditions. The justification for the block exemption in essence assumes that conferences bring stability, assuring exporters of reliable services which cannot be achieved by less restrictive means. However, a thorough review of the industry carried out by the Commission has demonstrated that liner shipping is not unique as its cost structure does not differ substantially from that of other industries. There is therefore no evidence that the industry needs to be

(3) The liner shipping conference block exemption provided for in Regulation (EEC) No 4056/86 exempts from the prohibition of Article 81(1) of the Treaty agreements, decisions and concerted practices of all or part of the members of one or more liner conferences which fulfil certain conditions. The justification for the block exemption in essence assumes that conferences bring stability, assuring exporters of reliable services which cannot be achieved by less restrictive means. *Given the current conditions of global competition, rapid developments, high cost and investment risk in the liner shipping industry, it should at least be recognised that there is a need for exchange of information among stakeholders in that industry.*

¹ Not yet published in OJ.
protected from competition.

Justification

1) The findings of the studies carried out on behalf of the Commission do not constitute a sound basis for abolishing the liner shipping conference block exemption. The main questions regarding the consequences of complete liberalisation and regarding the four cumulative conditions to justify the exemption have not been answered in a credible and clear manner.

2) The liner shipping industry operates in an extremely competitive environment. In view of the particular nature of the industry (structure and operation), the exchange of information among stakeholders in the industry is essential and will facilitate adaptation to the new system.

Amendment 3
RECITAL 4

(4) The first condition for exemption under Article 81(3) requires that the restrictive agreement contributes to improving the production or distribution of goods or to promoting technical or economic progress. As regards the efficiencies generated by conferences, liner conferences are no longer able to enforce the conference tariff although they still manage to set charges and surcharges which are a part of the price of transport. There is also no evidence that the conference system leads to more stable freight rates or more reliable shipping services than would be the case in a fully competitive market. Conference members increasingly offer their services via individual service agreements entered into with individual exporters. In addition conferences do not manage the carrying capacity that is available as this is an individual decision taken by each carrier. Under the current market circumstances price stability and reliability of services are brought about by individual service agreements. The alleged causal link between the restrictions (price fixing and supply regulation) and the claimed efficiencies (reliable services) therefore appears too tenuous to meet the first condition of Article

(4) The first condition for exemption under Article 81(3) requires that the restrictive agreement contributes to improving the production or distribution of goods or to promoting technical or economic progress. As regards the efficiencies generated by conferences, liner conferences do not enforce tariffs but set reference tariffs which also include relevant primage. There is also no evidence that the conference system leads to more stable or less stable freight rates or more reliable or less reliable shipping services than would be the case in a fully competitive market. Conference members increasingly offer their services via individual service agreements entered into with individual exporters, taking the conference system as their indicative field of reference (freight rates, operating schedules). In that sense, conferences do not directly manage the carrying capacity that is available as this is an individual decision taken by each carrier. Under the current market circumstances price stability and reliability of services are brought about by individual service agreements operating alongside the conferences.
Justification

For the last 19 years, the liner conference exemption has been a significant regulatory factor in the development of international trade and, at the same time, the present conference system appears to be much more 'liberal' compared with the past as it operates alongside other forms of service provision in the industry (individual agreements, joint ventures, consortia etc). The studies hitherto carried out on behalf of the Commission do not expressly and categorically prove that conferences do not provide more stable tariffs or less reliable services.

Amendment 4
RECITAL 5

(5). The second condition for exemption is that consumers must be compensated for the negative effects resulting from the restrictions of competition. In the case of hard core restrictions such as horizontal price fixing which occur when the conference tariff is set and charges and surcharges are jointly fixed, the negative effects are very serious. However no clearly positive effects have been identified. Transport users consider that conferences operate for the benefit of the least efficient members and call for their abolition. Conferences today do not fulfil the second condition of Article 81 (3).

Justification

The Commission has not produced reliable data concerning the damages suffered by transport users using conferences. Furthermore, the assertion that horizontal price fixing by conferences has negative effects remains unsubstantiated since the Commission claims that the conferences have now lost that possibility.

Amendment 5
RECITAL 5

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Although the
hard core restrictions such as horizontal price fixing which occur when the conference tariff is set and charges and surcharges are jointly fixed, the negative effects are very serious. However no clearly positive effects have been identified.  
Transport users consider that conferences operate for the benefit of the least efficient members and call for their abolition. Conferences today do not fulfil the second condition of Article 81(3).

A replacement system based on information exchange, consistent with competition rules, could help to make the sector operate to the best possible effect.

Justification

The usefulness of information exchange for carriers and users alike is recognised in the various studies on the sector published since the revision of Regulation (EEC) No 4056/86 got under way.

As regards the conference tariff, given that it is no longer applied (cf. recital 4), it does not constitute ‘horizontal price fixing’ of the kind involved when surcharges and extras are set directly and does not entail the same ‘very serious’ negative effects.

Amendment 6
RECITAL 9

(9) The exclusion from the prohibition of Article 81(1) of the Treaty of purely technical agreements and the procedure for dealing with conflicts of law which may arise are also redundant. Those provisions should therefore also be deleted.

Justification

To strengthen legal certainty in the sector, Article 2 (‘Technical agreements’) and Article 9 (‘Conflicts of international law’) of Regulation (EEC) No 4056/86 should continue to apply.

Amendment 7
RECITAL 10
(10) In the light of the above, Regulation (EEC) No 4056/86 should be repealed in its entirety.

10) Should Regulation (EEC) No 4056/86 be repealed, in the light of the above:

a) the possible negative effects of the overall change of the system, both on large freight shipping lines and, principally, on small and medium-sized operations, should be prevented;

b) account should be taken of the current legal and operational systems in other countries (USA, Australia, Japan, Canada) since any divergence between the European system and those systems could create destabilising socio-economic trends on a world scale;

c) the liner shipping block exemption should end after a transitional period from the date of the Council decision to repeal Regulation (EEC) No. 4056/86;

d) the Commission, in close cooperation with stakeholders in the industry and after consulting the European parliament, should lay down clear guidelines in relation to the scope of Articles 81 and 82 of the Treaty and within a reasonable time before the expiry of the transitional period.

Justification

A number of conditions - safety valves - should be attached to the repeal of Regulation 4056/86 and the conference system as follows:

a) the protection of small and medium-sized enterprises in the industry from the risk of dominance by large-scale oligopolies (market trend),

b) the reaction of third country conference partners to the abolition of the existing system,

c) the fixing of a satisfactory transitional period of five years to enable the industry to adapt and the laying down of clear guidelines to achieve legal certainty.

Amendment 8

RE bâtAL 10 A (new)

(10a) Enforcement of this Regulation will entail the lapse, and hence the repeal, of Council Regulation (EEC) No 954/79 of
15 May 1979 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences\(^1\), which lays down a framework enabling the Code of Conduct for Liner Conferences to be applied in accordance with the Treaty.

\(^{1}\) OJ L 21, 17.5.1979, p. 1.

Justification

If the block exemption for liner conferences is abolished, the UNCTAD Code will cease to be applicable in the manner authorised by Regulation (EEC) No 954/79. There is no further need for European rules on accession to the UNCTAD Code when Member States which have ratified the Code are being asked to denounce their ratifications.

Amendment 9
RECITAL 10 A (new)

\((10a)\) The repeal should not take effect until the end of a transitional period allowing sufficient time for Member States and stakeholders in the sector to adapt to the new regulatory environment.

Justification

A transitional period needs to be laid down so as to allow sufficient time for those operating in the sector to adapt to the new regulatory environment. Since the Union’s unilateral ban on liner conferences also has international implications, the transitional period is necessary in order to enable Member States to revise any international agreements to which they might be parties and which refer explicitly to the conference system and related legal instruments such as the UNCTAD Code of Conduct.

Amendment 10
RECITAL 10 B (new)

\((10b)\) As the European Parliament noted in its resolution of 1 December 2005 on the application of EC competition rules to maritime transport\(^2\), it would be undesirable to repeal Article 2 (entitled ‘Technical agreements’) of Regulation (EEC) No 4056/86, which lists the forms of
agreement and technical cooperation applicable specifically to shipping and thus helps to make transactions in the sector legally more secure.

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1 Texts adopted on that date, P6_TA(2005)0466.

Justification

The forms of agreement and technical cooperation specified in Article 2 are one of the elements serving to organise the maritime transport sector. In its report the Commission points to the need for an information system and even goes so far as to accept the formation of consortia.

Amendment 11

RECITAL 10 C (new)

(10c) Since enforcement of this Regulation will create a conflict of law as regards the accession of certain Member States to the UNCTAD Code of Conduct for Liner Conferences, those Member States should be recommended to withdraw bilaterally from the Code, although they cannot be obliged to do so. In view of this situation, a clear-cut procedure needs to be put in place in order to deal with such conflicts of international law as might arise. To that end, it is necessary in particular to refrain from repealing the provisions of Article 9 (entitled ‘Conflicts of international law’) of Regulation (EEC) No 4056/86, which enable the Commission to act on the authority of the Council.

Justification

Abolition of the block exemption for liner conferences poses a number of legal problems in relation to non-member countries that will have to be resolved by means of a legal instrument.

Amendment 12

RECITAL 11

(11) Liner conferences are tolerated in

(11) Liner conferences are tolerated in
several jurisdictions. In this, as in other sectors, competition law is not applied in the same way worldwide. In light of the global nature of the liner shipping industry, the Commission will take all relevant initiatives to advance the removal of the price fixing exemption for liner conferences that exist elsewhere whilst maintaining the exemption for operational co-operation between shipping lines grouped in consortia and alliances, in line with the recommendations of the OECD Secretariat in 2002.

Justification

The OECD Secretariat's technical report cannot constitute a point of reference as the members of the OECD did not reach political agreement on that report.

Amendment 13
RECITAL 11 A (new)

(11a) The Commission should submit to the European Parliament a report analysing and evaluating the positions of third countries (China, India, Japan, Singapore, the USA, Canada) regarding the policy to be pursued by those countries in relation to future European policy on regular scheduled services (acceptance, adjustment, opposition, negative effects, etc.)

Justification

Thus far, the Commission has not provided any information on its negotiations with the partners or on the possible reactions of third countries to the plans to abolish the conference system. In contrast, third countries have recently expressed their intention to maintain the conferences.

Amendment 14
RECITAL 14

(14) Regulation (EC) No 1/2003 should therefore be amended accordingly. In particular, before the repeal of Article 32 of Regulation (EC) No. 1/2003, a transitional
period should be introduced. In order to ensure legal certainty, the Commission should publish, within a reasonable period of time before the repeal of that article, clear guidelines for the tramp services sector, taking account of its particular characteristics, with particular regard to joint operation agreements. The guidelines should be laid down after close cooperation with stakeholders in the sector and in consultation with the European Parliament.

Justification

The repeal of Article 32 of Regulation 1/2003 should be accompanied by a transitional period for adjustment to allow the tramp services market the necessary preparation time. As in the case of conferences, the guidelines will ensure legal certainty in this sector.

Amendment 15
ARTICLE 1, PARAGRAPH 2

However, Article 1 (3) (b) and (c), Articles 3 to 7, Article 8(2) and Article 26 of Regulation (EEC) No 4056/86 shall continue to apply in respect of liner shipping conferences satisfying the requirements of Regulation (EEC) No 4056/86 on the date of entry into force of this Regulation for a transitional period of two years from that date.

Justification

In order to ensure legal certainty in the sector, it should be mandatory to lay down clear guidelines for regular scheduled services and they should be published within a specified and reasonable period of time to allow the sector an appropriate period of preparation to adjust to the new conditions.

Amendment 16
ARTICLE 1, PARAGRAPH 2

However, Article 1 (3) (b) and (c), Articles 3 to 7, Article 8(2) and Article 26 of Regulation (EEC) No 4056/86 shall continue to apply in respect of liner shipping conferences satisfying the requirements of Regulation (EEC) No 4056/86 on the date of entry into force of this Regulation for a transitional period of five years from that date. The Commission shall lay down clear guidelines at least two years before the end of the transitional period.
However, Article 1(3) (b) and (c), Articles 3 to 7, Article 8(2) and Article 26 of Regulation (EEC) No 4056/86 shall continue to apply in respect of liner shipping conferences satisfying the requirements of Regulation (EEC) No 4056/86 on the date of entry into force of this Regulation for a transitional period of two years from that date.

However, Article 1(3) (b) and (c), Articles 3 to 7, Article 8(2) and Article 26 of Regulation (EEC) No 4056/86 shall continue to apply in respect of liner shipping conferences satisfying the requirements of Regulation (EEC) No 4056/86 on the date of entry into force of this Regulation for a transitional period of two years from that date. Articles 2 and 9 of that Regulation shall be reproduced in their entirety in this Regulation.

Justification

‘However, Article 1(3) (b) and (c), Articles 3 to 7, Article 8(2) and Article 26 of Regulation (EEC) No 4056/86 shall continue to apply in respect of liner shipping conferences satisfying the requirements of Regulation (EEC) No 4056/86 on the date of entry into force of this Regulation for a transitional period of two years from that date.’ Article 2 (‘Technical agreements’) and Article 9 (‘Conflicts of international law’) should be reproduced in their entirety in the regulation now being proposed.

Amendment 17
ARTICLE 1, PARAGRAPH 2 A (new)

At the beginning of this transitional period, the Commission shall publish guidelines designed to gradually replace the liner conference system. In these guidelines, the Commission shall pay particular attention to the interests of small and medium-sized ship owners and those engaged in specialised trades, and to the outermost regions, in accordance with Article 299(2) of the Treaty.

Justification

In keeping with the text proposed by the draftsman and complying exactly with Article 299(2), the amendment will ensure that the permanent constraints affecting the outermost regions will be taken properly into account when the Commission draws up the guidelines.

Amendment 18
ARTICLE 1, PARAGRAPH 2 A (new)
If no guidelines have been published within two years, the transitional period referred to in the second paragraph shall be extended until such time as guidelines have been adopted.

Justification

To strengthen legal certainty in the sector, guidelines for scheduled shipping transport services must be put in place before the regulation is implemented.

Amendment 19
ARTICLE 1 A (new)

Article 1a
Five years after this Regulation has entered into force, the Commission shall publish a report on the trend in the regulatory situation in the world’s other maritime regions and on the impact which the Union’s unilateral abolition of the liner conference system has had on the competitiveness of the European maritime transport sector.

Justification

The Union’s unilateral abolition of the liner conference system may entail international consequences that are hard to anticipate at the present time. It would therefore be desirable to assess how the repeal of Regulation (EEC) No 4056/86 has affected the competitiveness of Community shipping and the Union’s relations with its partners and neighbours.

Amendment 20
ARTICLE 2

Article 32 of Regulation (EC) No 1/2003 is deleted.

Article 32 of Regulation (EC) No 1/2003 is deleted. The Commission shall lay down clear guidelines for tramp services at least two years before the end of a transitional period.
Justification

In order to ensure legal certainty in the sector, it should be mandatory to have a transitional period for adjustment and to lay down clear guidelines for tramp services. They should also be published within a specified and reasonable period of time to allow the sector an appropriate period of preparation to adjust to the new conditions.

Amendment 21
ARTICLE 2 A (new)

Article 2a
Regulation (EEC) No 954/79 is repealed. The European Union and the Member States shall have two years in which to revise those agreements with third countries which are no longer in accordance with Community law.

Justification

The abolition of liner conferences is tantamount to denunciation of the UNCTAD Code of Conduct. Regulation (EEC) No 954/79, which has enabled the Code to be applied in Community law, no longer needs to exist. Multi- or bilateral agreements that mention the Code will need to be revised. A two-year transitional period is necessary to enable the revision to proceed calmly.

Amendment 22
ARTICLE 2 B (new)

Article 2b
In addition to amending Regulation (EC) No 1/2003, the Commission shall publish guidelines regarding application of that Regulation to the tramp vessel and cabotage sectors. The Commission shall publish informal guidelines at least 18 months before the above amendment enters into force.
Justification

To guarantee legal certainty, the Commission must publish guidelines as early as possible. Since it will not permitted to do so until the amendment of Regulation (EC) No 1/2003 has taken effect, it could publish informal guidelines in order to gain time pending entry into force of the amendment. It will be necessary to allow at least 18 months before the date of entry into force so as to enable the tramp vessel and cabotage sectors to adapt.
## PROCEDURE

<table>
<thead>
<tr>
<th><strong>Title</strong></th>
<th>Proposal for a Council regulation repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services</th>
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<td><strong>Committee responsible</strong></td>
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<td><strong>Draftsman</strong></td>
<td>Fernand Le Rachinel</td>
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<td><strong>Date appointed</strong></td>
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<td>19.4.2006 1.6.2006</td>
</tr>
<tr>
<td><strong>Date adopted</strong></td>
<td>1.6.2006</td>
</tr>
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</table>
| **Result of final vote** | +: 24
--:  7
 0:  4 |
| **Members present for the final vote** | Margrete Auken, Inés Ayala Sender, Etelka Barsi-Patakny, Paolo Costa, Christine De Veyrac, Saïd El Khadraoui, Robert Evans, Luis de Grandes Pascual, Mathieu Grosch, Ewa Hedkvist Petersen, Jeanine Hennis-Plasschaert, Georg Jarzembowski, Dieter-Lebrecht Koch, Rodi Kratsa-Tsagaropoulou, Fernand Le Rachinel, Eva Lichtenberger, Erik Meijer, Seán Ó Neachtain, Josu Ortuondo Larrea, Gilles Savary, Renate Sommer, Dirk Sterckx, Ulrich Stockmann, Georgios Toussas, Marta Vincenzi, Roberts Zīle |
| **Substitute(s) present for the final vote** | Zsolt László Becsey, Fausto Correia, Elisabeth Jeggle, Dan Jørgensen, Helmuth Markov, Kathy Sinnott, Jan Marinus Wiersma |
| **Substitute(s) under Rule 178(2) present for the final vote** | Raúl Romeva i Rueda, Thomas Wise |
| **Comments (available in one language only)** | ... |
### PROCEDURE

| Title | Proposal for a Council regulation repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services |
| Date of consulting Parliament | 10.2.2006 |
| Committee responsible | ECON 16.2.2006 |
| Committee(s) asked for opinion(s) | TRAN 16.2.2006 |
| Not delivering opinion(s) | Date of decision |
| Enhanced cooperation | Date announced in plenary |
| Rapporteur(s) | Corien Wortmann-Kool 17.1.2006 |
| Previous rapporteur(s) | |
| Simplified procedure – date of decision | Date of decision |
| Legal basis disputed | Date of JURI opinion |
| Financial endowment amended | Date of BUDG opinion |
| Parliament to consult European Economic and Social Committee – date decided in plenary | |
| Parliament to consult Committee of the Regions – date decided in plenary | |
| Discussed in committee | 19.4.2006 30.5.2006 |
| Date adopted | 20.6.2006 |
| Result of final vote | +: 27  
-: 1  
0: 4 |
| Members present for the final vote | Pervench Berès, Sharon Bowles, Leke van den Burg, David Casa, Jan Christian Ehler, Elisa Ferreira, Jean-Paul Gauzès, Donata Gottardi, Benoît Hamon, Joseph Muscat, Karsten Friedrich Hoppenstedt, Othmar Karas, Piia-Noora Kauppi, Christoph Konrad, Cristobal Montoro Romero, John Purvis, Alexander Radwan, Bernhard Rapkay, Dariusz Rosati, Manuel António dos Santos, Margarita Starkevičiūtė, Lars Wohlin |
| Substitute(s) present for the final vote | Werner Langen, Klaus-Heiner Lehne, Alain Lipietz, Vladimir Maňka, Thomas Mann, Giovanni Pittella, Gilles Savary, Corien Wortmann-Kool |
| Substitute(s) under Rule 178(2) present for the final vote | Elspeth Atwoooll, Willem Schuth |
| Date tabled | 22.6.2006 |