



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION

**on the implementation of**  
**Decision No 2496/96/ECSC of 18 December 1996 establishing**  
**Community rules for aid to the steel industry**  
**(Steel Aid Code)**  
**in 1997**

**Report from the Commission on the implementation of  
Decision No 2496/96/ECSC of 18 December 1996 establishing  
Community rules for State aid to the steel industry (Steel Aid Code)  
in 1997.**

**1. Introduction**

Article 8 of the Commission's Decision 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry<sup>1</sup> (hereinafter referred to as Steel Aid Code or SAC) requires the Commission to draw up annual reports on the implementation of the Decision for the Council and, for information, for the European Parliament and the Consultative Committee.

**2. General overview**

- 2.1. This report describes the first cases decided by the Commission under the sixth Steel Aid Code. In general, the Commission has been able to use the new instrument of controlling State aid in the sensitive sector of ECSC steel in a satisfactory way.

In two cases it made use of the new possibilities given to it by article 6(4) of the SAC and it used the enlarged scope of Article 3 of the SAC to allow exemptions from CO<sub>2</sub> taxation for the ECSC steel industry.

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<sup>1</sup> OJ No L 338, 28.12.1996, p. 42

The monitoring of the implementation of the Article 95 ECSC cases previously decided was continued in 1997. The Commission submitted its seventh<sup>2</sup> and eight<sup>3</sup> monitoring report to the Council, covering in particular the restructuring of the companies concerned and the payment of the aid authorized.

**2.2.** In 1997 the Commission took 5 final negative decisions and in 2 two cases it took final positive decisions. In one case the procedure was closed after a withdrawal of the notification by the relevant authorities. In 7 cases the Commission did not raise objections without an opening of the procedure, including two cases where it came to the conclusion that no State aid was involved. For 7 other cases the Commission decided to open the procedure pursuant to Article 6(5) of the Steel Aid Code.

**2.3** Chapter 3 of the report gives a description of the individual cases decided by the Commission in 1997. Cases notified to the Commission in 1997 but not yet decided upon are not presented in the report. Annex I presents all the relevant information in a table.

### **3. Description of aid cases to the steel industry per Member State**

#### **3.1. Belgium**

##### **3.1.1. Forges de Clabecq / Duferco Clabecq**

The Commission decided that the financial assistance from the Walloon Region in favour of Duferco Clabecq, in the form of a capital acquisition of BEF 350 million (25% of the capital) and a 10-year loan of BEF 550 million, constitutes a genuine provision of risk capital according to usual investment practices in a market economy.

The assistance does therefore not contain any element of State aid.

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<sup>2</sup> SEC (97) 673 final

<sup>3</sup> SEC (97) 1898 final

In concluding that no aid is involved the Commission took into consideration, as regards the capital participation, that the SWS (Société Wallonne pour la Sidérurgie) acquired its minority shareholding of 25% under the same conditions and at the same time as a private investor who owns the majority of the capital.

The private partner has a solid financial structure, and the new investment is part of its entrepreneurial strategy. Investments are to be undertaken which will make it possible to give practical shape to a precise industrial strategy and the business plan predicts a positive operating margin from year 2 and profits from year 5.

As regards the loan, it was concluded that no State aid is involved as the risk of not recovering the capital is shared by both shareholders in proportion to their respective shareholding positions. In addition, the loan generates interest on a half yearly basis, irrespective of the firm's performance, at a fixed annual rate of 5.55% over ten years. The rate, which is the same as the reference rate used by the Commission since 1 August 1997 to determine the aid element of government loans in Belgium, may be regarded as the market rate applicable to this type of loan and this type of risk.

## **3.2. Germany**

### **3.2.1. Investment programme for the reduction of environmental pollution**

In January 1996 the Commission opened the procedure in respect of a German aid scheme aimed at the stimulation of projects demonstrating in what way an application of processes and technology can lead to significant reductions in air and water pollution as well as waste-disposal and noise levels.

The Commission considered that the aid intensity allowed under the scheme, i.e. 50%, was too high taken into account that demonstration projects are rather close to the market place and it furthermore held that the costs eligible for support were not only proper R and D costs but could also entail investment costs.

In October the Commission closed the procedure following the withdrawal of the notification by the German Government. The measures have not been put into effect.

### **3.2.2. Eisen- und Stahlwalzwerke Rötzel GmbH**

In July the Commission decided to open the procedure pursuant to Article 6(5) SAC in respect of guarantees granted by the Land Nordrhein-Westfalen in 1995 to the company Eisen- und Stahlwalzwerke Rötzel GmbH.

The guarantee covered 80% of a bank-credit amounting to DM 15 million for investment purposes.

### **3.2.3 Gröditz Stahlwerke and Walzwerk Burg GmbH**

The Commission opened in July the procedure of Article 6(5) SAC in respect of the privatisation of these companies and some financial interventions undertaken in the years 1993-1996.

The Commission had serious doubts whether the privatisation process by which the companies were sold to affiliates of Georgsmarienhütte GmbH did not constitute State aid.

As to the financial interventions, the Commission investigated investment aid in the form of interest-free loans amounting to DM 96.9 million and operating aid, also in the form of shareholder loans, amounting to DM 166.8 million. It has to be noted here that the shareholders at the time were State agencies.

Furthermore some guarantees and grants are the subject of the procedure.

In this case the Commission has taken the position that Gröditz GmbH is a company that is engaged in production in the steel industry and consequently falls under Article 80 of the ECSC Treaty, although the company mainly produces non-ECSC products. The fact that it produces also ECSC steel and sells parts of its ECSC steel production on the market was considered sufficient to label the company as one that falls under Article 80 of the ECSC Treaty.

### **3.2.4. MCR Gesellschaft für metallurgisches Recycling mbH**

In December 1994 the Commission took a favourable decision in respect of regional investment aid to this company.

It did so pursuant to Articles 1 and 5 of the previous Steel Aid Code<sup>4</sup>.

The Commission decided to open the procedure in December 1997 pursuant to Article 6(5) of the SAC concerning two loans totalling at DM 97 million, a guarantee and the grant of DM 24 million authorised previously.

The loans and the guarantee were intended to cover environmental costs but the Commission had serious doubts whether all the conditions of the Steel Aid Code and the Community guidelines on State aid for environmental protection<sup>5</sup> were met by the project in question.

The subsidy of DM 24 million was authorised in December 1994 and had to be paid to the company before the end of that year. The Commission received information that the subsidy had not been paid in accordance with this deadline and consequently it opened the procedure.

It also took the first step in the decision to come to a suspension of payment of the subsidy pursuant to Article 6(4) of the Steel Aid Code.

### **3.2.5. Georgsmarienhütte**

The Commission initiated, in July, a procedure under the Steel Aid Code to examine whether the relief from environmental obligations covering the recycling and disposal of industrial dust granted by the German Land Niedersachsen to the steel ECSC undertaking Georgsmarienhütte GmbH, located close to Osnabrück, represents State aid.

In 1993 the steel companies of the German Klöckner group were financially restructured through a composition procedure. The subsidiary Klöckner Edelstahl GmbH in Georgsmarienhütte was subsequently sold and renamed Georgsmarienhütte GmbH. During the composition procedure the Land Niedersachsen relieved the company from the obligation to dispose or recycle industrial dust arising from the steel making process. Subsequently, the Land

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<sup>4</sup> OJ No L 362, 31.12.91, p. 57

<sup>5</sup> OJ No C 72, 10.3.94, p. 3

charged the public Niedersächsische Landesentwicklungsgesellschaft mbH to provide for the proper disposal of the dust. This company then charged Georgsmarienhütte to recycle the dust and paid 61.64 Mio DM for this service.

The Commission is of the opinion that the relief by the State from the general obligation under public law to dispose or recycle industrial waste, arising from the polluter-pays-principle, reduces the production costs of the company concerned and may therefore represent operating aid, which would not be compatible with the Steel Aid Code.

### **3.2.6. Elbe Stahlwerk Feralpi GmbH**

The Commission initiated in November a procedure under the Steel Aid Code concerning State aid - 9.4 million DM investment grant and guarantees covering 42 million DM - granted by Saxony to the ECSC steel undertaking ESF Elbestahlwerk Feralpi GmbH in Riesa. The Commission had received information that a certain portion of investment aid that was authorized in 1993/94 under a special derogation for steel undertakings located in the former GDR may have been misused for operating purposes. In addition it had received information that supplementary investment aid and operating aid was granted in 1995/96 after the expiry of the derogation for the former Eastern Germany. This aid was granted without prior notification and therefore in breach of the procedural rules of the Steel Aid Code. The Commission invited the German Government to submit its comments covering an intended order to suspend the disbursement of any further aid in favour of ESF Elbestahlwerk Feralpi.

### **3.2.7. Stahlwerke Bremen GmbH**

The Commission decided in June that an intended injection of capital by the public investment company Hanseatische Industriebeteiligungen GmbH (Hibeg), Bremen, to the equity of Stahlwerke Bremen GmbH did not constitute State aid.

The shareholders of Stahlwerke Bremen are the Belgian steel company Sidmar NV (67.6835%) and Hibeg (32.3165%). They intended to inject DM 150 million to the equity of their company to allow the financing of certain investments, which are considered suitable to contribute towards the profitability of Stahlwerke Bremen. The shareholders would cover this amount in accordance with their percentage of shareholding. The public contribution had to be notified to the Commission according to Article 6 (2) of the Steel Aid Code. The Commission examined the intended financial measure and concluded that the behaviour of Bremen represented normal private market investors' behaviour.

### **3.3. Greece**

#### **3.3.1. Halyvourgia Thessalias**

In September the Commission authorised regional investment aid to the steel company Halyvourgia Thessalias SA pursuant to Article 5 of the Steel Aid Code.

The investment focused on the purchase and installation of a new controlled cooling system and a new high-technology shear and the resiting in another part of the plant of the cooling bed.

The aid consisted of two grants of DRA 69.6 million and DRA 26.4 million and interest subsidies for bank loans amounting to DRA 114 million.

The investment did not lead to an increase of the production capacity.

### **3.4. Italy**

#### **3.4.1. Acciaieria ISP Cremona.**

In April the Commission declared compatible with the common market by virtue of Article 2 of the Steel Aid Code a grant of LIT 25.9 billion to Acciaieria ISP Cremona.

The R & D should identify and define the technical conditions for the industrial manufacture on the ISP plant of stainless steels, and for obtaining directly the hot



manufacture in the austenitic phase of thins gauges of less than 1.5 mn which cannot be manufactured with the current rolling plants.

The R and D was considered to represent industrial research and the aid intensity of 36.6% was well below the threshold of 50%. As to the incentive effect of the aid, it must be observed that this condition was met considering the special risks and costs involved in the projects and the fact that Cremona's R&D spending represents some 4.5% of its turnover which is significantly higher than the average R&D spending of other steelmaking companies (about 1% -2%).

#### **3.4.2. Bresciani**

In February the Commission decided to close the open procedure with regard to the public interventions for six iron and steel companies within the framework of the dismantling of the private steel sector in Italy. It seems appropriate to recall that in April 1996, the Commission had initiated the procedure with respect to the State aid that the government Italian had planned to grant to the following companies: Diano, Lamifer, Demafer, LMV, MAO and Sidercamuna.

Following its analysis of the cases, the Commission noted that, exception made for the MAO cases and Diano the aid of which was permitted, in the other cases all the conditions provided for in Article 4 of the Steel AID Code were met except that referring to the regularity of production. In this respect the Commission observed that the criteria provided by the Italian authorities (valid electricity contract, investment and handling of the facilities, personnel etc) were not likely to show that the companies in question produced in a regular way but, that in fact, they were just ready to do so.

Thus, the Commission considered that in these four cases the condition relating to the regularity of production is not met and that Italian allegations could not modify the first appraisal carried by the Commission at the time of its decisions for opening the procedure.

### 3.4.3. Ferdofin Srl

In April, the Commission decided to close by a negative decision the procedure open against the public interventions in favour of Ferdofin Srl.

Having taken note of the decision of the Italian authorities, following the opening of the procedure, to withdraw the planned public guarantee envisaged by the Italian law n.95/1979, the Commission assessed whether the Italian law as such constitutes state aid.

In this respect, it is appropriate to observe that, contrary to the bankruptcy procedures envisaged by the Italian law, the procedure in question is not reserved for all the companies, but only for the major companies, i.e., the companies employing at least 300 persons and who are in situation of insolvency.

Concerning the transfer of official resources, the Commission has noted that the extraordinary administration comprises certain economic advantages giving concrete expression to the transfer of resources of the state or affecting the budget of the state.:

Therefore, the Commission comes to the conclusion that the law in question constitutes state aid. It follows from the file that the public intervention in question can aim at neither environmental protection, neither research and development nor, finally, closure.

### 3.5. Luxembourg

#### 3.5.1. ARBED S.A AND ARES S.A..

Notified aid concerns projects which were undertaken and were carried out in 1995 and in 1996. The Community framework of the State aid with research-development<sup>6</sup> establishes (point 6.5) that the Commission will attach importance particular to the analysis of the incentive effect, in order to ensure that the planned aid is under no circumstances operating aid, in the case of research projects close to the market and when a significant part of expenditure was carried out beforehand at the request of aid. The Commission observes that, in the case in point, it appears extremely difficult that one could invoke the incentive effect, and that companies would not have carried out these R&D projects without government aid, since the notified projects had already been carried out and that without any public intervention.

Similarly, the framework establishes in its point 6.1 that the aid for R&D has to provide an incentive for the companies to undertake additional R&D activities, in addition to those that they undertake within the framework of their daily activities. However, it arises from the file that the Luxembourg authorities did not justify why described work does not constitute any normal activity of the company, or in which project aid could contribute to increasing the efforts of research and of development of the companies in question beyond which they usually do.

Therefore, the Commission decided to initiate the procedure provided for in Article 6 (5) of the steel aid code against the aid mentioned.

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<sup>6</sup> OJEC No. C 45, 17.2.96, p.5

### **3.6. Sweden, Denmark and the Netherlands**

#### **3.6.1. CO<sub>2</sub> taxation**

In these three Member States legislation exists that introduces a taxation of CO<sub>2</sub> output. The taxation itself is not considered to be State aid. However an essential element of the legislation is that certain industries are charged at a lower rate in comparison with other consumers of energy. Such derogations constitute State aid. For the non-ECSC industry they have been approved by the Commission under the EC Treaty.

The ECSC steel industry is an important consumer of energy and contributes in a significant way to the production of CO<sub>2</sub> gasses. The steel industry in the three Member States is likely to be put on disadvantage in comparison with its competitors from Member States where there is no such CO<sub>2</sub> taxation if it were to be fully subjected to the tax.

It is for this reason that the three Member States concerned have included the steel industry on the list of industries charged at a lower level.

On the basis of Article 3 of the Steel Aid Code and the Community guidelines on State aid for environmental protection<sup>7</sup> this type of operating aid is compatible with the common market and consequently the Commission decided not to raise objections.

Before the adoption of the new Steel Aid Code such a decision would not have been possible except by invoking Article 95 of the ECSC Treaty.

### **3.7. Spain**

#### **3.7.1. Law 43/1995**

In July the Commission decided to investigate steel corporations tax credits granted connection with the realization of export related activities companies located in Spain are entitled to receive tax credits of up to 25% of their investments as long as these investments are related to:

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<sup>7</sup> See footnote 5

the creation of branches or permanent establishments abroad as well as the acquisition of shares in foreign corporations or setting up subsidiaries directly related to exporting goods and services;

the advertising and publicity undertaken abroad for the international launching of products, market penetration and foreign market surveys;

trade fairs, expositions and other analogue public events, in this case including those events taking place in Spain of an international nature.

It is worth noting that the Spanish corporate tax law 43/1995 consolidates legislation which has been in force since 1978, *id est* before Spain joining the Communities. Nevertheless, it must be observed that, unlike the rules under the EC Treaty, the notion of existing aid does not exist under the ECSC Treaty.

Thus, the scope of the decision is the assessment of the measures at issue only under the ECSC rules.

The above mentioned tax credit scheme appears to have the nature of state aid and to be contrary to the provisions laid down in article 4 (c) of the ECSC Treaty whilst the application of one of the exemptions provided for by the Steel Aid Code is doubtful.

MEMBER STATE	AID NUMBER	COMPANY	MEASURE	DECISION	DATE	PUBLICATION
B	N 680/97	Duferco Clabecq	capital acquisition/loan	no aid involved	5/11/97	OJ C 20, 22.1.98
D	N 361/97	Gröditzter Stahlwerke	privatisation/ various aid	opening procedure	15/7/97	OJ C 395, 31.12.97
D	C 2/96	reduction pollution	r and d/ investment aid	closure procedure/ withdrawal notification	21/10/97	OJ C 377, 12.12.97
D	N 301/97	MCR	environmental/ investment aid	opening procedure/ suspension order	16/12/97	not yet published
D	N 344/97	Stahlwerke Bremen	capital injection	no aid involved	18/6/97	OJ C 1, 3.1.98
D	NN 85/97	Rötzel	guarantee	opening procedure	30/7/97	OJ C 328, 30.10.97
D	NN 86/97	Georgs-marienhütte	relief from environmental obligations	opening procedure	15/7/97	OJ C 323, 24.10.97
D	NN 108/97	Feralpi	investment/ operating aid	opening procedure/ suspension order	18/11/97	not yet published
Dk	N 759/96	CO2 tax	derogation	approval	5/2/97	OJ C 197, 27.6.97
E	NN 116/96	Law 43/1995	tax credits	opening procedure	30/7/97	OJ C 329, 31.10.97
G	N 154/97	Halyvourgia Thessalias	regional investment aid	approval	16/9/97	not yet published
I	C 8/96	Ferdofin Srl	guarantee	final negative decision	30/4/97	OJ L 306, 11.11.97
I	N 119/97	Acciaieria ISP	r and d aid	approval	2/4/97	not yet published
I	C 54/95	Bresciani	closure aid	2 final positive decisions/ 4 final negative decisions	26/2/97	OJ L 139, 30.5.97
L	N 668/96 N 72/97 N 73/97	Arbed group	r and d aid	opening procedure	21/5/97	OJ C 250, 15.8.97
NL	N 20/97	CO2 tax	derogation	approval	30/7/97	not yet published
SE	N 742/96	CO2 tax	derogation	approval	26/2/97	OJ C 197, 27.6.97

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