



COMMISSION OF THE EUROPEAN COMMUNITIES

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**Draft**  
**Commission Communication**

Alignment of procedures for processing mergers under the ECSC and EC Treaties

## Draft Commission notice to appear in the Official Journal

### Alignment of procedures for processing mergers under the ECSC and EC Treaties

#### I. INTRODUCTION

1. The following provisions relate to mergers governed by the ECSC Treaty. They are designed to increase transparency and improve compliance with the rights of the defence in connection with the examination of such mergers and to expedite decision-making. To this end, they are based on an alignment of certain rules with those governing mergers covered by Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings.<sup>1</sup>
2. The Commission hopes, in this context, to meet the expectations of undertakings, in particular as regards merger operations which are covered by the ECSC and EC Treaties at the same time. This notice should also be seen as an attempt at simplification, albeit within the limits imposed by having two separate treaties. The rules thus introduced should make it possible for ECSC undertakings to familiarize themselves with the procedures of ordinary law against the background of the forthcoming expiry of the ECSC Treaty.

#### II. MAIN PROCEDURAL CHANGES ENVISAGED WITH REGARD TO MERGER CONTROL PURSUANT TO THE ECSC TREATY

##### *Publication of the fact of notification*

3. The Commission will from now on publish in the Official Journal the fact of notification in the case of mergers covered by the ECSC Treaty. It will state in particular the names of the interested parties, the nature of the merger operation and the economic sectors concerned. Publication will take account of the legitimate interest of undertakings in not having their business secrets divulged.

##### *Statement of objections where the Commission plans to subject the authorization of a merger to conditions or even to prohibit an operation*

4. The sending of a statement of objections prior to the conditional authorization or prohibition of a merger does not figure explicitly in Article 66 of the ECSC Treaty. It is provided for only in the event of a pecuniary sanction (Article 36 ECSC) or of a decision imposing a demerger or other measures designed to restore effective competition where a merger has already been carried out (second paragraph of Article 66(5) ECSC). The Commission believes, however, that it can commit itself to sending such a statement as an expression of the general principle of the protection of the rights of the defence, which is recognized by the Court as a general principle of Community law. It will therefore base its decisions only on those objections on which the interested parties have been able to express their views.

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<sup>1</sup> OJ No L 395, 30.12.1989; corrected version: OJ No L 257, 21.9.1990.

Of course, this does not prevent the Commission from allowing undertakings to alter their merger proposals on their own initiative, thus making it unnecessary to send a statement of objections, in particular where the competition problem perceived is easily identifiable, limited in scope and easy to resolve, as currently happens in the EC domain.

*Access to the file and possibility of making oral observations (hearing)*

5. The possibility of gaining access to the Commission file and making oral observations (at a hearing) when a statement of objections has been sent is the logical consequence of such a statement. The Commission confirms therefore that it will give such a possibility to interested natural or legal persons. It will apply in this context, and by analogy, the rules which figure in Articles 14 to 16 of Commission Regulation (EC) No 3384/94 of 21 December 1994 on the notifications, time limits and hearings provided for in Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, which is an implementing regulation,<sup>2</sup> and in accordance with Commission Decision 94/810/ECSC, EC of 12 December 1994 on the terms of reference of hearing officers in competition procedures before the Commission<sup>3</sup> and Commission notice 97/C23/03 on the internal rules of procedure for processing requests for access to the file in cases pursuant to Articles 85 and 86 of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89.<sup>4</sup>

*Publication in the Official Journal of the final decisions adopted after communication of the objections, and the public nature of all authorization decisions*

6. Final decisions adopted after the objections have been communicated should be systematically published in the Official Journal. Similarly, all authorization decisions will be made public. Publication will respect business secrecy in accordance with Article 47 of the ECSC Treaty.

*Time limits*

7. A statement of objections will be sent at the latest within ten weeks of notification of the merger operation. The final decision, where a statement of objections has been sent, will be taken at the latest within five months of notification. These time-limits presuppose that undertakings use the new notification form or, pending its adoption, form CO (see point 9 below) and supply the Commission with five copies of the notification. Where the Commission thinks it is not necessary to send a statement of objections, it will try and adopt its decision in the month of notification.
8. As regards the effective date of notification, the Commission will apply by analogy the provisions of Article 4 of the above-mentioned Regulation No 3384/94. Concerning the application of paragraph 5 of that Article, the terms "pursuant to Article 4(3)) of Regulation (EEC) No 4064/89" are replaced by the terms "pursuant to point 3 of this notice". As regards the time limits of ten weeks and five months mentioned at point 7

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<sup>2</sup> OJ No L 377, 31.12.1994.

<sup>3</sup> OJ No L 330, 21.12.1994, p. 67.

<sup>4</sup> OJ No C 23, 23.1.1997, p.3.

above, these will start to run on the working day following that on which the notification becomes effective. The time limit of ten weeks will end with the expiry of the day which in the tenth week following that in which the time limit began is the same day of the week as that from which the time limit runs. The time limit of five months will end with the expiry of the day which in the fifth month following that in which the time limit began is the same day of the week as that from which the time limit runs. Where such a day does not occur in that month, the time limit will end with the expiry of the last day of the month. Where the last day is not a working day, the time limit will end with the expiry of the first working day which follows. Holidays are taken into account in the time limits in accordance with the rules laid down in Article 8 of the above-mentioned Regulation No 3384/94 and are defined in the same way as in Article 22 of the said Regulation.

9. The Commission will communicate to undertakings as soon as possible a new notification form to replace the existing one. In the meantime, the Commission would be grateful if undertakings would use the form CO annexed to Regulation No 3384/94. It is understood that the Commission will examine in a favourable light requests for dispensation from supplying certain information which are submitted to it in a prenotification, limiting the information required to that which is strictly necessary for examining the cases.

### **III. IMPLEMENTATION**

10. The Commission will apply the above rules, where they are not already in force, to notified mergers from the day following the date of publication of this notice.