

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(75) 302 final

Brussels, 17 June 1975

Proposal for a decision of the Council concerning the opening of negotiations in respect of the United Nations Convention on a Code of Conduct for Liner Conferences (submitted to the Council by the Commission)

COM(75) 302 final

EXPLANATORY MEMORANDUM

On 17 July 1974 and 17 March 1975 the Commission forwarded to the Council proposals for a Council Decision concerning common action by the Member States in respect of the Convention on a Code of Conduct for Liner Conferences (doc. COM(74) 1112 final and COM (75) 112 final). These proposals aimed especially at the definition of the terms and conditions of common action as proposed by the Commission, within specified time limits, and abstention on the part of Member States from any unilateral action in respect of the Convention.

The Commission, while recalling the need for Member States to take common action, considers that it is advisable, here and now, to make proposals aimed at finding the concrete terms and conditions for the action to be undertaken by the Community and the Member States with regard to the Code of Conduct.

It recalls the incompatibilities which exist between some of the provisions of the Code of Conduct and the EEC Treaty. Some provisions of the Code create difficulties of an economic and political nature.

The Commission considers that incompatibilities exist between the following provisions of the Code of Conduct and specified articles of the Treaty (1):

Provisions of the Code of Conduct

Articles of the Treaty

(The references in bracket are to the text of the Code of Conduct)

- Membership of a Conference (Chapter II Article 1) 7,52,85
- Participation in the Trade (Chapter II Article 2) 7,52,85

(1) The application of the general rules of the Treaty to sea and air transport was confirmed by the Court of Justice in its ruling of 4.4.1974 in case 167/73.

(The present provisions create discrimination, because of their nationality, between shipping companies established in the EEC and risk limiting competition)

- Relations between shipping companies and shippers (Chapter III) 85,86

(These provisions do not entirely conform to competition rules)

A difficulty of another legal nature is raised by the absence of any provision which would allow the Community to become a contracting party. The difficulties of an economic and political nature are raised especially by the following provisions of the Code of Conduct :

- membership of the conferences and participation in the trade: it is necessary to obtain modifications which will avoid the creation of fresh barriers to international maritime transport while taking account of the special needs of developing Countries
- relations between shippers and conferences: it will be necessary to improve the protection of the shippers' interests, especially in so far as the terms and conditions of the application of loyalty agreements are concerned:
- freight rates: it would be wise to render more flexible the provisions concerning the notice given of overall increases
- settlement of disputes: it will be necessary to improve these provisions, in view of their excessive complexity, by simplification
- competent authority: the definition of "competent authority", for the purpose of applying the Code, should include the Commission of the EEC.

Difficulties of a legal, economic and political nature will be raised by the application of the Code of Conduct to sea transport within the Community. It would be wise, therefore, to ensure the non-application of the Code to this traffic.

It will be necessary to overcome these difficulties, by appropriate methods, if the Community and Member States are to adhere to the Convention. It is advisable therefore to submit reservations or, should the occasion arise, obtain amendments to the Convention which would take account of these difficulties.

Some reservations, especially those which are necessary in order to avoid any discrimination on grounds of nationality between shipping companies established in Member States, are not of a kind to pose any problems of acceptability for third Countries which are, or want to become contracting parties to the Convention. However, other reservations (e.g. application of Community Law) could pose problems of acceptability. Some amendments, necessary from a legal, economical or political point of view, could also create such difficulties.

It is advisable therefore, in parallel with the work undertaken within the Community, to open negotiations with interested third Countries for the purpose of establishing the acceptability of these reservations and amendments. Given that these reservations and amendments depend either on the competence of the Community or on the competence of Member States, these negotiations should be conducted jointly by the Member States and the Commission.

From the practical point of view these negotiations can not be limited to bilateral contacts. As unanimous agreement is necessary for any amendment one must take account of the possibility of carrying out these negotiations in an appropriate international forum. If, in fact, bilateral negotiations show the advantage of so doing the Commission will propose that the Member States should suggest, jointly with the Commission, that an advanced review conference should be convened under the auspices of the United Nations, with the aim of avoiding the waste of time created by the provisions of Article 52 of the Code, which provides for the possibility of convening such a conference only at the end of a 5 year period. On the basis of the results of these negotiations the Commission will send a proposal for a Decision to the Council concerning possible adhesion of the Member States to the Convention and, should the matter arise, a recommendation for a decision relating to the conclusion of the Convention by the Community.

In the meantime it is necessary that Member States abstain from any action concerning signature, with or without reservations concerning ratification, ratification or adhesion to the Convention on the Code of Conduct. This obligation stems from the provisions of Articles 5, 113, 114 and 116 of the EEC Treaty.

Conclusions

For the reasons set out above the Commission considers that it is advisable to open negotiations with interested third Countries on the subject of the Convention of the Code of Conduct with a view to resolving those difficulties of an economic, political or legal nature which prevent Member States from becoming parties to the Convention, and which prevent the Community concluding the aforesaid Convention in its present form. Given that the reservations and amendments fall within the competence of both the Community and the Member States. These negotiations are to be carried out jointly by the Member States and the Commission.

The necessary reservations and amendments have been set out above and are repeated in the directives for negotiation annexed to the Decision.

In the light of the obligations arising under the Treaty it is evidently necessary that Member States should abstain from any isolated action.

Proposal for a Council Decision (EEC)
concerning the opening of negotiations regarding the United Nations'
Convention on a Code of conduct for Liner Conferences

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community and in particular articles 113 and 116,

Having regard to the Proposal of the Commission,

Whereas a Convention on a Code of conduct for Liner Conferences has been opened for signature following its preparation by a conference convened under the auspices of UNCTAD;

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

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

Whereas the Community is determined to continue to contribute towards the prosperity of developing countries and to take into account fully their needs and problems with respect to the activities of liner conferences serving their foreign trade;

Whereas certain provisions of the Convention are incompatible with obligations arising from the Treaty (EEC);

Whereas from the economic and political point of view certain amendments to the Convention appear desirable;

Whereas to allow the Community and the Member States becoming contracting parties it is necessary to remove the incompatibilities and to make certain reservations and amendments; and whereas it is necessary for the Community and the Member States to open negotiations for this purpose.

Has adopted this Decision :

Article 1

The Commission is authorised to, and Member States shall, acting in common together with the Commission open negotiations regarding the United Nations' Convention on a Code of Conduct for Liner Conferences to permit the accession of the Community and Member States.

These negotiations shall be conducted in accordance with the Directives annexed to this Decision.

The Commission shall conduct the negotiations falling within its competence in consultation with the special committee referred to in article 113.

Article 2

Member States shall refrain from signing, ratifying or acceding to the Convention until the Council decides on the action to be taken having regard to the outcome of the negotiation.

Article 3

This Decision is addressed to Member States.

Done at

For the Council

Directives for negotiation

Reservations and amendments to the Convention :

1. For the purpose of applying the Code of conduct to liner conferences engaged in the external trade of the Community, any shipping company formed in accordance with the law of a Member State and having its registered office, central administration or principal place of business within the Community shall be regarded as a "national shipping line" with respect to any liner conference engaged in the external trade of one or more Member States.
2. Sea-borne trade between Member States of the European Economic Community should be excluded from the application of the Code of conduct.
3. For the purpose of applying the provisions of the Code to liner conferences engaged in the external trade of the Community, any agreement between the members of a conference or between the members of a conference and a shipper (or organization of shippers) and any decision or action taken by a conference or its members shall remain subject, where appropriate, to the rules of the Treaty establishing the European Economic Community and to Community legislation. The recommendations of conciliators concerning any dispute referred to compulsory international conciliation shall be made in accordance with the provisions of the Code and, where appropriate, in accordance with Community law.
4. The provisions of the Code of conduct concerning membership of conferences and participation in trade (Ch. II) should be modified as concerns liner conferences engaged in the external trade of the Community in order to avoid the creation of obstacles in trade, taking account of the particular needs of developing countries.
5. For the purpose of applying the provisions of Chapter IV, Article 14 paragraph 9 to conferences engaged in the external trade of the Community, the rule providing for a minimum period of at least ten months between the date when one general freight rate increase becomes effective and the date of notice for the next general freight rate increase shall be relaxed by introducing the notion that this period may be shortened where shipping lines are affected by exceptional increases in costs.

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6. Simplify and improve the provisions of the Code relating to the settlement of disputes.
7. Amendments to permit the Community to become a Contracting Party and consequential amendments.