



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION

on the implementation of
Decision No 3855/91/ECSC of 27 November 1991 establishing
Community rules for aid to the steel industry
(Steel Aid Code)
in 1996

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1. Introduction

Article 8 of the Commission's Decision 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry¹ (hereinafter referred to as 'the Steel Aid Code' or 'the 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 report includes also a reference to the Article 95 decision taken in respect of Irish Steel Ltd.

2. General overview

- 2.1. 1996 saw the adoption of a new Steel Aid Code for the years 1997-2002 (22 July).² Without going into the details of the new SAC it is worth mentioning here that the rules for State aid to R and D and for environmental protection have been brought in conformity with those that were already in application for the industry sectors covered by the EC Treaty and that the new SAC allows under certain conditions to grant aid for partial closures.

¹ OJ No L 302, 31.12.1991

² OJ No L 338, 28.12.1996.

The monitoring of the implementation of the Article 95 ECSC cases previously decided was continued in 1996. The Commission submitted its fifth³ and sixth⁴ monitoring report to the Council, covering in particular the restructuring of the companies concerned and the payment of the aid authorized.

- 2.2. In 1996 the Commission took 20 negative decisions and in 38 cases it did not raise objections. Furthermore it opened in 4 cases the procedure pursuant to Article 6(4) Steel Aid Code and it took 1 decision under Article 95 ECSC Treaty.

The amount of aid approved in 1996 as environmental aid is MECU 6.6, as closure aid MECU 366 and as aid for R and D MECU 4.5 (ECU rate of December 1996).

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

3.1. Austria

3.1.1. Voest Alpine Stahl Linz GmbH⁵

In September the Commission decided not to raise objections in respect of environmental aid to Voest Stahl Linz GmbH.

Article 3 SAC allows investments to bring into line with new statutory environmental standards plants that entered into service at least 2 years before the introduction of the standards. In order to meet the new standards Voest Alpine Stahl Linz GmbH invested a sum of OS 165.5 million in a de-dusting installation for its blast furnace A. The Austrian authorities agreed to accompany this investment with a grant of OS 23.2 million. The resulting aid intensity of 14% gross is less than the admissible intensity of 15% net. The Commission was also satisfied that the other conditions of Article 3 SAC were being met in this case.

³ SEC (96) 657 final

⁴ SEC (96) 1764 final.

⁵ OJ No C 1, 03.01.1997.

3.2. Belgium

3.2.1. SIDMAR⁶

In January the Commission approved a proposal of the Flemish Government to grant aid to SIDMAR to help it adapt its installations for desulphurization of coke gas to the new legislation for environmental protection (Vlaem II bis of 1 August 1995).

These investments did not overlap but rather complemented earlier investments made by the company in other installations also with the aim of bringing the plant into line with the new environmental legislation.

The planned aid consisted of a capital grant of BEF 162 000 000, towards an investment of BEF 1 350 000 000, which represents an aid intensity of 7.4% net.

3.2.2 ALZ⁷

In May the Commission approved a proposal of the Flemish Government to grant aid to NV ALZ to help it insulate its electric arc furnace according to the new norms for noise levels set in the new legislation for environmental protection (Vlaem II bis of 1 August 1995).

The planned aid consisted of a capital grant of BEF 2 940 000, towards an investment of BEF 24 500 000, which represents an aid intensity of 7.58% net.

The investment concerned did, as in the case of SIDMAR, not overlap earlier investments, but complemented these investments.

3.2.3 Forges de Clabecq⁸

In December the Commission decided, after an opening of the procedure pursuant to Article 6(4) SAC in September, that the measures taken by the Region of Wallonia to assist Forges de Clabecq (chiefly a capital injection of BEF 1.5 billion, but also bridging loans amounting so far to BEF 700 million,

⁶ OJ No C 102, 04.04.1996.

⁷ OJ No C 227, 06.08.1996.

⁸ OJ No L 106, 24.04.1997.

the waiver of claims amounting to over BEF 800 million and rescheduling of the company's debts) were incompatible with the common market. It concluded that the measures could not be deemed to be a genuine injection of risk capital in accordance with normal practice in a market economy but constitute aid prohibited by the steel aid code, which allows only aid for environmental protection, for research and development or for closures. Aid which has already been improperly paid to Forges de Clabecq will therefore have to be recovered.

3.3. Germany

3.3.1. Investment programme for the reduction of environmental pollution⁹

In January the Commission opened the procedure pursuant to Article 6(4) SAC in respect of a German aid scheme aimed at the stimulation of demonstration projects that demonstrate 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.

3.3.2. Neue Maxhütte Stahlwerke GmbH¹⁰

In July 1995 the Commission initiated a procedure under Article 6(4) of the Steel Aid Code in respect of different shareholder's loans granted by the Bavarian Government to Neue Maxhütte Stahlwerke GmbH between July 1994 and March 1995 totalling DM 24.1125 million (ECU 12.68 million)¹¹. The Commission considered that the behaviour of the Government may not be equivalent to that of a private market investor as no other shareholder in the company was prepared to grant loans under equivalent conditions.

⁹ OJ No C 121, 25.04.1996.

¹⁰ OJ No L 198, 08.08.1996.

¹¹ OJ No C 312, 23.11.1995.

In March the Commission decided that the loans granted to the company constituted state aid which was incompatible with the common market. The Commission reached this conclusion in the light of the fact that the loans were granted to avoid illiquidity and subsequent insolvency, thereby being equivalent to the injection of risk capital, and because the private shareholders did not provide financing on similar conditions. In view of the contractual arrangements and the economic difficulties of the company, the Bavarian Government had no reasonable chance ever to receive any repayment of these loans. The loans were intended to cover the operating losses of the company during that period. Such aid cannot benefit from any derogation under the Steel Aid Code and the Commission therefore decided that the State aid was incompatible with the common market and that Germany should recover that aid from the company with interest from the day the aid was granted.

The German Government filed an application for annulment of this decision with the European Court of Justice. Neue Maxhütte Stahlwerke GmbH filed an application for annulment of the decision with the European Court of First Instance.

3.3.3 Walzwerk Ilsenburg GmbH¹², Reinwald Recycling GmbH and Hansa Chemie Abbruch und Recycling GmbH¹³

For Walzwerk Ilsenburg in May and for the two other companies in March the Commission decided to close the procedure in respect of regional investment aid. The Commission found that the notifications were lodged at such a late stage in 1994 that it was not in the position to take a decision before 31 December 1994. On the basis of Articles 1 and 5 SAC the Commission considered that it had no authority after 31 December 1994 to take a favourable decision.

In the case of Walzwerk Ilsenburg GmbH the aid had already been paid and consequently the Commission also ordered the recovery of the aid.

Preussag Stahl AG, the mother company of Walzwerk Ilsenburg GmbH, lodged an application with the Court of First Instance seeking the annulment of the Commission's decision.

¹² OJ No L 233, 14.09.1996.

¹³ OJ No C 186, 26.06.1996.

3.3.4. Werkstoff-Union Lippendorf GmbH¹⁴

In July the Commission closed the procedure it had opened in 1995 and declared State aid to Werkstoff-Union to be illegal, incompatible with the common market and prohibited under the SAC and the ECSC Treaty. The State aid consisted of an investment subsidy of DM 46 million, a fiscal concession of DM 17 million and some guarantees and was used to create new production capacity. The Commission did not accept the argument brought forward that Werkstoff-Union was only to produce non-ECSC steel.

3.4. Greece

3.4.1. Halyvourgia Thessalias SA¹⁵

In May the Commission decided to end the procedure provided for in Article 6(4) of the Steel Aid Code in respect of investment aid to be granted by the Greek Government to the steel company Halyvourgia Thessalias SA for the purchase of modern machinery and modernization of existing installations. Investment aid is normally considered to be incompatible with the Steel Aid Code and the ECSC Treaty and can not be approved. However, pursuant to Article 5 of the Steel Aids Code the Commission may approve investment aid granted under general regional aid schemes in Greece up to 31 December 1994 but the aid was notified to the Commission only on 15 February 1995. The Commission considered on the basis of Articles 1 and 5 of the SAC that it had no authority after 31 December 1994 to approve the aid and it therefore declared the aid to be incompatible.

¹⁴ OJ No L 48, 19.02.1997.

¹⁵ OJ No L 252, 04.10.1996.

3.5. Ireland

3.5.1. Irish Steel Ltd.¹⁶

In February the Commission decided, following the unanimous assent of the 20 December 1995 Industry Council, exceptionally to approve under Article 95 ECSC aid of up to IRL£ 38.298 million linked to the sale of the publicly-owned Irish Steel, Ireland's only steel producer, to the privately-owned Ispat International.

Various conditions were attached to the authorisation of aid. These included a minimum level of net financial charges of 3.5% of turnover at the outset of the new company; a 5 year freeze of existing capacity(500,000 tons liquid steel and 343,000 tons in hot-rolled finished products);and,since no capacity reductions were technically possible, restrictions for 5 years on the range and levels of production of finished products, as well as on the levels of sales of semi-finished and finished products, in order to minimise possible distortions to competition.

In common with previous Article 95 ECSC cases, strict monitoring arrangements were also imposed to ensure that the conditions are respected. British Steel and the German Steel Federation lodged applications with the Court of First Instance seeking the annulment of the decision.

3.6. Italy

3.6.1. Falck Acciaierie di Bolzano¹⁷

En juillet la Commission a clôturé par biais d'une décision négative la procédure à l'égard des interventions publiques octroyées par la Province Autonome de Bolzano (Italie) en faveur de Acciaieria di Bolzano (ACB). Ayant constaté que les interventions publiques dont a bénéficié ACB constituaient des aides d'Etat, la Commission a examiné si ces aides, tout en étant illégales parce qu'elles n'ont jamais fait l'objet de notification à la Commission, pouvaient être jugées compatibles avec le marché commun. Aucune dérogation à l'interdiction établie par l'article 4 du traité CECA étant

¹⁶ OJ No L 121, 21.05.1996.

¹⁷ OJ No L 274, 26.10.1996.

envisageable, les aides en question ont été déclaré incompatibles avec le marché commun.

La Commission a, des lors, enjoint aux autorités italiennes la récupération des aides octroyées à partir du 1 janvier 1986. Dans le but de supprimer les effets résultant de ces aides, leur montant est majoré des intérêts courant à compter du jour de versement des aides jusqu'à la date du remboursement.

3.6.2. Alti forni e Ferriere di Servola ¹⁸

In March the Commission decided to adopt a final negative decision requiring the Italian authorities to recover the illegal and incompatible aid granted by the Italian government to Alti Forni e Ferriere di Servola (AFS), a steel undertaking located in Trieste.

In the light of the information gathered, the Commission reached the conclusion that, in the present case, the granting of the state guarantee without charging any premium did constitute State aid as AFS could not get such a guarantee under the same conditions in the market.

The aid is equivalent to the premium which AFS should have paid under normal market conditions for a guarantee similar to that granted by the state.

3.6.3. Bresciani cases

En 1996, la Commission, dans le cadre du démantèlement du secteur sidérurgique privé en Italie a, d'une part, autorisé 32 cas - qui ont entraîné des réductions de capacités supérieurs à 5 millions de tonnes de laminés à chaud - et, d'autre part, refusé l'autorisation dans 10 autres cas car il ressortait des éléments dont la Commission disposait que les dix entreprises en question, tout en remplissant les autres conditions établies le Code des aides à la sidérurgie, n'avaient pas été en production régulière à la date de notification des aides à la fermeture. A cet égard la Commission constate que les critères fournis par les autorités italiennes (contrat d'électricité valable, investissement et manutention des installations, personnel etc.) ne sont pas de nature à démontrer que les entreprises en question ont produit d'une façon régulière mais, qu'en fait, elles étaient prêtes pour le faire. Or, l'article 4 du code des aides à la sidérurgie est rédigé d'une telle façon qu'il ne permet pas une

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OJ No L 216, 27.08.1996

interprétation extensive qui amènerait à inclure, parmi les entreprises éligibles aux aides, celles qui, tout en n'ayant pas produit régulièrement, seraient tout simplement prêtes à le faire.

Il y avait donc lieu de conclure, pour la Commission, que les aides envisagées par les autorités italiennes dans ces 10 cas étaient incompatibles avec le marché commun.

3.6.4. Ferdofin¹⁹

En mars la Commission a engagé la procédure prévue par l'article 6(4) de la décision 3855/91/CECA à l'égard des interventions publiques programmées par l'Etat italien en faveur de Ferdofin Siderurgica SpA dans le cadre de l'application de la loi italienne n.95/1979. En effet, compte tenu des critères d'application de la loi en question et de la situation financière de l'entreprise, la Commission a des raisons pour croire que l'application de ladite loi ainsi que l'octroi de la fidéjussion par le Ministre du Trésor en faveur de Ferdofin peuvent constituer des aides d'Etat aux termes du droit communautaire.

3.6.5. Ferriere Nord SpA²⁰

Une mesure d'intervention publique en faveur de Ferriere porte sur un financement d'un montant de LIT 15 milliards de liras italiennes octroyé par l'institution financière publique Friulia, qui est entièrement contrôlée par la Région Autonome Friuli Venezia Giulia. Friulia octroierait ledit financement pour une durée de six ans et à un taux équivalent au taux RIBOR à six mois - à savoir le taux interbancaire pratiqué sur la place de Rome- augmenté par un "spread" de 0,80%.

Si Ferriere peut obtenir un financement similaire à celui envisagé par Friulia, à savoir de la même durée, pour le même montant et pour le même taux, l'on pourra conclure que le financement notifié ne contient pas des éléments d'aide d'Etat. Pour évaluer la capacité d'une entreprise à se voir accordée des financements par des institutions financières privés, il convient d'analyser la situation financière et économique dans laquelle cette entreprise se trouve. Il ressort des bilans de la société relatifs aux années 1992-1995 que Ferriere est une entreprise qui jouit d'une bonne situation financière et industrielle.

¹⁹ OJ No C 151, 25.05.1996

²⁰ OJ No C 1, 03.01.1997

En Italie le taux pratiqué pour des financements similaires pour le montant et pour la durée à celui dont il est ici question équivaut au taux RIBOR à six mois majoré d'un spread qui varie entre 0,50 pour les meilleurs clients et environ 1,4 pour les financements avec des éléments de risque.

Par ailleurs, il ressort du dossier que deux banques fortement actives dans la région où se trouve l'entreprise ont proposé à Ferriere le même financement que celui en question à un taux équivalent au RIBOR à six mois plus un spread de 0,75%. Comme le financement notifié apparaît être cohérent avec ceux qui ont été proposés à l'entreprises par deux banques privées la Commission estime qu'aucun élément d'aide d'état est présent dans le financement public envisagé.

3.6.6. Servola SpA²¹

The Commission decided to raise no objection to the proposed public acquisition of a minority shareholding of 35 % in the equity of the newly created private steel company Servola SpA and to open the procedure in respect of the state aid aimed at bringing the steel installations of Servola SpA into line with the new Italian environmental legislation.

Having regard to the sound economic, financial and industrial situation and perspectives of the new company, as well as the legal conditions under which the minority acquisition by the State in Servola's equity capital will be carried out, the Commission took the view that the public acquisition in point appears to be made according to the same criteria as a private investor would have accepted to make such an investment under normal market conditions.

As to the proposed aid purportedly intended to help the company to bring its plant into line with the Italian legislation for environmental protection. The Commission assessed the State aid pursuant to Article 3 of the SAC. The Commission observed that a large part of the investments foreseen, mainly aimed at reducing dust emissions, were related to installations which entered into service in 1991/1992. Since the relevant environmental standards were enacted in July 1990, it follows that the condition according to which aid can be authorised as long as the installations entered into service at least two years before the introduction

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CG No C 273, 19.03.1996.

of the new environmental standards does not appear to be met. In addition, a significant part of the remaining investments would be devoted to reducing dust and noise by remaking roads and squares inside the industrial site. The Commission considered that this kind of intervention may not be regarded as being eligible under article 3 of the SAC.

3.7. France

3.7.1. Usinor-Sacilor²²

In October 1996, the Commission approved aid which France proposes to grant to two R&D projects being carried out by Usinor Sacilor. The first project, covering a three-year period (1995-97), which is being carried out at the Maizières and Gondrange works by IRSID, a Usinor Sacilor subsidiary, is designed to adapt steel-making processes for use with scrap, and in particular to adapt electric furnaces to new sources of iron. This project, which is known as the "steelworks of the future", is intended to make optimum use of energy and to respond to the environmental challenge which the large amounts of scrap metal pose in France and elsewhere in the European Union. The project, which will cost a total of FF 76.5 million, is at the applied research stage and will receive aid of FF 17.5 million.

The other project, "Myosotis, is carried out in collaboration with Thyssen. It costs a total of FF 96 million, covers the same period (1995-97), and will be 50% financed by Usinor-Sacilor, which will receive FF 12 million from the French State for this purpose. Successful completion of the project will ensure that Community operators are not left behind by competitors elsewhere in the world whose research in the same area is fairly advanced.

3.8. Spain

3.8.1. Tubacex²³

In July the Commission decided to adopt a partial negative decision in respect of various measures linked to a financial restructuring of the Spanish

²² OJ No C 1, 03.01.1997

²³ OJ No L 8, 11.01.1997

seamless steel tubes producer Tubacex and its steel-making subsidiary Aceria de Alava, enabling the company to lift a suspension of debt repayments. The Commission decided that the price of company land sold to the Basque government was below market rates and did not contain any state aid elements. The Commission also concluded that the participation of public bodies in the creditors' settlement that led to the lifting of the suspension of debt repayments did not involve aid since the public creditors had been in the minority and had acted in accordance with generally applicable legislation. However the Commission found that loans from the Wages Guarantee Fund (FOGASA) and a rescheduling of post-suspension Social Security debts, granted in favour of the company in exercise of discretionary powers under generally applicable legislation, contained illegal aid in so far as the rate of interest charged in both cases was not at market rates. The Commission ordered that the aid should be recovered with interest.

The Spanish Government filed an application for annulment of this decision with the Court of Justice.