

EUROPEAN PARLIAMENT



session documents

ENGLISH EDITION

16 January 1995

A4-0004/95



REPORT

on the proposal for a Council decision concluding the Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws
(COM(94)0430 - C4-0236/94 - 94/0236(CNS))

Committee on External Economic Relations

Rapporteur: Mr Franco Malerba

DOC_EN\RR\264\264456

PE 210.828/fin.
it - Or. en/es/it

- * Consultation procedure
simple majority
- **I Cooperation procedure (first reading)
simple majority
- **II Cooperation procedure (second reading)
simple majority to approve the common position
absolute majority of Parliament's component Members to reject or amend the common position
- *** Assent procedure
absolute majority of Parliament's component Members to give assent
except for simple majority under Articles 8a, 105, 106, 130d and 228 EC

- ***I Codecision procedure (first reading)
simple majority
- ***II Codecision procedure (second reading)
simple majority to approve the common position
absolute majority of Parliament's component Members either to adopt a declaration of intent to reject the common position, or to amend or confirm the rejection of the common position
- ***III Codecision procedure (third reading)
simple majority to approve the joint text
absolute majority of Parliament's component Members to reject the Council text

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By letter of 30 November 1994 the Council consulted Parliament, pursuant to Article 87 in conjunction with the first subparagraph of Article 228(3) of the EC Treaty, on the proposal for a Council decision concluding the Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws.

At the sitting of 12 December 1994 the President of Parliament announced that he had referred this proposal to the Committee on External Economic Relations as the committee responsible and the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs and Citizens' Rights for their opinions.

At its meeting of 4 November 1994 the Committee on External Economic Relations had appointed Mr Malerba rapporteur.

It considered the draft report at its meetings of 22 November 1994, 19 December 1994 and 16 January 1995.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following took part in the vote: De Clercq, chairman; Pex, vice-chairman; Malerba, rapporteur; Chesa, Ferrer, Erika Mann, Valdivielso de Cue, Van der Waal (for Goldsmith) and Wiersma (for Falconer).

The opinions of the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs and Citizens' Rights are attached.

The report was tabled on 16 January 1995.

A

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the proposal for a Council decision concluding the Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws

(COM(94)0430 - C4-0236/94 - 94/0236(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the proposal for a Council decision COM(94)0430 - 94/0236(CNS),
 - having been consulted by the Council pursuant to Article 87 in conjunction with the first subparagraph of Article 228(3) of the EC Treaty (C4-0236/94),
 - having regard to the report of the Committee on External Economic Relations and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Legal Affairs and Citizens' Rights (A4-0004/95),
1. Approves the conclusion of the agreement;
 2. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 3. Instructs its President to forward this opinion to the Council and Commission, and the Government and Congress of the United States of America.

EXPLANATORY STATEMENT

1. The agreement on which Parliament is required to give an opinion contains various interesting features.

- (a) First of all, it is the first agreement of its kind, on which Parliament has been consulted. This has only been possible following the judgment of the Court of Justice which annulled the Commission's act of conclusion of the agreement. The agreement therefore remains in force in international terms, but the adoption procedure must be repeated.
- (b) It is also the first of a series of agreements on competition laws, which the Commission proposes concluding with a number of trade partners (the agreement with Canada is currently in preparation) on the grounds of a fundamental consideration: the increasing internalization of the economy, the importance of multinational companies and the impact not only of the practices of external companies but also the competition policies of our economic partners on the Community market.

2. It is therefore important to make every possible effort to prevent disputes between public administrations on competition policies and to ensure at least a minimum amount of consultation and exchange of information. In practice, the agreement with the United States lays down notification and consultation rules concerning procedures in the field of competition policy. As far as the European Union is concerned, these concern procedures relating to trade agreements, abuse of dominant position on the market and mergers.

The agreement contains specific provisions on the confidentiality of information forwarded. According to the details given by the Commission in this document, there were 102 notifications by the Commission and 112 notifications by the US (mainly merger cases) during the period from September 1991 to August 1994. The provisions for bilateral coordination of the implementation of each party's competition rules and each party's undertaking to take account of the 'important interests' of the other are promising developments.

3. The cooperation in the field of competition between the relevant authorities of the Union and the United States has already produced positive results, in particular through the regular meetings provided for in the agreement: a notable example was the 'Microsoft' case, in which the American company undertook to amend the terms of its licensing contracts to bring them into line with the recommendations received from the Commission and the US Department of Justice.

In assessing the agreement, it should also be borne in mind that US laws provide for much more extensive extraterritorial application than European Union legislation: US law applies to competition practices on foreign markets insofar as they affect the interests of US exporters. European Union legislation, on the other hand, only concerns the way in which competition is practised within the Union.

However, the main problems concern future developments: the agreement provides for a review after two years with a view to reaching a more ambitious agreement. However, this procedure would raise problems since it might entail passing on information collected by the Commission during its inquiries. The confidential nature of this information is guaranteed by Article 20 of Regulation No. 17, adopted in 1962, and it seems difficult to alter this aspect of the procedure without carrying out a general revision of procedures in respect of inquiries in the competition sector.

Nevertheless, it is important to note this point, partly with a view to the future negotiations which the Union will be required to enter into, both in relations with its trading partners and within the future WTO.

O P I N I O N

(Rule 147 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy
for the Committee External Economic Relations

Draftsman: Mr Alman Metten

At its meeting of 19 December 1994 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Alman Metten draftsman.

At its meeting of 16 January 1995 it considered the draft opinion.

At the meeting of 16 January 1995 it adopted the conclusions as a whole.

The following took part in the vote: von Wogau, chairman; Theonas and Katiforis, vice-chairmen; Metten, rapporteur; Argyros (for Langen), Billingham, de Bremond d'Ars, Cassidy (for Konrad), Christodoulou, Cox (for Larive), Donnelly, Falkmer, Garcia Arias, Garcia-Margallo, Gasoliba i Böhm, Glante, Harrison, Herman, Imaz San Miguel, Kestelijn-Sierens, Kuckelkorn, McNally, Murphy, Peijs, Quisthoudt-Rowohl (for Lulling), Randzio-Plath, Rapkay, Read, de Rose, Siso-Cruellas (for Secchi) and Watson.

1. The agreement on which the European Parliament is being consulted has been in force since 23 September 1991. Since the Court of Justice decided last August that it was for the Council and not (only) for the Commission to conclude the agreement, the European Parliament has to give an opinion.
2. The agreement on cooperation between the competition authorities of the European Communities and the United States of America remains in force under international law but according to Community law it was not concluded by the competent institution (except with regard to the ECSC). The present proposal seeks to remedy this without changing the agreement itself.
3. The agreement itself is mainly about mutual notification, exchange of information, cooperation and coordination in enforcement activities and consultation. Under the present agreement, and contrary to what is widely thought, no confidential company information may be exchanged.

Cooperation and the exchange of information could be important especially in cases where the principle of extra-territoriality is at stake (application of competition rules on companies outside either the Community or the United States of America, where there are competition effects in the Community or the USA (or both)).

4. The Commission itself states that the agreement is as yet of mainly symbolic significance. The purpose is clearly to start cooperation at a low level of ambition but to widen and deepen it in due course.
5. This brings the Committee on Economic and Monetary Affairs and Industrial Policy to the following conclusions:
 - a. The agreement on cooperation in the application of competition law between the USA and the Community is a good initiative and seems to be a modest and justified first step.
 - b. As the agreement has already existed for more than three years the Committee on Economic and Monetary Affairs and Industrial Policy is surprised that until now the European Parliament has not been fully informed about its operation. It proposes as a minimum the incorporation of a substantial report on the way it operates in the annual competition report.
 - c. As the agreement itself foresees an upgrading already after two years (which was delayed pending the Court of Justice decision), the European Parliament should be consulted in good time on the next step, after a full evaluation of the present agreement.

O P I N I O N

(Rule 147 of the Rules of Procedure)

of the Committee on Legal Affairs and Citizens' Rights
for the Committee on External Economic Relations

Draftsman: Mr Josep Verde I Aldea

At its meeting of 2 December 1994 the Committee on Legal Affairs and Citizens' Rights appointed Mr Verde I Aldea draftsman.

It considered the draft opinion at its meeting of 11 January 1995 and adopted the conclusions unanimously.

The following were present for the vote: Casini, chairman; Rothley, Palacio Vallelersundi and Barzanti, vice-chairmen; Verde I Aldea, draftsman; Alber, Gebhardt, Janssen van Raay and Mosiek-Urbahn.

On 12 October 1994 the Commission submitted to the Council a proposal for a decision concluding the Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws.

In 1991 the Commission negotiated an agreement, the aim of which was to promote cooperation between competition authorities by encouraging the exchange of information and to promote dialogue between authorities in accordance with a 1986 OECD recommendation on cooperation in competition matters.

The agreement was signed by the Commission, but its conclusion was recently overturned by the Court of Justice, which took the view that it was for the Council to conclude such an act, with the exception of the elements relating to the ECSC Treaty, for which the Commission is competent. Nonetheless, the Court did not annul the agreement itself, which remains valid under international law (Article 46 of the Vienna Convention) and the European Communities therefore remain bound by their commitments vis-à-vis the United States.

The aim of the proposal for a decision is to remedy the breach of Community law which occurred when the Commission signed the agreement by complying with the Court's ruling.

The existing agreement is annexed unamended to the proposal for a decision which has been put before Parliament.

The proposal establishes Articles 65 and 66 of the ECSC Treaty, together with Article 87 and the first indent of Article 228(3) of the EC Treaty, as the legal bases for the agreement.

On the basis of the information set out by the Commission in its explanatory memorandum and given that the aim of the agreement is to guarantee respect for Articles 85 and 86 of the EC Treaty, the Committee on Legal Affairs and Citizens' Rights considers the legal bases to be appropriate.

