

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 20 April 1982

Draft for a

COMMISSION RECOMMENDATION

to the Member States

amending Commission Recommendation No 1835/81/ECSC of
3 July 1981 on the obligation to publish price lists
and conditions of sale and on prohibited practices
in the steel trade

Draft for a

COMMISSION DECISION

amending Commission Decision No 1836/81/ECSC of 3 July 1981
on the obligation of distributive undertakings to publish
price lists and conditions of sale and on practices
prohibited for these undertakings

(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

The implementation of Decision No 1836/81/ECSC, on 1 July 1981 for ordinary steels and on 1 October 1981 for special steels, and the discussions with the Ministerial departments of the Member States in preparation for their implementation of Recommendation No 1835/81/ECSC on 1 July 1982, have shown the need for a number of details to be added and certain amendments made to the provisions addressed to the Member States and, consequently, to steel dealers.

The grounds for these amendments are as follows:

- I. (a) The resale limit of 12 000 tonnes per annum of all steels, above which steel dealers are subject to obligations, does not allow for consistent control over the steel trade in the Community as a whole. This limit should be brought down to 6 000 tonnes per annum in order to cover at least 75% of the steel trade in the various regions of the Community.
- (b) This limit of 12 000 tonnes also makes it impossible to have adequate control over the trade in special steels. This trade is normally conducted by specialized dealers who often operate on a smaller scale because of the high prices of special steels and the fact that they are generally resold in smaller quantities.

The resale of special steels covered by the dealers reselling 12 000 tonnes or more of all steels per annum accounts for less than half the market, except in one region of the Community. In order to cover 75% of this market, a separate resale limit of 3 000 tonnes per annum should be fixed where such resales concern only special steel products.

- (c) Incorporating into their national laws administrative fines of the type provided for in Articles 47 and 64 of the ECSC Treaty presents the Member States with difficulties out of all proportion to the object of the exercise and to the duration of Recommendation No

1835/81/ECSC, due to expire on 30 June 1984. It is advisable to leave the choice of penalties up to the individual Member States.

Furthermore, it would be useful to ask the Member States to submit a quarterly report to the Commission, giving an account of the checks carried out, any infringements recorded and any sanctions applied.

- (d) The unforeseeable amendments that now have to be made to Recommendation No 1835/81/ECSC will make it practically impossible for the Member States to implement the Recommendation on 1 July next, as originally planned. This date must therefore be put back six months, i.e. until 1 January 1983. Implementation of Decision No 1836/81/ECSC will also have to be extended so that the Commission itself can continue to apply provisions for the same purpose until 31 December 1982.

- II. Under the arrangements made with certain non-member states, Community producers were prohibited, by Decision No 527/78/ECSC, from aligning their prices on those of these third countries; since the ECSC Treaty makes no provision for cases of this nature, this Decision was taken invoking Article 95 of the Treaty. In order to ensure that the steel market, of which dealers account for over half, operates smoothly, the same prohibition should apply to distributive undertakings.

This prohibition already exists in Decision No 1836/81/ECSC, which is based on Article 95 of the Treaty.

In order to insert the prohibition into Recommendation No 1835/81/ECSC, which is based on Article 63 of the Treaty where no provision is made for cases of this type, the provisions of Article 95 of the Treaty must be invoked, but solely in this respect.

Draft for a
COMMISSION RECOMMENDATION

to the Member States

amending Commission Recommendation No 1835/81/ECSC of 3 July 1981
on the obligation to publish price lists and conditions of sale
and on prohibited practices in the steel trade.

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,
and in particular Article 63(3) and the first and second paragraphs of
Article 95 thereof,

Whereas Commission Recommendation No 1835/81/ECSC¹, has obliged the Member
States to take all measures necessary to ensure that
steel distributive undertakings observe rules governing
prices and conditions of sale similar to those that apply to production
undertakings pursuant to Article 60 of the Treaty and its implementing
decisions; whereas the Member States must bring into force the measures
necessary to achieve the goals set out in that Recommendation with effect
from 1 July 1982;

Whereas, by its Decision No 1836/81/ECSC², the Commission itself required steel
distributive undertakings to comply with the said rules until 30 June 1982 in
an effort to influence prices throughout the steel market immediately and
whereas implementation of this Decision has improved the prospects of an
increase in steel prices;

Whereas implementation of Decision/No 1836/81/ECSC has shown that certain details needed
to be added and certain amendments made to the obligations imposed on distributive
undertakings pursuant to Recommendation No 1835/81/ECSC;

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¹ OJ No L 184, 4.7.1981, p.9

² OJ No L 184, 4.7.1981, p.13

Whereas by virtue of the minimum ^{of} 12 000 tonnes per annum referred to in the second indent of Article 2(1) of Recommendation No 1835/81/ECSC, steel dealers in the various Community markets are not subjected in the same way to the obligations under that Recommendation, with the result that there are discrepancies between Community regions; whereas, furthermore, during the fourth quarter of 1981 a number of steel dealers, whose sales fell below this limit, increased their share of the market considerably to the detriment of dealers who resold more than 12 000 tonnes; whereas the provisions adopted by the Commission must not have the effect of transferring activity in this way; whereas the limit of 12 000 tonnes per annum should therefore be reduced; whereas in view of the high prices of special steels and the fact that they are normally resold in smaller quantities, a specific annual resale tonnage limit should be laid down for dealers who sell only these products;

Whereas the wording of the first indent of Article 2(1) of Recommendation No 1835/81/ECSC is ambiguous and therefore needs to be clarified and made more specific;

Whereas, like undertakings, dealers can be exempted from the obligation to publish price lists and conditions of sale in respect of certain types of steel or products in cases where, because of incomparability, publication of price lists is of no practical value, or where there is only a limited number of buyers and sellers of such steels and products and market transparency is obtained even without publication, or where such steels and products are in direct competition with other products not covered by the ECSC Treaty;

Whereas the Commission has renewed for 1982 the arrangements which it has concluded since 1978 with a number of third countries and whereas, for the reasons given in Decision No 527/78/ECSC¹, as last amended by Decision No /82/ECSC², it has prohibited steelmakers from aligning their prices on those of these third countries;

Whereas, for the same reasons and in view of the unity of the Community steel market in which dealers play a considerable part, alignment prohibitions must

¹ OJ No L 73, 15.3.1978, p.16

² OJ No L , , p.

apply equally to distributive undertakings; whereas there appears to be a need for this prohibition if the objectives of the Treaty, as defined in Article 3 thereof, are to be achieved in the operation of the common steel market; whereas the Treaty makes no provision in this respect; whereas the first paragraph of Article 95 must therefore be brought into play;

Whereas with regard to the penalties imposed on distributive undertakings contravening the obligations provided for by Recommendation No 1835/81/ECSC, it is sufficient, in order to achieve the objectives of that Recommendation, to oblige Member States to make provision for suitable penalties; whereas, if it is to be aware of the current situation in the steel trade, the Commission must be informed periodically about the implementation by the Member States of the provisions taken in this respect;

Whereas because of the unforeseen amendments to Recommendation No 1835/81/ECSC which will create difficulties for the Member States when they are preparing to implement it, the date at which they must implement the Recommendation must be deferred; whereas, for the same reasons, the period within which the Member States must inform the Commission of the provisions taken to implement the Recommendation must be extended;

After consulting the Consultative Committee and with the assent of the Council acting unanimously in respect of the prohibition on alignment,

HAS ADOPTED THIS RECOMMENDATION:

Article 1

Recommendation No 1835/81/ECSC is hereby amended as follows:

1. Article 1 is replaced by the following:
"Article 1

The Member States shall, from 1 January 1983 to 30 June 1984, put into effect measures to ensure that the steel distributive undertakings referred to in Article 2 are subject to the obligations under this Recommendation, and to secure observance of these obligations by means of appropriate inspection measures and fines.

The Member States shall inform the Commission of the measures they have taken not later than 1 October 1982"

2. The first two indents of Article 2(1) are replaced by the following:

"- they obtain the steel in total or in part either directly from Community steelmakers, or from third countries,

and

- their steel resale figures, combined, where appropriate, with the steel resale figures of their parent and/or subsidiary companies and branches, involve a ^{minimum} of 3 000 tonnes per year of special steels or 6 000 tonnes per year of all steels, based on the figures for the last financial year".

3. The following paragraph (4) is hereby added to Article 2:

"4. Non-alloy steels and alloy steels defined as special steels in sections 5.2.3. and 5.3.3. of Euronorm 20-74 shall be considered as 'special steels' within the meaning of this Recommendation".

4. The existing text of Article 8 hereby becomes paragraph (1) of that Article and the following paragraph (2) is added:

"2. Steel dealers need not publish price lists in respect of steel products for which steelmakers are not required to publish price lists and conditions of sale pursuant to Decisions No 31-53¹ and No 37-54² as last amended by Decision No 72/441/ECSC³ and Decision No 21-63⁴, respectively".

5. The following paragraph (5) is added to Article 13:

"5. Steel dealers must observe the prohibitions, which apply to Community undertakings, concerning alignment of their prices on quotations from third countries, in the same way as those currently imposed pursuant to Decision No 527/78/ECSC."

¹ OJ of the ECSC, 4.5.1953, p. 111.

² OJ of the ECSC, 1.8.1954, p. 470.

³ OJ No L 297, 30.12.72, p. 42

⁴ OJ No L 297, 30.12.72, p. 42

6. Article 16 is hereby replaced by the following:

"Article 16

The Member States shall be obliged to inform the Commission periodically, and at least once each quarter, about checks carried out, any irregularities found and any penalties imposed".

Article 2

This Recommendation is addressed to the Member States.

Done at Brussels,

1982

For the Commission

Draft for a
COMMISSION DECISION

amending Commission Decision N° 1836/81/ECSC of 3 July 1981
on the obligation of distributive undertakings to publish price lists
and conditions of sale and on practices prohibited for these undertakings

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel
Community and in particular the first and second paragraphs of Article 95
thereof,

whereas, Commission Decision No 1836/81/ECSC (1), obliged steel
dealers to comply, until 30 June 1982, with rules similar to those to be
imposed on steel dealers by the Member States as from 1 July 1982 pursuant
to Recommendation N° 1835/81/ECSC (2);

Whereas the Commission has amended the above-mentioned Recommendation by
Recommendation No /82/ECSC (3); whereas, for the reasons stated
in that Recommendation, Decision No 1836/81/ECSC should be amended;

Whereas Recommendation N° /82/ECSC has deferred until 1 January 1983
the date when Member States must bring into force the provisions envisaged;

whereas, in order to ensure continuity in the measures taken with respect
to trade, it is appropriate to extend until 31 December 1982 application of
Decision N° 1836/81/ECSC;

After consulting the Consultative Committee and with the assent of the Council
acting unanimously,

HAS ADOPTED THIS DECISION:

Article 1

Decision N° 1836/81/ECSC is hereby amended as follows:

1. The text of the first two indents of Article 1 (1) is replaced by the
following:

"- they obtain the steel in total or in part either directly from Community
producer undertakings, or from third countries, and

(1) O.J. N° L 184, 4.7.1981, p. 13

(2) O.J. N° L 184, 4.7.1981, p. 9

(3) O.J. N° L 184, 4.7.1981, p. 9

- their steel resale figures, combined where appropriate with the steel resale figures of their parent and/or subsidiary companies and branches, involve a minimum of 3.000 tonnes per year of special steels or 6.000 tonnes per year of all steels, based on the figures for the last financial year."

2. The following paragraph (3) is added to Article 1:

"3. Non-alloy steels and alloy steels defined as special steels in sections 5.2.3 and 5.3.3 of EURONORM 20-74 shall be considered as "special steels" within the meaning of this Decision".

3. The existing text of Article 7 becomes paragraph (1) of that Article and the following paragraph (2) is added:

"2. Steel dealers need not publish price lists in respect of steel products for which steelmakers are not obliged to publish price lists and conditions of sale pursuant to Decisions N°s 31-53 (1) and 37-54 (2), as last amended by Decision N° 72/441/ECSC (3) and Decision N° 21-63 (4), respectively".

4. The date 30 June 1982 in the second paragraph of Article 16 is replaced by 31 December 1982.

Article 2

This Decision shall enter into force on the day of its publication in the Official Journal of the European Communities.

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

Done at Brussels

1982

For the Commission

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- (1) OJ of the ECSC, 4.5.1953, p. 111
 - (2) OJ of the ECSC, 1.8.1954, p. 470
 - (3) O.J. N° L 297, 30.12.1972, p. 42
 - (4) O.J. of 24.12.1963, p. 2973.