

EXCHANGE OF INTERPRETATIVE LETTERS BETWEEN THE EC/ ECSC AND GOVERNMENT OF THE UNITED STATES OF AMERICA

CORRIGENDA TO DECISION 95/145/EC, ECSC OF THE COUNCIL AND THE COMMISSION OF 10 APRIL 1995¹¹³

[...]

Dear [name],

As you are aware, on 9 August 1994, the Court of Justice of the European Communities held that the European Commission was not competent to conclude the 'Agreement between the Commission of the European Communities and the Government of the United States of America regarding the application of their competition rules'.

In order to remedy this situation and to assure the continuation of the application of the Agreement, the Council has decided on [date] to conclude the Agreement. However, as the Agreement will now be concluded by the Council on behalf of the European Community and by the Commission on behalf of the European Coal and Steel Community, certain corrections to the text of the Agreement are necessary. These are set out in detail in the Annex to this letter, which forms an integral part of this letter.

As these corrections do not affect the substance of the Agreement, we consider that they can be made through an exchange of letters. We should therefore be grateful if you would confirm your acceptance of the corrections contained in this letter.

Moreover, in order to ensure a clear understanding of the European Communities' interpretation of the Agreement, we set out below two interpretative statements:

1. In the light of Article IX of the Agreement, Article VIII(1) should be understood to mean that the information covered by the provisions of Article 20 of Council Regulation 17/62 or by equivalent provisions in other regulations in the field of competition may not under any circumstances be communicated by the Commission to the US antitrust authorities, save with the express agreement of the source concerned.

Similarly, the information referred to in Articles II(6) and III of the Agreement may not include information covered by Article 20 of Regulation 17/62 nor by equivalent provisions in other regulations in the field of competition, save with the express agreement of the source concerned.

2. In the light of Article VIII(2) of the Agreement, all information provided in confidence by either of the Parties in accordance with the Agreement will be considered as confidential by the receiving party which should oppose any request for disclosure to a third party unless such disclosure is:

- (a) authorized by the Party supplying the information, or
- (b) required under the law of the receiving Party.

This is understood to mean that:

- each Party assures the confidentiality of all information provided in confidence by the other Party in accordance with the receiving Party's applicable rules, including those rules intended to assure the confidentiality of information gathered during a Party's own enforcement activities,
- each Party shall use all the legal means at its disposal to oppose the disclosure of this information. The European Communities recall the principles which govern the relationship between the Commission and the Member States in the application of the competition rules as enshrined, for example, in Council Regulation 17/62. The Commission after notice to the US competition authorities, will inform the Member State or Member States whose interests are affected of the notifications sent to it by the US antitrust authorities. The Commission, after consultation with the US competition authorities, will also inform such Member State or Member States of any cooperation and coordination of enforcement activities. However, as regards such activities, either competition authorities will respect the other's request not to disclose the information which it provides when necessary to ensure confidentiality, subject to any contrary requirement of the applicable law.

We should be grateful if you would also confirm that these interpretative statements do not present any difficulties for the US Government.

Yours sincerely,

**ANNEX — CHANGES TO THE TEXT OF THE AGREEMENT
NECESSITATED BY THE CONCLUSION OF THE AGREEMENT
BY THE COMMISSION ON BEHALF OF THE EUROPEAN COAL
AND STEEL COMMUNITY AND BY THE COUNCIL
ON BEHALF OF THE EUROPEAN COMMUNITY***

Title

Agreement between *the European Communities* and the Government of the United States of America regarding the application of their competition laws

Parties

The European Community and the European Coal and Steel Community on the one hand (hereinafter referred to as 'the European Communities')

Recital No 2

Noting that *the European Communities* and the Government of the United States of America share the view that the sound and effective enforcement of competition law is a matter of importance to the efficient operation of their respective markets and to trade between them;

Execution

For the European Community

For the European Coal and Steel Community

For the Government of the United States of America.

* All changes have been underlined (italic in this publication).

DECISION OF THE COUNCIL AND THE COMMISSION OF 10 APRIL 1995 CONCERNING THE CONCLUSION OF THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITIES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA REGARDING THE APPLICATION OF THEIR COMPETITION LAWS¹¹⁴

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 conjunction with the first subparagraph of Article 228 (3) thereof,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹¹⁵,

Whereas Article 235 of the Treaty establishing the European Community must be invoked owing to the inclusion in the text of the Agreement of mergers and acquisitions which are covered by Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings¹¹⁶, which is essentially based on Article 235;

Whereas, given the increasingly pronounced international dimension to competition problems, international cooperation in this field should be strengthened;

Whereas, to this end, the Commission has negotiated an Agreement with the Government of the United States of America on the application of the competition rules of the European Communities and of the United States of America;

Whereas the Agreement, including the exchange of interpretative letters, should be approved,

HAVE DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws, including the exchange of interpretative letters, is hereby approved on behalf of the European Community and the European Coal and Steel Community.

114 OJ L095 , 27.04.1995 p. 45 (Decision 95/145/EC, ECSC)

115 Opinion delivered on 20 January 1995 (OJ No C 43, 20. 2. 1995) and 17 March 1995 (OJ No C 89, 10. 4. 1995).

116 OJ No L 395, 30. 12. 1989, p. 1 (corrected version: OJ No L 257, 21. 9. 1990, p. 13).

The texts of the Agreement and of the exchange of interpretative letters, drawn up in the English language, are attached to this Decision.

Article 2

The Agreement shall apply with effect from 23 September 1991.

Article 3

The President of the Council is hereby authorized to designate the person(s) empowered to notify the Government of the United States of America of approval of the Agreement, on behalf of the European Community, and to sign the exchange of interpretative letters.

The Commission shall designate the person(s) empowered to notify the Government of the United States of America of approval of the Agreement, on behalf of the European Coal and Steel Community, and to sign the exchange of interpretative letters.

Done at Luxembourg, 10 April 1995.

For the Council

The President

J. PUECH

For the Commission

The President

J. SANTER