

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 639 final
Brussels, 15.12.1994

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 Republic of Hungary, of the other part, signed at Brussels on 16 December 1991, with regard to the adoption of the necessary rules for the implementation of Article 62(1)(i), (1)(ii) and (2) of the Europe Agreement

EXPLANATORY MEMORANDUM

Article 62(3) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, signed in Brussels on 16 December 1991, 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; consequently the three-year time-limit for the adoption of the rules necessary to implement the competition rules referred to in Article 62 expires on 31 December 1994.

The competition provisions are one of the basic points of the Europe Agreement between the European Communities and Hungary. 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 13 December 1993 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. These are, specifically, Article 113 of the Treaty establishing the European Community, in conjunction with the first sentence of Article 228(2) of that Treaty, and Article 95 of the Treaty establishing the European Coal and Steel Community. The Community's position must, consequently, be laid down by a decision of the Council and the Commission. This makes it necessary for the ECSC Consultative Committee to be consulted on the ECSC aspects. As a result, it is necessary that the Council and the Commission should adopt the attached decision.

The Commission therefore asks 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 Republic of Hungary, of the other part, signed at Brussels on 16 December 1991, with regard to the adoption of the necessary rules for the implementation of Article 62(1)(i), (1)(ii) and (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,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to the Decision of the Council and the Commission of 13 December 1993 on the conclusion of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, and in particular Article 2(1) thereof,

Whereas the provisions to which that Article refers are, in essence, Article 113 of the Treaty establishing the European Community, in conjunction with the first sentence of Article 228(2) of that Treaty, and Article 95 of the Treaty establishing the European Coal and Steel Community;

Whereas Article 62(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,

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 Republic of Hungary, of the other part, with regard to the rules implementing Article 62(1)(i), (1)(ii) and (2) of the aforesaid 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 Hungary**
The Association Council

**DRAFT DECISION No .../94 OF THE EC-HUNGARY
ASSOCIATION COUNCIL OF ... 1994**

*adopting the necessary rules for the implementation of Article 62(1)(i), (1)(ii)
and (2) of the Europe Agreement between the European Communities and
their Member States, of the one part, and the Republic of Hungary, of the
other part*

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, and in particular Article 62 thereof,

Whereas Article 62(3) of the aforesaid Agreement lays down that the Association Council shall, within three years of the entry into force of the Agreement, adopt the necessary rules for the implementation of paragraphs 1 and 2 of that Article and whereas, in accordance with Article 124 of the Agreement, that time-limit expires on 31 December 1994,

HAS DECIDED AS FOLLOWS:

The necessary rules for implementing the competition provisions referred to in Article 62(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 Republic of Hungary, of the other part, as set out in the Annex to this Decision, are hereby adopted.

Done at Brussels,

For the Association Council

The President

The Secretaries

Implementing Rules for the Application of the competition provisions applicable to undertakings provided for in Art. 62 para. 1i), 1 ii) and 2 of the Europe Agreement between the EC and Hungary.

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 Hungary as a whole or in a substantial part thereof, which may affect trade between the EC and Hungary shall be settled according to the principles contained in Article 62 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 Office of Economic Competition (GVH) on the Hungarian side.

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

Both authorities shall settle the cases 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 Hungarian Act LXXXVI of 1990 on the Prohibition of Unfair Market Practices for the GVH.

ECONOMIC ACTIVITIES UNDER THE EC TREATY

ARTICLE 2: COMPETENCE OF BOTH COMPETITION AUTHORITIES

Cases under Article 62 of the Europe Agreement which may affect both the EC and the Hungarian market and which may fall under the competence of both competition authorities shall be dealt with by the EC Commission and the GVH, 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.

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 GVH 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 62 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 62 of the Europe Agreement 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 GVH 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 Hungarian side, and having regard to the approximation of legislation as foreseen in the Europe Agreement, consultations shall take place in the Association Council, in accordance with the provisions contained in Article 9.

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

ARTICLE 7

With regard to mergers which fall within Council Regulation (EEC) No 4064/89 and have significant impact on the Hungarian economy, the GVH 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 62 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 ECU 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 common market affected by the agreement, and the Hungarian market affected by the agreement, respectively.

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 62 para 6 of the Europe Agreement. 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 GVH 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 Hungary 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 62 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 GVH will provide for practical arrangements for mutual assistance or any other appropriate solution concerning in particular the question of translations.

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