

EUROPEAN PARLIAMENT

2004



2009

Committee on Transport and Tourism

2005/0264(CNS)

7.6.2006

OPINION

of the Committee on Transport and Tourism

for the Committee on Economic and Monetary Affairs

on the 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 (COM(2005)0651 – C6-0046/2006 – 2005/0264(CNS))

Draftsman: Fernand Le Rachinel

PA_Leg

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:

Amendment 1
CITATION 1

Having regard to the Treaty establishing the European Community, and in particular **Article 83** thereof,

Having regard to the Treaty establishing the European Community, and in particular **Articles 80 and 83** thereof,

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 protected from competition.

(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.

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 81(3).

(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 abolishment. Conferences today do ***not*** fulfil the second condition of Article 81 (3).

(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, ***from transport users' point of view, very serious since they*** consider that conferences operate for the benefit of the least efficient members and call for their abolishment.

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

(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***

(5) The second condition for exemption is that consumers must be compensated for the negative effects resulting from the restrictions of competition. ***Although the contribution of information exchange is recognised in the various studies on***

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 abolishment. Conferences today do not fulfil the second condition of Article 81(3).

developments in the sector, in the case of hard core restrictions such as horizontal price fixing which occur when charges and surcharges are jointly fixed, the negative effects are very serious. Transport users consider that conferences operate for the benefit of the least efficient members and call for their abolishment. 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. *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* **10) *Should Regulation (EEC) No 4056/86***

entirety.

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

RECITAL 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 Conferences¹, 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 transport¹, 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.

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 several jurisdictions. In this, as in other sectors, competition law is not applied in the

(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.*

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.

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.

(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.

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.***

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

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 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 be 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

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
References	COM(2005)0651 – C6-0046/2006 – 2005/0264(CNS)
Committee responsible	ECON
Opinion by Date announced in plenary	TRAN 16.2.2006
Enhanced cooperation – date announced in plenary	
Draftsman Date appointed	Fernand Le Rachinel 15.2.2006
Previous drafts(wo)man	
Discussed in committee	19.4.2006 1.6.2006
Date adopted	1.6.2006
Result of final vote	+: 24 -: 7 0: 4
Members present for the final vote	Margrete Auken, Inés Ayala Sender, Etelka Barsi-Pataky, 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 Zile
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	Raül Romeva i Rueda, Thomas Wise
Comments (available in one language only)	...