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REGULATION (EEC) No 2822/71 OF THE COUNCIL

of 20 December 1971

supplementing the provisions of Regulation No 17 implementing Articles 85 and 86 of the Treaty

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;

Having regard to the Opinion of the European Parliament;

Having regard to the Opinion of the Economic and Social Committee;

Whereas Article 4 (2) of Regulation No 17¹ exempts a number of agreements, decisions and concerted practices from the requirement of notification under Article 4 (1);

Whereas the creation of a common market requires that undertakings be adapted to the conditions of the enlarged market and whereas co-operation between undertakings can be a suitable means of achieving this; whereas it is in particular advisable to encourage co-operation in the field of research and development and the conclusion of specialisation agreements which do not affect competition;

Whereas such co-operation would be facilitated if notification of the agreements, decisions and concerted practices in question were no longer required;

Whereas, in introducing exemption from notification, account must be taken on the one hand of the desire on the part of undertakings that co-operation between them be made easier and on the other of the need for effective supervision;

Whereas agreements, decisions and concerted practices relating only to joint research and

development, in so far as they restrict competition, do not as a rule present such dangers as to make notification necessary;

Whereas specialisation agreements may make for improvement in the production and distribution of products; whereas generally there is no reason to fear that competition will be affected provided the participating undertakings do not exceed a certain size and their share of the market in the specialised products does not exceed a given limit; whereas as a general rule agreements of this kind may, pursuant to Article 85 (3) of the Treaty, be exempted from the prohibition imposed by Article 85 (1) thereof;

Whereas, therefore, Article 4 (2) of Regulation No 17 should be supplemented and agreements, decisions and concerted practices for joint research and development, in so far as they restrict competition, and certain specialisation agreements, should be exempted from compulsory notification;

HAS ADOPTED THIS REGULATION:

Sole Article

Article 4 (2) of Regulation No 17 shall be supplemented as follows:

'2 Paragraph 1 shall not apply to agreements, decisions and concerted practices where:

(1) (unchanged)

(2)(unchanged)

(3) they have as their sole object:

(a)(unchanged)

(b) joint research and development;

(c) specialisation in the manufacture of products, including agreements necessary for achieving this,

¹ OJ No 13, 21.2.1962, p. 204/62.

- where the products which are the subject of specialisation do not, in a substantial part of the common market, represent more than 15% of the volume of business done in identical products or those considered by consumers to be similar by reason of their characteristics, price and use,

and

- where the total annual turnover of the participating undertakings does not exceed 200 million units of account.

These agreements, decisions and practices may be notified to the Commission.'

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

Done at Brussels, 20 December 1971.

For the Council

The President

M. PEDINI