



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.05.1995
COM(95) 157 final

95/0104 (CNS)

Proposal for a Council and Commission Decision

On the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States of the one part, and the Czech Republic of the other part, signed in Brussels on 4 October 1993, with regard to the adoption of the necessary rules for the implementation of Article 64 para. 1(i) and (ii) and para 2 of the Europe Agreement.

EXPLANATORY MEMORANDUM

Article 64 (3) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, signed in Brussels on 4 October 1993, provides that the necessary rules for the implementation of paragraphs 1 and 2 of that Article (i.e. the competition provisions) shall be adopted by the Association Council. The time-limit for these rules to be adopted is three years from the entry into force of the Agreement; in accordance with Article 124, the time-limit runs from 1 January 1992.

The competition provisions are one of the basic points of the Europe Agreement between the European Communities and the Czech Republic. Their actual implementation, through the adoption of the attached rules by the Association Council, is a prerequisite for the smooth development of trade relations between the two parties. The proposed decision lays down procedures for cooperation between the two parties' competition authorities. It is confirmed that the principles embodied in the block exemption rules in force in the Community will apply, and there is provision for a consultation procedure within the Association Council should disagreement arise between the two competition authorities.

According to Article 2 (1) of the Decision of the Council and the Commission of 19 December 1994 on the conclusion of the Europe Agreement the position to be taken by the Community within the Association Council shall be laid down in accordance with the corresponding provisions of the Treaties establishing the three Communities. Article 87, 228 and 235 of the EC Treaty as well as Article 65 and 66 of the ECSC Treaty are appropriate legal basis for the position to be adopted by the Community in the Association Council with regard to rules for the implementation of the competition provisions applicable to undertakings, specifically because of the inclusion of all types of mergers and acquisitions, including those falling outside the scope of Article 86 of the Treaty in the text of the implementing rules. As a result, it is desirable that the Council and the Commission should adopt the attached decision.

The Commission therefore requests the Council to adopt the attached proposal for a Council and Commission Decision.

Proposal for a Council and Commission Decision

On the position to be taken by the Community within the Association Council established by the Europe Agreement between the European Communities and their Member States of the one part, and the Czech Republic of the other part, signed in Brussels on 4 October 1993, with regard to the adoption of the necessary rules for the implementation of Article 64 para. 1(i) and (ii) and para 2 of the Europe Agreement.

The Council of the European Union,
The Commission of the European Communities,

Having regard to the Treaty establishing the European Community, and in particular Articles 87 and 235 in connection with Article 228 para. 2, second sentence and para. 3, first section,

Having regard to the Treaty establishing the European Coal and Steel Community, in particular Article 65 and 66,

Having regard to the opinion of the European Parliament,

Having regard to the Decision of the Council and the Commission of 19 December 1994 on the conclusion of the Europe Agreement between the European Communities and their Member States, of the one part and the Czech Republic, of the other part, and in particular Article 2 (1) thereof,

Whereas resort to Article 235 of the Treaty establishing the European Community is necessary since Article 7 of the draft Decision of the Association Council deals with provisions of Council Regulation (EEC) 4064/89, which is mainly based on aforementioned Article 235,

Whereas Article 64 (3) of the Europe Agreement lays down that the Association Council shall adopt the rules necessary for the implementation of paragraphs 1 and 2 of that Article,

Whereas Article 8 (3) of Protocol 2 to the Europe Agreement on products covered by the ECSC Treaty lays down that the Association Council shall adopt the necessary rules for the implementation of paragraph 1 and 2 of that Article,

HAVE DECIDED AS FOLLOWS :

The position to be taken by the Community within the Association Council established by the Europe Agreement between the European communities and their Member States, of the one part, and the Czech republic, of the other part, with regard to the rules implementing Article 64 (1) (i), (1) (ii) and (2) of the aforementioned Europe Agreement, and to the rules implementing Article 8 (1) (i), 1 (ii) and 2 of the Protocol 2 on ECSC products to the Europe Agreement shall be based on the draft decision of the Association Council annexed to this Decision.

Done at Brussels

For the Council

For the Commission

Association between the European Union
and the Czech Republic
The Association Council

***Draft decision n° .../95 of the Association Council
between the European Communities and their Member States, of the one part,
and the Czech Republic, of the other part,
of .../95***

adopting the necessary rules for the implementation of Article 64 (i), (1) (ii) and (2) of the Europe Agreement between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, and the rules for the implementation of Article 8 (1) (i), (1) (ii) and (2) of Protocol 2 on ECSC products to the same agreement,

The Association Council,

Having regard to the Europe Agreement establishing an association between the European Communities and the Member States, of the one part, and the Czech Republic, of the other part, and in particular Article 64 (3) thereof,

Having regard to Protocol 2 on ECSC products to the aforementioned Europe Agreement, and in particular Article 8 (3) thereof,

Whereas Article 64 (3) of the Europe Agreement lays down that the Association Council shall, within three years of the entry into force of the Agreement, adopt by decision the necessary rules for the implementation of paragraph 1 and 2 of that Article,

Whereas Article 8 (3) of Protocol 2 to the Europe Agreement lays down that the Association Council shall, within three years of the entry into force of the Agreement, adopt by decision the necessary rules for the implementation of paragraphs 1 and 2 of that Article,

HAS DECIDED AS FOLLOWS :

The necessary rules implementing Article 64 (1) (i), (1) (ii) and (2) of the Europe Agreement establishing an association between the European Communities and their member States, of the one part, and the Czech Republic, of the other part, and the rules implementing Article 8 (1) (i), (ii) and (2) of Protocol 2 on ECSC products to the aforementioned Europe Agreement, as set out in the Annex to this Decision, are hereby adopted.

Done at Brussels,

The secretaries

For the Association Council
The President

Implementing Rules for the Application of the competition provisions applicable to undertakings provided for in Article 64 of the Europe Agreement between the EC and Czech Republic :

ARTICLE 1 : GENERAL PRINCIPLE

Cases relating to agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition as well as to abuses of dominant position in the territories of the Community or of Czech Republic as a whole or in a substantial part thereof, which may affect trade between the EC and Czech Republic shall be settled according to the principles contained in Article 64 para. 1 and 2 of the Europe Agreement.

For this purpose, these cases are dealt with by the EC Commission (DG IV) on the EC side and the Czech Ministry for Economic Competition (MEC) on the Czech side.

The competences of the EC Commission and the MEC to deal with these cases shall follow from the existing rules of the respective legislations of the EC and Czech Republic including where these rules are applied to undertakings located outside the respective territory.

Both authorities shall settle the case in accordance with their own substantive rules, and having regard to the provisions set out below. The relevant substantive rules of the authorities are the competition rules of the Treaty establishing the European Community as well as the ECSC Treaty including the competition-related secondary legislation, for the EC Commission and the Czech Competition Protection Act for the MEC.

ECONOMIC ACTIVITIES UNDER THE EC TREATY

ARTICLE 2 : COMPETENCE OF BOTH COMPETITION AUTHORITIES

Cases under Article 64 of the Europe Agreement which may affect both the EC and the Czech market and which may fall under the competence of both competition authorities shall be dealt with by the EC Commission and the MEC, according to the rules under this Article.

2.1. Notification

2.1.1. The competition authorities shall notify to each other those cases they are dealing with, which, according to the general principle laid out in Article 1, appear to fall as well under the competence of the other authority.

2.1.2. This situation may arise in particular in cases concerning activities that :

- Involve anticompetitive activities carried out in the other authority's territory
- Are relevant to enforcement activities of the other competition authority
- Involve remedies that would require or prohibit conduct in the other authority's territory.

2.1.3. Notification under this article shall include sufficient information to permit an initial evaluation by the recipient party of any effects on its interests. Copies of the notifications shall be submitted on a regular basis to the Association Council under the Europe Agreement.

2.1.4. Notification shall be made in advance, as soon as possible and at the latest at the stage of an investigation still far enough in advance of the adoption of a settlement or decision, so as to facilitate comments or consultations and to enable the proceeding authority to take into account the other authority's views, as well as to take such remedial action it may find feasible under its own laws, in order to deal with the case in question.

2.2 Consultation and Comity

Whenever the EC Commission or the MEC consider that anticompetitive activities carried out on the territory of the other authority are substantially affecting important interests of the respective Party, it may request consultation with the other authority, or it may request that the other Party's competition authority initiate any appropriate procedures with a view to take remedial action under its legislation on anticompetitive activities. This is without prejudice to any action under the requesting party's competition law and does not hamper the full freedom of ultimate decision of the authority so addressed.

2.3 Finding of an Understanding

The competition authority so addressed shall give full and sympathetic consideration to such views and factual materials as may be provided by the requesting authority and, in particular, to the nature of the anticompetitive activities in question, the enterprises involved and the alleged harmful effects on the important interests of the requesting Party.

Without prejudice to any of their rights or obligations, the competition authorities involved in consultations under this Article shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved.

ARTICLE 3 : COMPETENCE OF ONE COMPETITION AUTHORITY ONLY

3.1 Cases falling under the exclusive competence of one competition authority, in accordance with the principle laid down in Article 1, and which may affect important interests of the other Party, shall be handled having regard to the provisions set out in Article 2, and taking account of the principles set out below.

3.2 In particular, whenever one of the competition authorities undertakes an investigation or proceeding in a case which reveals to affect important interests of the other Party, the proceeding authority shall notify this case to the other authority, without formal request by the latter.

ARTICLE 4 : REQUEST FOR INFORMATION

Whenever the **competition authority** of a Party becomes aware of the fact that a case, falling as well or **only** under the competence of the other authority, appears to affect important interests of the first Party, it may request information about this case from the proceeding authority.

The proceeding authority shall give sufficient information to the extent possible and at a stage of its proceedings far enough in advance of the adoption of a decision or settlement to enable the requesting authority's views to be taken into account.

ARTICLE 5 : SECRECY AND CONFIDENTIALITY OF INFORMATION

- 5.1. Having regard to Article 64 para. 7 of the Europe Agreement, neither competition authority is required to provide information to the other authority if disclosure of that information to the requesting authority is prohibited by the law of the authority possessing the information, or would be incompatible with important interests of the Party whose authority is in possession of the information.
- 5.2. Each authority agrees to maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other authority.

ARTICLE 6 : BLOCK EXEMPTIONS

In the application of Article 64 of the Europe Agreements as provided for in Articles 2 and 3 above, the competition authorities shall ensure that the principles contained in the Block Exemption Regulations in force in the EC shall be applied integrally. The MEC shall be informed of any procedure related to the adoption, abolition or modification of Block Exemptions by the EC.

Where such Block Exemption Regulations encounter serious objections on the Czech side, and having regard to the approximation of legislation as foreseen in the Europe Agreement, consultations shall take place in the Joint Committee or Association Council, in accordance with the provisions contained in Article 9

The same principles shall apply regarding other significant changes in the EC or Czech competition policies.

ARTICLE 7 : MERGER CONTROL

With regard to mergers which fall within Council Regulation (EEC) n° 4064/89 and have significant impact on the Czech economy, the MEC shall be entitled to express its view in the course of the procedure taking into account the time limits as provided for in the aforementioned regulation. The EC Commission shall give due consideration to that view, without prejudice to any action under the Parties' respective competition laws.

ARTICLE 8 : ACTIVITIES OF MINOR IMPORTANCE

8.1. Anticompetitive activities whose effects on trade between the Parties or on competition are negligible, do not fall under Article 64 para 1 of the Europe Agreement, and therefore, are not to be treated under the Articles 2 to 6 of the present implementing rules.

8.2. Negligible effects in the sense of Article 8.1 are generally presumed to exist when

- the aggregate annual turnover of the participating undertakings does not exceed EU 200 millions, and

- the goods or services which are the subject of the agreement together with the participating undertakings' other goods or services which are considered by users to be equivalent in view of their characteristics, price and intended use, do not represent more than 5 % of the total market for such goods or services in the area of the EC common market affected by the agreement, and the Czech market affected by the agreement.

ARTICLE 9 : ASSOCIATION COUNCIL

9.1 Whenever the procedures provided for in Articles 2 and 3 above do not lead to a mutually acceptable solution, as well as in other cases explicitly mentioned in the present implementing rules, an exchange of views shall take place in the Association Council at the request of one Party within 3 months following the request.

9.2. Following this exchange of views, or after expiration of the delay stated above, the Association Council may make appropriate recommendations for the settlement of these cases, without prejudice to Article 64 para 6 of the Europe Agreements. In these recommendations, the Association Council may take into account eventual failure of the requested authority to give its point of view to the requesting authority within the delay provided for in Art. 9.1.

9.3 These procedures in the Association Council are without prejudice to any action under the respective competition laws in force in the territory of the Parties.

ARTICLE 10 : NEGATIVE CONFLICT OF COMPETENCE

When both the EC Commission and the MEC consider that neither of them is competent to handle a case on the basis of their respective legislation an exchange of views shall take place on request in the Association Council. The EC and Czech Republic shall endeavour to find a mutually acceptable solution in the light of the respective important interests involved with the support of the Association Council, which may make appropriate recommendations, without prejudice to Article 64 para 6 of the Europe Agreement, and the rights of individual EU Member States on the basis of their competition rules.

ECONOMIC ACTIVITIES UNDER THE ECSC TREATY

ARTICLE 11 : TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY (ECSC)

The provisions contained in Articles 1 to 10 above shall also apply with respect to the coal and steel sector as referred to in Protocol 2 to the Europe Agreement.

ARTICLE 12 : ADMINISTRATIVE ASSISTANCE (LANGUAGES)

The EC Commission and the MEC will provide for practical arrangements for mutual assistance or any other appropriate solution concerning in particular the question of translations.

Done at

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