



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.11.2001
COM(2001) 632 final

Proposal for a

COUNCIL DECISION

on the position to be adopted by the Community within the EC-Turkey Association Council, concerning a Decision of the EC-Turkey Association Council adopting the implementing rules necessary for the application of the provisions on competition policy referred to in Article 37 of Decision 1/95 of the EC-Turkey Association Council

(presented by the Commission)

EXPLANATORY MEMORANDUM

The proposed Decision on implementing rules for competition is based on Article 37 of Decision 1/95 of the EC-Turkey Association Council. It covers competition policy in the fields of rules for undertakings and state aid control.

The proposed implementing rules are based on existing rules, especially on those with the CEECs. They do not change the obligations, or derogations granted from the *acquis communautaire*, under the Decision 1/95. They do not try to achieve more than what is set out in the mandate. In order to respect the mandate, provisions referring to merger procedures have not been included.

The guiding principle for the implementing rules is that the existing systems and competition laws remain unaltered by the implementing rules. The rules will however create viable mechanisms for enhancing cooperation between the responsible authorities of the EC and Turkey. The main filter for issues to fall within the interest of cooperation is that anticompetitive behaviour or activities may affect trade between the European Community and Turkey.

The proposal contains chapters on procedural provisions, substantive provisions, and provisions relating to dispute avoidance. The cooperation mechanisms will aim at providing for systematic information exchange and increased transparency with respect to issues covered by the implementing rules. The substantive provisions of Decision 1/95 are included by way of reference. In general, the proposed rules recall the principle to take into consideration the important interests of the other Party in the course of its enforcement activities.

The proposed rules require the establishment of a Turkish State Aid Monitoring Authority effective as of 01.01.2003. The Community would grant upon request technical assistance within the existing frameworks in areas related to the implementing rules. The cooperation and information mechanisms will also provide the Community with valuable instruments to advance the approximation process.

The Council is requested to adopt the attached proposal for a Council Decision on the position to be adopted by the Community within the EC-Turkey Association Council, concerning a Decision of the EC-Turkey Association Council adopting the implementing rules necessary for the application of the provisions on competition policy referred to in Article 37 of Decision 1/95 of the EC-Turkey Association Council.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 83 thereof and the first sentence of the first subparagraph and the second subparagraph of Article 300(2),

Having regard to the proposal from the Commission,

Whereas:

- (1) The Agreement establishing an Association between the European Economic Community and the Republic of Turkey, is hereinafter referred to as the 'Ankara Agreement',¹.
- (2) Article 37 of Decision No 1/95 of the EC-Turkey Association Council lays down that the Association Council shall adopt the necessary rules for implementation of Articles 32, 33, and 34 and related parts of Article 35, that these rules shall be based upon those already existing in the Community and that they shall *inter alia* specify the role of each competition authority,

¹ OJ L 217 of 29.12.1964.

HAS DECIDED AS FOLLOWS:

The position to be adopted by the Community within the Association Council established by the Ankara Agreement, concerning a Decision of the EC-Turkey Association Council adopting the implementing rules necessary for the application of the provisions on competition policy referred to in Article 37 of Decision 1/95 of the EC-Turkey Association Council shall be based on the draft decision of the Association Council annexed to this Decision.

Done at Brussels,

For the Council
The President

DECISION OF THE EC-TURKEY ASSOCIATION COUNCIL
No

of

adopting the implementing rules necessary for the application of the provisions on competition policy referred to in Article 37 of Decision 1/95 of the EC-Turkey Association Council

THE EC-TURKEY ASSOCIATION COUNCIL,

Having regard to the Agreement establishing an Association between the European Economic Community and the Republic of Turkey, hereinafter referred to as the 'Ankara Agreement',²

Having regard to Decision No 1/95 of the EC-Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union³ and in particular Article 37 thereof,

Whereas Article 37 of Decision No 1/95 lays down that the Association Council shall adopt the necessary rules for implementation of Articles 32, 33, and 34 and related parts of Article 35 that these rules shall be based upon those already existing in the Community and that they shall *inter alia* specify the role of each competition authority,

HAS DECIDED AS FOLLOWS:

Article 1

The implementing rules necessary for the application of the competition provisions referred to in Article 37 of Decision 1/95 of the EC-Turkey Association Council as set out in the Annex to this Decision are hereby adopted.

² OJ L 217 of 29.12.1964.

³ OJ L 35 of 13.2.1996.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at ..., .

*For the EC-Turkey Association Council
The President*

ANNEX

Implementing rules for the application of the provisions on competition policy referred to in Article 37 of Decision 1/95 of the EC-Turkey Association Council

General Provisions

Article 1

General principles

1. The competencies of the Parties' Competition authorities to deal with cases falling within the scope of these Implementing Rules ("the Rules") shall flow from their respective competition laws and State aid rules.
2. Such cases shall be settled according to each Party's relevant competition laws and State aid rules, and having regard to the provisions set out below.

Article 2

Coverage

General Coverage

1. The Rules cover all anticompetitive behaviour or activities addressed by rules for undertakings (including prohibitions on anticompetitive collusion, and on abuse of dominant position) and rules for State aid control of either Party, insofar as such behaviour or activities may affect trade covered by Decision 1/95 of the EC-Turkey Association Council.

De minimis clauses

2. Anticompetitive behaviour or activities whose effects on competition are negligible within the meaning of this Article are not covered by the Rules.
 - 2.1. Rules for Undertakings
 - 2.1.1. Negligible effects are deemed to exist if the anticompetitive behaviour or activities fulfil the specific conditions defined in the relevant legislation of each Party.
 - 2.1.2. In the event that the applicable legislation of one Party would define as negligible a certain anticompetitive behaviour or activity whereas this is not the case under the applicable legislation of the other Party, for the purpose of the Rules negligible effects are deemed to exist.
 - 2.2. State aid control
 - 2.2.1. Aid schemes or individual aids which do not involve export aid and which fall below the threshold of Euro 100.000 of total aid per firm over a three-year period shall be considered as having only a negligible effect.

- 2.2.2. The threshold referred to in paragraph 2.2.1. does not apply to shipbuilding, nor to transport, nor to aid towards expenditure in connection with agriculture or fisheries, nor to industries covered by the Treaty establishing the European Coal and Steel Community.

Article 3
Competition Authorities

1. The Competition Authorities responsible for the implementation of the provisions of the Rules are:
- for the European Community,

as to its responsibilities pursuant to the rules for undertakings and State aid provisions of the European Community: the Commission of the European Communities (“the Commission”), and
 - for Turkey,

as to its responsibilities pursuant to the rules for undertakings of Turkey: the Rekabet Kurumu (“Turkish Competition Authority”) and

as to its responsibilities pursuant to the State aid provisions of Turkey: the Authority to be established by Turkey in accordance with Article 17.1. (“Turkish State Aid Monitoring Authority”).

Article 4
Definitions

“Enforcement activities” shall mean any application of competition laws and State aid legislation by way of investigation or proceeding conducted by the Competition authorities of a Party.

“Anticompetitive behaviour or activities” shall mean any conduct or transaction that is impermissible under the competition laws of a Party.

“Competition criteria” shall mean the totality of competition rules and interpretative instruments adopted by the institutions of the European Community, including rules and interpretative instruments on State aid.

Procedural Provisions

Article 5
Information Exchange and Transparency

- 1.1. The Parties shall exchange information which will facilitate or enhance the effective application of their respective competition laws and promote a better understanding of their respective legal frameworks.

- 1.2. Whenever one Party's Competition authority becomes aware of the fact that a case contrary to the respective legal frameworks, falling also or only under the competence of the Competition authority of the other Party, appears to affect the important interests of the first Party, this Competition authority may request information about this case from the Competition authority of the other Party.

The Competition authority to which a request for information is directed, shall give sufficient information within the limits of what is legally possible, and at a stage of its proceedings in advance of the adoption of a decision or settlement in order to enable the requesting authority's views to be taken into account.

- 2.1. Both Parties shall ensure transparency in the domains of activity within the scope of the Rules by providing appropriate publications and exchanging information on a regular and reciprocal basis in order to ensure and continuously improve transparency.
- 2.2. In particular, the European Community shall inform Turkey of any acts relating to the preparation, adoption, abolition or modification of the competition criteria, insofar as these are not published but are specifically brought to the attention of all Member States.
- 2.3. In particular in the area of State aid, the Turkish State Aid Monitoring Authority shall draw up and thereafter update annually an inventory of its aid schemes and individual aid, established on the basis of those prepared in the European Community, including amount, intensity and purpose of any aid. The Turkish State Aid Monitoring Authority shall publish annually a State aid report established on the basis of the inventory.
3. Any exchange information under this Article is limited by the requirements of professional and business secrecy and confidentiality.

Article 6 *Notifications*

1. Enforcement activities within the scope of the Rules, falling under the exclusive competence of one Competition authority, and which may affect important interests of the other Party, shall be notified to the Competition authority of the other Party.
- 2.1. Each Competition authority shall notify to the Competition authority of the other Party those enforcement activities within the scope of the Rules which appear also to fall under the competence of the other Competition authority.
- 2.2. In particular, this situation may arise in cases concerning enforcement activities that:
 - involve anticompetitive behaviour and activities carried out in a significant part in the territory of the other Party,
 - are relevant to enforcement activities of the other Competition authority,
 - involve remedies that would require or prohibit a particular conduct in the territory of the other Party,

- involve conduct believed to have been required, encouraged or approved by the other Party.
3. Notification under this Article shall include sufficient information to permit an initial evaluation by the recipient Party of any effects on its interests.
 - 4.1. Provided that it is not contrary to the applicable competition laws and does not adversely affect any enforcement activity being carried out, notification shall ordinarily be provided by the proceeding Competition authority at the stage in an enforcement activity when it becomes evident that notifiable circumstances are present, in advance of the adoption of a decision or settlement so as to allow for comments and to enable the proceeding authority to take into account the other Competition authority's views.
 - 4.2. The notifying Competition authority shall give due consideration to the opinions received from the Competition authority of the other Party when taking decisions. This is without prejudice to any action under the respective competition laws of the Parties.

Article 7
Co-ordination of Enforcement Activities

1. Without prejudice to Article 1, cases which fall under the jurisdiction of both Competition authorities shall be dealt with by the Commission and the Turkish Competition Authority according to the provisions of this Article.
2. A Competition authority may notify its willingness to co-ordinate enforcement activities with respect to a specific case. The notified Competition authority shall consider such expression in a favourable way within the limits of its applicable laws.
3. In determining the extent of co-ordination, the Competition authorities shall consider:
 - the effective results which co-ordination could produce;
 - the additional information to be obtained;
 - the reduction in costs for the Competition authorities;
 - the applicable deadlines under their respective legislation;
 - the availability of resources.
4. Any co-ordination of enforcement activities under this Article shall not prevent the Competition authorities from taking autonomous decisions.

Article 8
Meetings

Representatives of each Party's competent Competition authority and related authorities shall meet as needed but no less than once every two years, in order to promote knowledge on both sides of their respective competition laws and policies, and to evaluate the results of the co-operation mechanisms and the dealings under the Rules.

Substantive Provisions

Article 9
Rules for Undertakings

The substantive obligations as laid down in Article 32 and 33 of the Decision 1/95 of the EC-Turkey Association Council apply. Prohibitions and declarations of inapplicability as stipulated in the aforesaid Article 32 and 33 shall be enacted by the Party under which jurisdiction these acts would fall in accordance with its relevant legal framework.

Article 10
State Aid Control

1. The substantive obligations as laid down in Article 34 of the Decision 1/95 of the EC-Turkey Association Council apply. Subject to the procedural rules in force in the European Community and Turkey, the Competition authority of the Party under whose jurisdiction the State aid falls, shall examine the compatibility of State aid within the scope of the Rules with the aforesaid Article 34 in accordance with its relevant legislation.
2. The assessment of individual aids and aid schemes within the scope of the Rules shall be compatible with the competition criteria.
3. The Competition authority of a Party that declares compatible or incompatible an individual aid or an aid scheme on grounds of Article 34 of the Decision 1/95 of the EC-Turkey Association Council shall notify this act and its reasons to the Competition authority of the other Party.

Dispute Avoidance and Settlement

Article 11
Avoidance of Conflicts

1. Each Party shall, wherever possible, and in accordance with its own legislation, take into consideration the important interests of the other Party in the course of its enforcement activities.

- 2.1. If adverse effects for one Party would result from taking into account important interests of the other Party, the Competition authorities shall seek a mutually acceptable solution.
- 2.2. In this context, the following should be considered:
 - the relative significance of the measure and the impact which it has on the interests of one Party compared to the benefits to be obtained by the other Party;
 - the presence or absence, in the actions of the economic agents concerned, of the intention to affect consumers, suppliers or competitors,
 - the degree of inconsistencies between the legislation of one Party and the enforcement activities by the other Party;
 - the extent to which the same economic agents involved will be subjected to incompatible requests, including judgements or undertakings, by both Parties;
 - the location of the assets of the economic agents involved;
 - the initiation of the procedure or the imposition of penalties or remedies;
 - the importance of the penalty to be imposed in the territory of the other Party.

*Article 12
Consultations*

1. A Competition authority which considers that an enforcement activity being conducted by the Competition authority of the other Party, or its absence, may affect its important interests should transmit promptly its views on the matter to and request consultations with the other Competition authority with a view to reaching expeditiously mutually satisfactory conclusions.
2. The Competition authority so addressed should give due consideration to the views expressed by the requesting Competition authority, factual materials as may be provided by the requesting authority, and in particular to any suggestions as to alternative means of fulfilling the needs and objectives of the enforcement activity.
3. Entering into such consultations is without prejudice to any action under its competition laws and to the full freedom of ultimate decision of the Competition authority concerned.
4. Where consultations do not lead to a mutually acceptable solution, or after the expiration of a period of two months following the request, the matter may be submitted to the Association Council.

Article 13
Dispute Settlement

1. After the unsuccessful completion of consultations as described in Article 12 and on request of the Competition authority of the Party which considers its important interest affected, the Association Council may make appropriate recommendations for the settlement of these cases.
2. 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, nor to the rights of individual Member States of the European Community on the basis of their competition rules.
3. Only if the Association Council has not found a mutually satisfactory recommendation after deliberations, a Party can claim that a practice is not being adequately dealt with in the sense of the second condition of paragraph 1 of Article 38 of Decision 1/95 of the EC-Turkey Association Council.

Final Provisions

Article 14
Confidentiality

1. Neither Competition authority is required to provide information to the other authority if disclosure of that information to the requesting authority is prohibited by law of the Party whose Competition authority possesses the information or would be incompatible with important interests of that Party.
2. Confidential information whose dissemination is not prohibited, but legally restricted, or which, if disseminated, could adversely affect the interest of a Party, shall not be provided without written consent of the source of this information.
3. Each Competition authority shall maintain confidentiality of any information provided to it in confidence by the other Competition authority under the Rules, and refuse any application for disclosure of such information by a third party that is not authorised by the Competition authority that supplied the information.

Article 15
Administrative Arrangements

1. For the purpose of the Rules, the working language is English. The Turkish Competition authorities shall provide the practical arrangements for translations from Turkish into English.
2. The Competition authorities shall use the appropriate form in writing for requests of consultation. Communication may be oral, written, by mail, by facsimile, by telephone, by electronic mail or any other means which the Parties may have at their disposal.

Article 16
Modification and Review

1. The Association Council may amend the Rules at the joint request of the Competition authorities of both Parties.
2. The Competition authorities of the Parties may meet at request and shall meet at the latest in the fifth year after entry into force of the Rules in order to review its application in detail and to propose amendments with a view to improving its functioning or to identifying additional areas of co-operation.

Article 17
Supplementary Legislation and Technical Assistance

1. In order to implement the Rules, Turkey shall establish a Turkish State Aid Monitoring Authority effective as of 01.01.2003.
2. The European Community recognises the need of Turkey to establish a comprehensive inventory of aid schemes. Turkey shall establish such an inventory of aid within one year following the establishment of the Turkish State Aid Monitoring Authority.
3. At signature of the Rules, Turkey shall inform the European Community of the content of any legislation necessary to promulgate for implementing the Rules and notify to the European Community when such legislation is in place.
4. Upon request, the Community shall provide Turkey, within the existing framework, with technical assistance for activities related to implementing the Rules.

Article 18
Entry into Force

The Rules shall enter into force on the first day of the month following their adoption.