

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 COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the draft Regulation submitted by 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 a Convention on a Code of Conduct for Liner Conferences has been drawn up by a Conference convened under the auspices of the United Nations Conference on Trade and Development and is open for ratification or accession;

Whereas the questions covered by the Code of Conduct are of importance not only to the Member States but also to the Community, in particular from the shipping and trading viewpoints, and it is therefore important that a common position should be adopted in relation to this Code;

Whereas this common position should respect the principles and objectives of the Treaty and make a major contribution to meeting the aspirations of developing countries in the field of shipping while at the same time pursuing the objective of the continuing application in this field of the commercial principles applied by shipping lines of the OECD countries and in trades between these countries;

Whereas to secure observance of these principles and objectives, since the Code of Conduct contains no provision allowing the accession

of the Community as such, it is important that Member States ratify or accede to the Code of Conduct subject to certain arrangements provided for in this Regulation;

Whereas the stabilizing role of conferences in ensuring reliable services to shippers is recognized, but it is nevertheless necessary to avoid possible breaches by conferences of the rules of competition laid down in the Treaty; whereas the Commission will accordingly forward to the Council a proposal for a Regulation concerning the application of those rules to sea transport,

HAS ADOPTED THIS REGULATION:

Article 1

1. When ratifying the United Nations Convention on a Code of Conduct for Liner Conferences, or when acceding thereto, Member States shall inform the Secretary-General of the United Nations in writing that such ratification or accession has taken place in accordance with this Regulation.

2. The instrument of ratification or accession shall be accompanied by the reservations set out in Annex I.

Article 2

1. In the case of an existing conference, each group of shipping lines of the same nationality which are members thereof shall determine by commercial negotiations with another shipping line of that nationality whether the latter may participate as a national shipping line in the said conference.

If a new conference is created, the shipping lines of the same nationality shall determine by commercial negotiations which of them may participate as a national shipping line in the future conference.

(1)OJ No C 131, 5.6.1978, p. 34. (2)OJ No C 269, 13.11.1978, p. 46.

2. Where the negotiations referred to in paragraph 1 fail to result in agreement, each Member State may, at the request of one of the lines concerned and after hearing all of them, take the necessary steps to settle the dispute.

3. Each Member State shall ensure that all vessel-operating shipping lines established on its territory under the Treaty establishing the European Economic Community are treated in the same way as lines which have their management head office on its territory and the effective control of which is exercised there.

Article 3

1. Where a liner conference operates a pool or a berthing, sailing and/or any other form of cargo allocation agreement in accordance with Article 2 of the Code of Conduct, the volume of cargo to which the group of national shipping lines of each Member State participating in that trade or the shipping lines of the Member States participating in that trade as third-country shipping lines are entitled under the Code shall be redistributed, unless a decision is taken to the contrary by all the lines which are members of the Conference and parties to the present redistribution rules. This redistribution of cargo shares shall be carried out on the basis of a unanimous decision by those shipping lines which are members of the conference and participate in the redistribution, with a view to all these lines carrying a fair share of the conference trade.

2. The share finally allocated to each participant shall be determined by the application of commercial principles, taking account in particular of: (a) the volume of cargo carried by the conference and generated by the Member States whose trade is served by it; (b) past performance of the shipping lines in the trade covered by

the pool;

(c) the volume of cargo carried by the conference and shipped through the ports of the Member States;

(d) the needs of the shippers whose cargoes are carried by the conference.

3. If no agreement is reached on the redistribution of cargoes referred to in paragraph 1, the matter shall, at the request of one of the parties, be referred to conciliation in accordance with the procedure set out in Annex II. Any dispute not settled by the conciliation procedure may, with the agreement of the parties, be referred to arbitration. In that event, the award of the arbitrator shall be binding.

4. At intervals to be laid down in advance, shares allocated in accordance with paragraphs 1, 2 and 3 shall be regularly reviewed, taking into account the criteria set out in paragraph 2 and in particular from the viewpoint of providing adequate and efficient services to shippers.

Article 4

1. In a conference trade between a Member State of the Community and a State which is a party to the Code of Conduct and not an OECD country, a shipping line of another Member State of the OECD wishing to participate in the redistribution provided for in Article 3 of this Regulation may do so subject to reciprocity defined at governmental or ship-owners' level.

2. Without prejudice to paragraph 3 of this Article, Article 2 of the Code of Conduct shall not be applied in conference trades between Member States or, on a reciprocal basis, between such States and the other OECD countries which are parties to the Code.

3. Paragraph 2 of this Article shall not affect the opportunities for participation as third country shipping lines in such trades, in accordance with the principles reflected in Article 2 of the Code of Conduct, of the shipping lines of a developing country which are recognized as national shipping lines under the Code and which are:

(a) already members of a conference serving these trades; or

(b) admitted to such a conference under Article 1 (3) of the Code.

4. Articles 3 and 14 (9) of the Code of Conduct shall not be applied in conference trades between Member States or, on a reciprocal basis, between such States and other OECD countries which are parties to the code.

5. In conference trades between Member States and between these States and other OECD countries which are parties to the Code of Conduct, the shippers and ship-owners of Member States shall not insist on applying the procedures for settling disputes provided for in Chapter VI of the Code in their mutual relationships or, on a reciprocal basis, in relation to shippers and ship-owners of other OECD countries where other procedures for settling disputes have been agreed between them. They shall in particular take full advantage of the possibilities provided by Article 25 (1) and (2) of the Code for resolving disputes by means of procedures other than those laid down in Chapter VI of the Code.

Article 5

For the adoption of decisions relating to matters defined in the conference agreement concerning the trade of a Member State, other than those referred to in Article 3 of this Regulation, the national shipping lines of such State shall consult all the other Community lines which are members of the conference before giving or withholding

their assent.

Article 6

Member States shall, in due course and after consulting the Commission, adopt the laws, regulations or administrative provisions necessary for the implementation of this Regulation.

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

Done at Brussels, 15 May 1979.

For the Council

The President

R. BOULIN

ANNEX I RESERVATIONS

When ratifying the Convention or when acceding thereto, Member States shall enter the following three reservations and interpretative reservation: 1. For the purposes of the Code of Conduct, the term "national shipping line" may, in the case of a Member State of the Community, include any vessel-operating shipping line established on the territory of such Member State in accordance with the EEC Treaty.

2. (a) Without prejudice to paragraph (b) of this reservation, Article 2 of the Code of Conduct shall not be applied in conference trades between the Member States of the Community or, on a reciprocal basis, between such States and the other OECD countries which are parties to the Code.

(b) Point (a) shall not affect the opportunities for participation as third country shipping lines in such trades, in accordance with the principles reflected in Article 2 of the Code, of the shipping lines of a developing country which are recognized as national shipping lines under the Code and which are: (i) already members of a

conference serving these trades; or

(ii) admitted to such a conference under Article 1 (3) of the Code.

3. Articles 3 and 14 (9) of the Code of Conduct shall not be applied in conference trades between the Member States of the Community or, on a reciprocal basis, between such States and the other OECD countries which are parties to the Code.

4. In trades to which Article 3 of the Code of Conduct applies, the last sentence of that Article is interpreted as meaning that: (a) the two groups of national shipping lines will coordinate their positions before voting on matters concerning the trade between their two countries;

(b) this sentence applies solely to matters which the conference agreement identifies as requiring the assent of both groups of national shipping lines concerned, and not to all matters covered by the conference agreement.

ANNEX II CONCILIATION REFERRED TO IN ARTICLE 3 (3)

The parties to the dispute shall designate one or more conciliators. Should they fail to agree on the matter, each of the parties to the dispute shall designate a conciliator and the conciliators thus designated shall co-opt another conciliator to act as chairman. Should a party fail to designate a conciliator or the conciliators designated by the parties fail to reach agreement on the chairman, the President of the International Chamber of Commerce shall, at the request of one of the parties, make the necessary designations.

The conciliators shall make every endeavour to settle the dispute.

They shall decide on the procedure to be followed. Their fees shall be paid by the parties to the dispute.