



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.03.1996
SEC(96) 284 final

COMMUNICATION FROM THE COMMISSION

Request for Council assent and consultation of the ECSC Committee,
pursuant to Article 95 of the ECSC Treaty,
concerning a draft Commission decision

**establishing Community rules for aid to the steel industry
(Steel Aids Code - SAC)**

COMMUNICATION FROM THE COMMISSION

I. Background

According to Article 4 (c) of the ECSC Treaty any aid of Member States to ECSC steel undertakings in any form whatsoever and whether specific or non-specific is prohibited. Since 1980, the Commission, based on Article 95 of the ECSC Treaty, established regularly, with the unanimous assent of the Council, Community rules for aid to the steel industry. Currently, the Fifth Steel Aid Code of November 1991¹, covering the years 1992 - 1996, is in force.

The strict regime established by the Steel Aids Code has ensured fair competition in the European steel industry in recent years.

II. A new Steel Aids Code

The Fifth Steel Aids Code will expire by the end of 1996. The ECSC Treaty will expire by 23 July 2002. In order to ensure fair competition in the ECSC steel industry up until the expiry of the Treaty it is proposed to renew the rules of the existing Steel Aids Code, with the exception of its Article 5, covering regional investment aid for certain regions of the Community. These aids were intended to allow the restructuring of steel undertakings in the most disfavoured regions of the Community during a limited period up until the end of 1994. They served their purposes so that the provisions on regional investment aids should not be retained.

The provisions concerning aid for research and development and for aid for environmental protection are proposed to follow more closely than in the Fifth Steel Aids Code the expressed intention to provide an equal footing of the Community steel industry with other industries as regards these types of aid. Therefore, the proposed provisions refer directly to the Community framework on aid for research and development, that has been newly established in December 1995, and the framework for aid for environmental protection, in its current version of 1994. Whenever these frameworks are amended, the new rules applicable under the EC Treaty would automatically also be applicable for the ECSC steel industry pursuant to Articles 2 and 3 of the draft new Steel Aids Code. Thereby, an equal treatment of the steel industry would be ensured.

The provisions regarding closure aid are proposed to be maintained in order to promote further adaption of the capacities in the European steel industry to long term demand. It is, however, proposed to allow also closure aid for undertakings which are part of a group with different steel undertakings provided that the group does not increase its ECSC capacity for a period of five years.

In order to bring the procedural rules applicable under the Steel Aids Code in line with the practice of the Commission in State aid cases under the EC Treaty, the existing rules are

¹ Commission Decision No 3855/91/ECSC of 27.11.1991, OJ No L 362, 31.12.1991, p. 57

proposed to be amended as regards the treatment of non-notified State aid. The proposed new provision spells out that the principles laid down in the judgement of the European Court of Justice in the '*Boussac*' case² and in the communication of the Commission to the Member States³ concerning the suspension of aid and the recovery of aid paid without awaiting the prior decision of the Commission are also applicable in cases of non-notified aid to an ECSC steel undertaking.

III. Proposal

The European Commission consequently proposes to the Council of Ministers to give its unanimous assent under Article 95 of the ECSC Treaty to the adoption of the draft Decision annexed.

The Commission will, pursuant to Article 95 of ECSC Treaty, also consult the Consultative Committee on this proposal.

² Case C 301/87, Judgement of 14.3.1990, ECR 1990 I 307

³ OJ No C 156, 22.6.1995, p. 5

COMMISSION DECISION No
of 1996
establishing Community rules for aid to the steel industry
(Steel Aids Code - SAC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community and in particular the first and second paragraphs of Article 95 thereof,

Having consulted the Consultative Committee and with the unanimous assent of the Council,

WHEREAS:

1.

Any aid in any form whatsoever and whether specific or non-specific which Member States might grant to their steel industries is prohibited pursuant to Article 4 (c) of the Treaty establishing the European Coal and Steel Community (hereinafter referred to as 'the ECSC Treaty').

In 1980 the Commission first established, based on Article 95 of the ECSC Treaty, rules authorizing the grant of aid to the steel industry in certain cases expressly provided for. These rules have been regularly renewed and developed since then¹. Currently, Decision No 3855/91/ECSC², covering the period 1992 - 1996, is in force.

The rules cover aid, whether specific or non-specific, financed by Member States in any form whatsoever.

Their aim is firstly not to deprive the steel industry of aid for research and development and for environmental protection. The rules also authorize social aid to encourage the partial closure of plants or finance the definitive cessation of all ECSC activities by the least-competitive enterprises. There was an exemption regarding regional investment aid in certain Member States but this has now expired. All other aids are prohibited.

The strict regime thus established has ensured fair competition in this industry in recent years. It is consistent with the objective pursued through the completion of the single market. It should therefore continue to be applied, albeit with a number of technical modifications.

Decision No 3855/91/ECSC will, according to its Article 9, expire on 31 December 1996.

¹ Decision No 257/80/ECSC of 1.2.1980 (OJ No L 29, 6.2.1980, p. 6) covered the period up until 31.12.1981 and was replaced by Decision No 2320/81/ECSC of 7.8.1981 (OJ No L 228, 13.8.1981, p. 14), amended by Decision No 1018/85/ECSC of 19.4.1985 (OJ No L 110, 23.4.1985, p. 5), covering the period up until 31.12.1985. As from January 1986, Decision No 3484/85/ECSC of 27.11.1985 (OJ No L 340, 18.12.1985, p. 1) was in force up until 31.12.1988 and was replaced by Decision No 322/89/ECSC of 1.2.1989 (OJ No L 38, 10.2.1989, p. 8) that was valid up until 31.12.1991.

² OJ No L 362, 31.12.1991, p. 57

The Community thus finds itself faced with a situation not specifically provided for in the ECSC Treaty and yet requiring action. In these circumstances, recourse must be had to the first paragraph of Article 95 of the ECSC Treaty so as to enable the Community to pursue the objectives set out in Articles 2 to 4 thereof.

II.

In order to cover the period remaining until the expiry of the ECSC Treaty, this Decision will apply until 22 July 2002.

In order to ensure that the steel industry and other industries have equal access to aid for research and development and to aid for environmental protection, in so far as this is permitted by the Treaties, the compatibility of these aids with the common market will be assessed in the light of the existing Community frameworks on State aid for research and development and on State aid in environmental matters. The latter provides for a reduction of maximum aid intensities to adapt to new statutory standards compared to the provisions of Decision No 3855/91/ECSC and allows for higher aid for investments that lead to a protection of the environment exceeding significantly the minimum standards. Furthermore, it opens some limited possibilities for operating aid, in particular for relief from environmental taxes in cases where it is necessary to prevent firms from disadvantages compared to their competitors in countries that do not have such measures.

Where an undertaking ceases all ECSC activity, aid for closure may be paid without restriction as to the nature of its steel production. Since the rules concerning closure aid of Decision No 3855/91/ECSC were limited to cases in which the company closing its steel plants was not part of a group including other ECSC firms, the practical relevance of these provisions was rather limited. Therefore, in order to promote further capacity reductions in the steel sector, the present Decision allows also closure aid for companies that belong to a group with other steel firms, provided that it is effectively separated and that the group does not increase its remaining capacity throughout a period of five years.

To avoid discrimination due to the variety of forms which State aid may take, transfers of State resources to public or private steel firms, in the form of acquisitions of shareholdings or provisions of capital or similar financing, must be subject to the same procedures as aid so that the Commission can determine whether such operations involve an aid element. This will be the case where the financial transfer is not a genuine provision of risk capital according to usual investment practice in a market economy. The compatibility of any such aid element with the Treaty must be assessed by the Commission in the light of the criteria laid down in this Decision. For this purpose, all such financial transfers must be notified to the Commission and may not be implemented if before the end of the standstill period laid down in Article 5 (6) the Commission determines that they contain aid elements and initiates the procedure provided for in Article 5 (5).

In order to ensure an equal footing of the ECSC steel industry and other industries³ the Commission may, if a Member State fails to comply with its obligation to notify the Commission in advance of a financial transfer in favour of an ECSC steel undertaking, after giving the Member State concerned the opportunity to comment, adopt a provisional decision ordering the Member State to suspend the disbursement of any financial means and to recover financial means that have been disbursed in infringement of the above procedural requirements.

This Decision will be applied in accordance with current or future international commitments of the Community concerning State aid to the steel industry.

In order to maintain transparency with regard to aid, the Commission will draw up an annual report on the implementation of this Decision.

HAS ADOPTED THIS DECISION:

Article 1 **Principles**

1. Aid to the steel industry, whether specific or non-specific, financed by Member States or their regional or local authorities or through State resources in any form whatsoever may be deemed Community aid and therefore compatible with the orderly functioning of the common market only if it satisfies the provisions of Articles 2 to 4.
2. The term 'aid' also covers the aid elements contained in transfers of State resources by Member States, regional or local authorities or other bodies to steel undertakings in the form of acquisitions of shareholdings or provisions of capital or similar financing (such as bonds convertible into shares, or loans, the interest or repayment on which is at least partly dependent on the undertaking's financial performance) which cannot be regarded as a genuine provision of risk capital according to usual investment practice in a market economy.
3. Aid coming within the terms of this Decision may be granted only after the procedures laid down in Article 5 have been followed and shall not be payable after 22 July 2002.

³ see European Court of Justice, Case C 301/87 (*Boussac*), Judgement of 14.3.1990, ECR 1990 I 307 and the Communication of the Commission to the Member States, OJ No C 156, 22.6.1995, p. 5

Article 2

Aid for research and development

Aid granted to defray expenditures by steel undertakings on research and development projects may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community framework on State aid for research and development⁴ in force at the date of the Commission's decision approving the aid.

Article 3

Aid for environmental protection

Aid for environmental protection may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community guidelines on State aid for environmental protection⁵ in force at the date of the Commission's decision approving the aid.

Article 4

Aid for closures

1. Aid towards the costs of payments to workers of ECSC steel undertakings made redundant or accepting early retirement may be deemed compatible with the common market provided that
 - (1) the payments actually arise from the partial or total closure of steel plants that have been in regular production up to the time of notification of the aid and whose closure has not already been taken into account for the purposes of applying Commission Decisions No 257/80/ECSC⁶, No 2320/81/ECSC⁷, No 3484/85/ECSC⁸, No 218/89/ECSC⁹, No 322/89/ECSC¹⁰, No 94/257 -261/ECSC¹¹, No 94/1075/ECSC¹², No 96/.../ECSC¹³, on aid to the steel industry or the Act of Accession of Spain and Portugal and pursuant to Article 5 third indent of Decision No 3855/91/ECSC,

⁴ current framework published in OJ No C 45, 17.2.1996, p. 5. Provisions, laid down in paragraph 5.10.3., applicable to a research project which is in accordance with the objectives of a specific project or programme undertaken as part of the current Community RTD framework programme are applicable also to aid to a research project which is undertaken as part of an ECSC steel RTD project or programme.

⁵ current framework published in OJ No C 72, 10.3.1994, p. 3

⁶ OJ No L 29, 6.2.1980, p.5

⁷ OJ No L 226, 13.8.1981, p. 17

⁸ OJ No L 340, 18.12.1985, p.1

⁹ OJ No L 86, 31.3.1989, p. 76

¹⁰ OJ No L 33, 10.2.1989, p. 8

¹¹ OJ No L 112 of 3.5.1994, p. 52 - 82

¹² OJ No L 386 of 31.12.1994, p. 18

¹³ OJ No L xx, xx.xx.1996, p. x (*Irish Steel*)

- (2) the payments do not exceed those customary, under the rules in force in the Member States on 1 January 1996 and
 - (3) the aid does not exceed 50 % of that portion of such payments which is not detracted directly pursuant to Article 56 (1) (c) or (2) (b) of the ECSC Treaty by the Member State and/or by the Community according to the modalities laid down in the bilateral conventions but is payable by the undertaking concerned.
2. a) Aid to steel undertakings which permanently cease production of ECSC iron and steel products may be deemed compatible with the orderly functioning of the common market, provided that the undertakings
- (1) became a legal entity before 1 January 1996,
 - (2) have been regularly producing ECSC iron and steel products up to the date of notification of the particular aid in accordance with Article 5,
 - (3) have not reorganized their production or plant structure since 1 January 1996,
 - (4) are not directly or indirectly controlled, within the meaning of Decision No 24/54 of the High Authority, and do not themselves directly or indirectly control, an undertaking that is itself a steel undertaking or controls other steel undertakings,
 - (5) dismantle¹⁴ the installations used for the production of ECSC iron and steel products within six months after the cessation of production or six months after the approval of the aid by the Commission, whatever is the later, and
 - (6) that the closure of their plants has not already been taken into account for the purposes of applying the Decisions referred to in paragraph 1 (a) or the Act of Accession of Spain and Portugal or granting a favourable opinion pursuant to Article 54 of the ECSC Treaty.
- b) Aid to steel undertakings which fulfill the above conditions (1) - (3), (5) and (6) but which are directly or indirectly controlled by or themselves directly or indirectly control an undertaking that is itself a steel undertaking may be deemed compatible with the common market provided that
- (1) the undertaking is effectively and legally separated from the corporate structure before the granting of the aid and
 - (2) other steel undertakings belonging to the grouping do not increase their capacity for the production of ECSC iron and steel products throughout a period of five years following the date of the aided closures, or, if this will be later, the last payment of aid approved under this Article.
- c) The amount of aid may not exceed the higher of the following two values, as determined by an independent consultant's report:

¹⁴ as defined in Commission Decision No 3010/91/ECSC, OJ No L 286, 16.10.1991, p. 20

- the discounted value of the contribution to fixed costs obtainable from the plants over a three-year period, less any advantages the aided firm derives from their closure, or
- the residual book value of the plants (ignoring that portion of any revaluations since 1 January 1996 which exceeded the national inflation rate).

Article 5 Procedure

1. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid of the types referred to in Articles 2 to 4. It shall likewise be informed of plans to grant aid to the steel industry under schemes on which it has already taken a decision under the EC Treaty. The notifications of aid plans must be lodged with the Commission at the latest by 31 December 2001.
2. The Commission shall be informed, in sufficient time for it to submit its comments, and by 31 December 2001 at the latest, of any plans for transfers of State resources by Member States, regional or local authorities or other bodies to steel undertakings in the form of acquisition of shareholdings or provisions of capital or similar financing.

The Commission shall determine whether the financial transfers involve aid elements within the meaning of Article 1 (2) and, if so, shall examine whether they are compatible with the common market under the provisions of Articles 2 to 4.

3. The Commission shall seek the views of the Member States on plans for closure aid and on other major aid proposals notified to it before adopting a position on them. It shall inform the Member States of the decisions it has adopted on aid proposals, specifying the form and volume of the aid.
4. a) The planned measures falling within paragraph 1 or 2 may be put into effect only with the approval of and subject to any conditions laid down by the Commission.
- b) The Commission may, after giving the Member State concerned the opportunity to comment, adopt a decision under paragraph 1 of Article 88 of the ECSC Treaty ordering the Member State to suspend the disbursement of any financial means until after the approval of the Commission. Article 88 of the Treaty shall continue to apply in the event of a Member State's failure to comply with such decision.
- c) The Commission may, after giving the Member State concerned the opportunity to comment, adopt a decision under paragraph 1 of Article 88 of the ECSC Treaty ordering the Member State to provisionally recover any financial means which have been disbursed in infringement of Article 5 paragraph 4 a) of this Decision and Article 4 c) of the ECSC Treaty. Repayment shall be made in accordance with the procedures and provisions of domestic law of the Member State concerned with interest, based on the interest rate used as reference rate in

the assessment of regional aid schemes, starting to run on the date of disbursement. Article 88 of the ECSC Treaty shall continue to apply in the event of a Member State's failure to comply with such decision.

5. If the Commission considers that a certain financial measure may represent State aid in the sense of Article 1 paragraph 2 or doubts whether a certain aid is compatible with the provisions of this Decision it shall inform the Member State concerned and give notice to the interested parties concerned and other Member States to submit their comments. If, after having received the comments and after having given the Member State concerned the opportunity to react, the Commission finds that the measure in the given case is an aid incompatible with the provisions of this Decision it shall inform the Member State concerned of this decision. The Commission shall take such a decision not later than three months after receiving the information needed to assess the proposed measure. Article 88 of the Treaty shall apply in the event of a Member State's failure to comply with such decision.
6. If the Commission fails to initiate the procedure provided for in paragraph 5 or otherwise to make its position known within two months of receiving full notification of a proposal, the planned measures may be put into effect provided that the Member State first informs the Commission of its intention to do so. Where the Commission seeks the views of Member States under the provisions of paragraph 3, the above mentioned time period shall be three months.

Article 6 **Reports of Member States**

Member States shall supply the Commission twice a year with reports on the aid disbursed over the previous six months, the uses to which the aid was put and the results obtained over the same period. The reports shall include particulars of all financial operations carried out by the Member States or local or regional authorities in relation to publicly-owned steel undertakings. They must be supplied within two months following the end of each six-month period.

Article 7 **Reports of the Commission**

The Commission shall draw up annual reports on the implementation of this Decision for the Council and, for information, for the Parliament and the Consultative Committee.

Article 8 **Term of validity**

This Decision shall enter into force on 1 January 1997. It shall apply until 22 July 2002.

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Article 9
Applicability

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done in Brussels,

For the Commission