II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 May 1984

authorizing specialization agreements between Arbed and Cockerill-Sambre concerning flat and long steel products

(Only the French text is authentic)

(84/317/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the joint application made on 3 February 1984 on behalf of Arbed and Cockerill-Sambre,

Whereas :

I

(1) Arbed SA (Luxembourg) is a steel-producing undertaking covered by Article 80 of the Treaty, which also controls, alone or jointly *inter alia* the following undertakings :

— Sidmar NV (Gent),

— SA Métallurgique et Minière de Rodange-Athus (MMR-A) (Rodange),

— Arbed Saarstahl GmbH (Völklingen),

— Lech-Stahlwerke GmbH (Meitlingen),

— Galvalange Sàrl (Dudelange) — 50 % holding,

— Tradearbed Arbed SA (Luxembourg).

Cockerill-Sambre SA (Seraing) is a steel producing undertaking, which also controls, alone or jointly *inter alia* the following undertakings :

— SA Carlam (Couillet),

— SC Valfil (Seraing),

— SA Phénix-Works (Flémalle-Haute),

— SA Galvameuse (Contrisson),

— Galvalange Sàrl (Dudelange) — 50 % holding,

— SA Laminoirs du Ruau (Monceau-sur-Sambre),

— 'PUM' SA (Reims),

— Frère Bourgeois Commerciale SA (Charleroi).

(2) Arbed and Cockerill-Sambre have applied to the Commission, pursuant to Article 65 (2), for authorization of a protocol of agreement dated 24 January 1984 and a framework agreement dated 24 January 1984, providing for cooperation and specialization between the two groups concerned in Belgium and Luxembourg.

(3) The contracting parties draw attention to the existence of serious excess capacity in the European steel industry, which must adapt itself to new production requirements and conditions of competition. The stated object of the agreements is to improve the competitiveness of the parties and to preserve the place of the Belgian-Luxembourg steel industry in Europe. This object is to be achieved by cooperation between the parties on production, investment and (in a form still to be defined) in the commercial field. At the

same time it is intended that Arbed, its subsidiary Sidmar, and Cockerill-Sambre should each preserve its operating autonomy and therefore its own responsibility for its management and its results.

(4) Cooperation on production and investment is to be carried out by means of specialization. The form which commercial cooperation will take has still to be decided by the parties, who have set up a joint working group for this purpose. It is envisaged that there will be joint selling for certain products in a form still to be determined.

(5) As a background to the proposals for specialization, the agreement first identify areas in which the parties are particularly efficient and have a leading role (vocation); these are :

— for Arbed, Luxembourg and MMR-A, long products and the current activities of Dudelange in flat cold-rolled and coated products,

— for Sidmar, its activity as an integrated works from the pig iron stage through to the production of flat cold-rolled products,

— for Cockerill-Sambre, Liège, flat cold-rolled and coated products (which would enable the future of hot iron and steel making processes 'sidérurgie à chaud' at Liège to be assured),

— for Cockerill-Sambre, Charleroi, hot-rolled flat products for direct use (Carlam downstream and upstream stages); also, and in order to complement Arbed, Luxembourg, the production of certain long products (wire roads, concrete reinforcing bars, merchant bars and medium sections).

(6) Within the above framework, the contracting parties agree to the following definitive closures :

— by September 1984 at the latest, the '900' beam mill at Charleroi,

— by the beginning of 1985 at the latest :

the wire rod mill of Valfil at Liège, and

the Steckel mill for flat products at Dudelange.

(In addition the definitive closures of the Arbed, Differdange, hot narrow strip mill and the Cockerill-Sambre '850' heavy sections mill are confirmed in the framework agreement).

The contracting parties also agree to exchange certain production tonnages, consequent upon the above closures, in order to preserve their commercial positions for the products concerned and to secure a better loading on the relevant mills of the parties which will remain in operation. 510 000 tonnes per year of flat products and 435 000 tonnes of long products are involved in these exchanges. In addition, Arbed undertakes to deliver and Cockerill-Sambre undertakes to buy 300 000 tonnes per year of blooms and billets. The parties will also hold capacity in reserve for each other, supplementary to the tonnages already mentioned, up to stated maxima. The parties also agree to offer to each other on a priority basis any unused quotas, for any relevant time period, which are allotted to either of the parties by the Commission, under the application of Article 58 or under a voluntary system installed by the Commission, for products which are the subject of a production exchange.

(7) So far as capital investment is concerned, the emphasis will be on the leading role areas identified in point 5 above. The two groups will coordinate their medium and long-term investment policy in order to avoid duplication and overcapacity.

(8) Specifically in the coated products field, the group Arbed-Sidmar undertakes not to create or extend facilities in Belgium or Luxembourg for making those coated products for which Cockerill-Sambre currently has a position on the market. In return Cockerill-Sambre will offer Arbed-Sidmar a right of co-production on new investments which it might undertake for products receiving a 'hot' coating. On the other hand, Cockerill-Sambre recognizes that Arbed-Sidmar has a priority for the construction at Gent, if the market makes this desirable, of an electrolytic coating line (for products other than those used for packaging). In return, Arbed-Sidmar will offer Cockerill-Sambre a right of co-production on such a line.

(9) The contracting parties will set up a Steering Committee ('Comité d'Orientation') to guide and develop cooperation in accordance with the principles of the agreements.

(10) The protocol lasts for 10 years with provision for a review after five years to determine whether any changes are considered necessary by the parties.

The framework agreement has an indefinite duration but may be terminated, after three years' notice by either party, at the earliest on 31 December 1993.

II

(11) The agreements submitted for authorization restrict normal competition between the undertakings concerned, since the parties :

(i) agree mutually to specialize in their production and hence :

(ii) agree mutually on the closure of certain production installations ;

(iii) agree jointly to utilize certain production installations, and to transfer production ;

(iv) agree to coordinate their policy and decisions regarding capital investments.

In these circumstances, the agreements fall within the prohibition in principle set out in Article 65 (1).

III

(12) However, Article 65 (2) empowers the Commission to authorize specialization or joint-buying or joint-selling agreements, and agreements which are strictly analogous in nature and effect, if it finds that they satisfy the requirements specified.

(13) The agreements concerned, which relate to the specialization of production and to the coordination of investment, are specialization agreements or strictly analogous thereto.

(14) These agreements may therefore be authorized under Article 65 (2), but only if they make for a substantial improvement in production or distribution and are essential in order to achieve these results and are not more restrictive than is necessary for that purpose, nor must the agreements be liable to give the undertakings concerned the power to determine the prices, or to control or restrict the production or marketing, of a substantial part of the products in question within the common market, or to shield them against effective competition from other undertakings within the common market. So far as distribution is concerned, the agreements envisage that production specialization will be combined with joint selling. Such a combination is acceptable in principle, but since the form of the joint selling has not yet been settled, it is not possible for the present Decision to pronounce on that aspect of the proposed arrangements.

IV

(15) On the question of whether the agreements make for a substantial improvement in the production of the products concerned, it can be stated in general terms that the rationalization of production and coordination of investment involved will bring about substantial improvements in plant utilization and operating efficiency. As a result, unit costs will fall and quality will improve, with benefits both to the contracting parties and to consumers. Examples of the means by which these benefits will be achieved are given in the following paragraphs.

(16) Firstly, the closure of Cockerill-Sambre's heavy beam mill at Charleroi-Marchienne and heavy section mill at Charleroi-Montignies, with a combined maximum possible production (MPP) of 875 000 tonnes per year and an actual production in 1982 of 243 000 tonnes will improve the utilization rate and competitivity of the heavy beam and section mill at Arbed, Differdange, one of the best mills in the Community for the product range concerned (MPP 900 000 tonnes/year ; 1982 production 528 000 tonnes).

(17) Secondly, the closure of the Valfil mill for wire rod, a product for which a particularly serious surplus of capacity exists in the Community, will reduce MPP by 1 150 000 tonnes per year, enabling a better loading and improved competitiveness for the rod mill at Arbed, Schifflange, (MPP 518 000 tonnes ; actual 1982 production 224 000 tonnes) and a good utilization rate on the modern rod and bar mill at Charleroi-Marcinelle (MPP 750 000 tonnes per year ; 1982 production 384 000 tonnes).

(18) Thirdly, the closure of the old Steckel mill for flat products at Arbed, Dudelange, (MPP 745 000 tonnes per year ; 1982 production 465 000 tonnes) is an important element in the two groups' plan to concentrate on each others' areas of strength by exchanging flat products for long products. This closure, under the terms of the agreements, will bring about an improvement in the utilization and competitiveness of the Cockerill-Sambre wide strip mills at Charleroi and Liège (1982 utilization rates of 46 and 68 % respectively).

(19) Fourthly, the definitive closure of the Arbed, Differdange, hot narrow strip mill (MPP 720 000 tonnes per year ; 1982 production 13 000 tonnes) recognizes the force of the technological and

market trend towards the use of slit wide strip in substitution. This closure also, therefore, will tend to support the further loading of the Cockerill-Sambre wide strip mills.

(20) Fifthly, the supply of blooms and billets from Arbed, Luxembourg, to Cockerill-Sambre, Charleroi, will involve the supply of low-cost semi-finished products from an efficient steelworks to the modern and low-cost medium section mill at Marchienne (MPP 525 000 tonnes; 1982 production 191 000 tonnes) and to the efficient bar mills at Ruau (MPP 556 000; production 193 000 tonnes), where local steel supply will be inadequate.

(21) Sixthly, the allocation by the parties of priority roles to each other, both generally and specifically in the coated products field, is based on existing strengths and their consolidation, for the future, through mutually guided investment. This will involve a rational and beneficial type of specialization, the wide scope of which should ensure substantial improvements in production. (This statement is without prejudice to any opinion which the Commission may deliver on individual investment projects submitted under Article 54.)

(22) The agreements submitted for authorization will therefore make for a substantial improvement in the production of hot- and cold-rolled flat products and of several long products, including beams, heavy sections, wire rods and merchant steels. Accordingly, the agreements meet the requirement of Article 65 (2) (a), which refers to production *or* distribution. So far as distribution is concerned, the present agreements contain only general indications of intent which do not in themselves require authorization, but any firm proposals will have to be submitted for prior authorization before they can be put into effect.

(23) The various elements in the specialization agreements submitted, including mutually agreed closures, coordination of investment decisions, the transfer of production and any production quotas from time to time granted by the Commission and the reservation of capacity on production installations are interdependent and interrelated. If they acted individually the undertakings concerned could not attain the resulting improvement in production, or at least the same degree of improvement. The agreements submitted are therefore essential in order to achieve the improvement in production concerned and are not more restrictive than is necessary for that purpose. The agreements therefore satisfy the test of Article 65 (2) (b).

V

(24) To ascertain whether the agreements for which authorization is requested satisfy the tests of Article 65 (2) (c), it is necessary to consider the importance of the undertakings concerned and of the competition which they will have to face. For this purpose, although the agreements relate specifically to production in Belgium and Luxembourg, it is also necessary to take into account the production of the two groups in other Community Member States, i.e. the Federal Republic of Germany and France. On account of the specialization agreements concerned, competition between the two groups will be limited, directly or indirectly, for the entire steel production activity of the various undertakings in those groups.

(25) The production of finished products by the two groups in 1982 and their shares of production in the common market are shown in the following table (the figures include tonnages for own use and exports to non-member countries):

Production of rolled finished products and end products by the Arbed group and the Cockerill-Sambre group in 1982

Products	Arbed group		Cockerill-Sambre group		Total	
	1 000 tonnes	% EC	1 000 tonnes	% EC	1 000 tonnes	% EC
Coils (total production)	2 489	5,4	2 637	6,2	4 926	11,6
Rolled finished products (total)	6 538	7,8	4 324	5,2	10 862	13,0
Of which:						
Railway materials	160	12,8	—	—	160	12,8
Sheet piling	151	27,6	—	—	151	27,6
Broad flanged beams	633	29,8	154	7,3	787	37,1
Other heavy sections	468	15,2	285	9,3	753	24,5
Wire rods	1 029	10,9	542	5,8	1 571	16,7
Concrete reinforcing bars	591	9,4	246	3,9	837	13,3

Products	Arbed group		Cockerill-Sambre group		Total	
	1 000 tonnes	% EC	1 000 tonnes	% EC	1 000 tonnes	% EC
Merchant steels	1 130	13,1	270	3,1	1 400	16,2
Wide flats	19	5,3	—	—	19	5,3
Hot-rolled narrow strip	402	9,0	16	0,4	418	9,4
Hot-rolled plates	238	2,2	290	2,7	528	4,9
Cold-rolled sheets	1 371	5,6	1 773	7,2	3 144	12,8
Coils (finished product)	346	2,9	748	6,3	1 094	9,2
End products						
Tinplate and other tinned sheets	—	—	276	7,6	276	7,6
Coated sheets	100	1,6	940	15,4	1 040	17,0
Magnetic sheets	—	—	63	7,2	63	7,2

(26) The two groups export the major part of their production to other Member States and to non-member countries and in their own respective countries they face strong competition from other Community undertakings and from undertakings situated in non-member countries. There is a considerable degree of interpenetration between all Member States so far as finished steel products are concerned and of penetration by imports from non-member countries into the Community. Thus in 1982 the picture was as follows:

	(1 000 tonnes)
Community production of steel products	88 446
Subtract exports to non-member countries	18 349
	70 097
Add imports from non-member countries	8 736
Apparent consumption in the Community	78 883
Receipts by Member States from other Member States	21 740

Imports from non-member countries in 1982 represented 11 % of Community consumption. Receipts by Member States from other Member States were responsible for 28 % of Community consumption.

In these circumstances the relevant market for judging the conditions of competition is the common market as a whole.

(27) For hot-rolled coils (total production), the Arbed and Cockerill-Sambre (C-S) groups are together responsible for 11,6 % of Community production (Arbed 5,4 %, C-S 6,2 %). If taken together, the two groups would rank in fourth place after producers with production shares of 20,5, 15,3 and 12,5 % respectively. The 10 largest Community producers are responsible in total for 92,6 % of Community production. It is to be noted that coils are to a large extent used by the producing undertakings themselves for further transformation into flat finished products and to that extent do not appear as hot-rolled coils on the market.

(28) For railway materials, Arbed with 12,8 % of Community production (C-S does not make these products) stands in fourth place among Community producers, following groups/undertakings with 20,6, 17,5 and 15,7 % of production. The 10 largest Community producers are responsible for 98,2 % of Community production. The effect of the agreements on the competition position for this product is small and indirect (through the potential effect on investment decisions).

(29) For sheet piling, Arbed with 27,6 % of Community production (C-S does not make this product) stands in first place among Community producers but two other producers with 27,3 and 24,3 % are almost as important. The only other Community makers have 14,8 and 6 % respectively. The agreements do not significantly affect the competition position for this product and what effect there is can be described as potential rather than actual.

(30) For broad flanged beams, Arbed with 29,8 % and C-S with 7,3 % of Community production would together come in the first place (37,1 %) before makers with 27,7, 10,2, 10,1, 4,9, 4,5, 2,9 and 2,6 %. There are nine Community producers in total. It should be noted that the C-S heavy beam mill will close under the agreements so that the combined production potential of Arbed and C-S will be considerably reduced.

(31) For other heavy sections, Arbed (15,2 %) and C-S (9,3 %) if taken together, would account for 24,5 % of Community production and would stand in first place among Community producers, followed by makers with 19,5, 11,9, 6,8, 5,5, 4,6, 3,9, 3,6 and 2,6 %. The first 10 makers account for 82,9 % of Community production. The definitive closure of a heavy section mill at C-S under the agreements reduces the combined production potential of Arbed and C-S.

(32) For wire rods, Arbed (10,9 %) and C-S (5,8 %), if taken together, would account for 16,7 % of Community production and would stand in second place among Community producers, after one maker with 21,8 % and followed by makers with 10,2, 6,6, 6,4, 5,2, 3,1, 2,6 and 2,6 %. The first 10 producers are responsible for 75,2 % of Community production. The closure of the Valfil rod mill under the agreement will reduce considerably the combined production potential of Arbed and C-S.

(33) For concrete reinforcing bars, Arbed (9,4 %) and C-S (3,9 %), if taken together, would account for 13,3 % of Community production and would stand in first place among Community producers. However, the first 10 producers of this product account only for 44,6 % of total Community output and there are many small but competitively efficient makers.

(34) For merchant steels, Arbed (13,1 %) and C-S (3,1 %), if taken together, would account for 16,2 % of Community production and again would stand in first place among Community producers. However, for this product too, there is very active competition, with a large number of makers.

(35) For hot-rolled narrow strip, Arbed (9,0 %) and C-S (0,4 %), if taken together, would account for 9,4 % of Community production and would stand in third place among Community producers, following makers with shares of 16,5 and 10,0 % respectively and preceding makers with 9,1, 8,7, 8,4, 6,5, 6,2 and 5,8 %. The first 10 producers are responsible for 80,6 % of Community output. The definitive closure of the Differdange hot narrow strip mill under the agreements reduces considerably the combined production potential of Arbed and C-S for hot-rolled narrow strip. The product in question is also facing increasing competition from slit wide strip.

(36) The relatively small Arbed and S-C output of hot-rolled plates does not have a significant effect on the competition situation.

(37) For cold rolled sheets, Arbed (5,6 %) and C-S (7,2 %), if taken together, would account for 12,8 % of Community production and would stand in third place among Community producers, following makers with 18,0 and 13,7 % shares respectively, and preceding makers with shares of 12,0, 12,0, 6,4 6,0, 5,5 and 3,5 %. The 10 largest producers account for 89,9 % of total Community output.

(38) Of the two groups, only C-S produces tinplate with a 7,6 % share of Community production. There are four larger makers (with 21,3, 16,4, 14,7 and 14,1 % shares) and five smaller makers. The agreements are unlikely to have any significant effect on the competition position for this product, given the cost of entry into the tinplate sector and the competition from other existing producers.

(39) For coated sheets, C-S with a production share of 15,4 % already holds a leading position in the Community. The addition of Arbed's 1,6 % production share would not change the competition position significantly, but the aggregation of these shares would place the two groups in first place, closely followed by three other groups with 15,8, 15,1 and 14,3 % shares respectively. The first 10 producers account for 80,7 % of Community output.

(40) Of the two groups, only C-S produces electrical sheets, with a 7,6 % share of Community output. As in the case of tinplate, competition from other existing makers is considerable. There are five larger producers (with 27,0, 18,3, 14,7, 13,5 and 8,6 % shares) and four smaller makers. The agreements are unlikely to have any significant effect on the competition position.

(41) The main point which emerges from the above analysis is that even for the products where Arbed and C-S are alone or together the leading Community producers, they are counterbalanced by other strong Community producers, or by a large number of competitors ; these undertakings, together with imports from non-member countries, will ensure the maintenance of active competition.

(42) In these circumstances, the agreements are not liable to give the undertakings concerned the power to determine the prices, or to control and restrict the production or marketing, of the products in question within the common market, or to shield them against effective competition from other undertakings within the common market. The agreements therefore satisfy the requirements of Article 65 (2) (c).

VI

(43) In Decision 78/538/ECSC [1] authorizing Arbed to acquire control of Neunkircher Eisenwerk AG and of MMR-A, the Commission attached to its authorization the obligation that members of the management bodies of the Arbed group iron and steel production and distribution undertakings should not belong to management bodies of other undertakings or holding companies of the same type (this prohibition did not apply to steel undertakings already jointly controlled by Arbed and other undertakings prior to the transactions authorized by the Decision in question). Similarly, in its Decision of 24 March 1982 [2] authorizing the creation of Cockerill-Sambre, the Commission imposed the obligation that managers or members of a management or supervisory body of the steel production and distribution undertakings belonging to the C-S group should not exercise any such functions in other undertakings of the same type.

Having regard to the close collaboration which is necessary between the Arbed and C-S groups in order to operate the coordination of production and investment provided for by the agreements submitted for authorization, it is appropriate that the prohibitions referred to above should be removed so far as personal links between the Arbed and C-S groups are concerned. In all other respects, however, in view of the need to maintain the independence of large steel undertakings, these prohibitions should be maintained.

(44) The Commission must ensure that all measures taken by the parties under the agreements submitted are in conformity with the authorization given by this Decision and with the provisions of the Treaty. To this end, the parties must be required to inform the Commission forthwith of all proposed changes and additions to the agreements including, in particular, any firm proposals for coordinating commercial activities and introducing joint selling. It should therefore be provided that such changes and additions to the agreements may not be put into effect until the Commission has declared them to be admissible or has authorized them under Article 65 (2). Meanwhile the present authorization should be made subject to the condition that the parties do not coordinate their commercial activities unless and until the Commission authorizes such coordination, including its nature and extent.

(45) The protocol is intended to be valid for 10 years ; the framework agreement is intended to be valid for at least 10 years. In view of the rationalization measures proposed by the parties both in the short term and in the longer term through investment coordination, it is appropriate that authorization be granted for 10 years in the first instance.

(46) Subject to the condition imposed, the agreements for which authorization has been requested are in conformity with Article 65 (2) and may therefore be authorized,

HAS ADOPTED THIS DECISION :

Article 1

The specialization agreements between Arbed SA, Luxembourg, and Cockerill-Sambre SA, Seraing, contained in a protocol of agreement and a framework agreement dated 24 January 1984 are hereby authorized.

Article 2

The authorization referred to in Article 1 is subject to the condition that the undertakings concerned do not coordinate their commercial activity unless and until the Commission authorizes such coordination, including its nature and extent, under Article 65 (2).

Article 3

The undertakings concerned shall inform the Commission forthwith of any proposed changes and additions to the agreements.

Such changes and additions shall not be put into effect until the Commission has confirmed that they are in conformity with the authorization given by this Decision, or has authorized them under Article 65 (2).

[1] OJ No L 164, 21. 6. 1978, p. 14.
[2] See Bulletin EC 3-1982, point 2.1.27.

Article 4

The prohibitions of managerial links with outside companies imposed on the Arbed group by Decision 78/538/ECSC and on the Cockerill-Sambre group by the Decision of 24 March 1982 are hereby removed so far as links between the Arbed and Cockerill-Sambre groups are concerned.

Article 5

This Decision shall apply until 31 January 1994.

Article 6

This Decision is addressed to Arbed SA, Avenue de la Liberté, L-2930 Luxembourg, and to Cockerill-Sambre SA, Avenue Adolphe Greiner, B-4100 Seraing.

Done at Brussels, 28 May 1984.

For the Commission

Frans ANDRIESSEN

Member of the Commission