

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (74) 1112 final

Brussels, 15 July 1974

Proposal for a decision of the Council concerning common action by the Member States in respect of the United Nations Convention on a Code of Conduct for Liner Conferences (submitted to the Council by the Commission).

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Proposal for a Decision of the Council
concerning common action by the Member
States in respect of the United Nations Conventions
on a Code of Conduct for Liner Conferences

EXPLANATORY MEMORANDUM

BACKGROUND:

For some time a consensus of opinion has been growing in favour of general rules for certain aspects of liner conferences. This consensus of opinion received a powerful stimulus from UNCTAD's work in the field of sea transport and it developed in favour of mandatory rules aimed at institutionalizing cargo reservation in favour of the exporting and importing countries served by a liner conference.

UNCTAD's work, the aim of which was the establishment of a "code of conduct" for liner conferences, resulted in the convening of a conference of plenipotentiaries who met in Geneva from 12 November to 15 December 1973 and from 11 March to 7 April 1974. On 7 April 1974 this Conference adopted its Final Act to which a "Convention on a Code of Conduct for Liner Conferences" and two resolutions were annexed.

When the final vote was taken, the opinions of the Member States differed (in favour of the Code: Germany, Belgium France; abstentions: Italy, Netherlands; against: Denmark, United Kingdom; absent from the Conference: Ireland, Luxembourg). All the developing countries and the socialist countries were in favour of the Code, as were a number of market economy countries (Australia, Japan, Spain, Turkey). Other industrialized countries (Canada, New Zealand, Greece) abstained and some voted against the Code (United States, Norway, Sweden, Finland, Switzerland).

The Convention will remain open for signature as from 1 July 1974.

until and including 30 June 1975, and shall thereafter remain open for accession. States may become contracting parties by:

- signature subject to ratification, acceptance or approval;
- signature without reservation as to ratification, acceptance or approval, or
- accession.

The entry into force of this Convention shall remain subject to the accession of at least 24 countries having at least 25% of the world's general cargo tonnage.

SUMMARY OF THE PRINCIPAL PROVISIONS OF THE CODE OF CONDUCT FOR LINER CONFERENCES

The Code contains seven chapters and an Annex; two resolutions are also annexed to it. The seven chapters deal with the following topics: definitions, relations among member lines, relations with shippers, freight rates, "other matters", provisions and machinery for settlement of disputes, final clauses. The Annex contains model rules for international mandatory conciliation. The two resolutions annexed to the Code concern non-conference lines and the question of local conciliation.

Generally speaking, the Code of Conduct can be considered as representing a significant departure from the former situation, particularly as regards the provisions for cargo sharing which provide that the group of national shipping lines of each of two countries, at one end or the other of its traffic which is carried by the conference, shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference, and that third country shipping lines shall have the right to acquire a significant part, such as 20%, in the freight and volume of traffic generated by that trade. Such provisions institutionalize the distribution of shares of trade in the following proportions: 40% for the shipping lines of the exporting country, 40% for those of the importing country and 20% for those of third countries. Other provisions concern the conditions for membership of a conference and lay down fairly strict rules as regards the accession of third-country shipping

lines. It must be added that the various provisions referred to above leave no opening for any interpretation whereby the Community could be considered a single entity and not as nine independent markets and national merchant navies.

The Code of Conduct also contains large sections on relations between shipping lines within a conference and, more generally, between shipowners and shippers.

As far as freight rates are concerned, the Code stipulates that 150 days' notice must be given before any general increase may be made.

The Code also contains quite complex rules aimed at introducing a system of international mandatory conciliation. More detailed comments on the various chapters, especially on the provisions which are of particular interest to the Common Market, are annexed to this draft Decision.

PARTICULAR INTEREST TO THE COMMON MARKET

This Convention concerns various matters relating to maritime transport policy. In addition, its conclusions can give rise to problems concerning compatibility with obligations arising from the Treaty, particularly as regards the prohibition of discrimination, competition rules and commercial policy.

It would therefore be inadvisable for the Member States to conclude this Convention before the problems of compatibility as well as the repercussion of this Convention on possible Community action in this field have been cleared up. The Commission therefore reserves the right to take any action in this connection which it considers necessary in order to see that the Treaty are respected.

However, regardless of these problems of incompatibility, it should be emphasised that the area governed by the Convention on a Code of Conduct for Liner Conferences is of prime importance to the Common Market :

- most of its exports and a substantial part of its imports are transported by liners belonging to liner conferences ;

- approximately one-quarter of the trade within the Community is carried out by sea, and part of this is governed by agreements such as those concluded within the framework of conferences;
- the shipping lines of the Member States have approximately one-quarter of the world general cargo tonnage and make a substantial contribution to the employment and balance of payments situations within the Community.

On account of the provisions which it contains, the Convention on a Code of Conduct for Liner Conferences is liable

- to influence the cost and quality of liner services between the Community and the other parts of the world;
- to interfere with the development of trade within the Community.

The Commission draws particular attention to the fact that it considers that the present provisions of the Code of Conduct do not pay equal regard to the interests of shipowners and of shippers and are likely to damage certain fundamental interests of the Community.

Finally, the Commission is aware of the serious risks connected with the differences of opinion of the various Member States which were observed when a vote was taken on the draft Convention and which could jeopardize the general organization of sea traffic on both a worldwide scale and a Community scale.

COMMON ACTION

For the reasons and with the reservations given above, it is imperative that the Member States should adopt a common position on the question of the possible conclusion of the Convention on a Code of Conduct for Liner Conferences, and that, while awaiting the implementation of such common action, they should abstain from signing, ratifying or the possibility of acceding to that Convention.

Proposal for a Decision of the Council concerning common action by the Member States in respect of 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 Article 116 thereof,

Having regard to the proposal from the Commission,

Whereas the question of the operation of liner conferences has been treated by UNCTAD, and whereas UNCTAD's work has resulted in the drawing-up of a Convention on a Code of Conduct for Liner Conferences ;

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 such internationally-applicable rules affects the terms on which transport is effected, both within the Community and with non-member countries, and whereas such rules would affect the interests of the shipping lines and shippers of the Member States :

Whereas, regardless of the possible incompatibility of certain provisions of this Convention with the obligations arising from the Treaty and the repercussions that the Convention can have in the field of maritime transport, its entry into force is of particular interest to the Common Market, and whereas common action on the part of the Member States is required in this connection ;

Whereas the definition of the positions which the Member States will adopt as part of their common action requires careful examination, and whereas in the meantime they must abstain from any action which could prejudice or affect the implementation of their subsequent common action ;

HAS ADOPTED THIS DECISION :

Article 1

1. Without prejudice to all other possible Community actions, the Council shall define before 30 June 1975, and on a proposal from the Commission, on the form of the common action to be implemented as regards the possible conclusion by the Member States of the Convention on a Code of Conduct for Liner Conferences.

2. While awaiting the decision referred to in paragraph 1, the Member States shall abstain from signing, ratifying or acceding to the above-mentioned Convention.

Article 2

This Decision is addressed to the Member States.

Done at

For the Council

ANNEX

COMMENTS ON THE VARIOUS CHAPTERS OF THE CODE OF CONDUCT FOR LINER
CONFERENCES WITH PARTICULAR REFERENCE TO THOSE PROVISIONS WHICH ARE OF
PARTICULAR INTEREST TO THE COMMON MARKET OR WHICH RELATE TO AN AREA
GOVERNED BY THE GENERAL RULES CONTAINED IN THE TREATY

CHAPTER I : Definitions

There are no particular comments to be made on this chapter, except to say that the definition of the expression "national shipping line" is restrictive. In order to be regarded as a "national shipping line", a shipping line must have its head office of management and its effective control in that country.

CHAPTER II : Relations among member lines

Article 1 : Membership

This Article provides that any national shipping line (see definition in Chapter I) shall have the right to be a member of a conference, provided that certain criteria are met, in particular as regards its ability to operate a regular, adequate and efficient service as defined in the agreement concluded between the members of the Conference. Furthermore, it must be able to prove that it will be able to fulfil its obligations within the framework of the agreement and shall deposit a financial guarantee to cover any outstanding financial obligation in the event of subsequent withdrawal, suspension or expulsion from membership of the Conference. Any shipping line not regarded as a "national shipping line" ("cross trader") must meet the same requirements and a number of additional requirements (especially as regards the existing volume of trade on the route or routes served by the conference and prospects for its growth; the adequacy of shipping space for the existing and prospective volume of trade on the route or routes served by the Conference; the probable effect of admission of the shipping line to the conference on the efficiency and quality of the conference service; the current participation of the

shipping line on the same route or routes within the framework of another conference). Furthermore, the admission of such a shipping line shall also be subject to the application of the cargo sharing provisions (see below).

Article 2 : Participation in the trade

For the purpose of determining the share of trade which member lines shall have the right to acquire, the national shipping lines of each country, irrespective of the number of lines, shall be regarded as a single group of shipping lines for that country.

Shares of trade within a pool shall be determined as follows, unless otherwise mutually agreed:

- the group of national shipping lines of each of two countries, the foreign trade of which is carried by a conference, shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference;
- third-country shipping lines, if any, shall have the right to acquire a significant part, such as 20% in the freight and volume of traffic generated by that trade.

These provisions therefore institutionalise the distribution of freight in the following proportions:40-40-20.

Other provisions relate to the distribution of shares of trade in cases where the national shipping lines of one country decide not to carry, or cannot carry, their full share of trade. In such cases, that portion of their share of trade which those shipping lines do not carry shall be distributed among the individual member lines participating in the trade in proportion to their respective shares (in exceptional cases where no national shipping line of one country will participate in trade, the national shipping lines at the other end of the route, and third-country shipping lines will distribute the trade as follows:

$66\frac{2}{3}\%$ for the national shipping lines and $33\frac{1}{3}\%$ for third country shipping lines.

Another provision provides that national shipping lines of a region, members of a conference, at one end of the trade covered by the conference, may redistribute among themselves by mutual agreement the shares in trade allocated to them.

Article 2 also makes provision for cases where a conference has not yet distributed the trade between the member lines. In such cases the national shipping lines have the right to require the establishment of a system of pooling whereby they would receive the share of trade defined above.

If a conference makes provision for such a case in a pooling agreement, any vessel shall be allowed to lift cargo, even in excess of the pool share of the line, if otherwise the cargo would be shut out and delayed beyond a period set by the conference.

Article 4 : Sanctions and Article 5 : Self-policing

These articles relate to sanctions against shipping lines which fail to abide by the terms and conditions of a conference agreement, with particular reference to financial sanctions and the suspension or expulsion of a shipping line.

Article 6 : Conference agreements

This article lays down certain rules concerning the fact that all documents relating to the agreement shall be made available to the appropriate authorities of the countries whose trade is served by the conference.

CHAPTER III : Relations with shippers

This Chapter stipulates in particular that the members of conference are entitled to institute and maintain loyalty arrangements with shippers. Whatever loyalty arrangements are made, the freight rate applicable to loyal shippers shall be determined within a fixed range of percentages of the freight rate applicable to other shippers. Article 11 of this chapter relates to the machinery for consultations between conferences and shippers' organizations.

CHAPTER IV : Freight rates

This chapter requires that a number of criteria be taken into account when determining freight rates (but does not provide for any machinery for satisfying these criteria). The member lines of a conference must adhere strictly to freight rates, rules and terms laid down by the conference. At least 150 days' notice must be given before a general increase in freight rates can take place. Surcharges may be imposed temporarily in order to cover sudden or extraordinary increases in costs or losses of revenue.

CHAPTER V : Other matters

Members of a conference shall not use fighting ships to prevent competition from a shipping line which is not a member of the conference. General provisions require that shipping lines ensure regular services.

CHAPTER VI : Provisions and machinery for settlement of disputes

This chapter gives a more detailed account of the procedure for applying quite a complex system of conciliation or of international mandatory conciliation for the purposes of applying the various provisions of the Code.

CHAPTER VII : Final clauses

This chapter contains, in particular, provisions relating to the

signature and ratification of the Convention and its entry into force. Another important provision provides that a review conference shall be convened five years from the date on which the Convention enters into force.

Resolution in the Annex concerning non-conference lines

This Resolution provides in particular that non-conference lines should adhere to the principle of fair competition on a commercial basis. As long as they do so, such companies should not be prevented from operating on any given route.