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(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 1534/91

of 31 May 1991

on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Article 85 (1) of the Treaty may, in accordance with Article 85 (3), be declared inapplicable to categories of agreements, decisions and concerted practices when satisfy the requirements of Article 85 (3);

Whereas the detailed rules for the application of Article 85 (3) of the Treaty must be adopted by way of a Regulation based on Article 87 of the Treaty;

Whereas cooperation between undertakings in the insurance sector is, to a certain extent, desirable to ensure the proper functioning of this sector and may at the same time promote consumers' interests;

Whereas the application of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ⁽⁴⁾ enables the Commission to exercise close supervision on issues arising from concentrations in all sectors, including the insurance sector;

Whereas exemptions granted under Article 85 (3) of the Treaty cannot themselves affect Community and national provisions safeguarding consumers' interests in this sector;

Whereas agreements, decisions and concerted practices serving such aims may, in so far as they fall within the prohibition contained in Article 85 (1) of the Treaty, be exempted therefrom under certain conditions; whereas this applies in particular to agreements, decisions and concerted practices relating to the establishment of common risk premium tariffs based on collectively ascertained statistics or the number of claims, the establishment of standard policy conditions, common coverage of certain types of risks, the settlement of claims, the testing and acceptance of security devices, and registers of, and information on, aggravated risks;

Whereas in view of the large number of notifications submitted pursuant to Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty ⁽⁵⁾, as last amended by the Act of Accession of Spain and Portugal, it is desirable that in order to facilitate the Commission's task, it should be enabled to declare, by way of Regulation, that the provisions of Article 85 (1) of the Treaty are inapplicable to certain categories of agreements, decisions and concerted practices;

Whereas it should be laid down under which conditions the Commission, in close and constant liaison with the competent authorities of the Member States, may exercise such powers;

Whereas, in the exercise of such powers, the Commission will take account not only of the risk of competition being eliminated in a substantial part of the relevant market and of any benefit that might be conferred on policyholders resulting from the agreements, but also of the risk which the proliferation of restrictive clauses and the operation of accommodation companies would entail for policyholders;

Whereas the keeping of registers and the handling of information on aggravated risks should be carried out subject to the proper protection of confidentiality;

⁽¹⁾ OJ No C 16, 23. 1. 1990, p. 13.

⁽²⁾ OJ No C 260, 15. 10. 1990, p. 57.

⁽³⁾ OJ No C 182, 23. 7. 1990, p. 27.

⁽⁴⁾ OJ No L 395, 30. 12. 1989, p. 1.

⁽⁵⁾ OJ No 13, 21. 2. 1962, p. 204/62.

Whereas, under Article 6 of Regulation No 17, the Commission may provide that a decision taken in accordance with Article 85 (3) of the Treaty shall apply with retroactive effect ; whereas the Commission should also be able to adopt provisions to such effect in a Regulation ;

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) of the Treaty ; whereas it is desirable that the Commission be enabled to grant by Regulation like exemption to such agreements, decisions and concerted practices if they are modified in such manner as to fall within a category defined in an exempting Regulation ;

Whereas it cannot be ruled out that, in specific cases, the conditions set out in Article 85 (3) of the Treaty may not be fulfilled ; whereas the Commission must have the power to regulate such cases pursuant to Regulation No 17 by way of a Decision having effect for the future,

HAS ADOPTED THIS REGULATION :

Article 1

1. Without prejudice to the application of Regulation No 17, the Commission may, by means of a Regulation and in accordance with Article 85 (3) of the Treaty, declare that Article 85 (1) shall not apply to categories of agreements between undertakings, decisions of associations of undertakings and concerted practices in the insurance sector which have as their object cooperation with respect to :

- (a) the establishment of common risk premium tariffs based on collectively ascertained statistics or the number of claims ;
- (b) the establishment of common standard policy conditions ;
- (c) the common coverage of certain types of risks ;
- (d) the settlement of claims ;
- (e) the testing and acceptance of security devices ;
- (f) registers of, and information on, aggravated risks, provided that the keeping of these registers and the handling of this information is carried out subject to the proper protection of confidentiality.

2. The Commission Regulation referred to in paragraph 1, shall define the categories of agreements, decisions and concerted practices to which it applies and shall specify in particular :

- (a) the restrictions or clauses which may, or may not, appear in the agreements, decisions and concerted practices ;

- (b) the clauses which must be contained in the agreements, decisions and concerted practices or the other conditions which must be satisfied.

Article 2

Any Regulation adopted pursuant to Article 1 shall be of limited duration.

It may be repealed or amended where circumstances have changed with respect to any of the facts which were essential to its being adopted ; in such case, a period shall be fixed for modification of the agreements, decisions and concerted practices to which the earlier Regulation applies.

Article 3

A Regulation adopted pursuant to Article 1 may provide that it shall apply with retroactive effect to agreements, decisions and concerted practices to which, at the date of entry into force of the said Regulation, a Decision taken with retroactive effect pursuant to Article 6 of Regulation No 17 would have applied.

Article 4

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

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

The provisions of the first subparagraph shall apply in the same way to those agreements, decisions and concerted practices existing at the date of accession of new Member States to which Article 85 (1) of the Treaty applies by virtue of accession and which do not satisfy the conditions of Article 85 (3).

2. Paragraph 1 shall apply to agreements, decisions 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.

Paragraph 1 shall not apply to agreements, decisions and concerted practices existing at the date of accession of new Member States to which Article 85 (1) of the Treaty applies by virtue of accession and which had to be notified within six months from the date of accession in accordance with Articles 5 and 25 of Regulation No 17, unless they have been so notified within the said period.

3. The benefit of provisions adopted pursuant to paragraph 1 may not be invoked in actions pending at the date of entry into force of a Regulation adopted pursuant to Article 1; neither may it be invoked as grounds for claims for damages against third parties.

Article 5

Where the Commission proposes to adopt a Regulation, it shall publish a draft thereof to enable all persons and organizations concerned to submit to it their comments within such time limit, being not less than one month, as it shall fix.

Article 6

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

- (a) before publishing a draft Regulation;
- (b) before adopting a Regulation.

2. Article 10 (5) and (6) of Regulation No 17, relating to consultation of the Advisory Committee, shall apply. However, joint meetings with the Commission shall take

place not earlier than one month after dispatch of the notice convening them.

Article 7

Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that, in any particular case, agreements, decisions and concerted practices, to which a Regulation adopted pursuant to Article 1 applies, have nevertheless certain effects which are incompatible with the conditions laid down in Article 85 (3) of the Treaty, it may withdraw the benefit of application of the said regulation and take a decision in accordance with Articles 6 and 8 of Regulation No 17, without any notification under Article 4 (1) of Regulation No 17 being required.

Article 8

Not later than six years after the entry into force of the Commission Regulation provided for in Article 1, the Commission shall submit to the European Parliament and the Council a report on the functioning of this Regulation, accompanied by such proposals for amendments to this Regulation as may appear necessary in the light of experience.

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

Done at Brussels, 31 May 1991.

For the Council

The President

A. BODRY