COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION

on the implementation in 1994 of its Decision 3855/91/ECSC

of 27 November 1991 establishing Community rules for aid to the steel industry

1. Introduction

Article 8 of the Commission's Decision 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry[1], hereinafter referred to as Steel Aids 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 Parliament and the Consultative Committee.

The present report covers the calendar year 1994. It includes the Commission Decisions on the basis of the SAC, and it mentions , but this without a full description, the Article 95 ECSC-cases formally decided in 1994, with the exception of EKO Stahl which will be described. The aids covered by the other Article 95 decisions were already explained in the 1993-report (SEC(94) 1301 final of 27.07.94).

2. General overview

2.1 1994 saw the formal adoption by the Commission on 12 April of the Decisions under Article 95 of the ECSC Treaty concerning the restructuring, and in some cases privatisation, of the steel companies EKO Stahl and Sächsische Edelstahlwerke Freital in Germany, CSI and Sidenor in Spain, Ilva in Italy and Siderurgia Naçional in Portugal. However one month later, the private Italian group Riva withdrew and the restructuring plan for EKO Stahl collapsed. On 25 October, the Commission proposed to the Council that it give its unanimous assent to the payment of approximately DM 910 million in aid to EKO Stahl to help the company implement a new restructuring plan in partnership with Cockerill Sambre S.A. The Council gave its unanimous assent on 8 December and the formal decision of the Commission followed on 21 December..

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[1] O.J. L362 of 31.12.91

The monitoring of the restructuring and the payment of the aids approved started in this year. On a regular basis the Council is informed of this by means of monitoring reports.

2.2 The year 1994 saw also the end of the possibility to grant aid to steel undertakings located in the territories of Greece, Portugal and of the former German Democratic Republic for investment under general regional aid schemes under Article 5 SAC.

This type of aid was only deemed compatible with the common market until 31 December 1994.

The deadline for payments of the aid was also 31 December 1994, with the exception for the former GDR of the special fiscal concessions (Investitionszulage) which may be payable up to 31 December 1995.

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

3.1 Belgium

3.1.1. Aid for environmental protection

In September the Commission raised no objections to grants by the Flemish government to the steel companies N.V. ALZ at Genk and N.V. SIDMAR at Gent for environmental purposes[2].

Article 3 SAC allows State aid to steel undertakings for bringing into line with new statutory environmental standards, plants which entered into service at least two years before the introduction of these standards.

The total amount of aid granted for this purpose may not exceed 15% net grant equivalent of the investment costs directly related to the environmental measures concerned.

The aids were defined to help the two companies bringing their plants into line with new legislation for environmental protection, the so-called VLAREM II, which entered into force in January 1993.

[2] O.J. C390 of 31.12.94

The planned aid consisted of a grant of BEF 45.8 million BEF to ALZ and BEF 55.2 million BEF to SIDMAR, towards the cost of their environmental investments amounting to BEF 381.636 million for ALZ and BEF 460.215 million for SIDMAR. The aids corresponded to 8% net grant equivalent of the costs of the respective investments.

3.2 Portugal

3.2.1 Article 95 ECSC decision

On 12 April 1994, the Commission adopted the decision under Article 95 ECSC Treaty approving State aid to Siderurgia Nacional[3].

3.2.2. Further aid to Siderurgia Nacional

The restructuring plan for the company, presented in 1993, required partly a decision under Article 95 ECSC Treaty but comprised also aids that were covered by the SAC i.e. aid for closure and for environmental protection.
These aids, that are described below, were approved by the Commission in September 1994[4].

3.2.2.1 Aid for closures

Aid towards the costs of payments to workers made redundant or accepting early retirement may , according to Article 4(1) SAC, be deemed compatible with the common market, provided that the aid does not exceed 50% of that portion of such payments which is not defrayed directly pursuant to Article 56(1) (c) or (2) (b) ECSC Treaty by the Member State or by the Community according to the modalities laid down by the Commission in the bilateral conventions but is payable by the undertaking concerned.

The total social costs were 17.9 billion escudos. Of this amount, 2.1 billion escudos were covered by the ECSC budget, according to Article 56 ECSC, and 5.14 billion escudos by the Portuguese State under the same article and in accordance with the existing bilateral Convention between Portugal and the ECSC. Portugal intended to finance 50% of the remaining Esc 9.85 billion, i.e. Esc 4.925 billion, under Article 4.1 of the Steel Aids Code. The other 50% was to be borne by the company.

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[3] O.J. L112 of 3.5.94

[4] O.J. C390 of 31.12.94

In the light of the foregoing, the Commission considered that the social aids totalling a maximum of 4.925 billion escudos, to cover the workforce reductions under the restructuring plan of Siderurgia Nacional, were compatible with Article 4(1) of the Steel Aids Code.

3.2.2.2 Aid for environmental protection

The environmental investments under the plan were aimed at bringing the installations of the company into line with the new environmental regulations relating to air, water and land pollution.

The cost of these investments considered eligible for State aid under Article 3 SAC amounted to Esc 1.3 billion. The State aid amounted to Esc 1,064 billion representing a net grant equivalent of 15% as allowed by the same Article.

3.3 Luxembourg

3.3.1. Aid for research and development

In June the Commission decided not to raise objections against Luxembourg State aid for 12 R and D projects to be carried out by ProfilARBED S.A.[5] .
According to Article 2 SAC State aid to steel companies for R and D projects may be deemed compatible with the common market if it is in compliance with the provisions of the Community framework for State Aids for R and D[6]. This framework allows an aid intensity of 50% gross for projects of basic industrial research. For other research that is more close to the market place, applied research and development, in principle lower levels of aid apply. In practice, the Commission allows a financing of 25% gross for these types of research. The total cost of the projects of applied research and development amounted to FLUX 389 million and the State aid proposed to 77.8 mio FLUX. The aid intensity was consequently 20% gross which is well below the ceiling of 25% gross for applied research and development.

3.3.2. Aid for environmental protection

Also in June, the Commission decided to initiate the procedure provided for in Article 6(4) SAC in respect of a subsidy for ProfilARBED S.A. of up to FLUX 120 million gross for

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[5] O.J. C293 of 21.10.94

[6] O.J. C83 of 11.04.86

environmental costs amounting to FLUX 613 million[7].

Under the operating licence granted by the Luxembourg authorities, ProfilArbed must comply with mandatory standards fixing the thresholds for dust and noise emission. In order to meet the thresholds, Arbed had to agree to make considerable investments in the Esch Schifflange plant. In view of the high costs involved in bringing the existing steelworks into line with the environmental protection standards, Arbed decided to speed up the process of replacing its plant with equipment meeting the new environmental protection standards.
The Commission, however, had doubts whether this aid was in conformity with Article 3 SAC.

After receiving several comments by Member States and interested parties, the Commission decided in December to close the procedure and not to raise objections[8].

The Commission considered that it is possible, under Article 3(1) of the Steel Aids Code, to consider as compatible with the common market aid not exceeding 15% gross granted to firms which instead of bringing into line with new environmental standards plants which entered into service at least two years before the introduction of the standards, decide to replace them by new facilities meeting the new standards provided that the aid does not exceed that which would have been granted for adapting the old steelworks. Since the aid conforms to Article 3 of Decision N° 3855/91/ECSC, it may therefore be considered compatible with the common market.

3.4 Spain

3.4.1 Article 95 Decisions

On 12 April 1994, the Commission formally adopted Decisions concerning aid to the steel companies Corporación de la Siderurgia Integral and Sidenor[9].

3.4.2 Further aid to Corparacion de la Siderurgia Integral and Sidenor

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[7] O.J. C212 of 3.8.94

[8] O.J. C400 of 31.12.94

[9] O.J. L112 of 3.5.94

3.4.2.1 Aid for closures : Corporación de la Siderurgia Integral

The restructuring of CSI involved social costs amounting to a total of PTA 250.57 billion. Of this, PTA 134.267, paid for by the Spanish government, was not considered to be State aid, being payments under either adapted general measures or specific provisions under Article 56 ECSC Treaty of costs not falling on the company. PTA 14.434 billion was to be covered under the ECSC budget leaving a balance of PTA 101.869. Costs of PTA 7.169 billion arising from the acceleration of the Ansio closure represented operating aid incompatible with Article 4 (c) ECSC Treaty and the Steel Aids Code. This amount was therefore included in the Article 95 ECSC Decision. The remaining balance of PTA 94.7 billion was for 50% (PTA 47.35 billion) compatible with Article 4(1) SAC.
After consulting the Member States the Commission decided in February not to raise objections to this aid.

3.4.2.2. Aid for closure : Sidenor

On the basis of Article 4 (1) SAC and after a consultation of the Member States the Commission authorised also in February social aid amounting to PTA 7.79 billion to the company Sidenor.

The social costs of the restructuring plan were estimated at PTA 31.994 billion. Of this, PTA 12.798 billion was to be paid by the Spanish Government under general social security arrangements while PTA 3.617 billion was to be covered under the ECSC budget. On the balance costs for the company totalled at PTA 15.579 billion.

Article 4(1) SAC permits an aid of 50% to defray these expenses. The remaining half of the costs were authorized by the Commission under the Article 95 ECSC-Decision.

3.4.3. Aid for closures : Public Shareholding

In March the Commission authorized under Article 4(1) SAC and after consulting Member States social aid to two privately-owned special steel companies Aforasa and PESA, producing together approximately 150,000 tons of special steel per year[10]. Around 85% of their sales are ECSC-relevant.
An integration of the activities of the two companies into a new holding company Grupo

[10] O.J. C201 of 23.7.94

Siderurgico Vasco (GSB) with less capacity would lead to the shedding of 515-545 jobs.

The social cost of such a reduction of the workforce were partly covered by the Basque regional government by paying PTA 1.545 billion.

The setting up of this new company appeared to be a clear decision of the two private companies involved which planned it as a natural integration of their activities with a view to achieving greater profitability. The Basque government's participation of 15 % in the shareholding was on the same terms and conditions as the two other parties. Therefore the taking of this minority interest was considered to be in accordance with normal market economy conditions and included no State aid elements.

3.5. Italy

3.5.1 Article 95 decision

On 12 April 1994 the Commission formally adopted a Decision concerning aid to the public steel sector (Ilva group)[11]. In January it already decided to close the procedure pursuant to Article 6(4) of the SAC in respect of these aids.

3.5.2. Aid for R and D

Aid amounting to LIT 4,409 billion (ECU 2.3 million), or less than 10% of eligible costs, was granted under Italian Law N° 46 of 17 February 1982 to Ilva for the implementation of a research programme costing LIT 45,325 billion and comprising three projects relating to the study of production processes and innovative products in the steel industry. Aid amounting to LIT 1,857 billion (ECU 960,000), equivalent to 10% of eligible costs, was also authorized for the development by Dalmine of an integrated programme on the design and manufacture of steel tubes suitable for use with oil, gas and geothermal products.

In both cases the Commission decided in September that, in accordance with the provisions of the Steel Aids Code, the planned aid stayed within the limits of the framework for State aid for research and development and was therefore compatible with the common market[12].

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[11] O.J. L112 of 3.5.94

[12] O.J.C390 of 31.12.94

3.5.3. Guarantee ; opening of procedure

In November, the Commission decided to open the procedure provided for by Article 6(4) SAC in respect of the granting of a State guarantee under Article 2 bis of the Law Prodi to the steel undertaking Altiforni e Ferriere di Servola[13]. The guarantee, that was not called upon, was granted in relation to credits awarded to AFS by some Italian banks.

The Commission had reasons to believe that this guarantee constituted State aid because it allowed AFS to obtain external financing that otherwise would not have been obtained since financial institutions are not willing to assume the risks without the State guarantee in view of the serious financial difficulties experienced by the company and that AFS had not paid any risk premium to the Italian government for the credit guarantee. It was not possible for the Commission to declare the aid compatible with the common market since the aid could not be clearly related to one of the categories of aid allowed by the Steel Aids Code.

3.5.4. Restructuring aid

Law N° 481 earmarks, for the period 1994-96, LIT 790 billion (ECU 410 million), for restructuring of the Italian steel industry involving plant closures (LIT 600 billion) and retraining of the workforce (LIT 190 billion). Its implementation should make possible an additional reduction in production capacity of some 5 million tonnes. The Commission decided in October to authorize the aid scheme in question, having satisfied itself that it was in conformity with the Steel Aids Code, in particular Article 4(2), and may not be granted for partial plant closures[14]. The aid for the creation of alternative jobs will be granted in areas eligible for regional aid, within the limits laid down for such aid, and outside those areas will satisfy the criteria in the guidelines on aid for SMEs. The Italian government undertook to notify in advance all individual awards under the Law so that the Commission can decide whether they are compatible with community law.

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[13] Not yet published

[14] O.J. C390 of 31.12.94

3.6. Germany

3.6.1. Article 95 decision's

On 12 April the Commission adopted its final decision authorizing the aids to EKO Stahl AG and Sächsische Edelstahlwerke GmbH[15].

In the case of EKO Stahl AG the Commission approved up to DM 813 million (ECU 444 million) aid to back the privatization and restructuring plan under participation of the Italian Riva group . In May 1994, the Riva group withdrew from the privatization contract.

On 6 July 1994, the Commission decided to initiate a procedure pursuant to Article 6 (4) of the Steel Aids Code with regard to the continuous loss financing in favour of EKO Stahl GmbH [16] by the public holding Treuhandanstalt (hereinafter referred to as 'the THA') and an investment loan granted by a public bank. It held that these transfers of financial ressources from public entities to the steel undertaking may represent State aid incompatible with the Steel Aids Code[17].

On 27 July 1994, the Commission decided to initiate an second procedure under Article 6 (4) of the Steel Aids Code with regard to a notification of the German authorities received on 29.6.1994 covering investment aid under general regional investment aid schemes of up to DM 300 million (ECU 164 million)[18]. The Commission was of the opinion that such aid, although it may in general be deemed compatible with the common market under Article 5 indent 3 of the Steel Aids Code, would not serve towards the aims of the Treaty if it would not be accompanied by a restructuring plan providing for the proper financing of the entire industrial restructuting of the company in question.

On 10 October 1994, the German authorities notified a new privatization and restructuring plan, providing for the sale of 60% of the shares to the Belgian Cockerill Sambre S.A.. On 8 December 1994 the Council gave its unanimous assent to State aid connected to this plan .

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[15] O.J. L112 of 3.5.94

[16] On 17.6.1994 the corporate form of EKO Stahl has been changed from Aktiengesellschaft (AG) into Gesellschaft mit beschränkter Haftung (GmbH)

[17] O.J. C274 of 1.10.94

[18] O.J. C303 of 29.10.94

On 21 December 1994, the Commission adopted its final decision authorizing State aid of up to DM 900.62 million (ECU 492 million), of which DM 362.2 million (ECU 198.1 million) to cover losses accumulated until the end of 1994, up to DM 220 million (ECU 120.2 million) to cover losses during the restructuring period 1995 -1997, up to DM 314 million (ECU 171.6 million) to cover costs of investments and repairs and a guarantee of the public THA representing an aid element of up to DM 4.02 million (ECU 2.2 million)[19]. Since EKO Stahl GmbH has no own hot-rolling capacities, the Commission accepted the closure of a hot-rolling mill of Hennigsdorfer Elektrostahlwerke GmbH (Brandenburg) with a capacity of 320 kt/y and of another hot-rolling mill with a capacity of 41 kt/y of Walzwerke Burg GmbH (Brandenburg) as sufficient to reduce the distortive effect of the aid approved. The creation of a new hot-rolling mill with a capacity of 900 kt/y (limited at this capacity for a period of five years) by EKO Stahl GmbH shall be balanced by capacity reductions in hot-rolled finished products elsewhere in the territory of the former GDR.

3.6.2 Further aid to EKO Stahl

Also on 21 December, the Commission authorized investment aid in favour of EKO Stahl GmbH of up to DM 385 million (ECU 210.4 million) under general regional investment aid schemes, applying Article 5 indent 3 of the Steel Aids Code[20]. The procedure initiated on 27 July 1994 has been closed [21].

3.6.3. Aid for investment

According to Article 5 SAC aid granted to steel undertakings for investment under general regional aid schemes may until 31 December 1994 be deemed compatible with the common market provided that the aided undertaking is located in the territory of the former GDR and the aid is accompanied by a reduction in the overall production capacity of that territory.

3.6.3.1. General investment aid scheme

The Commission approved, in November, the extension of the application of the 22nd and 23rd "Rahmenplan der Gemeinschaftsaufgabe Verbessurung der Regionalen Wirschaftstruktur"

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19 O.J. L386 of 31.12.94

20 Not yet published

21 Not yet published

to the ECSC-sector[22].

This regional aid scheme, allows, including cumulation with other regional aid schemes, an intensity of 35 % gross. With a view to Article 5 SAC the approval was limited to 31 December 1994.

3.6.3.2 Individual cases

In December the Commission authorized regional investment aid to 28 companies mostly because of investments for the collection and treatment of iron and steel scrap for recycling in the steel industry[23]. These companies were : Metall-Rohstoff Eberswalde GmbH, Theo Steil GmbH, M.F. Metallaufbereitung Cottbus GmbH, Oder Schrott und Metallverwertungs GmbH, TRR Thyssen Rohstoff-Recycling GmbH , Zehdenicker Schrott-und Metallhandel GmbH, Rohstoffverwertung GmbH, Rohstoff-Recycling GmbH Lauchhammer, Rohstoff-Recycling Brandenburg GbR, Metalle und Autoverwertung Weckwerth Betriebsstätte Angermünde, Metalle und Autoverwertung Weckwerth Betriebsstätte Berkholz-Meyenburg, Robert Wetzel, Mettallaufbereitung GmbH, SMR Schrott-Metall-Recycling Fürstenwalde, Rheinmetall GmbH, Rüdersdorfer Recyclingwerk KLEWO GmbH, Rohstoff-Recycling GmbH Alt Golm Betriebsstätte Fürstenwalden, Walzwerke Ilsenburg GmbH, W.Bötzel GmbH, Märkische Montagerealisierung und Metallverarbeitung GmbH, Klöckner Rohstoff Recycling, SFM Recycling GmbH, Jade-Stahlhandel und Rohstoffverwertung GmbH, Firma Rolf Thieke, Wirtschaftshof Bringfried Hiller, Rohstoffrecycling GmbH, MCR Gesellschaft für metalurgisches Recycling mbH and Eisenhüttenstadter Entwicklungsgesellschaft für Wertstofgewinnung mbH. Regional investment aid to Geweniger Recycling GmbH for the same purpose was approved in February[24].

3.6.3.3 Sächsische Edelstahlwerke Freital

In August 1993, the Commission raised no objections in respect of regional investment aid to this company[25]. The decision was based on the notification of costs amounting to 210 mio DM for ECSC products. At a later stage it turned out that these estimations had been too low and that the total costs were 230 mio DM. In December 1994 the Commission approved an

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[22] O.J. C390 of 31.12.94

[23] O.J. C401 of 31.12.94

[24] O.J. C165 of 17.6.94

[25] O.J. C401 of 31.12.94

investment subsidy of 47.8 mio DM, a tax allowance of 12.8 mio DM and an ERP loan amounting to 75 mio DM.

3.6.3.4 Hennigsdorfer Elektrostahlwerke and Brandenburger Elektrostahlwerke

Also in December 1994, the Commission authorized regional investment aid to these two companies[26]. Hennigsdorf received, on an investment of 78 mio DM, an investment subsidy of 11.7 mio DM and a tax allowance of 2.56 mio DM, for modernization and for measures protecting the environment.

Brandenburg received an investment susbisdy of 9.675 mio DM and a tax allowance of 2.54 mio DM, representing 18.93 % gross of the investment costs amounting to 64.5 mio DM.

For both companies, the investments did not affect the hot-rolled capacity.

3.6.3.5 ESF Elbe Stahlwerke Feralpi GmbH

For an investment plan leading to a hot-rolling capacity of 450,000 t/y of long products instead of the previous capacity of 650,000 t/y, this company received regional investment aid in 1993. In order to obtain the foreseen capacity an extra investment of 51 mio DM was deemed necessary in 1994. The Commission raised in December no objections to an investment subsidy of 11.73 mio DM, a tax allowance of 4.08 mio DM and a loan from the ERP-programme of 6.215 mio DM[27].

3.6.4. Public shareholding

3.6.4.1. Klöckner Stahl GmbH

In January 1994, the Commission initiated a procedure under Article 6(4) of the Steel Aids Code with respect to the injection of public capital into the equity of the German steel undertaking Klöckner Stahl GmbH with its steel works in Bremen[28]. The former sole shareholder of this company, Klöckner Werke AG, had agreed in November 1993 to transfer

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[26] O.J. C401 of 31.12.94

[27] O.J. C401 of 31.12.94

[28] O.J. C110 of 20.4.94

two thirds of the shares to four Bremen based companies, including two public companies that were to inject 68% of the fresh capital from the new shareholders totalling 250 Mio DM. The Commission held that the behaviour of the State might not be comparable to a genuine provision of risk capital according to normal investment practice in a market economy and therefore may represent State aid prohibited under the Steel Aids Code.

In April 1994, the Belgian steel company Sidmar B.V. entered the group of shareholders, taking over 25.01% of the shares after an increase of stock capital in return for an injection of fresh capital , with the result that the public shareholders held only 33.98% of the shares. The fresh capital to be injected under both contracts, interconnected through a letter of intent of Sidmar of October 1993, was now being provided by only 46.5% through public funds. On the basis of this new development the Commission was convinced that the behaviour of the State was in line with normal investment practice in a market economy and therefore did not represent State aid. It decided formally in September 1994, after having adopted its position in principle already in July 1994, to close the procedure under Article 6 (4) of the Steel Aids Code[29].

3.6.4.2. Hamburger Stahlwerke GmbH

In July 1994, the Commission initiated a procedure under Article 6(4) of the Steel Aids Code with regard to loans granted on the basis of a credit line totalling 184 Mio DM (96.84 MECU) and a loan of 20 Mio DM (10.52 MECU), used for the initial provision of risk capital in 1984, granted through the public Hamburgische Landesbank Girozentrale to Hamburger Stahlwerke GmbH[30]. The Commission was of the opinion that the company is indirectly being controlled by the State and that the financing of the company nearly exclusively through public funds may represent Stae aid prohibited under the Steel Aids Code and requested other Member States and third parties to submit their comments.

3.6.4.3. Neue Maxhütte Stahlwerke GmbH and Lech-Stahlwerke GmbH

In May 1994, the German authorities informed the Commission about the intention of the Bavarian authorities to privatize its 45% share in Neue Maxhütte Stahlwerke GmbH (NMH) and its 20% share in Lech-Stahlwerke GmbH (LSW). It was intended to transfer the shares to a private entrepreneur, controlling already 44% of the shares of NMH, for a symbolic price

[29] O.J. C390 of 31.12.94

[30] O.J. C293 of 21.10.94

and to grant a countervailing payment of 20 Mio DM (10.52 MECU) to cover past losses of LSW and an amount equivalent to 80% of the past losses of NMH. In addition it was intended to grant 56 Mio DM (29.47 MECU) to cover costs of certain investments to modernize the installations of NMH. The Commission initiated the procedure under Article 6(4) Steel Aids Code in September 1994[31]. It held that the intended payments may represent State aid prohibited under the Steel Aids Code and requested other Member States and third parties to submit their comments.

In November 1994, the Commission initiated a second procedure with regard to loans totalling 49.895 Mio DM (26.26 MECU) granted by the State to retain NMH in operation[32]. Since the other shareholders did not participate in that financing of the company comparable to the State's contribution, the Commission was of the opinion that the behaviour of the State may not be in line with normal investment practice in a market economy and would therefore represent State aid prohibited under the Steel Aids Code.

3.6.5. Steel undertakings in bankruptcy

In April 1994, the European Independant Steel Producers Association filed a formal complaint under Article 35 of the ECSC Treaty, requesting the Commission to take appropriate measures against presumed State aid it considered Saarstahl AG i.K. (= in bankruptcy) to benefit from. The Commission studied the facts and concluded in July 1994 that the company did not receive any State aid. The financial measures of the State in conncetion with the bankruptcy of the company were social measures on the basis of the general social welfare system to the benefit of employees of the company. The Commission concluded further that the use of the general legal possibilities of the German legislation for bankrupt companies cannot represent State aid, because the legal situation is the same for any entity in severe financial difficulties and is therefore not specific.

[31] O.J. C377 of 31.12.94

[32] O.J. C135 of 8.7.95