Basic information

2005/0264(CNS) CNS - Consultation procedure Regulation	Procedure completed
Maritime transport: cabotage and international tramp services Amending Regulation (EC) No 1/2003 2000/0243(CNS) **Subject** 2.60.01 Trade restrictions, concerted practices, dominant positions 3.20.03 Maritime transport: passengers and freight	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	WORTMANN-KOOL Corien (PPE-DE)	17/01/2006

Committee for opinion	Rapporteur for opinion	Appointed
TRAN Transport and Tourism	LE RACHINEL Fernand (NI)	15/02/2006

Council of the European Union

Council configuration	Meetings	Date
Competitiveness (Internal Market, Industry, Research and Space)	2751	2006-09-25

European Commission

Commission DG	Commissioner
Competition	KROES Neelie

Key events

Date	Event	Reference	Summary
14/12/2005	Legislative proposal published	COM(2005)0651	Summary
16/02/2006	Committee referral announced in Parliament		
20/06/2006	Vote in committee		Summary
22/06/2006	Committee report tabled for plenary, 1st reading/single reading	A6-0217/2006	
03/07/2006	Debate in Parliament		

04/07/2006	Decision by Parliament	T6-0291/2006	Summary
04/07/2006	Results of vote in Parliament		
25/09/2006	Act adopted by Council after consultation of Parliament		
25/09/2006	End of procedure in Parliament		
28/09/2006	Final act published in Official Journal		

Technical information

Procedure reference	2005/0264(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 1/2003 2000/0243(CNS)
Legal basis	EC Treaty (after Amsterdam) EC 083
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/32795

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE371.844	28/03/2006	
Amendments tabled in committee		PE374.090	10/05/2006	
Committee opinion	TRAN	PE371.856	07/06/2006	
Committee report tabled for plenary, 1st reading/single reading		A6-0217/2006	22/06/2006	
Text adopted by Parliament, 1st reading/single reading		T6-0291/2006	04/07/2006	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2005)0651	14/12/2005	Summary
Document attached to the procedure	SEC(2005)1641	14/12/2005	Summary
Commission response to text adopted in plenary	SP(2006)3801	28/08/2006	
Follow-up document	SEC(2008)2151	01/07/2008	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0958/2006	05/07/2006	

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Final act	
Regulation 2006/1419 OJ L 269 28.09.2006, p. 0001-0003	Summary

Maritime transport: cabotage and international tramp services

2005/0264(CNS) - 01/07/2008 - Follow-up document

The Commission sets out the guidelines on the application of Article 81 of the EC Treaty to maritime transport services. These Guidelines set out the principles that the Commission will follow when defining markets and assessing cooperation agreements in those maritime transport services directly affected by the changes brought about by Council Regulation (EC) No 1419/2006, i.e. liner shipping services, cabotage and international tramp services. The Guidelines are intended to help undertakings and associations of undertakings operating those services, mainly if operated to and/or from a port or ports in the EU, to assess whether their agreements are compatible with Article 81 of the Treaty.

Maritime transport services: liner shipping services, cabotage and tramp services are the maritime transport sectors directly affected by the changes brought about by Regulation (EC) No 1419/2006. The paper discusses the **effect of trade** between Member States, pointing out that Article 81 of the Treaty applies to all agreements which may appreciably affect trade between Member States. The effect on trade between Member States is of particular relevance to maritime cabotage services since it determines the scope of application of Article 81 of the

Treaty and its interaction with national competition law under Article 3 of Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. The extent to which such services may affect trade between Member States must be evaluated on a case by case basis.

The paper goes on to discuss the notion of the **relevant market**. In order to assess the effects on competition of an agreement for the purposes of Article 81 of the Treaty, it is necessary to define the relevant product and geographic market(s). The main purpose of market definition is to identify in a systematic way the competitive constraints faced by an undertaking. Guidance on this issue can be found in the Commission Notice on the definition of the relevant market for the purposes of Community competition law. This guidance is also relevant to market definition as regards maritime transport services.

The relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use. The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas. A carrier (or carriers) cannot have a significant impact on the prevailing conditions of the market if customers are in a position to switch easily to other service providers. The Commission examines the notion with regard to liner shipping and tramp services. It discusses at length the following:

- elements to take into account when determining the relevant product market from the demand side (demand substitution);

- elements to take into account when determining the relevant product market from the supply-side (supply substitution);

- additional considerations to take into account when determining the relevant product market, such as the existence of chains of substitution between vessel sizes in tramp shipping;

- geographic dimension.

The paper notes that market shares provide useful first indications of the market structure and of the competitive importance of the parties and their competitors. The Commission interprets market shares in the light of the market conditions on a case-by-case basis, and it gives some guidelines based on Commission decisions and Court judgments.

Horizontal agreements in the maritime transport sector: cooperation agreements are a common feature of maritime transport markets. Considering that these agreements may be entered into by actual or potential competitors and may adversely affect the parameters of competition, undertakings must take special care to ensure that they comply with the competition rules. In service markets, such as maritime transport, the following elements are particularly relevant for the assessment of the effect an agreement may have in the relevant market: prices, costs, quality, frequency and differentiation of the service provided, innovation, marketing and commercialisation of the service.

Lastly, three issues are of particular relevance to the services covered by these guidelines: **technical agreements, information exchanges between competitors in liner shipping, and pools**. The paper discusses these in detail.

Maritime transport: cabotage and international tramp services

2005/0264(CNS) - 04/07/2006 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Corien **WORTMANN-KOOL** (EPP-ED, NL) by 534 votes in favour to 89 against with 16 abstentions,and approved the proposal, subject to a number of amendments. (For a summary, please refer to the document of 20/06/2006.)

Maritime transport: cabotage and international tramp services

2005/0264(CNS) - 25/09/2006 - Final act

PURPOSE: to repeal Regulation 4056/86/EEC concerning the application of Article 85 and 86 of the Treaty to maritime transport. To amend Regulation 1/2003 on cabotage and international tramp services.

LEGISLATIVE ACT: Council Regulation 1419/2006/EC repealing Regulation 4056/86/EEC laying down detailed rules for the application of Article 85 and 86 of the Treaty to maritime transport and amending Regulation 1/2003/EC as regards the extension of its scope to include cabotage and international tramp services.

CONTENT: in agreeing to this Act, the EU is repealing Regulation 4056/86/EEC which laid down detailed rules for the application of Article 85 and 86 of the Treaty to maritime transport. The 1986 Regulation served two purposes. Firstly, it contained procedural provisions for the enforcement of Community competition rules in the maritime transport sector. Secondly, it laid down certain specific substantive competition provisions for the maritime sector. Notably, it exempted liner shipping conferences from competition rules and allowed them to fix prices and regulate capacity subject to certain conditions.

Justification for the block exemption was based on the assumption that conferences brought stability and ensured exporters reliable services. A thorough review of the industry, however, has demonstrated that liner shipping is not unique. Its cost structures do not differ substantially from that of other industries and there is, therefore, no evidence that the industry needs to be protected from competition. Given that liner shipping conferences no longer fulfil the four cumulative conditions for exemption under Article 81(3) of the Treaty the block exemption in respect of such conferences has been abolished. Similarly, exclusion from the prohibition requirements of Article 81(1) of the Treaty on purely technical agreements as well as the procedure for dealing with conflicts of law which may arise are also redundant and consequently deleted.

A second aspect of this Regulation concerns cabotage and international tramp vessel services. Until now, these too have been excluded from the rules implementing Article 81 and 82 of the Treaty. Firstly through Regulation 4056/86/EEC and later through Regulation 1/2003/EC. They were the only remaining sectors to be excluded from the Community’s competition implementing rules, which was deemed an anomaly by the Commission. To redress this anomaly this Regulation amends the scope of Regulation 2003/1/EC so as to include cabotage and tramp vessel services.

The Regulation provides for a transposition of two years concerning the liner conference block exemption.

ENTRY INTO FORCE: 18 October 2006.

TRANSPOSITION: 18 October 2008.

Maritime transport: cabotage and international tramp services

2005/0264(CNS) - 14/12/2005 - Legislative proposal

PURPOSE : to repeal the block exemption for liner shipping conferences.

PROPOSED ACT : Council Regulation.

CONTENT : liner shipping, the provision of regular, scheduled maritime freight transport, has been organised in the form of cartels – called liner conferences - since the 1870s. These bring together most or all lines operating container services on a particular route. Defenders of conferences claim that the liner shipping market is unique, requiring special competition law treatment. However, in the 20 years that the block exemption has been in force, the market has changed considerably. A block exemption gives assurance that the agreements concerned are compatible with EU competition rules, provided that the agreements respect requirements set out in the Regulation. EU competition rules require that the positive effects brought about by a restrictive agreement outweigh its negative effects and that a fair share of these benefits be passed on to consumers. The Commission has reviewed Regulation 4056/86/EEC concluding that the conditions for granting the block exemption are not fulfilled.

More specifically, this proposal aims to repeal the block exemption of liner conferences from the EC Treaty competition rules' ban on restrictive business practices (Article 81). The current block exemption, established by Council Regulation 4056/86/EEC, allows carriers to fix prices and regulate capacity jointly. Repealing the exemption will benefit EU exporters by lowering transport prices whilst maintaining reliable services. This will enhance the competitiveness of EU industry, furthering the Lisbon Strategy.

To allow shipping lines time to adapt to a competitive market and to give Member States time to review their international obligations, the Commission proposes that the repeal of the block exemption should take effect only two years after adoption by the Council of the decision to do so.

In addition, the proposal also covers tramp and cabotage services. Tramp services are the non-regular, maritime transport of non-containerised bulk cargo, and include economically important services such as the transport of oil, agricultural and chemical products. Cabotage services are maritime transport services between ports of a single Member State. The proposal to bring these services under Council Regulation 1/2003/EC, the common competition implementing rules (by deleting Article 32 of Council Regulation 1/2003/EC), does not involve a change to the applicable law as EU competition rules already apply to the sectors. It rather establishes equality of treatment between these sectors of the economy and all others to which the implementing rules already apply.

The Commission and the liner shipping industry have discussed whether a replacement of the conference system is necessary. If the current block exemption is repealed, the Commission is minded to issue appropriate guidelines on how to apply competition rules to all forms of co-operation in the maritime transport sector, including information exchange. This would help smooth the transition to a more competitive environment. The guidelines which should be brought forward by the end of 2007, would treat issues such as an independent data warehouse, the creation of a trade association and of trade fora, the publication of a price index and common formulae for charges and surcharges. The guidelines will explain how the competition rules apply to the liner sector in general, including timely and regular exchange and publication of capacity utilisation information. As an interim step, the Commission will publish an issues paper on liner shipping in September 2006.

Lastly, if the liner conference block exemption is repealed all carriers (both EU and non EU) that are presently part of conferences would no longer be allowed to fix prices and regulate capacity on those trades. Given the definition of a conference this implies that conferences would no longer operate on trade lanes to and from the Community. Nothing would impede these carriers to continue being part of conferences on other (non EU) trades.

Maritime transport: cabotage and international tramp services

2005/0264(CNS) - 14/12/2005 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

For further information regarding the context of this issue, please refer to the summary of the Commission's proposal for a Council Regulation repealing Regulation 4056/86/EEC laying down detailed rules for the application of Articles 85 and 86 to maritime transport, and amending Regulation 1 /2003/EC as regards the extension of its scope to include cabotage and international tramp services – COM(2005)0651.

1- POLICY OPTIONS AND IMPACTS

The Commission considered three options.

1.1- Option 1 - keep the current block exemption for liner shipping conferences in force and transform it into a Commission regulation for a limited period of five years. This would be followed by a subsequent review which is common for all other block exemption regulations ('No action option').

1.2- Option 2 - repeal the present block exemption and not replace it by any other instrument ('Repeal option'). This option would bring the whole liner shipping industry on equal footing with all other industrial sectors and would imply that conference members, like any other shipping carrier, will have to carry out a self-assessment as to whether their activities would fall within the scope of Article 81(1) of the Treaty and, if so, whether they would fulfil the conditions for an exemption under Article 81(3) of the Treaty. Lines would be assisted in this regard by the decisional practice of the Commission, various guidelines issued by the Commission and the case law of the Court.

1.3- Option 3 - repeal the present block exemption, but also establish an alternative regime that allows other forms of cooperation between carriers operating liner services to and from the EU('Replace option'), in addition to current forms of co-operation for which there exists a legal framework (e.g. consortia, alliances or mergers).

CONCLUSION: The Commission's identified the 'Repeal option' (Option 2) as the best available option in terms of social and economic aspects. It also positively contributes to the Lisbon objectives. With respect to the four areas of transport prices, reliability of services, competitiveness of EU liner shipping and small EU carriers, which are of particular importance in the review process, the 'Repeal option' would bring about substantial benefits to industry and consumers.

IMPACTS

Effect on transport prices: In the 'No action option' shippers will continue to pay transport prices that are above competitive levels, i.e. the option has a negative impact on transport prices. The 'Repeal option' has a positive impact on transport prices as it will lead to reductions of the ocean rates and even more so to reductions in surcharges and ancillary charges. The 'Replace option' is most likely to result in total transport prices that are even higher than today and has hence a negative impact.

Effect on price stability: The impact of the 'No action option' is weakly negative since price instability stems from a fundamental and wasteful problem, while the impact of the 'Repeal' and 'Replace option' on price volatility is neutral. Based on the ICF analysis and the experience in other liberalized transport industries, we expect tariff rates would be less volatile in the long-run under a more competitive system.

Overall consequences of the option for economic growth and employment: Both the ‘No action option’ and the ‘Replace option’ will have a negative impact on the Lisbon objectives and economic growth. The ‘Repeal option’ will have a positive impact on the Lisbon objectives and long-term economic growth.

Effect on the functioning of the internal market:

- The ‘No action option’ will have a negative impact.
- The ‘Repeal option’ has a positive impact.
- The ‘Replace option’ overall has a negative impact.

Impact on small shippers: Overall the ‘No action option’ and the ‘Repeal option’ will have a neutral impact on small shippers. Some stakeholders even see a positive impact of the ‘Repeal option’ on small shippers. A negative impact on small shippers can be expected from the ‘Replace option’.

Impact on employment: The impact on employment of all three options is neutral.

Environmental impacts: The ‘No action’ and ‘Replace option’ are likely to have weakly negative impacts on the environment. The environmental impact of the ‘Repeal option’ is difficult to quantify but unlikely to be positive, so is judged to be neutral for the purposes of this impact assessment.

2- FOLLOW-UP

The Commission considers that collective fixing of terminal handling charges does not fall with the scope of Regulation 4056/86 and hence Commission intervention might be necessary in future. Lastly, Commission block exemption regulations are usually reviewed every five years.