

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(77) 53 final

Brussels, 9 March 1977

DRAFT

## COMMISSION DECISION

amending Decision No 25-67 of 22 June 1967  
laying down in implementation of Article 66(3)  
of the Treaty establishing the European Coal  
and Steel Community a regulation concerning  
exemption from prior authorization

COM(77) 53 final



EXPLANATORY MEMORANDUM

1. By Decision No 25-67 the High Authority, acting under Article 66(3) of the Treaty establishing the ECSC with the assent of the Council, exempted from the requirement of prior authorization certain categories of transaction which, by reason of the size of the assets or undertakings concerned and of the nature of the resulting concentration, satisfied the tests of Article 66(2).
  
2. Since that Decision came into force in 1967, Community steel output has expanded considerably, there have been major structural changes in the steel and coal industries and new Member States have joined the Community. For these reasons, and to reflect several years' experience in applying the Decision, it has now been found necessary to adapt the limits and conditions laid down by the Decision to the economic reality of today.
  
3. Article 1  
The limits set in Article 1 of Decision No 25-67 represented between 3 and 8 % of Community output as it was in 1966, depending on the product. But by 1974, the last year of normal activity in the industry, the combined effect of a general expansion in output and the accession of the United Kingdom meant that total Community output was 82 % higher than in 1966.

It is therefore proposed that this situation be reflected by raising the limits set in Article 1 to at least the same percentage of total output as they represented when Decision No 25-67 was adopted.

The new technique of prereduction of iron ore has also developed during the same period. Since prereduction will continue to be of growing importance, this technological development should be reflected by the introduction of a new limit for "prereduced iron ore". The proposed limit is 400 000 tonnes.

The limit of 2 500 000 tonnes set for pig iron and ferro-alloys has now been found to be inadequate for pig irons but too high for ferro-alloys, and particularly for ferro-manganese. It is therefore proposed that this item be split into "steelmaking pig iron", where the limit could be raised to 4 000 000 tonnes, and "other forms of pig iron and ferro-alloys", where a limit of 250 000 tonnes is proposed.

#### 4. Article 3

In the case of concentrations between major steel producers and undertakings using very little steel as a raw material, the annual pre-concentration consumption in the undertakings concerned often exceeds 50 % of their output in certain categories of product which are not directly affected by the concentration. In most cases, therefore, the exemption from the requirement of prior authorization is not available.

To avoid such situations it is proposed that Article 3 be so amended that the 50 % limit will apply only to products used by the undertakings which are not covered by Article 80.

This criterion would seem more objective for the assessment of the importance of the additional outlets to which the producing undertakings concerned would gain access through the concentration.

It is also proposed that concentrations between undertakings covered by Article 80 and undertakings consuming very small quantities of steel be exempted from the requirement of prior authorization. The additional outlets are negligible enough for such concentrations to be without effect on competition.

5. Article 4

The quantitative limit on concentrations between coal distributors will remain at 2 500 000 tonnes. It is, however, proposed that there be an exemption from the requirement of prior authorization for concentrations exceeding this tonnage where the smallest of the undertakings involved distributes less than 200 000 tonnes annually in a wholesale capacity (excluding supplies to households and small craft industries). These are concentrations of limited scope which are unlikely to affect competition on the coal market.

It would nevertheless seem desirable for the aggregate of such concentrations occurring within any three-year period not to exceed 600 000 tonnes. Beyond that limit, each concentration would be subject to case-by-case examination.

6. Article 5

As regards concentrations between steel distributors, it is proposed that the limit be raised from 60 to 150 million units of account. It is also proposed that exemption be given in respect of concentrations which, while exceeding a turnover of 150 million u.a., involve an undertaking whose annual turnover is less than 30 million u.a. In addition the total permissible increase attained through exempted concentrations in any given three-year period would be raised from 30 to 60 million u.a.

In the scrap industry, although it is necessary to set special sales limits, there is no apparent reason why the same criteria as applied to the exemption of steel concentrations should not apply here too. It is therefore proposed that the limit be raised from 400 000 to 700 000 tonnes and that there be an exemption from the requirement of prior authorization for concentrations where one of the undertakings involved has an annual volume of business not exceeding 100 000 tonnes. A limit is set for repeated concentrations.

7. The new limits for exemption and the proposed amendments to Decision No 25-67 satisfy the requirements of Article 66(2) since all the concentrations thus exempted can be regarded as satisfying the tests for authorization laid down in Article 66. The Council's assent to the attached draft Decision should accordingly be sought.

COMMISSION DECISION

amending Decision No 25-67 of 22 June 1967 laying down in implementation of Article 66(3) of the Treaty establishing the European Coal and Steel Community a regulation concerning exemption from prior authorization

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 47, 66 and 80 thereof;

having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular Article 9 thereof;

having regard to Decision No 25-67 of 22 June 1967 laying down in implementation of Article 66(3) of the Treaty a regulation concerning exemption from prior authorization (Official Journal of the European Communities, 14 July 1967, page 11 et seq.);

with the assent of the Council;

whereas by Decision No 25-67 the High Authority, acting under Article 66(3), exempted from prior authorization certain classes of transaction which, by reason of the size of the assets or undertakings concerned and of the nature of the resulting concentration, satisfied the tests of Article 66(2);

whereas experience has shown that Decision No 25-67 should be adapted to take account of the changes which have meanwhile occurred in the volume of production, in economic structure and in market and competitive conditions, particularly as regards quantitative limits;

whereas the production of prereduced iron ore is of growing importance and appropriate limits should therefore be set for that category of product;

whereas, in view of the peculiar characteristics distinguishing them from steelmaking pig irons, ferro-alloys and other forms of pig iron should constitute a distinct product category with an appropriate limit for exemption;

whereas in the case of concentrations between undertakings engaged in coal or steel production and undertakings which are not within the scope of the Treaty, account must be taken of the privileged position which such concentrations can secure for Community undertakings by providing outlets for their products; whereas, in concentrations between steel producers and undertakings using little steel as a raw material, the annual pre-concentration consumption of the undertakings in question often exceeds 50 % of their output in categories of product which are not affected by the concentration; whereas, therefore, exemption from the requirement of prior authorization on the tests in Article 3 of Decision No 25-67 was in most cases unavailable; whereas the importance of the additional markets to which such producers gain access through the concentration should be appraised by reference to the steel input of the undertakings involved which are not within the scope of the Treaty; whereas exemption from prior authorization should, however, be allowed wherever a concentration gives the Community undertakings a negligible increase only in their potential outlets and has no influence on competition;



whereas, in view of the contraction of the household coal market and of the atomistic structure of the wholesale trade in certain Member States, there should be a general exemption for concentrations between a distributor and another, small, distributor; whereas, however, the number of such exempted concentrations should be limited over time;

whereas changes in the structure of the steel distribution business in the Community warrants higher limits in Article 5 for concentrations between distributors;

whereas, although special limits must be fixed for sales of scrap, it is appropriate that the same criteria be applied as for steel concentrations;

HAS ADOPTED THIS DECISION :

Article 1

The items from (f) to the end of the list in Article 1(1) of Decision No 25-67 are replaced by the following :

(f) <u>Prereduced ore</u>	<u>400 000 tonnes</u>
(g) <u>Steelmaking pig iron</u>	<u>4 000 000 tonnes</u>
(h) <u>Other forms of pig iron, ferro-alloys</u>	<u>250 000 tonnes</u>
(i) Crude steel (ordinary steel: ingots, semi-finished products and liquid steel)	<u>5 000 000 tonnes</u>
(j) Alloy and non-alloy special steels (ingots, semi-finished products and liquid steel)	<u>500 000 tonnes</u>
(k) Finished rolled steel products including end products	<u>4 000 000 tonnes</u>

Article 2

Article 3 of Decision No 25-67 is replaced by the following :

Concentrations between steel producers  
and undertakings not falling within the scope of the Treaty

Article 3

1. Transactions referred to in Article 66(1) shall be exempted from the requirement of prior authorization where they have the direct or indirect effect of bringing about concentration between :

a) undertakings engaged in steel production, and

b) undertakings not falling within the scope of Article 80, if :

- the annual production of undertakings referred to in (a) does not exceed 20 % of the tonnages set out for the groups of products referred to in (f) to (k) in Article 1(1); or

- the annual steel consumption of undertakings involved in the concentration does not exceed 50 % of their production of the product categories used by the undertakings referred to in (b).

However, in respect of finished rolled steel products and end products only the groups of products listed in the Annex to this Decision shall be taken into account; or

- the undertakings referred to in (b) use no more than 10 000 tonnes of ordinary steel or 1 000 tonnes of special steel, and the resulting expansion in potential sales by the undertakings referred to in (a) is no more than 20 000 tonnes of ordinary steel or 2 000 tonnes of special steel in any three-year period.

2. Tonnages used in the production of steel and in the upkeep and renewal of installations of the undertakings in question shall not be considered as steel consumption.

Article 3

Article 4 of Decision No 25-67 is replaced by the following:

Concentrations between distributors

COAL

Article 4

1. Transactions referred to in Article 66(1) shall be exempted from the requirement of prior authorization where they have the direct or indirect effect of bringing about concentration between undertakings engaged in coal distribution, other than sales to domestic consumers or to small craft industries (hereinafter called "distribution undertakings") if :

- (a) either the total volume of business dealt with annually by distribution undertakings involved in the concentration does not exceed 2 500 000 tonnes of coal; or
- (b) the increase in the annual volume of business brought about by the concentration does not exceed 200 000 tonnes of coal.

However, transactions of this type which are repeated or involve several distribution undertakings at the same time shall be exempted from the requirement of authorization only if the consequent total increase in the volume of business does not exceed 600 000 tonnes in any three-year period.

2. "Volume of business" means the quantities sold by the distribution undertakings for their own account and for account of third parties. Sales to domestic consumers and to small craft industries are not to be taken into account.

Article 4

Article 5 of Decision No 25-67 is replaced by the following:

STEEL

Article 5

1. Transactions referred to in Article 66(1) shall be exempted from the requirement of prior authorization where they have the direct or indirect effect of bringing about concentration between undertakings engaged in steel distribution, other than sales to domestic consumers or to small craft industries (hereinafter called "distribution undertakings"), if:

- (a) either the total annual turnover of steel - not including scrap - achieved by the distribution undertakings involved in the concentration does not exceed 150 million units of account; or
- (b) the annual turnover of steel - not including scrap - achieved by the distribution undertaking which represents one of the parties involved in the concentration does not exceed 30 million units of account. However, transactions of this type which are repeated or which involve several distribution undertakings at the same time shall be exempted from the requirement of authorization only if the consequent total increase in turnover does not exceed 60 million units of account in any three-year period.

2. Transactions referred to in Article 66(1) shall be exempted from the requirement of prior authorization where they have the direct or indirect effect of bringing about concentration between undertakings engaged in scrap distribution, if:

- (a) either the total annual volume of business of the distribution undertakings involved in the concentration does not exceed 700 000 tonnes of scrap; or

(b) the annual volume of business of the distribution undertaking which represents one of the parties involved in the concentration does not exceed 100 000 tonnes of scrap. However, transactions of this type which are repeated or which involve several distribution undertakings at the same time shall be exempted from the requirement of authorization only if the consequent total increase in the volume of business does not exceed 200 000 tonnes of scrap in any three-year period.

3. The turnover shall be ascertained by reference to the amount of products sold and invoiced for own account and for account of third parties. "Volume of business" means the amounts sold by the distribution undertakings for their own account and for account of third parties.

#### Article 5

In the heading to Article 6 of Decision No 25-67, "prior" is inserted before "authorization".

#### Article 6

In Article 10(1) of Decision No 25-67, the reference to the "High Authority" is replaced by a reference to the "Commission".

#### Article 7

This Decision shall enter into force on .....

The text of Decision No 25-67, as amended by this Decision, shall be published in the Official Journal of the European Communities.

Done at Brussels,

For the Commission,

12

DECISION No 25-67

of 22 June 1967

laying down in implementation of Article 66 (3) of the Treaty a regulation concerning exemption from prior authorisation

THE HIGH AUTHORITY,

Having regard to Articles 47, 66 and 80 of the Treaty;

Having regard to Decision No 25-54 of 6 May 1954 on rules for the application of Article 66 (3) of the Treaty, relating to exemption from prior authorisation (*Official Journal of the European Coal and Steel Community*, 11 May 1954, pp 346 *et seq.*), as supplemented by Decision No 28-54 of 26 May 1954 (*Official Journal of the European Coal and Steel Community*, 31 May 1954, p. 381);

Whereas under Article 66 (1), and subject to Article 66 (3), any transaction which would in itself have the direct or indirect effect of bringing about a concentration between undertakings at least one of which falls within the scope of application of Article 80, requires the prior authorisation of the High Authority; whereas the High Authority grants the authorisation referred to in paragraph (1) if it finds that the proposed transaction will not give to the persons or undertakings concerned the power to influence competition within the common market, within the meaning of Article 66 (2);

Whereas by Decision No 25-54, and with the concurring Opinion of the Council, the High Authority in accordance with Article 66 (3) exempted from the requirement of prior authorisation certain classes of transactions which would bring about concentration of undertakings and which, in view of the size of the assets or of the undertakings to which they relate, taken in conjunction with the kind of concentration which they effect, and having regard to the totality of the undertakings grouped under the same control, must be deemed to meet the requirements of Article 66 (2);

Whereas experience has shown that Decision No 25-54 should be adapted to take account of the

changes which have occurred since that time in the volume of production, in economic structure, in market and competitive conditions; whereas this applies particularly to quantitative limits and to the ties which exist between Community undertaking and undertakings in other sectors and trading undertakings;

Whereas in concentrations between undertakings engaged in the production of coal and steel, the size of the industrial entity being formed depends on the volume of production of the different types of products; whereas this volume should be limited both in absolute figures and in relation to production within the Community as shown in the official statistics;

Whereas in the case of concentration\* between undertakings engaged in production and undertakings which are not within the scope of the Treaty, account must be taken of the privileged position which concentration can secure for Community undertakings by ensuring disposal of their products; whereas the relevant consumption of coal and steel in this respect is either the total consumption of the undertakings concerned or that of the different undertakings which are not within the scope of the Treaty but are involved in the concentration;

Whereas any concentration of undertakings in the wholesale trade which is subject to Article 66 should in accordance with Article 80, be assessed on the basis of the volume of their sales of coal and turnover of steel, the ties which exist between a wholesaler undertaking and an undertaking engaged in production not forming an obstacle to exemption for purposes of concentration with another wholesaler; whereas with regard to steel, repeated concentrations and concentrations which relate to several distribution undertakings at the same time should be limited;

Whereas special limits must be fixed for sales of scrap;

Whereas concentrations between producer undertakings and retailers and between distribution undertakings and undertakings which are not within the scope of the Treaty, may, in general, be exempted from the requirement of prior authorisation;

Whereas, as regards concentrations effected by establishing control over groups, it is impossible to define general criteria for exemption; whereas concentrations of this type should accordingly be excluded from the field of application of this Decision, whether involving joint formation of new undertakings or control over groups of existing undertakings;

Whereas the High Authority should be informed of any concentration effected within the common market for coal and steel, even if exempt from prior authorisation by virtue of this Decision; whereas the undertakings or the persons who obtained control should accordingly be required to declare any such concentration the size of which is not substantially below the limits fixed for exemption;

With the concurring Opinion of the Council of Ministers;

DECIDES:

**Concentrations between producers**

*Article 1*

Transactions referred to in Article 66 (1) which have the direct or indirect effect of bringing about concentration between undertakings engaged in production in the coal or the steel industry shall be exempted from the requirement of prior authorisation where:

1. The annual output of products specified below, achieved by all the undertakings involved in the concentration, does not exceed the following tonnages:

- (a) Coal (net production screened and washed) 10 000 000 metric tons
- (b) Manufactured fuels made from coal 1 000 000 metric tons

- (c) Coke 3 000 000 metric tons
- (d) Iron ore (gross production) No limit
- (e) Agglomerated ore 4 000 000 metric tons
- (f) Pig iron and ferro-alloys 2 500 000 metric tons
- (g) Crude steel (ordinary steel: ingots, semi-finished products and liquid steel) 3 000 000 metric tons
- (h) Alloy and non-alloy special steels, (ingots, semi-finished products and liquid steel) 200 000 metric tons
- (i) Finished rolled steel products including end products 2 400 000 metric tons

2. The annual output of undertakings involved in the concentration shall not exceed, for any of the types of steel products listed in the Annex to this Decision, 30% of the overall output of products of this type within the Community. The overall output within the Community shall be determined according to the production statistics published by the Statistical Office of the European Communities.

**Concentrations between coal producers and undertakings not falling within the scope of the Treaty**

*Article 2*

Transactions referred to in Article 66 (1) shall be exempted from the requirement of prior authorisation where they have the direct or indirect effect of bringing about concentration between:

- (a) undertakings engaged in coal production; and
  - (b) undertakings not falling within the scope of Article 80,
- if: — either the annual coal consumption, considered as a whole for all the undertakings involved in the concentration, does not exceed 5 000 000 metric tons; or
- the annual coal consumption of each of the undertakings referred to in (b) is less than 500 000 metric tons.

**Concentrations between steel producers and undertakings not falling within the scope of the Treaty**

*Article 3*

Transactions referred to in Article 66 (1) shall be exempted from the requirement of prior authorisation where they have the direct or indirect effect of bringing about concentration between:

- (a) undertakings engaged in steel production, and
- (b) undertakings not falling within the scope of Article 80,

if: — the annual production of undertakings referred to in (a) does not exceed 20% of the tonnages set out in Article 1 (1) for the groups of products referred to in (f) to (i); or

— the annual steel consumption of undertakings involved in the concentration does not exceed 50% of their production of these groups of products. However in respect of finished rolled steel products and end products only the groups of products listed in the Annex to this Decision shall be taken into account; or

— the undertakings referred to in (b) do not use steel as a raw material.

2. Tonnages used in the production of steel and in the upkeep and renewal of installations of the undertakings in question shall not be considered as steel consumption.

**Concentrations between distributors**

**COAL**

*Article 4*

1. Transactions referred to in Article 66 (1) shall be exempted from the requirement of prior authorisation where they have the direct or indirect effect of bringing about concentration between undertakings engaged in coal distribution, other than sales to domestic consumers or to small craft industries (hereinafter called 'distribution undertakings') if the total volume of business dealt with annually by distribution undertakings involved in the concentration does not exceed 2 500 000 metric tons of coal.

2. 'Volume of business' means the quantities sold by the distribution undertakings for their own account and for account of third parties. Sales to

domestic consumers and to the small craft industries are not to be taken into account.

**STEEL**

*Article 5*

1. Transactions referred to in Article 66 (1) shall be exempted from the requirement of prior authorisation where they have the direct or indirect effect of bringing about concentration between undertakings engaged in steel distribution, other than sales to domestic consumers or to small craft industries (hereinafter called 'distribution undertakings') if:

(a) either the total annual turnover of steel—not including scrap—achieved by the distribution undertakings involved in the concentration, does not exceed 60 million units of account; or

(b) the annual turnover of steel—not including scrap—achieved by the distribution undertaking which represents one of the parties involved in the concentration does not exceed 10 million units of account. However, transactions of this type which are repeated or which involve several distribution undertakings at the same time shall only be exempted from the requirement of authorisation if the consequent total increase in turnover does not exceed 30 million units of account.

2. Transactions referred to in Article 66 (1) shall be exempted from the requirement of prior authorisation where they have the direct or indirect effect of bringing about concentration between undertakings engaged in scrap distribution, if the total annual volume of business of the distribution undertakings involved in the concentration does not exceed 400 000 metric tons of scrap.

3. The turnover shall be ascertained by reference to the amount of products sold and invoiced for own account and for account of third parties. 'Volume of business' means the amounts sold by the distribution undertakings for their own account and for account of third parties.

**Other concentrations exempted from authorisation**

*Article 6*

Transactions referred to in Article 66 (1) shall be exempted from prior authorisation to the extent that they have the effect of bringing about concentration:



- between undertakings engaged in production as defined in Article 80, and undertakings which sell coal or steel exclusively to domestic consumers or to small craft industries;
- between distribution undertakings and undertakings not coming within Article 80.

#### Concentrations effected by providing for group control

##### Article 7

1. Articles 1 to 6 shall not apply to transactions referred to in Article 66 (1) which have the effect of bringing about concentration between:

- (a) on the one hand, a number of undertakings of which at least one is engaged in production or distribution in the coal and steel sector, and which are not concentrated among themselves, but which in fact or in law exercise joint control (group control) over the undertaking or undertakings under (b); and
- (b) on the other hand, one or several undertakings which produce, distribute or process coal or steel as a raw material.

2. Paragraph 1 shall apply where concentration results from the joint formation of a new undertaking or the establishment of joint control of an existing undertaking.

#### General provisions

##### Article 8

1. The figures to be considered in applying Articles 1 to 5 above shall be the average annual figures for production, consumption, turnover and volume of business attained during the last three financial years preceding the date of concentration.

2. In the case of undertakings which have been in existence for less than three years, the figures to be considered shall be the yearly averages calculated on the basis of production, consumption, turnover and volume of business since those undertakings came into existence.

##### Article 9

1. In applying Articles 1 to 7 regard shall be had to the whole of the undertakings and activities already grouped under one control or which would, as a result of concentration, be under such control.

2. Transactions within the meaning of Article 66 (1), to which several of the Articles 1 to 6 above apply, shall only be exempted from the requirement of prior authorisation if the conditions of each of the relevant Articles are satisfied.

##### Article 10

1. Transactions referred to in Article 66 (1) which in accordance with Articles 1 to 5 are exempted from authorisation, shall be notified to the High Authority within two months from the time when the concentration was effected.

The notification shall be made by the undertakings or persons who have acquired control.

The notification shall contain the following information:

- a description of the transaction leading to concentration;
- the description of the undertakings which will be directly or indirectly concentrated;
- an estimate of production, sales or consumption of coal or steel of the concentrated undertakings.

2. Paragraph 1 shall not apply to concentrations which achieve less than 50% of the figures required under Articles 1 to 5 of this Decision for exemption from authorisation.

##### Article 11

This Decision shall be published in the *Official Journal of the European Communities*. It shall enter into force on 15 July 1967.

On the same date, Decisions Nos 25-54 and 28-54 shall cease to be in force.

This Decision was considered and adopted by the High Authority at its meeting on 22 June 1967.

For the High Authority

The Vice-President

A. COPPE

**ANNEX****(Article 1 (2) and Article 3 (1))****Permanent railway material****Sheet piling****Wide-flanged beams****Other angles, shapes and sections, 80 mm or more and Omega sections****Tube rounds and squares****Wire rod in coils****Merchant steel****Universal plates****Hoop and strip and hot-rolled tube strip****Hot-rolled plates of 4-76 mm or more****Hot-rolled plates of 3-4.75 mm****Hot-rolled sheets under 3 mm****Coils (end products)****Cold-rolled sheets under 3 mm****Hoop and strip, cold-rolled, for making tinfoil****Tinfoil****Blackplate used as such****Galvanised, lead-coated and other clad sheets****Electrical sheet**