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COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**EUROPEAN PARLIAMENT AND COUNCIL REGULATION**

**repealing Council Regulation (EEC) No 954/79 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

- **Grounds for and objectives of the proposal**

The proposal aims to repeal Council Regulation (EEC) No 954/79 of 15 May 1979 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences. The present proposal has been made necessary by the adoption of Council Regulation (EC) No 1419/2006 of 25 September 2006 repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services.

- **General context**

Regulation (EEC) No 954/79 deals with the accession to or ratification by Member States of the United Nations Convention on a Code of Conduct for Liner Conferences.

The Convention on a Code of Conduct for Liner Conferences (Geneva, 6 April 1974) was drafted under the auspices of the United Nations Conference on Trade and Development (UNCTAD) with the aim of setting out a harmonised international framework for the operation of shipping conferences. The objective of the UNCTAD Convention was to promote a fair balance in the access to freight in liner shipping between operators from developed countries and those from developing ones. For that purpose the Code establishes the so called "40/40/20 rule", according to which shipments carried between two State Parties have to be shared in the following way: 40% for ship owners established in the country of origin, 40% for ship owners established in the country of destination, and 20% for ship owners from other countries (which are also party to the Code). The Convention also provides for rules and procedures aiming at avoiding abuses by conferences and at favouring a dialogue between shippers and carriers. Even though the main objective of the Code was to protect the interest of developing countries, such countries have been disappointed about the way the Convention has been implemented from the time of its entry into force on 6 October 1983.

Thirteen Member States of the Community are party to the Code. Under Article 48 of the Code, States are entitled to become contracting parties by means of accession or signature, if necessary followed by ratification, acceptance, or approval, according to their national law. On that basis, Belgium and Germany have ratified the Convention; Denmark, Finland, Italy, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom have acceded to it; the Czech Republic, France, and Slovakia have approved it. Norway has also acceded to the Code.

Since the Code of Conduct provides for the allotment of freight on the basis of national shares, Community law had to set up arrangements aimed at making such a mechanism compatible with the principles of the Treaty. Hence, Council Regulation (EEC) No 954/79 was adopted, requiring Member States to enter a reservation while ratifying (approving or acceding to) the Convention, according to which they had to open their national shares granted under the Code to all ship owners established in the Community. The regulation also

contains detailed provisions relating to the implementation of the Convention, but it does not impose on Member States its ratification.

On 25 September 2006 the Council adopted Regulation (EC) No 1419/2006 repealing Regulation (EEC) No 4056/86. Regulation (EEC) No 4056/86 provided for a block exemption of liner conferences from the EC Treaty's ban on restrictive business practices (Article 81). Prior to the entry into force of this repeal, given that competition rules had never applied fully to the liner sector, the Commission will issue appropriate guidelines on competition in the maritime sector so as to help smooth the transition to a fully competitive regime. The guidelines, which should be promulgated by end 2007, would treat issues such as, an independent data warehouse, the creation of a trade association and of trade fora, and the publication of a price index. The purpose of these guidelines is to explain, inter alia, how the competition rules apply to the liner sector in general, including timely and regular exchange and publication of information on capacity and utilisation. As an interim step in the preparation of guidelines, the Commission's services published an "issues paper" on liner shipping in September 2006.

Under Article 1, second paragraph, of Council Regulation (EC) No 1419/2006, Article 1 (3) (b) and (c), Articles 3 to 7, Article 8(2) and Article 26 of Regulation (EEC) No 4056/86 shall continue to apply in respect of liner shipping conferences satisfying the requirements of Regulation (EEC) No 4056/86 on 18 October 2006 - date of entry into force of Council Regulation (EC) No 1419/2006 - for a transitional period of two years.

Therefore, on 18 October 2008 – ie, after the transitional period has expired - , Article 81(1) of the Treaty will apply to liner shipping and shipping conferences will become unlawful on trades to/from ports of the Community. Member States which are party to the Code will no longer be able to fulfil their obligations thereof, namely the one to ensure that their national shipping lines have the right to be full members of conferences serving their foreign trade (Article 1(1) of the Code). Those Member States will have to withdraw from the Convention. It goes without saying that Member States which are not party to the Code will no longer be able to ratify it or to accede to it.

As a consequence, Regulation (EEC) No 954/79 will become inapplicable and should be repealed at the time of the repeal of the exemption from the prohibition in Article 81(1) of the Treaty in respect of shipping conferences.

- **Existing provisions in the area of the proposal**

Council Regulation (EEC) No 954/79 of 15 May 1979 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences.

- **Consistency with the other policies and objectives of the Union**

The proposal is in line with competition policy, since it aims at aligning the *acquis* in the maritime sector with the proposed reform of liner shipping. It is also consistent with the current policy of simplification, since its objective is removing from the Community set of rules a legal instrument which will become inapplicable.

## **2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

- **Consultation of interested parties**

The present proposal is ancillary to Council Regulation (EC) No 1419/2006 repealing Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 to maritime transport, and amending Regulation (EC) No 1/2003 as regards the extension of its scope to include cabotage and international tramp services.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

Since the proposal regards the repeal of an existing regulation, the two possible options are: 1) no legislative action; 2) legislative action.

The first option would imply that, despite the repeal of Regulation No 4056/86, Regulation No 954/79 would remain in force, although inapplicable. This solution appears not to be in line with the consistency of Community law and its simplification.

The repeal of the regulation, on the contrary, will contribute to put the maritime *acquis* in line with the reform of liner shipping which will be achieved very soon.

As already mentioned, the need for the Member States to withdraw from the UNCTAD Code of conduct is not a consequence of the repeal of Regulation 954/79 but rather of the repeal of Regulation 4056/86. It should be noticed, however, that when Member States withdraw from the Code, the latter will remain in force among the other parties.

Against this background it should be recalled that the economic impact on the European shipping industry of the phasing-out of shipping conferences in the Community (and the consequent withdrawal by Member States from the Code) has been examined by the impact assessment study carried for the proposal for a regulation repealing Regulation No 4056/86. Equally, the Commission has already assessed the impact of the repeal of Council Regulation 4056/86 on developing countries, many of which are party to the Code.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

It is proposed to repeal Council Regulation (EEC) No 954/79

- **Legal basis**

Article 80 of the Treaty

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal conforms to the principle of proportionality since the only way to repeal Council Regulation (EEC) No 954/79 is adopting a Council regulation.

The proposal implies no administrative burden on any authority, of the Community, national, regional or local. The administrative burden for the governments of the Member States consisting in withdrawing from the UN Code of Conduct for Liner Conferences is not a consequence of the present proposal - since Regulation No 954/79 does not oblige Member States to become party to the Code - but rather an effect of the repeal of Council Regulation No 4056/86.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason: the proposal aims at repealing a Council regulation, only a Council regulation might have been used.

#### **4. Budgetary implication**

The proposal has no implication for the Community budget.

#### **5. Additional information**

- **Simplification**

The proposal provides for simplification of legislation.

When the proposal is adopted a legal instrument which will become inapplicable is removed by the Community set of rules

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Entry into force**

For reasons of legal consistency, the repealing of Council Regulation n° 954/79 should entry into force at the moment of the repeal of the exemption from the prohibition in Article 81(1) of the Treaty in respect of shipping conferences, that is to say at the end of the two years transitional period foreseen by art 1, second paragraph, of Council Regulation (EC) No 1419/2006 repealing Regulation n°4056/86.

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**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80 (2) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>4</sup>,

Whereas:

- (1) Council Regulation (EEC) No 954/79 of 15 May 1979 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences<sup>5</sup> provides for requirements that Member States have to fulfil when ratifying the United Nations Convention on a Code of Conduct for Liner Conferences, or when acceding thereto.
- (2) The Convention on a Code of Conduct for Liner Conferences sets out an international regulatory framework for shipping conferences, namely by means of rules on access to cargo shares by ship owners established in the territories of the States Parties to the Convention and serving their mutual foreign trade.
- (3) Council Regulation (EC) No 1419/2006 of 25 September 2006<sup>6</sup> has repealed Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport<sup>7</sup> which,

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

<sup>5</sup> OJ L 121, 17.5.1979, p. 1

<sup>6</sup> OJ L 269, 28.9.2006, p. 1

<sup>7</sup> OJ L 378, 31.12.1986, p. 4

amongst others, provided for an exemption from the prohibition in Article 81(1) of the Treaty in respect of shipping conferences.

- (4) At the end of the transition period provided for by Regulation (EC) No 1419/2006, the prohibition in Article 81 (1) of the Treaty will apply to scheduled maritime transport services and as a consequence shipping conferences will no longer be allowed to operate in trades to/from the ports of the Member States.
- (5) The Member States will therefore be prevented from fulfilling their obligations under the Code. At that time Member States will no longer be in a position to ratify, approve or accede to the Code. Regulation (EEC) No 954/79 will therefore become inapplicable and should be repealed at the end of the transition period provided for in the second paragraph of article 1 of Regulation (EC) No 1419/2006, that is, on 18 October 2008.

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 954/79 is repealed.

*Article 2*

This Regulation shall enter into force on 18 October 2008.

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

Done at Brussels, [...]

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

[...]

[...]