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► **B****REGULATION NO 17****First Regulation implementing Articles 85 and 86 of the Treaty**

(OJ P 13, 21.2.1962, p. 204)

Amended by:

		Official Journal		
		No	page	date
► <b>M1</b>	Regulation No 59 of the Council amending certain provisions of No 17	P 58	1655	10.7.1962
► <b>M2</b>	Regulation No 118/63/EEC of the Council of 5 November 1963	P 162	2696	7.11.1963
► <b>M3</b>	Regulation (EEC) No 2822/71 of the Council of 20 December 1971	L 285	49	29.12.1971
► <b>M4</b>	Council Regulation (EC) No 1216/1999 of 10 June 1999	L 148	5	15.6.1999
► <b>M5</b>	Council Regulation (EC) No 1/2003 of 16 December 2002	L 1	1	4.1.2003

Amended by:

► <b>A1</b>	Act of Accession of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland	L 73	14	27.3.1972
► <b>A2</b>	Act of Accession of Greece	L 291	17	19.11.1979
► <b>A3</b>	Act of Accession of Spain and Portugal	L 302	23	15.11.1985
► <b>A4</b>	Act of Accession of Austria, Sweden and Finland	C 241	21	29.8.1994
	(adapted by Council Decision 95/1/EC, Euratom, ECSC)	L 1	1	1.1.1995

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).



## REGULATION No 17

### First Regulation implementing Articles 85 and 86 of the Treaty

(\*)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 Economic and Social Committee;

Having regard to the Opinion of the European Parliament;

Whereas, in order to establish a system ensuring that competition shall not be distorted in the common market, it is necessary to provide for balanced application of Articles 85 and 86 in a uniform manner in the Member States;

Whereas in establishing the rules for applying Article 85 (3) account must be taken of the need to ensure effective supervision and to simplify administration to the greatest possible extent;

Whereas it is accordingly necessary to make it obligatory, as a general principle, for undertakings which seek application of Article 85 (3) to notify to the Commission their agreements, decisions and concerted practices;

Whereas, on the one hand, such agreements, decisions and concerted practices are probably very numerous and cannot therefore all be examined at the same time and, on the other hand, some of them have special features which may make them less prejudicial to the development of the common market;

Whereas there is consequently a need to make more flexible arrangements for the time being in respect of certain categories of agreement, decision and concerted practice without prejudging their validity under Article 85;

Whereas it may be in the interest of undertakings to know whether any agreements, decisions or practices to which they are party, or propose to become party, may lead to action on the part of the Commission pursuant to Article 85 (1) or Article 86;

Whereas, in order to secure uniform application of Articles 85 and 86 in the common market, rules must be made under which the Commission, acting in close and constant liaison with the competent authorities of the Member States, may take the requisite measures for applying those Articles;

Whereas for this purpose the Commission must have the co-operation of the competent authorities of the Member States and be empowered, throughout the common market, to require such information to be supplied and to undertake such investigations as are necessary to bring to light any agreement, decision or concerted practice prohibited by Article 85 (1) or any abuse of a dominant position prohibited by Article 86;

Whereas, in order to carry out its duty of ensuring that the provisions of the Treaty are applied, the Commission must be empowered to address to undertakings or associations of undertakings recommendations and decisions for the purpose of bringing to an end infringements of Articles 85 and 86;

Whereas compliance with Articles 85 and 86 and the fulfilment of obligations imposed on undertakings and associations of undertakings

(\*) Editorial Note: The title of Regulation No 17 has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Articles 85 and 86 of the Treaty.

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under this Regulation must be enforceable by means of fines and periodic penalty payments;

Whereas undertakings concerned must be accorded the right to be heard by the Commission, third parties whose interests may be affected by a decision must be given the opportunity of submitting their comments beforehand, and it must be ensured that wide publicity is given to decisions taken;

Whereas all decisions taken by the Commission under this Regulation are subject to review by the Court of Justice under the conditions specified in the Treaty; whereas it is moreover desirable to confer upon the Court of Justice, pursuant to Article 172, unlimited jurisdiction in respect of decisions under which the Commission imposes fines or periodic penalty payments;

Whereas this Regulation may enter into force without prejudice to any other provisions that may hereafter be adopted pursuant to Article 87;

HAS ADOPTED THIS REGULATION:

**▼M5****▼B***Article 8***Duration and revocation of decisions under Article 85 (3)****▼M5****▼B**

3. The Commission may revoke or amend its decision or prohibit specified acts by the parties:

- (a) where there has been a change in any of the facts which were basic to the making of the decision;
- (b) where the parties commit a breach of any obligation attached to the decision;
- (c) where the decision is based on incorrect information or was induced by deceit;
- (d) where the parties abuse the exemption from the provisions of Article 85 (1) of the Treaty granted to them by the decision.

In cases to which subparagraphs (b), (c) or (d) apply, the decision may be revoked with retroactive effect.

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