

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(74) 986 final

Brussels, 1 July 1974

Second Amended Proposal for a Regulation (EEC) of the Council concerning limitation periods for the imposition and enforcement of pecuniary sanctions under the rules of the European Economic Community relating to transport and to competition

(submitted to the Council by the Commission pursuant to Article 149 (2) of the EEC Treaty)

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Second Amended Proposal for a Regulation (EEC) of the Council concerning limitation periods for the imposition and enforcement of pecuniary sanctions under the rules of the European Economic Community relating to transport and to competition *

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 75, 79 and 87 thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas under the rules of the European Economic Community relating to transport and to competition the Commission has power to impose fines (or penalties) and periodic penalty payments on undertakings or associations of undertakings which infringe its right of information and investigation, or which contravene the prohibition on discrimination, restrictive practices and abuse of dominant position; whereas those rules make no provision for any period of limitation;

Whereas it is desirable in the interests of legal certainty that the principle of limitation be introduced and that relevant implementing rules be laid down; whereas, for the matter to be covered fully, it is necessary that provision for limitation be made not only as regards the power to impose fines (or penalties) but also as regards the power to enforce decisions imposing fines (or penalties) or periodic penalty payments; whereas the relevant provisions should specify the length of limitation periods, the point from which time starts to run and the events which have the effect of interrupting or suspending the running of time;

* Amendments to the former version of the proposal for a Regulation are underlined.

Whereas in this respect regard should be had both to the interests of undertakings and associations of undertakings and to the requirements imposed by the administrative practice of the Commission;

Whereas it would seem appropriate to vary according to the type of infringement concerned the length of the period on the expiry of which the Commission's power to impose fines (or penalties) becomes barred; whereas the provisions from which the Commission derives its power to impose fines (or penalties) are based on the principle that infringements of the Commission's right of information and investigation are of a less serious nature than infringements of the prohibitions on discrimination, restrictive practices and abuse of dominant position; whereas it is therefore proper to make a similar distinction in fixing the length of periods of limitation; whereas it would accordingly seem appropriate to lay down a three-year period of limitation for infringements of the Commission's right of information and investigation and a five-year period for the other infringements to which this Regulation applies.

Whereas it is desirable in the interests of legal certainty to establish the principle that the period of limitation for the imposition of pecuniary sanctions shall run from the date of commission of the infringement; whereas, however, as long as any undertaking or association of undertakings remains in breach of any rule of the European Economic Community concerning transport or competition, no such period can be allowed to run in its favour; whereas it should accordingly be provided that as regards continuing or repeated infringements time starts to run only from the date when the undertaking or association concerned puts an end to its infringement;

Whereas if proceedings in respect of infringements are to be effective it is essential that there be proper provision for interruption of the running of the limitation period; whereas proceedings may become barred only in cases where the competent authority has throughout the relevant limitation period taken no action in respect of the infringement; whereas time cannot therefore be allowed to run in favour of undertakings or associations where that authority, acting in conformity with the provisions applicable, is in the course of

conducting an enquiry or taking proceedings in respect of the infringement; whereas it should accordingly be provided that any action in this respect taken by the Commission, or by a Member State at the request of the Commission, and notified to any of the parties concerned shall interrupt the running of time; whereas it should moreover be expressly specified that the taking of any such action shall interrupt the running of time as regards all the undertakings or associations of undertakings participating in the infringement; whereas it is moreover desirable, in order to prevent the undertakings or associations of undertakings concerned from suffering the disadvantages of excessively long drawn-out proceedings, that interruptions of the running of time should be subject to a time limit; whereas it should accordingly be provided that the Commission's power to impose fines (or penalties) should in any event become barred upon the expiry of twice the relevant limitation period.

Whereas it would also seem appropriate to lay down rules for suspending the running of limitation periods for the imposition of pecuniary sanctions; whereas time cannot be allowed to run in favour of undertakings or associations of undertakings during a period in which the Commission is prevented from taking proceedings in respect of the infringement; whereas it should accordingly be provided that the running of time shall be suspended for so long as proceedings relating to a decision of the Commission are pending before the Court of Justice of the European Communities.

Whereas by virtue of the first paragraph of Article 192 of the Treaty establishing the European Economic Community decisions of the Commission imposing fines (or penalties) or periodic penalty payments on undertakings or associations of undertakings are fully enforceable; whereas it would seem appropriate to provide that the power of the Commission to enforce such decisions be subject to a five-year limitation period, running from the date upon which the decision becomes final;

Whereas it should be provided that the running of the period for enforcement of decisions may also be interrupted or suspended.

Whereas any variation of a decision or any refusal of an application for variation must prevent time from running; nor, moreover, can time be allowed to run in favour of any undertaking or association of undertakings upon which a pecuniary sanction has been imposed where the competent authority is acting, in conformity with the relevant procedural rules, to enforce the decision; whereas it should therefore be provided that any decision varying the original amount of the fine (or penalty) or periodic penalty payment or refusing an application for variation, and likewise any action taken by the Commission, or by a Member State at the request of the Commission, to enforce payment of a fine (or penalty) or periodic penalty payment, shall interrupt the running of time;

Whereas time cannot moreover be allowed to run in favour of any undertaking or association of undertakings on which a pecuniary sanction has been imposed where the Commission is prevented from taking steps to enforce payment of the sums due to it; whereas it should accordingly be provided that the running of time be suspended for so long as any relief as to payment is allowed, or the enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Communities.

Whereas, lastly, it should be expressly specified that the rules relating to limitation periods apply also to infringements committed before the entry into force of this Regulation.

HAS ADOPTED THIS REGULATION.

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Article 1

Limitation periods for the imposition of pecuniary sanctions

- (1) The power of the Commission to impose fines (or penalties) for infringements of the rules of the European Economic Community relating to transport or to competition shall be subject to the following limitation periods:
 - (a) three years in the case of an infringement of any of the provisions concerning applications or notifications submitted by undertakings or associations of undertakings, requests for information, or the carrying out of investigations;
 - (b) five years in the case of all other infringements to which this Regulation applies.
- (2) Time shall run from the date on which the infringement is committed, save in the case of continuing or repeated infringements, in respect of which time shall run from the date upon which the infringement is terminated.

Article 2

Interruption of the running of the period for the imposition of sanctions

- (1) Any action taken by the Commission, or by any Member State at the request of the Commission, for the purpose of establishing the existence of an infringement or bringing proceedings in respect of the same shall interrupt the running of the limitation period. The limitation period shall be interrupted with effect from the date on which such action is notified.

Actions which interrupt the running of the period shall include in particular the following:

- (a) the sending by the Commission, or by the competent authority of any Member State at the request of the Commission, of a written request for information; or a decision of the Commission requiring that the information requested be supplied;

- (b) the issuing to its officials, by the Commission or by the competent authority of any Member State at the request of the Commission, of written instructions to carry out investigations; or a decision by the Commission ordering an investigation;
 - (c) the commencement of a procedure by the Commission;
 - (d) notification of the matters to which the Commission has taken objection.
- (2) Any action within the meaning of paragraph 1 shall interrupt the running of time as regards all the undertakings or associations of undertakings which participate in the infringement.
- (3) Each interruption shall start time running afresh, provided however that the right to impose pecuniary sanctions shall in any event become barred when twice the limitation period, plus any period during which the running of time is suspended pursuant to Article 3, has elapsed since the date on which it began to run without a fine, penalty or penalty payment having been imposed by the Commission.

Article 3

Suspension of the running of the period for the imposition of sanctions

The running of time shall be suspended for so long as proceedings relating to the relevant decision of the Commission are pending before the Court of Justice of the European Communities.

Article 4

Limitation period for the enforcement of decisions

- (1) The power of the Commission to enforce decisions imposing fines (or penalties) or periodic penalty payments for infringements of the rules of the European Economic Community relating to transport or to competition shall be subject to a limitation period of five years.
- (2) Time shall run from the date upon which the decision becomes final.

Article 5

Interruption of the running of the limitation period
for the enforcement of decisions

- (1) The following events shall be regarded as interrupting the running of time:
 - (a) notification of a decision varying the original amount of the fine (or penalty) or periodic penalty payments or refusing an application for variation;
 - (b) any action taken by the Commission, or by a Member State at the request of the Commission, for the purpose of enforcing payment of a fine (or penalty) or periodic penalty payments.
- (2) Each interruption shall start time running afresh.

Article 6

Suspension of the running of the limitation period
for the enforcement of decisions

The running of time shall be suspended for so long as:

- (a) any relief as to payment is allowed; or
- (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Communities.

Article 7

Application to transitional cases

The above rules shall apply also in respect of infringements committed before the entry into force of this Regulation.

Article 8

Entry into force

This Regulation shall enter into force on

This Regulation shall be binding in its entirety and directly applicable in all Member States.