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REGULATION No 19/65/EEC OF THE COUNCIL
of 2 March 1965

**on application of Article 85 (3) of the Treaty to certain categories
of agreements and concerted practices**

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

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

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament ⁽¹⁾;

Having regard to the Opinion of the Economic and Social Committee ⁽²⁾;

Whereas Article 85 (1) of the Treaty may in accordance with Article 85 (3) be declared inapplicable to certain categories of agreements, decisions and concerted practices which fulfil the conditions contained in Article 85 (3);

Whereas the provisions for implementation of Article 85 (3) must be adopted by way of regulation pursuant to Article 87;

Whereas in view of the large number of notifications submitted in pursuance of Regulation No 17 ⁽³⁾ it is desirable that in order to facilitate the task of the Commission it should be enabled to declare by way of regulation that the provisions of Article 85 (1) do not apply to certain categories of agreements and concerted practices;

Whereas it should be laid down under what conditions the Commission, in close and constant liaison with the competent authorities of the Member States, may exercise such powers after sufficient experience has been gained in the light of individual decisions and it becomes possible to define categories of agreements and concerted practices in respect of which the conditions of Article 85 (3) may be considered as being fulfilled;

Whereas the Commission has indicated by the action it has taken, in particular by Regulation No 153, ⁽⁴⁾ that there can be no easing of the procedures prescribed by Regulation No 17 in respect of certain types of agreements and concerted practices that are particularly liable to distort competition in the common market;

Whereas under Article 6 of Regulation No 17 the Commission may provide that a decision taken pursuant to Article 85 (3) of the Treaty shall apply with retroactive effect; whereas it is desirable that the Commission be also empowered to adopt, by regulation, provisions to the like effect;

Whereas under Article 7 of Regulation No 17 agreements, decisions and concerted practices may, by decision of the Commission, be exempted from prohibition in particular if they are modified in such manner that they satisfy the requirements of Article 85 (3); whereas it is desirable that the Commission be enabled to grant like exemption by regulation to such agreements and concerted practices if they are modified in such manner as to fall within a category defined in an exempting regulation;

Whereas, since there can be no exemption if the conditions set out in Article 85 (3) are not satisfied, the Commission must have power to lay down by decision the conditions that must be satisfied by an agreement

⁽¹⁾ OJ No 81, 27.5.1964, p. 1275/64.

⁽²⁾ OJ No 197, 30.11.1964, p. 3320/64.

⁽³⁾ OJ No 13, 21.2.1962, p. 204/62 (Regulation No 17 as amended by Regulation No 59 - OJ No 58, 10.7.1962, p. 1655/62 - and Regulation No 118/63/EEC - OJ No 162, 7.11.1963, p. 2696/63.

⁽⁴⁾ OJ No 139, 24.12.1962, p. 2918/62.

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or concerted practice which owing to special circumstances has certain effects incompatible with Article 85 (3);

HAS ADOPTED THIS REGULATION:

*Article 1***▼M1**

1. Without prejudice to the application of Regulation No 17 and in accordance with Article 81(3) of the Treaty the Commission may by regulation declare that Article 81(1) shall not apply to:

- (a) categories of agreements which are entered into by two or more undertakings, each operating, for the purposes of the agreement, at a different level of the production or distribution chain, and which relate to the conditions under which the parties may purchase, sell or resell certain goods or services,
- (b) categories of agreements to which only two undertakings are party and which include restrictions imposed in relation to the acquisition or use of industrial property rights, in particular of patents, utility models, designs or trade marks, or to the rights arising out of contracts for assignment of, or the right to use, a method of manufacture or knowledge relating to the use or to the application of industrial processes.

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2. The regulation shall define the categories of agreements to which it applies and shall specify in particular:

- (a) the restrictions or clauses which must not be contained in the agreements;
- (b) ►**M1** ————— ◀ the other conditions which must be satisfied.

▼M1

3. Paragraphs 1 and 2 shall apply by analogy to categories of concerted practices.

Article 1a

A regulation pursuant to Article 1 may stipulate the conditions which may lead to the exclusion from its application of certain parallel networks of similar agreements or concerted practices operating on particular market; when these circumstances are fulfilled the Commission may establish this by means of regulation and fix a period at the expiry of which the Regulation pursuant to Article 1 would no longer be applicable in respect of the relevant agreements or concerted practices on that market; such period must not be shorter than six months.

▼B*Article 2*

- 1. A regulation pursuant to Article 1 shall be made for a specified period.
- 2. It may be repealed or amended where circumstances have changed with respect to any factor which was basic to its being made; in such case, a period shall be fixed for modification of the agreements and concerted practices to which the earlier regulation applies.

Article 3

A regulation pursuant to Article 1 may stipulate that it shall apply with retroactive effect to agreements and concerted practices to which, at the date of entry into force of that regulation, a decision issued with retroactive effect in pursuance of Article 6 of Regulation No 17 would have applied.

▼B*Article 4*

1. A regulation pursuant to Article 1 may stipulate that the prohibition contained in Article 85 (1) of the Treaty shall not apply, for such period as shall be fixed by that regulation, to agreements and concerted practices already in existence on 13 March 1962 which do not satisfy the conditions of Article 85 (3), where:

- within three months from the entry into force of the Regulation, they are so modified as to satisfy the said conditions in accordance with the provisions of the regulation; and
- the modifications are brought to the notice of the Commission within the time limit fixed by the regulation.

▼A1

A regulation pursuant to Article 1 may stipulate that the prohibition contained in Article 85(1) of the Treaty shall not apply, for such period as shall be fixed by that regulation, to agreements and concerted practices already in existence at the date of accession to which Article 85 applies by virtue of accession and which do not satisfy the conditions of Article 85(3), where:

▼A3

The provisions of the preceding subparagraph shall apply in the same way in the case of the accession of the Hellenic Republic, the Kingdom of Spain and of the Portuguese Republic.

▼A4

The provisions of the preceding subparagraphs shall apply in the same way in the case of the accession of Austria, Finland and Sweden.

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2. Paragraph 1 shall apply to agreements and concerted practices which had to be notified before 1 February 1963, in accordance with Article 5 of Regulation No 17, only where they have been so notified before that date.

▼A1

Paragraph 1 shall not apply to agreements and concerted practices to which Article 85(1) of the Treaty applies by virtue of accession and which must be notified before 1 July 1973, in accordance with Articles 5 and 25 of Regulation No 17, unless they have been so notified before that date.

▼A2

Paragraph 1 shall not apply to agreements and concerted practices to which Article 85 (1) of the Treaty applies by virtue of the accession of the Hellenic Republic and which must be notified before 1 July 1981, in accordance with Articles 5 and 25 of Regulation No 17, unless they have been so notified before that date.

▼A3

Paragraph 2 shall not apply to agreements and concerted practices to which Article 85 (1) of the Treaty applies by virtue of the accession of the Kingdom of Spain and of the Portuguese Republic and which must be notified before 1 July 1986, in accordance with Articles 5 and 25 of Regulation No 17, unless they have been so notified before that date.

▼A4

Paragraph 1 shall not apply to agreements and concerted practices to which Article 85 (1) of the Treaty applies by virtue of the accession of Austria, Finland and Sweden and which must be notified within six months of accession, in accordance with Articles 5 and 25 of Regulation No 17, unless they have been so notified within that period. The present paragraph shall not apply to agreements and concerted practices which at the date of accession already fall under Article 53 (1) of the EEA Agreement.

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3. The benefit of the provisions laid down pursuant to paragraph 1 may not be claimed in actions pending at the date of entry into force

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of a regulation adopted pursuant to Article 1; neither may it be relied on as grounds for claims for damages against third parties.

Article 5

Before adopting a regulation, the Commission shall publish a draft thereof and invite all persons concerned to submit their comments within such time limit, being not less than one month, as the Commission shall fix.

*Article 6***▼M1**

1. The Commission shall consult the Advisory Committee on Restrictive Practices and Monopolies:

- (a) with regard to a regulation pursuant to Article 1 before publishing a draft regulation and before adopting a regulation;
- (b) with regard to a regulation pursuant to Article 1a before publishing a draft regulation if requested by a Member State, and before adopting a regulation.

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2. Article 10 (5) and (6) of Regulation No 17, relating to consultation with the Advisory Committee, shall apply by analogy, it being understood that joint meetings with the Commission shall take place not earlier than one month after dispatch of the notice convening them.

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Article 8

The Commission shall, before 1 January 1970, submit to the Council a proposal for a Regulation for such amendment of this Regulation as may prove necessary in the light of experience.

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