II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 9 September 1991**

**authorizing a joint-selling agreement for beams between Arbed SA and Usinor Sacilor SA (Europrofil)**

**(Only the French text is authentic)**

(91/515/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 65 (2) thereof,

Having regard to the applications made simultaneously on 10 October 1990 by Arbed SA, Luxembourg, and Usinor Sacilor SA, Paris-La Défense, for authorization to implement a joint-selling agreement in respect of beams,

Whereas :

### I. THE PARTIES

(1) Arbed SA, Luxembourg (Arbed), is the parent company of the Arbed group with a subscribed capital of Lfrs 12 513 256 000 (ECU 288,5 million) at 31 December 1989. The group is principally engaged in the production and distribution of ECSC steel products. It has diversified extensively in recent years and is particularly active in first-stage steel processing (wire-drawing) and in the structural steelwork, engineering, cement and non-ferrous metals industries.

(2) In 1989 the Arbed group achieved a consolidated world-wide turnover of some Lfrs 222 000 million, or ECU 5 100 million, to which Arbed contributed some Lfrs 65 000 million (ECU 1 500 million). The share of total turnover resulting from ECSC production is 71 %, with sales, distribution and trading (ECSC and EEC products) accounting for approximately 19 %.

(3) Arbed is itself an ECSC producer in Luxembourg and holds shares, either directly or through its subsidiaries and sub-subsidiaries, in the following enterprises :

— Association Coopérative Zélandaise de Carbonisation UA, Sluiskil (NL) 50,00 %,
— Sidmar NV, Gent (B) ..... 51,00 %,
— Métallurgique et Minière de Rodange-Athus SA, MMR-A, Rodange (L) 45,01 %,
— ALZ NV, Genk (B) ..... 60,00 %,
— Belgo-Mineira SA, Sabara (Brazil) ..... 20,21 %,
— Galvalange Sàrl, Dudelange (L) ..... 50,00 %,
— Ewald Giebel Luxembourg GmbH, Dudelange (L) ..... 33,33 %,
— Sikel NV, Genk (B) ..... 66,67 %,
— Coopérative Segal, Ivoz-Ramet (B) ..... 33,33 %,
— Laminés Marchands Européens (see point 9).

(4) Specialization agreements between Arbed and Cockerill-Sambre concerning flat and long steel products were authorized by Commission Decision 84/317/ECSC [1]. In accordance with Article 3 of that Decision, these enterprises informed the Commission in 1989 of their plan to alter the agreements. The Commission departments did not object to the amendments, which came into effect on 1 January 1990. Thus Arbed purchased from Cockerill-Sambre the business represented on the one hand by the production of wire rod, sections and heavy angles which it had until then produced on behalf of Cockerill-Sambre on its own rolling mills and, on the other hand, the production of sections manufactured by Cockerill-Sambre on its own T600 mill in Charleroi. At the same time, the two parties concluded an exclusive contract for hire rolling by Cockerill-Sambre at its T600 mill on behalf of Arbed.

(5) Usinor Sacilor SA, Paris-La Défense (U-S), is the parent company of the Usinor Sacilor group, the most important European steel group as much in terms of its size as because a large part of its production is carried out in Germany. U-S has a subscribed capital of FF 4 000 million (ECU 569,5 million). Its principal activities are the production and distribution of ECSC steel products. It is also very active in related sectors such as first-stage steel processing (wire drawing, pipes and tubes, forging, drop forging), structural steelwork and mechanical engineering.

(6) In 1989, the Usinor Sacilor group achieved a world-wide turnover of some FF 97 000 million, or some ECU 13 800 million. The share of this figure achieved by non-French companies belonging to the group (essentially German) was approximately FF 26 000 million (ECU 3 700 million), or nearly 27 %.

(7) U-S produces ECSC products only through its subsidiaries or sub-subsidiaries, and has holdings, either directly or indirectly through the latter, in the following enterprises:

— Association Coopérative Zélandaise de Carbonisation UA, Sluiskil (NL) 48,19 %
— Lech Stahlwerke GmbH, Meitingen-Herbertshofen (D) ..... 41,58 %
— Lutrix, Brescia (I) ..... 49,00 %
— Laminés Marchands Européens (see point 9)

(8) Agreements on specialization and exchanges of finished and semi-finished products between Arbed and Unimétal (the U-S subsidiary manufacturing carbon steel long products) were approved by Commission Decision 88/461/ECSC [2] for a period ending on 31 December 1992. These agreements relate in particular to heavy beams, heavy rails, sheet piling and medium sections, representing an annual tonnage of at least 54 000 tonnes and some 50 000 tonnes in the case of the exchange of semi-finished products.

(9) Arbed, U-S and Cockerill-Sambre set up the joint venture Laminés Marchands Européens SA (LME) which was authorized by the Commission Decision of 27 July 1990. LME manufactures and markets a range of merchant bars which the parent companies no longer produce.

## II. DESCRIPTION OF THE TRANSACTION

(10) By agreement concluded on 22 May 1991, Arbed and U-S decided to cooperate in the sale (joint selling) of beams and associated products (other heavy sections with the exception of permanent way material and sheet piling). The cooperation includes setting up the joint-venture company, Europrofil.

(11) The agreement reflects the intention of Arbed and U-S to increase rationalization in long products. For various strategic reasons, the companies opted to start with beams, defined as the whole range of products manufactured by Arbed and U-S in the form of beams, sections, large merchant bars and special sections.

(12) The present transaction will be followed by other phases with a view to the eventual pooling and definitive integration of the industrial and commercial infrastructures relating to the products in question, and possibly other long products. Europrofil is thus for the time being a joint venture, owned equally by Arbed and U-S, set up to implement the joint-selling agreement for beams. The two companies' holdings will be reviewed once their respective contributions, after rationalization, have been definitively assessed. It is planned in any event that Arbed will then control Europrofil.

[1] OJ No L 163, 21. 6. 1984, p. 37.
[2] OJ No L 223, 13. 8. 1988, p. 39.

(13) The functions of Europrofil reflect the aims of the agreement, and are twofold:

— a commercial function: Europrofil will be exclusively responsible for marketing and selling all the products covered by the agreement and made by the two groups. Europrofil will be also responsible for studies, promotion and technical assistance. Sales in France, Germany and the Benelux will be through Europrofil subsidiaries or sales offices and, in the other countries, through the networks remaining after rationalization;

— an industrial function: Europrofil will be responsible for mill specialization and optimization of the production and rolling programmes.

(14) Industrial studies on the modernization and rationalization of the production equipment will be undertaken in the framework of the agreement with a view to the joint production of the products covered by the agreement; the results of these studies will be put into practice. The parties have agreed that the integrated industrial phase will be established by 31 December 1993 at the latest. Until this date all strategic investment decisions about the products covered by the agreement must be taken by agreement between the parties.

(15) If Europrofil achieves its objectives, similar procedures could be applied to other long products after a certain time.

## III. RESULT OF THE TRANSACTION

(16) For the time being, Europrofil, jointly controlled by Arbed and Usinor Sacilor, is simply a practical framework set up to implement the joint-selling agreement which will be extended by joint production planning and by a joint investment policy for the products concerned. Some details of the final acquisition of control by Arbed, however, are not as yet known (e.g. respective shareholdings, industrial aspects). The setting-up of Europrofil is thus secondary and provisional and its appraisal under Article 66 will be necessary only if the aims of the agreement are attained. The joint-selling agreement on beams signed on 22 May 1991 must be examined under Article 65 of the ECSC Treaty.

## IV. THE RELEVANT MARKET

(17) The two companies own and/or operate production plants in four Community countries and sell their products throughout the Community. Some Member States do not produce the products in question but are consumers. The relevant market is therefore the Community.

(18) The term 'beams' is used here to mean products such as the very large beams with a web height of 1 100 mm manufactured at the Arbed-Differdange Grey mill and smaller angles (e.g. 90 × 90 mm). These products are used almost exclusively in the construction industry. About [...] % [3] of the tonnages in the product range covered by the Arbed/Usinor Sacilor agreement are listed in Community statistics under 'Sections 80 mm and over' and 'Other sections'. Thus the markets for both categories of product constitute the relevant market.

(19) Certain beam mills can in fact, by using the appropriate rolls, also manufacture rails and/or sheet pilings. This applies in particular to the Unimétal 950 mill at Hayange (beams/rails), the Arbed mill No 2 at Esch-Belval (beams/sheet piling) and the A mill of MMR-A (beams/rails). However this industrial aspect, in view of the level of the tonnages concerned, does not alter the commercial assessment based on the market definition given in point 18.

## V. MARKET SHARES

(20) In 1989, the Usinor Sacilor group (including Saarstahl AG) and the Arbed group (including MMR-A and the rolled products of the Charleroi T600 mill) produced [...] tonnes (or [...] % of Community production) and [...] (or [...] % of Community production) of beams respectively.

(21) Table 1 below shows the quantities produced in 1989 at the various plants owned by the two groups.

(22) The agreement in question thus relates to a total production of 2 308 000 tonnes, or 29,1 % of Community production.

(23) Imports of beams into the European Community in 19879 were 857 000 tonnes, equivalent to 10,8 % of Community production or 13,1 % of apparent Community consumption.

[3] In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 7, second paragraph, of the ECSC Treaty.

**Beam production in 1989**

| | 1 000 tonnes | % EUR-12 |
|---|---|---|
| Unimétal Hayange | [...] | [...] |
| Unimétal Rombas | [...] | [...] |
| Unimétal Longwy | [...] | [...] |
| Unimétal Trancel | [...] | [...] |
| Total Unimétal | [...] | [...] |
| Saarstahl Völklingen | [...] | [...] |
| Total U-S group | [...] | [...] |
| Arbed Differdange | [...] | [...] |
| Arbed Esch-Belval | [...] | [...] |
| MMR-A | [...] | [...] |
| Cockerill-Sambre Charleroi | [...] | [...] |
| Total Arbed group | [...] | [...] |
| Total products concerned by agreement | 2 308 | 29,1 |
| Total EUR-12 | 7 943 | 100,0 |

## VI. APPLICATION OF ARTICLE 65 OF THE ECSC TREATY

(24) Arbed and U-S produce and distribute ECSC products and constitute undertakings within the meaning of Article 80 of the ECSC Treaty.

(25) The joint-selling agreement in respect of beams restricts normal competition between Arbed and U-S since the two parties:

(a) agree to coordinate their pricing policies, by giving exclusive sales rights to a jointly owned subsidiary;

(b) agree to jointly programme their production and to coordinate their investment decisions for the products in question.

Under such conditions, the agreement is caught by the prohibition in principle set out in Article 65 (1) of the ECSC Treaty.

(26) Article 65 (2), however, empowers the Commission to authorize joint-selling agreements or agreements that are strictly analogous in nature and effect if it is satisfied that they meet the requirements of that Article.

(27) The agreement to which this Decision relates is a joint-selling agreement or strictly analogous thereto.

(28) The agreement may therefore be authorized under Article 65 (2), but only if it;

— makes for a substantial improvement in the production or distribution of the products in question,

— is essential in order to achieve these results and is not more restrictive than is necessary for that purpose, and

— is not 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.

(29) On the question of whether the agreement makes for a substantial improvement in the production or distribution of the products concerned, it is fair to say that, generally speaking, rationalizing production and marketing will greatly improve plant utilization and efficiency, cut production and transport costs, introduce qualitative improvements and reduce delivery times, with benefits both to the contracting parties and to consumers.

(30) Even if, in terms of tonnages produced, the plants manufacturing long products are inevitably smaller than those producing flat products, the two groups together produced some 2,3 million tonnes of beams in 1989 at 12 mills spread over nine production sites. With the exception of the very large beams which can be rolled only at the Grey mill of Arbed-Differdange, a large number of products of the same size are therefore at present rolled in several mills simultaneously.

(31) Rationalization, by unequivocally allocating specific sections to the various mills concerned, will in itself produce a productivity gain of some [...] % compared with the present average.

(32) Each of the parties has already closed down a rolling mill: Arbed closed its mill No 5 at Esch-Belval in January 1991 and U-S the mill operated by its subsidiary Trancel in January 1990. It is also planned to close Arbed mill No 3/4 at Esch-Belval. The immediate effect of these closures is and will be to increase the utilization rate of the parties' other plants. On the basis of production in 1989, the closures of the above three mills and the transfer of production (beams and other products) to the other nine mills would increase the latter's utilization rate by some [...] %.

(33) Rationalization will at the same time enable product quality to be improved by allowing the plants to operate on a more regular basis.

(34) Transport costs will be reduced by choosing the most appropriate production site in relation to delivery point. Rationalization of the commercial networks forms part of such a policy.

(35) The scale effect resulting from joint selling will also enable stock levels and related costs to be reduced.

(36) The foregoing examples thus show that the agreement submitted for authorization will make for a substantial improvement in the production and distribution of the products concerned and that it therefore satisfies the tests of Article 65 (2) (a) of the ECSC Treaty.

(37) Joint selling, the transfer of production and the coordination of investment decisions are all interdependent and connected. Operating in isolation, the undertakings concerned could not obtain the production and distribution improvements, or, in any event, the same level of improvement. In particular, it is essential that from now on they concentrate on eliminating duplication when making investments, particularly in view of the costs involved. The agreement in question is therefore essential to achieving the desired improvement in production and distribution and is not more restrictive than is necessary for that purpose. In particular, the joint production programming and the common agreement on capital investment are ancillary agreements to the joint selling agreement. However the resulting restriction of competition is essential if the parties are to reach their objective of industrial concentration as soon as possible. As a result, the agreement meets the criteria of Article 65 (2) (b) of the ECSC Treaty.

(38) In order to determine whether an agreement for which authorization is requested satisfies the requirements of Article 65 (2) (c), it is necessary to consider the size of the firms concerned and the extent of the competition facing them.

(39) It would seem that the Arbed group [...] % and the Usinor Sacilor group [...] % jointly hold 29,1 % of Community production of beams, and rank first among Community producers, those following having shares of 23,1 %, 12,4 %, 8,7 %, 5,3 % and 4,8 % respectively. Overall, the 10 leading producer groups (including Arbed and U-S) account for 94,0 % of Community production.

(40) It can therefore be concluded that, whilst the agreement between Arbed and U-S gives them joint first position among Community producers of the products in question, the other producers in the sector, together with imports which currently account for some 13,1 % of apparent consumption, will ensure the maintenance of effective competition.

(41) Accordingly, the agreement is not 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 in the common market. The agreement therefore satisfies the tests of Article 65 (2) (c) of the ECSC Treaty.

(42) The agreement is described as the first phase of an operation which will lead to control by Arbed of the present activities of Arbed and U-S in respect of beams. The operation will be of benefit to the parties concerned and to consumers only if it results in the necessary restructuring and modernization and if it is accompanied by appropriate capital investment. It is only under these conditions that the restriction can be exceptionally authorized.

(43) The parties must inform the Commission of any plans to alter or add to the agreement. It therefore needs to be stipulated that any amendments or additions to the agreement may not be implemented until the Commission has decided that they are admissible or has authorized them pursuant to Article 65 (2).

(44) By limiting the period of validity of the authorization, it must also be ensured that the parties concerned attain their objectives as rapidly as possible. In view of the size of the undertakings and the complexity of the studies to be carried out, the authorization should be granted for a period ending on 31 December 1993.

(45) The agreement of 22 May 1991 submitted for authorization complies with Article 65 (2) of the ECSC Treaty and may be authorized,

HAS ADOPTED THIS DECISION:

*Article 1*

The joint-selling agreement dated 22 May 1991 between Arbed SA and Usinor Sacilor SA which provides *inter alia* for the setting-up of Europrofil is hereby authorized pursuant to Article 65.

*Article 2*

The undertakings concerned shall notify the Commission of any plans to amend or add to the agreement.

Amendments or additions may not be implemented until the Commission has determined that they comply with the authorization granted in this Decision or has authorized them pursuant to Article 65 (2).

*Article 3*

This Decision shall be applicable until 31 December 1993.

*Article 4*

This Decision is addressed to Arbed SA, Avenue de la Liberté, L-2930 Luxembourg and Usinor Sacilor SA, Immeuble Ile-de-France, Cedex 33, F-92070 Paris-La Défense.

Done at Brussels, 9 September 1991.

*For the Commission*

Leon BRITTAN

*Vice-President*