

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 688 final.

Brussels, 3 January 1977.

Draft

Commission Decision (ECSC) concerning

limitation periods in proceedings and enforcement of  
sanctions under the Treaty establishing the European  
Coal and Steel Community

---

COM(76) 688 final.



7

D R A F T

Commission Decision (ECSC) concerning  
limitation periods in proceedings and enforcement of  
sanctions under the Treaty establishing the European  
Coal and Steel Community

Reasons for the Decision

I

On 26 November 1974 the Council, acting on a proposal from the Commission, made Regulation (EEC) 2988/74 concerning limitation periods in proceedings and in the enforcement of sanctions under the rules of the European Economic Community on transport and competition<sup>1</sup>. The Regulation came into force on 1 January 1975 and covered a gap in Community law. The Commission's power to impose pecuniary sanctions upon enterprises and associations of enterprises under the EEC Treaty, which has real importance in administrative practice, had never previously been subject to the principle of limitation.

In making Regulation (EEC) No. 2988/74, the legislative institutions of the Community were giving effect to an invitation of the Court of Justice.

In several judgements the Court had refused to draw from the principle of limitation recognised in the legal system of every Member State a concrete solution of the problem for Community law. Indeed, the Court had emphasised that for a period of limitation to fulfil its function of ensuring legal certainty it must be specified in advance and that its extent and conditions of application belonged to the Community's legislators<sup>2</sup>.

The legal position under the ECSC Treaty is comparable to that existing under the EEC Treaty before the entry into force of Regulation (EEC) No. 2988/74. Many of the Articles of the ECSC Treaty (Art. 47, 54, 58, 59, 60 to 64, 65, 66, 68, 95(1) and (2)) confer on the Commission the power of imposing pecuniary sanctions (fines and periodic penalties) for infringements

---

1 OJ No L 319, 29 November 1974, p. 1.

2 Judgement of 15 July 1970 in cases No. 41, 44 and 45/69, *Chimiefarma, Buchler and Boehringer v. Commission*, Rec. 1970-6, pp. 661, 685/6; 733, 752/53; 769, 789. Judgements of 14 July 1972 in cases No. 48, 49 and 51-57/69, *ICI, BASF, BAYER, GEIGY, SANDOZ, FRANCOLOR, CASSELLA, HOECHST and ACNA v. Commission*, Rec. 1972-5, p. 619, 655; 713, 732-33; 745, 774; 787, 828; 845, 849; 851, 874, 887; 915; 927, 930; 933, 950/51.

of the Articles themselves or of provisions made under them. However, the Treaty does not provide for any limitation on proceedings or enforcement of sanctions. Decision No. 5/65<sup>3</sup>, 17 March 1965, concerning the period of limitation for debts resulting from the levies created by Articles 49 and 50 of the Treaty, the only relevant rule in the ECSC, relates to fiscal law and could not, therefore, be applied to sanctions.

Consequently, the ECSC Treaty also contains a lacuna which ought to be filled by the Community's legislators. The reasoning of the Court of Justice mentioned previously in this respect apply here too.

Following the deliberations which took place on Regulation (EEC) No. 2988/74 in the Economic and Social Committee, the European Parliament and the Council, the problem of a possible rule covering limitation of fines and periodic penalty payments under ECSC law was raised on several occasions. Because of the differences which exist between the rule making procedures of the EEC and the ECSC, the Commission's representatives have not accepted the suggestion that the application of limitation periods in proceedings and the enforcement of sanctions for the whole of Community law should be contained in one Regulation covering the scope of the three Treaties. However, they have stated that, at the right time, the Commission would make a binding Decision within the meaning of Articles 14 and 15 of the ECSC Treaty, which would draw on the solutions adopted for EEC law. In the Fourth Report on Competition Policy (no. 50) the Commission confirmed its intention, emphasizing that Regulation (EEC) No. 2988/74 planned so as to serve as a model.

---

3 OJ No. 46, 22 March 1965, p. 695.

II

The present Decision contemplates the complete regulation by the Commission of prescription periods for proceedings and enforcement of sanctions in the ECSC. It is for this reason that the draft Decision takes in every Article of the Treaty which confers on the Commission the power to impose fines and periodic penalty payments. These rules would also apply to general decisions already made under these Articles or which may be made in future, to the extent that they provide for similar powers. Such is currently the position in the case of Decisions No. 14/64<sup>4</sup> and No. 73/287/ECSC<sup>5</sup>.

The present Decision relates in part to the power to impose fines (see Art. 1 to 3 of the draft) and in part to the power to enforce individual decisions imposing fines and periodic penalty payments, which come under the heading of enforcement by virtue of Article 92 of the Treaty (see Art. 4 to 6 of the draft). It fixes the periods of limitation, the moment when these periods begin to run as well as the acts which have the effect of interrupting or suspending those periods. In order to establish uniform rules of limitation for the whole of Community law, this Decision has been largely modelled as regards form and content on the text of Regulation (EEC) No. 2988/74 (annexed), to which the Commission may refer.

- 
- 4 Decision No. 14/64 of the High Authority of 3 July 1964 concerning commercial documents and accounts to be submitted by undertakings to officials or authorised persons entrusted by the High Authority with investigations or inspection of prices (OJ No. 120, 28 July 1964, p. 1967).
  - 5 Decision No. 73/287/ECSC of the Commission, 25 July 1973, concerning coal and coke for the iron and steel industry in the Community (OJ No. L 259, 15 September 1973, p. 36).

Two alternative legal bases exist for this Decision.

The Commission's power to impose fines and periodic penalties derives essentially from Articles 47, 54, 58, 59, 60 to 64, 65, 66, 68 and 95(1) and (2) of the Treaty. The majority of these Articles authorise the Commission to make implementing rules. It would, therefore, seem justified to accept that the Treaty has conferred upon the Commission a clear power to make rules even for fixing and enforcing the pecuniary penalties provided for by the said Articles. This power would also include the right to introduce rules governing limitation.

However, a contrary argument just as valid ought to be mentioned. The Treaty refers nowhere to the question of limitation. This fact leads to the conclusion that there is here a veritable lacuna in the law, which the Community's legislators should fill following the procedures of Articles 95(1) and (2).

In the present case both alternatives have the same result. Given that a Decision on limitation must apply to pecuniary penalties fixed under rules made by virtue of Article 95(1) and (2), the procedure defined in that Article must in any event be respected, even if the first solution is adopted.

These circumstances would appear to indicate that the whole of the Decision should be based on Article 95(1) and (2), and that the annexed draft should be submitted to the Consultative Committee for its opinion as well as to the Council for its unanimous assent.

Draft

COMMISSION DECISION No. ....

of

concerning limitation periods in proceedings and the enforcement of sanctions under the Treaty establishing the European Coal and Steel Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 2 to 5 and 95(1) and (2) thereof;

Having regard to the Opinion of the Consultative Committee;

Having regard to the unanimous assent of the Council;

Whereas under Articles 47, 54, 58, 59, 60 to 64, 66, 68 and 95(1) and (2) of the Treaty as well as under provisions made in applying such Articles - namely Decisions No. 14/64<sup>1</sup> and No. 73/287/ECSC<sup>2</sup> - the Commission has the power to impose fines and periodic penalty payments on undertakings or natural or legal persons who infringe obligations incumbent upon them by virtue of the above-mentioned provisions; whereas those rules make no provision for any limitation period;

- 
- 1 Decision No. 14/64 of the High Authority of 8 July 1964 concerning commercial documents and accounts to be submitted by undertakings to officials or authorised persons entrusted by the High Authority with investigations or inspection of prices (O.J. No. 120, 28 July 1964, p. 1967).
  - 2 Decision No. 73/287/ECSC of the Commission, 25 July 1973, concerning coal and coke for the iron and steel industry in the Community (O.J. No. L 259, 15 September 1973, p. 36).



Draft

COMMISSION DECISION No. ....

of

concerning limitation periods in proceedings and the enforcement of sanctions under the Treaty establishing the European Coal and Steel Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 2 to 5 and 95(1) and (2) thereof,

Having regard to the Opinion of the Consultative Committee,

Having regard to the unanimous assent of the Council,

Whereas under Articles 47, 54, 58, 59, 60 to 64, 66, 68 and 95(1) and (2) of the Treaty and under provisions made under these Articles - namely High Authority Decision 14/64 of 8 July 1964 on business books and accounting documents which undertakings must produce for inspection by officials or the High Authority carrying out checks or verifications as regards prices<sup>1</sup> and Commission Decision 73/287/ECSC, 25 July 1973, concerning coal and coke for the iron and steel industry in the Community<sup>2</sup> - the Commission has the power to impose fines and periodic penalty payments on undertakings or natural or legal persons who infringe obligations incumbent upon them by virtue of the above-mentioned provisions; whereas those measures do not provide for any limitation period;

---

(1) OJ No L 120, 28.7.1974 p. 1967

(2) OJ No L 259, 15.9.1973 p. 36

Whereas, in order to realise, pursuant to Article 5, the aims of the Community as defined in Articles 2,3 and 4 of the Treaty and in the interests of legal certainty it is necessary that the principle of limitation be introduced and that implementing rules be laid down; whereas, for the matter to be covered fully, it is necessary that provision for limitation be made not only as regards the power to impose fines but also as regards the power to enforce decisions, imposing fines or periodic penalty payments; whereas such provisions should specify the length of limitation periods, the date on which time starts to run and the events which have the effect of interrupting or suspending the limitation period; whereas in this respect the interests of the parties on the one hand, and the requirements imposed by administrative practice, on the other hand, should be taken into account;

Whereas this Decision must apply to all the relevant provisions laid down in the above mentioned Articles of the Treaty and in implementing measures taken hereunder; whereas it must also apply to the relevant provisions of future implementing measures,

HAS DECIDED AS FOLLOWS:

#### Article 1

##### Limitation periods in proceedings

1. The power of the Commission to impose fines for infringements of Articles 47, 54, 58, 59, 60 to 64, 65, 66, 68 or 95(1) and (2) of the Treaty or in provisions applying, these Articles shall be subject to the following limitation periods:
  - (a) three years in the case of infringements of provisions concerning requests for information, or statements of the parties in the course of investigations;
  - (b) five years in the case of all other infringements.
2. Time shall begin to run upon the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.

Article 2

Interruption of the limitation period in proceedings

1. Any action taken by the Commission for the purpose of the preliminary investigation or proceedings in respect of an infringement shall interrupt the limitation period in proceedings. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one party which has participated in the infringement.

Actions which interrupt the running of the period shall include in particular the following:

- (a) written requests for information by the Commission or Commission decisions requiring the requested information;
- (b) written authorizations to carry out investigations issued to their officials by the Commission or a Commission decision ordering an investigation;
- (c) the commencement of proceedings by the Commission;
- (d) despatch by the Commission of a letter giving an interested party the opportunity to submit its comments, pursuant to Article 36 of the Treaty.

2. The interruption of the limitation period shall apply for all parties which have participated in the infringement.

3. Each interruption shall start time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a penalty; that period shall be extended by the time during which limitation is suspended pursuant to Article 3.

Article 3

Suspension of the limitation period in proceedings

The limitation period in proceedings shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Communities.

Article 4

Limitation period for the enforcement of sanctions

1. The power of the Commission to enforce decisions imposing fines or periodic payments for infringements of Articles 47, 54, 58, 59, 60 to 64, 65, 66, 68 or 95(1) and (2) of the Treaty or of implementing provisions made under these Articles shall be subject to a limitation period of five years.
2. Time shall begin to run on the day on which the decision becomes final.

Article 5

Interruption of the limitation period for the enforcement of sanctions

1. The limitation period for the enforcement of sanctions shall be interrupted:
  - (a) by notification of a decision varying the original amount of the fine or periodic penalty payments or refusing an application for variation;
  - (b) by any action of the Commission, or of a Member State at the request of the Commission, for the purpose of enforcing payments of a fine or periodic penalty payment.
2. Each interruption shall start time running afresh.

Article 6

Suspension of the limitation period for the enforcement of sanctions

The limitation period for the enforcement of sanctions shall be suspended for so long as:

- (a) time to pay is allowed; or
- (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Communities.

Article 7

Application to transitional cases

This Decision shall also apply in respect of infringements committed before it enters into force.

Article 8

Entry into force

This Decision shall enter into force on ..... 1977.

