

# Procedure file

Basic information		
CNS - Consultation procedure Decision	1997/0178(CNS)	Procedure completed
EC/United States agreement: application of positive comity principles in the enforcement of their competition laws		
Subject 2.60 Competition 6.40.11 Relations with industrialised countries		
Geographical area United States		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>RELA</b> External Economic Relations		24/09/1997
		UPE <a href="#">MALERBA Franco E.</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>ECON</b> Economic and Monetary Affairs, Industrial Policy		11/09/1997
		PPE <a href="#">PORTO Manuel</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2099</a>	29/05/1998

Key events			
18/06/1997	Legislative proposal published	COM(1997)0233	Summary
05/11/1997	Committee referral announced in Parliament		
19/03/1998	Vote in committee		Summary
19/03/1998	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A4-0104/1998</a>	
03/04/1998	Debate in Parliament		
03/04/1998	Decision by Parliament	T4-0223/1998	Summary
29/05/1998	Act adopted by Council after consultation of Parliament		
29/05/1998	End of procedure in Parliament		
18/06/1998	Final act published in Official Journal		

Technical information	
Procedure reference	1997/0178(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	International agreement
Legislative instrument	Decision
Legal basis	EC before Amsterdam E 087; EC before Amsterdam E 228-p3-a1
Stage reached in procedure	Procedure completed
Committee dossier	RELA/4/09458

Documentation gateway					
Legislative proposal		COM(1997)0233	18/06/1997	EC	Summary
Document attached to the procedure		COM(1997)0346	04/07/1997	EC	Summary
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A4-0104/1998</a> <a href="#">OJ C 138 04.05.1998, p. 0005</a>	19/03/1998	EP	
Text adopted by Parliament, 1st reading/single reading		T4-0223/1998 <a href="#">OJ C 138 04.05.1998, p. 0203-0222</a>	03/04/1998	EP	Summary

Additional information	
European Commission	<a href="#">EUR-Lex</a>

Final act
<a href="#">Decision 1998/386</a> <a href="#">OJ L 173 18.06.1998, p. 0026</a> Summary

## EC/United States agreement: application of positive comity principles in the enforcement of their competition laws

**OBJECTIVE:** Conclusion of an Agreement between the European Communities and the United States of America designed to encourage the use of positive comity principles in the application of their competition law. **SUBSTANCE:** The draft Agreement is linked to the 1991 Agreement on the application of competition rules between the United States and the Community. Its main aims are to elaborate the principles of positive comity set out in the 1991 Agreement (Article V) and to lay down the implementing rules. The Commission believes that the Draft Agreement is an important development in relations with the US and represents a political commitment on the part of the US to cooperate with the Commission rather than seeking to apply its antitrust laws extraterritorially in the EU. Specifically, the draft Agreement specifies the circumstances in which positive comity should be invoked and how requests for positive comity should be dealt with. The principle of positive comity applies where one of the Parties believes that anticompetitive activities are occurring in the territory of the other Party, and are adversely affecting its interests. That Party may then request the competition authorities of the other Party to implement appropriate measures. In this event, the Requesting Party will defer or suspend its own enforcement activities while the Requested Party is investigating the alleged anticompetitive activities. A number of provisions lay down the implementing rules governing the deferral or suspension of enforcement activities. The confidentiality of information provided under the Draft Agreement is guaranteed.?

## EC/United States agreement: application of positive comity principles in the enforcement of their competition laws

In a Commission report presented to the Council and the European Parliament on the implementation of the 1991 agreement between the Communities and the United States on the application of their rules of competition, the Commission summarised the functioning of that agreement between 1 July 1996 and 31 December 1996. As a whole, it transpired that cooperation between the Commission and its American counterparts had worked well and had made a considerable contribution to clarifying certain issues. Over the brief period considered (six months), the Commission had sent 27 notifications to the American authorities, 18 of which related to mergers, while the Commission had received 21 notifications from the American authorities, including 17 on mergers. At the procedural level, the report emphasised the prompt nature of contacts between the parties: in some cases, contact was established even before an official procedure has been initiated, with a

view to establishing from the outset the approach the respective authorities intend to adopt in dealing with a case. At the level of notifications as such, again, the cooperation had clearly worked well. It had generally taken the form of detailed discussions on the various markets affected by the merger operations and on the conditions under which the merger might be authorised. In some cases, the parties concerned had agreed to derogations such as to allow the exchange of confidential information. In other circumstances, one authority had taken the decision to withdraw so as to enable the other more freedom of action. This occurred in the IRI/Nielsen case, where the DOJ (US Department of Justice Antitrust Division), approached by IRI at the same time as the European Commission, had withdrawn in favour of the Commission because the practices involved particularly concerned the territory of Europe. It was the Commission that had conducted the negotiations and reached an acceptable solution with Nielsen, guaranteeing that competition would not be distorted. The DOJ had then terminated its own inquiry. For the Commission, this case illustrated the way in which the instrument of positive comity could be used in future under the agreement, which is currently at the approval stage. As a reminder, this draft agreement provides that a competition authority shall, in principle, defer or suspend its inquiries in the event that certain anticompetitive activities are being committed primarily within the territory of the other party or primarily affect that territory, provided that the said other party is prepared to solve the problem. In conclusion, the Commission found that the agreement continued to offer a framework that allowed constructive cooperation between the authorities concerned and also for the undertakings participating in it. The Commission was nevertheless concerned by the limitation on exchanges of confidential information in connection with certain inquiries, even when such exchanges could prove useful in settling certain cases (for example, international understandings). For this reason, the Commission was currently studying what forms of protection could be provided for information exchanged under a future cooperation agreement.?

## EC/United States agreement: application of positive comity principles in the enforcement of their competition laws

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Parliament should give its approval to the agreement between the EU and the United States on the application of "positive comity" principles in the enforcement of the competition laws of the two sides. This was the position taken by the Committee, when it unanimously adopted a report by Franco MALERBA (UPE, I). The agreement follows on from the 1991 EU-US Agreement on the application of the competition laws of the two parties. Article V of the 1991 agreement introduced the concept of "positive comity", meaning that if a Party believes that anticompetitive activities carried out on the territory of the other Party are adversely affecting its interests, the first party may notify the other and may request their competition authorities take appropriate enforcement measures. The rapporteur of the External Relations Committee shares the Commission's view that the new agreement is an important step forward from the 1991 agreement, as it not only provides guidelines on how positive comity requests should be dealt with, it also introduces a presumption that in certain circumstances a Party will defer or suspend its own enforcement measures. The main point at issue is, in fact, extraterritorial application of competition rules, which has been a recurrent bone of contention in EU-US relations (as illustrated by the case of the Helms-Burton Act). The new agreement emphasises the option of substituting international cooperation for extraterritorial application of competition rules where appropriate. In particular, a presumption of deferral or suspension of enforcement measures by a Party would "normally" apply where: -the anticompetitive activities in question did not have a direct, substantial and reasonably foreseeable impact on consumers in the Requesting Party's territory, or -the anticompetitive activities did have such an impact on the Requesting Party's consumers but occurred principally in and were directed principally towards the other Party's territory. This provision therefore adequately covers the case of extraterritorial application based solely on the effect on the export markets of the Requesting Party (as envisaged under US law) and introduces a presumption that such measures will be suspended.

## EC/United States agreement: application of positive comity principles in the enforcement of their competition laws

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In adopting the report by Mr Franco MALERBA (UPE, I) Parliament approved the conclusion of the agreement between the European Communities and the Government of the United States of America regarding the application of positive comity principles in the enforcement of their competition laws. ?

## EC/United States agreement: application of positive comity principles in the enforcement of their competition laws

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OBJECTIVE: conclusion of an Agreement between the Communities and the USA to encourage the application of positive comity principles in the enforcement of their competition laws. COMMUNITY MEASURE: Decision 98/386/EC, ECSC of the Council and of the Commission concerning the conclusion of the Agreement between the European Communities and the Government of the USA on the application of positive comity principles in the enforcement of their competition laws. SUBSTANCE: The Agreement is linked to the 1991 Agreement on the application of competition laws between the USA and the Community. It defines more clearly the term 'positive comity' as used in the 1991 Agreement (Article V) and lays down details of its application. The Agreement constitutes an important development in the Commission's relations with the USA and represents a political commitment on the part of the USA to cooperate with the Commission rather than applying its antitrust legislation extraterritorially in the EU. More specifically, the Agreement defines the circumstances in which there are grounds for requesting the application of positive comity principles and how such requests should be dealt with. The 'positive comity' principle applies where one of the Parties considers that anticompetitive acts have been committed in the territory of the other Party which affect its interests. The Party may then request the application by the other Party's competition authority of appropriate measures. In this case, the requesting Party defers or suspends its own enforcement activities while the requested Party conducts an inquiry into the alleged anticompetitive activities. Provisions are laid down concerning the procedures for implementing the deferral or suspension measures. Information forwarded pursuant to the Agreement must be treated in confidence. ENTRY INTO FORCE: the Agreement enters into force on 04.06.1998, the date of its signature by the Parties.?