DECISION No 2/1999 OF THE ASSOCIATION COUNCIL

between the European Communities and their Member States, of the one part, and Romania, of the other part

of 16 March 1999

adopting the necessary rules for the implementation of Article 64(1)(i) and (ii) and Article 64(2) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part, and the rules for the implementation of Article 9(1)(1) and (2) and Article 9(2) of Protocol 2 on ECSC products to the same Agreement

(1999/249/EC, ECSC, Euratom)

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 Romania, of the other part [1], and in particular Article 64(3) thereof,

Having regard to Protocol 2 on ECSC products to the said Europe Agreement, and in particular Article 9(3) thereof,

Whereas Article 64(3) of the Europe Agreement lays down that the Association Council shall, within three years of the entry into force of the Agreement, adopt by decision the necessary rules for the implementation of paragraphs 1 and 2 of that Article;

Whereas Article 9(3) of Protocol 2 to the Europe Agreement lays down that the Association Council shall, within three years of the entry into force of the Agreement, adopt by decision the necessary rules for the implementation of paragraphs 1 and 2 of that Article,

HAS DECIDED AS FOLLOWS:

Sole Article

The necessary rules for the implementation of Article 64(1)(i) and (ii) and Article 64(2) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part, and the rules for the implementation of Article 9(1)(1) and (2) and Article 9(2) of Protocol 2 on ECSC products to the Europe Agreement, as set out in the Annex to this Decision, are hereby adopted.

Done at Brussels, 16 March 1999.

For the Association Council

The President

J. FISCHER

[1] OJ L 357, 31.12.1994, p. 2.

ANNEX

IMPLEMENTING RULES FOR THE APPLICATION OF THE COMPETITION PROVISIONS APPLICABLE TO UNDERTAKINGS PROVIDED FOR IN ARTICLE 64(1)(i) AND (ii) AND ARTICLE 64(2) OF THE EUROPE AGREEMENT AND ARTICLE 9(1)(1) AND (2) AND ARTICLE 9(2) OF PROTOCOL 2 ON ECSC PRODUCTS TO THAT AGREEMENT

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 and cases relating to abuses of a dominant position in the territories of the Community or of Romania as a whole or in a substantial part thereof, which may affect trade between the Community and Romania, shall be settled according to the principles contained in Article 64(1) and (2) of the Europe Agreement.

For this purpose, the cases are dealt with by the Commission of the European Communities (DG IV) ('Commission') on the Community side and the Competition Office and the Competition Council (COCC) on the Romanian side.

The competences of the Commission and the COCC to deal with these cases shall flow from the existing rules of the respective legislation of the Community and Romania, 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 of the Treaty establishing the European Coal and Steel Community including the competition-related secondary legislation, for the Commission, and the Romanian Competition Law No 21 of 10 April 1996, for the COCC.

ECONOMIC ACTIVITIES UNDER THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

Article 2

Competence of both competition authorities

Cases under Article 64 of the Europe Agreement which may affect both the Community and the Romanian market and which may fall under the competence of both competition authorities shall be dealt with by the Commission and the COCC, according to the rules under this Article.

1. **Notification**

(a) 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 also under the competence of the other authority.

(b) This situation may arise in particular in cases concerning activities that:

— involve anti-competitive 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.

(c) 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 under the Europe Agreement.

(d) 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. **Consultation and comity**

Whenever the Commission or the COCC considers that anti-competitive 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

taking remedial action under its legislation on anti-competitive 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.

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 anti-competitive 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

1. Cases falling under the exclusive competence of one competition authority, in accordance with the principle laid down in Article 1, which may affect important interests of the other Party shall be handled having regard to the provisions set out in Article 2, taking account of the principles set out below.

2. In particular, whenever one of the competition authorities undertakes an investigation or proceeding in a case which is found 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 also 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

1. Having regard to Article 64(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.

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 64 of the Europe Agreement as provided for in Articles 2 and 3 of these Implementing Rules, the competition authorities shall ensure that the principles contained in the block exemption regulations in force in the Community shall be applied in full. The COCC shall be informed of any procedure related to the adoption, abolition or modification of block exemptions by the Community.

Where such block exemption regulations encounter serious objections on the Romanian 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 Community or Romanian competition policies.

Article 7

Merger control

With regard to mergers which fall within Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], and which have a significant impact on the Romanian economy, the COCC 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 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

1. Anti-competitive activities whose effects on trade between the Parties or on competition are negligible do not fall under Article 64(1) of the Europe Agreement and, therefore, are not to be treated under Articles 2 to 6 of these implementing rules.

[1] OJ L 395, 30.12.1989, p. 1. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1).

2. Negligible effects within the meaning of paragraph 1 are generally presumed to exist when:

— the aggregate annual turnover of the participating undertakings does not exceed ECU 200 million, 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 Romanian market affected by the Agreement.

Article 9

Association Council

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 these 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.

2. Following this exchange of views, or after expiry of the period referred to in paragraph 1, the Association Council may make appropriate recommendations for the settlement of these cases, without prejudice to Article 64(6) of the Europe Agreement. In these recommendations, the Association Council may take into account any failure of the requested authority to give its point of view to the requesting authority within the period referred to in paragraph 1.

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 Commission and the COCC 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 Community and Romania 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 64(6) of the Europe Agreement, and the rights of individual Member States of the European Communities on the basis of their competition rules.

ECONOMIC ACTIVITIES UNDER THE TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY (ECSC)

Article 11

ECSC Treaty

The provisions contained in Articles 1 to 6 and 8 to 10 above shall apply with respect to the coal and steel sector as referred to in Protocol 2 to the Europe Agreement.

ADMINISTRATIVE ASSISTANCE

Article 12

Languages

The Commission and the COCC shall provide for practical arrangements, for mutual assistance or any other appropriate solution concerning in particular the question of translations.