

Supplement to

BULLETIN

of the European Economic Community

N° 5 - 1962

SECRETARIAT OF THE COMMISSION OF
THE EUROPEAN ECONOMIC COMMUNITY

REGULATION No. 27 OF THE COMMISSION

First Implementing Regulation pursuant to Council Regulation No. 17 of 6 February 1962

(Form, content and other details concerning applications and notifications)

The Commission of the European Economic Community,

NOTING the provisions of the Treaty establishing the European Economic Community, and particularly Articles 87 and 155 thereof;

NOTING Article 24 of Council Regulation No. 17 of February 6, 1962 (First Implementing Regulation pursuant to Articles 85 and 86 of the Treaty);

CONSIDERING that by virtue of Article 24 of Council Regulation No. 17 the Commission is empowered to lay down implementing provisions concerning the form, content and other details of applications submitted pursuant to Articles 2 and 3 and of the notification provided for in Articles 4 and 5 of that Regulation;

CONSIDERING that the submission of these applications and notifications may have important legal consequences for each of the enterprises party to an agreement, to a decision, or to a practice; that consequently each enterprise must have the right to submit an application of notification to the Commission; but that where an enterprise avails itself of this right it is necessary that it should inform the other enterprises party to the agreement, decision or practice, in order to enable them to safeguard their interests;

CONSIDERING that the onus of submitting to the Commission information on the facts and circumstances supporting applications filed in connection with Article 2 and notifications provided for in Articles 4 and 5 lies with the enterprises and associations of enterprises;

CONSIDERING that it is appropriate to provide for the use of application forms for negative clearance in connection with the implementation of Article 85, paragraph 1 and of notification forms in connection with the implementation of Article 85, paragraph 3, of the Treaty in order

to simplify and speed up scrutiny by the competent services in the interest of all concerned;

Has approved the present regulation :

Article 1

Persons authorized to file applications and notifications

1) Any enterprise party to the agreements, decisions, or practices coming under Article 85 or Article 86 of the Treaty shall be entitled to file an application under Article 2 or a notification under Articles 4 and 5 of Regulation No. 17. Where the application or notification is filed by only certain of the enterprises participating, they shall so inform the other enterprises.

2) Where representatives of enterprises, of associations of enterprises, or of natural or legal persons or of associations of persons sign the applications and notifications provided for in Article 2 and in Article 3, paragraph 1 and paragraph 2, sub-paragraph *b*) and in Articles 4 and 5 of Regulation No. 17, they must submit written evidence that they are authorized to act in this capacity.

3) Where an application or notification is filed jointly, a joint representative should be appointed.

Article 2

Filing of applications and notifications

1) Applications, notifications and relevant enclosures are to be filed with the Commission, in seven copies.

2) For enclosed documents, either the original or copies may be sent. Copies must be certified as being true copies of the original.

3) Applications and notifications shall be filed in one of the official languages of the Community. The documents shall be lodged in their original languages. Where the original language is not one of the official languages, a translation into one of these languages shall be enclosed.

Article 3

Date from which applications and notifications take effect

An application or notification shall take effect from the time it is received by the Commission. However, where the application or notification is sent by registered post, it shall take effect from the date shown on the postmark of the place of posting.

Article 4

Content of applications and notifications

1) The application provided for in Article 2 of Regulation No. 17 which concern Article 85, paragraph 1 of the Treaty, must be filed on Form A annexed hereto.

2) The notifications provided for in Article 4 or Article 5 of Regulation No. 17 must be filed on Form B annexed hereto.

3) Applications and notifications must give the information requested in the forms.

4) Several participating enterprises may submit an application or notification on a single form.

5) The applications provided for in Article 2 of Regulation No. 17 which concern Article 86 of the Treaty shall include a complete statement of the facts; this must cover, in particular, the practice in

question and the position occupied by the enterprise or enterprises in the Common Market or in a substantial part of it with respect to the product or service concerned.

Article 5

Transitional provisions

1) Any applications and notifications filed without use of the forms before the entry into force of this Regulation shall be considered as complying with Article 4 of the present Regulation.

2) The Commission may require that a form, duly filled in, be submitted within such time as it shall determine. In this event, applications and notifications shall not be considered as properly filed unless the forms are submitted within the period so determined and in accordance with the provisions of the present Regulation.

Article 6

The present Regulation shall enter into force the day after its publication in the official gazette of the European Communities.

The present Regulation shall be binding in every respect and directly applicable in each Member State.

Done at Brussels on the third day of May in the year one thousand nine hundred and sixty-two.

by the Commission
W. Hallstein
President

FORM A

Seven copies of this form and of the enclosures must be sent. Evidence that representatives are authorized to act in this capacity must be submitted in duplicate.

If there is not enough space alongside each question, additional sheets should be used and a clear indication given of the item of the form to which they refer.

To the EEC Commission
Directorate General for Competition
Directorate for Restrictive Agreements and Monopolies
12, avenue de Broqueville
Brussels 15

Application for negative clearance in connection with Article 85, paragraph 1, of the Treaty as provided for in Article 2 of Council Regulation No. 17 dated 6 February 1962

I. Information relating to parties concerned :

1. Name, first name and address of person filing the application. Where this person is acting as representative, the name and address of the enterprise or association of enterprises, and the names, first names and addresses of the owners or partners or, in the case of legal persons, of the legal representatives, should be indicated.

Evidence that representatives are authorized to act in this capacity must be submitted. If the application is submitted by several persons or on behalf of several enterprises, the information must be furnished for each person and for each enterprise.

2. Name and address of enterprises party to the agreement, decision or concerted practice, and name, first name and address of owners or partners, or, in the case of legal persons, of the legal representatives.

Where not all of the enterprises party to the agreement are filing the application, state how the other enterprises have been informed of the application.

This information is not required in the case of standard contracts (see below, sec. II, 1 b).

3. Where a company or joint service has been established under the agreement, state the name and address of this company or service and the names, first names and addresses of its legal or other representatives.

4. Where the execution of the agreement is entrusted to a company or to a joint service, state the name and address of this company or service, and the names, first names and addresses of its legal or other representatives.

Copies of the memorandum and articles of association should be enclosed.

5. For a decision by any association of enterprises, state the name and address of the association, and the names, first names and addresses of its legal representatives.

Copies of the memorandum and articles of association should be enclosed.

6. For enterprises established or having their principal place of business outside the territory of the Common Market (Article 227, paragraphs 1 and 2, of the Treaty), state the name and address of a representative or of a subsidiary established on the territory of the Common Market.

II. Information relating to the content of the agreement, decision or concerted practice :

1. Where the content has been set out in writing, enclose copies of the full text, except as otherwise provided under a) b) or c) :

a) Is the agreement or decision in question solely in outline form ? If so, enclose copies of the full texts of any detailed agreements or implementing measures;

b) Is it a standard contract, i.e. a contract which the applicant concludes regularly with specific persons or groups of persons (e.g. a contract limiting the freedom of action of one party with respect to prices or trading conditions for the resale of products supplied by the other party ?

If so, only the text of the standard contract need be enclosed.

c) For licensing contracts of the kind coming under Article 4, paragraph 2, sub-paragraph ii b), of Regulation No. 17, there is no need to file those clauses of the contract covering solely the description of a technical manufacturing process and having themselves no bearing on the restriction of competition; in such cases, however, any deletions from the text are to be indicated.

2. Where the content has not been set out, or has been set out only partially, in writing, state the content in the space opposite.

3. In any case, give the following additional information :

a) Date on which the agreement, decision or concerted practice was established;

b) Date of entry into force and, where appropriate, planned duration of validity;

c) Subject : accurate description of the product or products or of the service or services involved;

d) Aims of the agreement, decision or concerted practice;

e) Conditions for accession, cancellation and withdrawal;

f) Steps that can be taken against enterprises party to the agreement, decision or concerted practice (penalty clause, exclusion, withdrawal of supplies, etc.).

III. Means by which the aims of the agreement, decision or concerted practice are to be attained :

1. Say whether, and if so, to what extent, the agreement, decision or concerted practice involves :

— The observance of certain purchase or selling prices, discounts or other trading conditions;

- The limitation or control of production, technical development or investment;
 - Market-sharing or the sharing of sources of supply;
 - Restriction on freedom to purchase from, or sell to, third parties (sole agency contracts);
 - The application of unequal terms in respect of equivalent services.
-

2. Does the agreement, decision or concerted practice concern deliveries, or the supply of services :

- a) Solely within a Member State ?
 - b) Between a Member State and non-member States ?
 - c) Between Member States ?
-

IV. Enclose a statement of the facts and reasons supporting your contention that Article 85, paragraph 1, does not apply in your case, for example, to the effect that the agreement, decision or concerted practice :

- 1) Does not have as object or result the prevention, restriction or distortion of competition, or
 - 2) Is not liable to affect trade between the Member States.
-

The undersigned declare that the information given above and in the enclosures is correct. They have read Article 15, paragraph 1, sub-paragraph a) of Regulation No. 17.

(Place) (date)

Signatures :

Acknowledgement of receipt

(If this form is filled up by the applicant [one copy],
it will be returned to the address given above)

Your application for negative clearance with respect to Article 85, paragraph 1, of the Treaty, dated

a) Parties to the agreement, decision or concerted practice :

- 1.
- 2., etc.

(It is not necessary to list the remaining parties)

b) Object :

.....

(short description of the restraint on competition)
was received

and registered under the No. IV A

Please quote this reference in all correspondence.

FORM B

Seven copies of this form and of the enclosures must be sent. Evidence that representatives are authorized to act in this capacity must be submitted in duplicate.

If there is not enough space alongside each question, additional sheets should be used and a clear indication given of the item on the form to which they refer.

To the EEC Commission

Directorate General for Competition

Directorate for Restrictive Agreements and Monopolies

12, avenue de Broqueville

Brussels 15

Notification of an agreement, decision or concerted practice under Articles 4 and 5 of Regulation No. 17 adopted by the Council on 6 February 1962

I. Information relating to the parties concerned :

1. Name, first name and address of person filing the notification. Where this person is acting as representative, the name and address of the enterprise or association of enterprises, and the names, first names and addresses of the owners or partners or, in the case of legal persons, of the legal representatives, should be indicated.

Evidence that representatives are authorized to act in this capacity must be submitted.

If the notification is submitted by several persons or on behalf of several enterprises, the information must be furnished for each person and for each enterprise.

2. Name and address of enterprises party to the agreement, decision or concerted practice, and name, first name and address of owners or partners, or, in the case of legal persons, of the legal representatives.

Where not all of the enterprises party to the agreement are filing the notification, state how the other enterprises have been informed of the notification.

This information is not required in the case of standard contracts (see below, sec. II, 1 b).

3. Where a company or joint service has been established under the agreement, state the name and address of this company or service and the names, first names and addresses of its legal or other representatives.

4. Where the execution of the agreement is entrusted to a company or to a joint service, state the name and address of this company or service, and the names, first names and addresses of its legal or other representatives.

5. For a decision by any association of enterprises, state the name and address of the association, and the names, first names and addresses of its legal representatives.

Copies of the memorandum and articles of association should be enclosed.

6. For enterprises established or having their principal place of business outside the territory of the Common Market (Article 227, paragraphs 1 and 2 of the Treaty), state the name and address of a representative or of a subsidiary established on the territory of the Common Market.

II. Information relating to the content of the agreement, decision or concerted practice.

1. Where the content has been set out, in writing, enclose copies of the full text, except as otherwise provided under a) b) or c) :

a) Is the agreement or decision in question solely in outline form ?

If so, enclose copies of the full texts of any detailed agreements or implementing measures.

b) Is it a standard contract, i.e. a contract which the applicant concludes regularly with specific persons or groups of persons (e.g. a contract limiting the freedom of action of one party with respect to prices or trading conditions for the resale of products supplied by the other party ?

If so, only the text of the standard contract need be enclosed.

c) For licensing contracts of the kind coming under Article 4, paragraph 2, sub-paragraph ii b), or Regulation No. 17, there is no need to file those clauses of the contract covering solely the description of a technical manufacturing process and having themselves no bearing on the restriction of competition; in such cases, however, any omissions from the text are to be indicated.

2. Where the content has not been set out, or has been set out only partially, in writing, state the content in the space opposite.

3. In any case, give the following additional information :

a) Date on which the agreement, decision or concerted practice was concluded;

b) Date of entry into force and, where appropriate, planned duration of validity;

c) Subject : accurate description of the product or products or of the service or services involved;

d) Aims of the agreement, decision or concerted practice;

e) Conditions for accession, cancellation and withdrawal;

f) Steps that can be taken against enterprises party to the agreement, decision or concerted practice (penalty clause, exclusion, withdrawal of supplies, etc.)

III. *Means by which the aims of the agreement, decision or concerted practice are to be attained :*

1. Say whether, and if so, to what extent, the agreement, decision or concerted practice involves :

- The observance of certain purchase or selling prices, discounts of other trading conditions;
 - The limitation or control of production, technical development or investment;
 - Market-sharing or the sharing of sources of supply;
 - Restriction on freedom to purchase from, or sell to, third parties (sole agency contracts);
 - The application of unequal terms in respect of equivalent services.
-

2. Does the agreement, decision or concerted practice concern deliveries, or the supply of services,

- a) Solely within a Member State ?
 - b) Between a Member State and non-member States ?
 - c) Between Member States ?
-

IV. *Where your contention is that Article 85, paragraph 1, does not apply in your case, and you are filing notification of the agreement, decision or concerted practice solely as a precautionary measure, please enclose a statement of the relevant facts and reasons on which your contention is based.*

V. *In any case, state to what extent :*

1. The agreement, decision or concerted practice contributes

- a) To the improvement of production or distribution, or
 - b) To the promotion of technical or economic progress.
-

2. Consumers obtain a fair share of the benefit stemming from such improvement or progress;

3. The agreement, decision or concerted practice is essential to the attainment of the objectives set out in item 1 above;

and _____

4. The agreement, decision or concerted practice does not eliminate competition in respect of a substantial proportion of the products concerned.

VI. *State whether, and if so on what points, you intend to amplify your justification.*

The undersigned declare that the information given above and in the enclosures is correct. They have read Article 15, paragraph 1, sub-paragraph a) of Regulation No. 17.

(Place) (Date)

Acknowledgement of receipt

(If this form is filled up by the applicant [one copy],
it will be returned to the address given above.)

Your notification of concerning :

a) Parties to the agreement, decision or concerted practice :

- 1.
- 2., etc.

(It is not necessary to list the remaining parties)

b) Object :
.....
.....

(short description of the restraint on competition)

was received.....
and registered under the No. IV/A.....

Please quote this reference in all correspondence.

