

**Draft Council regulation suspending the application  
of Articles 85 to 94 of the Treaty establishing  
the European Economic Community to sea and air transport**

(Proposal submitted by the Commission to the Council as an opinion  
under the terms of Article 155 on 17 July 1962)

**Supplement to**

**BULLETIN**

**of the European Economic Community**

**N° 11 - 1962**

Pages 3-5

SECRETARIAT OF THE COMMISSION OF  
THE EUROPEAN ECONOMIC COMMUNITY

**Draft Council regulation suspending the application  
of Articles 85 to 94 of the Treaty establishing  
the European Economic Community to sea and air transport**

(Proposal submitted by the Commission to the Council as an opinion  
under the terms of Article 155 on 17 July 1962)

*The Council of the European Economic Community,*

*Having regard to the Treaty establishing the European Economic Community and in particular Article 84 (2) thereof;*

*Having regard to the opinion of the Commission;*

*Having regard to the opinion of the Economic and Social Committee;*

*Having regard to the opinion of the European Parliament;*

*Whereas appropriate provisions may have to be made in view of the special aspects of sea and air transport; whereas explicit reference to this possibility is made in Article 84 (2) of the Treaty; and whereas, before any adaptations that may be needed are made, or before Articles 85 to 94 are automatically applied to these types of transport, the current situation in this field should be investigated in conjunction with the Member States;*

*Whereas such an investigation should establish whether appropriate provisions are needed that will enable the aims of the Treaty to be pursued and at the same time be adapted to the special circumstances of sea and air transport; and whereas the measures to be adopted should take account of the fact that these types of transport largely operate over a greater area than the Community;*

*Whereas, however, the application of Articles 85 to 94 should be suspended during the period required for this study so as to avoid causing inconvenience to the undertakings concerned by a succession of different legal systems if such special measures should prove necessary;*

*Whereas, however, the special aspects of sea and air transport warrant the suspension of Article 85 only with respect to agreements, decisions and concerted practices directly concerned with the supply of a transport service;*

*Whereas this period of suspension will make it possible either to prepare the necessary special provisions or to find that sea and air transport undertakings can be subjected wholly or partly, without inconvenience, to the general legal system flowing from Articles 85 to 94 and from measures adopted in implementation thereof; and whereas in the latter case the application of Article 85 to all agreements, decisions and concerted practices would require that the transitional system instituted by Regulation No. 17 be adapted to take account of the time-limits laid down in the present Regulation,*

*Has adopted the present regulation :*

*Article 1*

The application of Articles 85 to 94 of the Treaty to sea and air transport shall be suspended until 31 December 1964.

*Article 2*

However, the suspension of the application of Article 85 of the Treaty and of any measures taken or to be taken in pursuance thereof shall affect only agreements, decisions and concerted practices between sea and air transport undertakings, the purpose or effect of which is to fix transport terms and conditions, to restrict or control the supply of transport and to share out transport markets.

*Article 3*

The Commission shall investigate in conjunction with the Member States the current situation in sea and air transport.

*Article 4*

1. On the basis of the investigation provided for in the foregoing Article, the Commission shall submit to the Council, before 1 January 1964, proposals for the

appropriate provisions to which reference is made in Article 84 (2) of the Treaty with regard to competition in sea and air transport.

2. If no appropriate provisions have been made by 1 January 1965, Articles 85 to 94 and any measures taken in pursuance thereof, shall apply *in toto* to sea and air transport.

In this case, Articles 5, 6 (2), 7 (1) and 15 (5 *b*) of Regulation No. 17 shall be applicable to the agreements, decisions and concerted practices referred to in Article 2 of the present Regulation and in force on 1 January 1965, provided that the Commission is notified thereof by 1 July 1965. However, Article 7 (1) of Regulation No. 17 shall be applicable to the agreements, decisions and concerted

practices referred to in Article 2 of the present Regulation and in force on 1 January 1965 which come into the categories referred to in Article 4 (2) of Regulation No. 17, provided that the Commission is notified thereof by 1 January 1966.

#### *Article 5*

Provisions to be made in accordance with Article 4 (1) of the present regulation shall be referred to the Economic and Social Committee and to the European Parliament for their opinions.

#### *Article 6*

The present regulation shall be binding in all its parts and directly enforceable in all Member States.

### Explanatory memorandum

1. In its memorandum of 12 November 1960 on the applicability to transport of the rules of competition set out in the Treaty establishing the EEC and on the interpretation and application of the Treaty in relation to sea and air transport, and in its memorandum to the Council dated 10 April 1961 on the general lines of the common transport policy, the Commission put forward the economic and legal reasons for which it considers the general rules of the Treaty, with the exception of Articles 74 to 83, to be applicable to sea and air transport.

2. With respect to the rules of competition, however, the Commission suggested in its memorandum of 12 November 1960 that an investigation should be made to determine whether, pending a general settlement adapting the rules of the Treaty to sea and air transport, the application of Articles 85 to 94 to these two types of transport should be suspended by a Council decision under Article 84 (2).

3. Although no full investigation has yet been made of the various problems that would arise in applying Articles 85 to 94, and any measures taken in implementation thereof, to sea and air transport, it is clear that these types of transport — particularly in view of their world-wide ramifications — have distinctive features that justify an assumption that the Articles in

question cannot be applied to them without modification.

4. In the traffic of the big shipping companies, which together share about 80 % of world sea transport, time-tables and freight rates are negotiated at shipping conferences and made binding on all parties. These conferences are held against the background of an oligopolistic marine freight market, and this leads to unfair undercutting.

Furthermore, the special economic importance of shipping companies in highly industrialized States has induced the latter to grant various subsidies to these companies.

Conditions in air transport are similar to those in sea transport, which is why most of the big airline companies are members of the International Air Transport Association. This Association co-ordinates time-tables and fixes tariffs, which are binding on all member companies. There is a trend towards the conclusion of agreements and mergers between airlines, and within the EEC some companies are now forming an association known as Air Union.

In this field, too, in view of the special economic importance of airline companies and in order to promote technical development Governments subsidize their airlines,

particularly in the form of grants to balance their operational accounts.

5. On a careful examination of the situation there are grounds for fearing that the full application of the rules of competition set out in the Treaty to sea and air transport may cause serious disturbances in view of the special aspects of these two types of transport. For this reason, in order that such appropriate provisions as may prove necessary may be worked out, it seems advisable to suspend for a specified period the application of Articles 85 to 94 and of any regulations made thereunder.

6. Moreover the European Parliament and the Economic and Social Committee have stressed the need to draw up special rules of competition for transport wherever the general rules of competition are not compatible with the special features of the sector and may hinder transport operations.

7. The special aspects of sea and air transport, however, do not warrant the suspension of the application of Article 85 with respect to agreements, decisions and concerted practices that do not directly

concern the supply of a transport service. Such agreements, decisions and concerted practices must therefore continue to be subject to the application of Article 85 and measures taken or to be taken thereunder.

8. If, after the situation has been investigated together with the Member States, appropriate provisions have not been made during the period of suspension, Articles 85 to 94 of the Treaty will apply *in toto* to sea and air transport. Should this be the case, the transitional arrangements made by Regulation No. 17 will also have to be adjusted, taking into account the dates on which Article 85 would be applicable to all agreements, decisions and concerted practices between the transport undertakings referred to in Article 84 (2).

9. Article 84 (2) leaves to the discretion of the Council the procedure for making such appropriate provisions as it may decide on. It would seem normal to adopt the same procedure as that laid down in Article 75 for the provisions on the implementation of the common transport policy.