

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(93) 1241 final

Brussels, 8 September 1993

Financial arrangements for the restructuring of the steel industry

COMMUNICATION FROM THE COMMISSION

to the Council and the ECSC Committee, pursuant to
Article 53(a) of the ECSC Treaty

I. Introduction

At its 1 643rd meeting on 25 February 1993, which was devoted to the restructuring of the Community steel industry, the Council adopted conclusions in which it welcomed the Commission's intention to examine arrangements based on Article 53(a) of the ECSC Treaty which groups of companies might submit to it for the joint financing of capacity reduction programmes. The programme for the reduction of production capacity should be consistent and take into account the specificities of undertakings including those receiving State Aids subject to art. 95 ECSC for which the Council proposed a rapid decision.

Three groups of companies have notified the Commission of their intention to conclude three similar agreements⁽¹⁾ with a view to them being authorized under Article 53(a) of the ECSC Treaty. Those agreements set out financial arrangements common to each group of companies for purposes of reducing production capacity in the hot-rolled wide strip, heavy plate and heavy sections sub-sectors.

The aim of this communication is to describe the three sets of financial arrangements with a view to obtaining, in accordance with Article 53(a) of the ECSC Treaty, the views of the Council and the ECSC Consultative Committee prior to their authorization by the Commission.

II. Coverage and participation

The three groups of companies which have so far drawn up agreements on financial arrangements accounted, in 1991, for the following proportions of Community production capacity for the products in question :

- 94.3 % for hot-rolled wide strip
- 81.2 % for heavy plate
- 70.8 % for heavy sections.

(1) See Annex I for the agreement on the financial arrangements.

Each of the agreements distinguishes between two types of parties to them: those closing down all or part of their capacity (hereafter referred to as "parties opting for closure") and those not closing down capacity but helping to finance the capacity reductions ("other parties").

Companies subject to state aid proceedings will be able to participate in the arrangements on the understanding that closures under Article 95 of the ECSC Treaty as well as those used as a compensation for a remission of debts in the application of regulations and/or agreements in procedures considering bankruptcy, court composition procedures, privatisation, etc. will not be eligible for co-financing by the other parties.

III. Arrangements for capacity reductions

The agreements will be implemented on the basis of capacity reduction plans (hereafter referred to as "restructuring plans") which will be notified to the Commission.

The restructuring plans will include details of the plants to be closed, their capacity and the deadlines for the closure operations, which will not in principle go beyond 31 December 1994.

The groups of companies consider that the reorganization of their respective sub-sectors will call for the following capacity reductions (millions of tonnes of maximum possible production within the meaning of questionnaire 2-61):

6 million tonnes	for hot-rolled wide strip (equivalent to 4.8 million tonnes of output)
2 million tonnes	for reversing-mill plate (equivalent to 1.2 million tonnes of output)
2.5 million tonnes	for heavy sections (equivalent to 1.6 million tonnes of output).

Plant closures will be deemed permanent when they are carried out in accordance with the provisions of Article 8 of Decision No 3010/91/ECSC. Any export of plant for reassembly at a location where exports to the Community market would be improbable could be deemed a permanent closure.

Parties opting for closure will undertake for five years not to increase their residual capacity for the products in question that are covered by the three sets of financial arrangements on pain of a fine, payable to the other parties, of ECU 100 per tonne of capacity. For a period of five years, capacity increases not exceeding 2% per year stemming from maintenance work or current productivity investment will not be subject to the restrictions between producers. Investment in new technologies is not excluded where it replaces existing capacity without leading to a net increase in capacity.

IV. Description of the common financial arrangements

- (a) Payments for capacity reductions made to parties opting for closure will be fixed by mutual agreement on the following basis:
- the capacity eligible for a contribution to costs from the other parties will be determined on the basis of the production capacity declared in questionnaire 2-61, the rate of capacity utilization in 1991 and 1992 and, where appropriate, the residual capacity of the same company;
 - the unit amount chosen as the flat-rate reference for the industrial cost of an eligible capacity closure in the case of rolling mills is ECU 60 per tonne for coils, strip and heavy plate, and ECU 40 per tonne for heavy sections. This may be supplemented, in the case of corresponding closure of upstream plant, by ECU 50 per tonne in the case of electric steelworks and ECU 100 per tonne in the case of oxygen-blown steelworks and other upstream plant;
 - the contribution of the other parties to the costs estimated in this way will not be less than 50%.
- (b) The groups of companies intend that these payments be prefinanced by ECSC loans which would be covered by appropriate guarantees, negotiated case by case, as it is foreseen in Annex II, and which would be repayable by the other parties starting from the date of actual capacity closure over a period not extending June 2002. This mechanism requires bank guarantees except in those specific cases where the Commission decides to the contrary.

- (c) The maximum amounts of ECSC loans that a group of companies would be able to apply for, according to its contribution to the industrial cost of closure, are estimated at:

ECU 700 million for coils;

ECU 140 million for heavy sections;

ECU 160 million for heavy plate.

V. Authorization of the financial arrangements

The Commission plans to authorize the financial arrangements subject to the following conditions:

1. The financial arrangements must simply reflect agreements on capacity reductions and their funding; their authorization will not prejudice the position the Commission will adopt under Article 65 of ECSC Treaty regarding restructuring plans and any other agreements or concerted practices involving the companies in question.

Closures made or to be made in the framework of art 95 ECSC procedure for the granting of State Aids will not be eligible for cofinancing by the other parties. Nor will be eligible closures made or to be made as a compensation for the remission of debts in application of regulations and/or agreements in procedures considering bankruptcy, court composition procedures, privatisation, etc.

2. The restructuring plans, the individual closures and their financial plan will have to be notified to the Commission for appraisal under Article 65 of the ECSC Treaty and for a reasoned opinion under Decision No 3010/91/ECSC of 15 October 1991 no later than three months following the Commission's authorization of the financial arrangements.

The Commission will, of course, ensure that the financial arrangements are simply agreements for reducing capacity. The companies may not attempt, either within or outside the framework of the financial arrangements, to establish any agreement or concerted practice or make unilateral declarations concerning prices, rates of capacity utilization or the level of production remaining under the control of each of the parties following the closures. During the life of these arrangements, the parties to them may not participate in any concerted practice or agreement for exchanging information which could restrict competition without first informing the Commission.

3. The Commission will check that plant closures comply with the provisions of Article 8 of Decision No 3010/91/ECSC. The responsibilities of the Court of Auditors will be safeguarded.

4. The Commission will have to be given access to any information necessary for checking the operation of the agreements on the financial arrangements. It will require activity reports to be submitted and may request additional information, particularly from parties opting for closure.

5. If the groups of companies so request, the Commission will examine the scheme through which ECSC loans could be offered under the first paragraph of Article 54 of the ECSC Treaty in accordance with the general conditions set out in Annex II and taking into account the following principles :

- a disbursement of ECSC loans can only be made if the repayment obligations of the Other Parties are fixed and the respective guarantees, negotiated case by case, covering 100% of the loan including interest and other costs are available before the disbursement of the loan. This mechanism requires bank guarantees except in those specific cases where the Commission decides to the contrary.
- the initial repayment plan of each reimbursement quotas of the ECSC loan of the other members should remain unchanged until final repayment of the loan. The other parties getting a specific benefit as a result of the closing measures may have an increased repayment quota.

- changes in the quotas of the Other Parties, as a consequence of changes of the respective Other Parties steel world deliveries during the calendar year preceeding the year in which repayment of instalment becomes due, shall be settled internally by the Other Parties without having influence on the repayment obligations under the loan agreements.

VI. Conclusion

The Council and the ECSC Consultative Committee are requested to give their views on the above.

Annexes:

- I. Draft agreement on the financial arrangements submitted by the groups of companies.
- II. Main operating principles for ECSC loans directly to companies.

ANNEXE I

AGREEMENTS CONCERNING
THE FINANCIAL ARRANGEMENTS

Financial Arrangement for Support of Restructuring of Heavy Sections in the European Community for Coal and Steel

Preamble

The present situation of the steel industry in the European Community for Coal and Steel is characterized by considerable overcapacities which are structural in nature. This holds, inter alia, true with respect to the capacities for heavy sections and the corresponding up-stream facilities (hereinafter jointly referred to as "Steel").

Pursuant to the provisions of the ECSC-Treaty, in particular in implementation of its responsibilities under Art. 2, 3 and on the basis of its competences under Art. 46, the European Commission (hereinafter referred to as the "Commission") has investigated the situation and, on the basis of its findings, noted the necessity of a restructuring programme reducing the capacities and the production in question. The European steel industry shares the view of the Commission and is prepared to make efforts to this effect.

In its communication of November 23, 1992 to the Council and the Parliament (SEC (92) 2160 final) the Commission has declared that the process of adaption of the present steel production structures is susceptible for direct support by different ECSC measures, including, in particular, the authorization of final mechanisms under Art. 53 lit. a ECSC-Treaty and the grant of investment loans under Art. 54 § 1 ECSC-Treaty. Pursuant to said communication, the public and private financial measures can include the funding of the cost this restructuring process is causing to the companies concerned.

In its conclusions dated February 25, 1993 the Council has welcomed the declaration of the Commission to accompany and support the restructuring programme by measures of market stabilization, by financial support for the cost of redundancies and by measures against unfair imports.

On this basis, the companies producing Steel which are listed in Annex hereto agree, pursuant to Art. 53 lit. a ECSC-Treaty and upon approval of the Commission, as follows :

Article 1 Formation

The Parties herewith establish a financial arrangement according to Art. 53 lit. a ECSC-Treaty. This arrangement is open to accession by other Steel producing companies. Steel producing companies which have received or will receive state aids in connection with the restructuring programmes referred to in the preamble shall not become Closing Parties as defined in Article 3 1.a) (1) for such capacity reductions which are or will be financed by state aids.

Article 2 Object

The object of the financial arrangement shall be contributing to the financing of Steel capacity reductions as provided in more detail in Art. 3.

The Parties will make financial contributions to the cost of closure of Steel capacity. The parties consider a capacity reduction of 2,5 million tonnes (maximum production possible as defined in questionnaire 2-61) of Steel per year necessary for the reestablishment of those conditions set forth by the objectives referred to in Art. 3 of the ECSC-Treaty. These closures mentioned are in addition to those capacity reductions financed by state aids as referred to in Art. 1, sentence 3.

Article 3 Functioning and Implementation

1. Basis for the functioning of the financial arrangement common to the Parties will be plans (hereinafter referred to as the "Restructuring Plan") both for the reduction of Steel capacity (hereinafter referred to as "Closing Measures") and its financing by financial contributions of the Parties not involved in the Closing Measures in question (hereinafter referred to as the "Other Parties").

The Restructuring Plan will be submitted to the European Commission for approval under the procedures established in the Decision 3010/91/ECSC in order to ensure that its aim corresponds to a general commitment of reduction of capacities. This must be done within 3 months of the approval by the Commission of the Financial Arrangement under Art. 53a of the ECSC Treaty.

- a) The Restructuring Plan shall
- (1) list the Parties partly or completely closing Steel capacities (hereinafter referred to as the "Closing Parties")
 - (2) describe the plants and facilities to be closed to this effect and define the remaining production capacity figures (hereinafter referred to as "Remaining Capacity"), if any, of the Closing Members remaining after the Closing Measures. The definition of Remaining Capacity will be based on the maximum production possible figures, that have been declared to the Commission under questionnaire 2-61 by the Closing Members in the years 1991 and 1992.
 - (3) fix stages and deadlines for the Closing Measures which, in any event, have to become effective not later than December 31, 1994.
- b) Closing of capacities shall have the meaning defined in Art. 8 of Decision 3010/91/ECSC of the Commission dated October 15, 1991 with the proviso that a plant/facility is not considered closed if it is reinstalled at another location from where products manufactured thereby are to be expected to enter the ECSC market. The Commission or its nominated experts will be invited to control the reductions in capacity detailed in the Restructuring plans. The right of visit and control by the Commission will be ensured by the Parties.
- c) A closing Party shall, until the later of the end of (1) the term of the financial arrangement or (2) a period of 5 years upon completion of its respective Closing Measures, not increase Steel capacities to a level exceeding its Remaining Capacity. This obligation extends to all companies affiliated with such Closing Party at or after the date to the establishment of the Restructuring Plan as well as the Financing and Repayment Plan referred to in item 2 (hereinafter referred to as the "Plans"). However, in the event a Party becomes affiliated with another Party after the establishment of the Plans, such Party shall, for the purposes of this item c, be considered to remain unaffiliated unless the non-affiliation has the result to circumvent the obligations of the Closing Party with the effect of increasing the remaining Steel capacity. In the case of such circumvention the respective Other Party must reimburse to the remaining Other Parties those contributions for Closing Measures received by the Closing Party.

An "affiliate" of a company shall be construed as a reference to another company which is a subsidiary or holding company, or a subsidiary of a holding company of that other company.

A "subsidiary" of a company or corporation shall be construed as a reference to any company or corporation :

- (i) which is controlled, directly or indirectly, by the first-mentioned company or corporation;
- (ii) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned company or corporation; or
- (iii) which is a subsidiary or another subsidiary of the first-mentioned company or corporation.

A "holding" company of a company or corporation shall be construed as a reference to any company or corporation of which the first-mentioned company or corporation is a subsidiary.

In addition a Closing Party shall, until the later of the end of (1) the term of the financial arrangement or (2) a period of 5 years upon completion of its respective Closing Measures, not increase its present respective capacities for steel products for which a similar financial arrangement as the present one has been established.

Investments in new technologies are unrestricted insofar as they do not lead to an increase in Remaining capacities. The Closing Party is entitled to invest for the purpose of plant maintenance and to improve productivity without any notice to or restrictions from any other party. In the case of such investments leading to an increase of Remaining capacity of more than 2 % per year in a period of 5 years upon completion of its respective Closing Measures then the rules detailed under Art. 2a will be applied to the excess capacities.

2. The Other Parties shall contribute to the industrial cost (social cost excluded) of the Closing Measures for the Closing Parties. Such contributions shall be paid out to the Closing Parties according to the stages and deadlines of the Closing Measures set forth in the Restructuring Plan.

The contributions shall be financed by loans of third parties. The contributions shall be substantial in regard to said cost and thus be an incentive for such Closing Measures. The amount of 40 ECU per tonne capacity of heavy sections and of 50 ECU for related upstream facilities in the case of Electric Arc Furnace, 100 ECU per tonne in the case of Oxygen Steel are, in principle, regarded to cover the industrial costs of Closing Measures. The contributions of the Other Parties will be 50 % or more of these amounts. The total amount of loans required, in view of the capacity reductions mentioned in Art. 2, will not exceed 140 million ECUs.

The level of contribution per tonne of Steel capacity recognized as eligible for financial support is the same in all cases. Eligible for financial support are all Steel capacities of a Party (including affiliated companies) as far as they were utilized in the years 1991 and 1992 (hereinafter referred to as "Eligible Capacities"). Each case will be considered individually taking into account the difference between the Eligible Capacities and the Remaining Capacities of the Closing Party (in each case including affiliated companies). The details shall be established by the Parties in a financing and repayment plan (hereinafter referred to as the "Financing and Repayment Plan") which shall have the following basis:

- a) The Closing Parties shall be obligated to implement their respective obligations under the Restructuring Plan and shall provide adequate security therefor to the Other parties.

In case a Closing Party fails either to implement its obligations under the Restructuring Plan in due time, or violates item 1 c), it shall reimburse the contribution received. In addition, it shall pay a penalty of 100 ECU per Tonne/year if capacity is wilfully not closed, or, as the case may be, constitutes a deliberate violation of item 1.c) by the Closing Party.

- b) Each of the Other Parties shall contribute a percentage to the repayment of said loans to the respective lenders. The respective percentage will be established in the Financing and Repayment Plan on the basis of the following elements:
- (i) a basic percentage payable in relation to the respective Other Party's Steel deliveries during the calendar year preceding the year in which repayment of the loan/installments becomes/become due.
 - (ii) an additional percentage in the event of a specific benefit accruing to the respective Other Parties as a result of the Closing Measures.

Such repayment shall be deferred and the open amounts shall bear interest. The period of deferral shall in no event exceed 2002. Repayment will start immediately closure becomes effective.

- c) Each of the Other Parties shall be liable only for the portion of said repayments attributed to it under the Financing and Repayment Plan. Joint liability is excluded.
 - d) The Other Parties, where appropriate, shall respectively provide security for their repayment obligations considering the special purpose of the loans and the need to establish the Restructuring Plan.
 - e) It is in the sole discretion of each Party to publish in its price lists the cost increase resulting from the repayments as extra charge.
3. A Closing Party can, in relation to Closing Measures of another Closing Party, be an Other Party.

Article 4 Assignment/Transfer

1. A Party can assign its rights and obligations hereunder upon prior unanimous consent of all Parties only.
2. If a Closing Party transfers all or an essential part of its assets to a third party; it shall impose its obligations hereunder (including the obligation of this item 2) and under the Restructuring Plan as well as under the Financing and Repayment Plan, to said third party. With the consent of the Other Parties and after the approval of the European Commission the obligation of a Closing Party may be substituted by a Third Party provided that the substitution has equivalent effect.

Article 5

Term

This financial arrangement shall end at the later of

- full implementation of the Restructuring Plan
- full implementation of the Financing and Repayment Plan and
- settlement of all loans incurred in connection with the Plans.

Article 6

Miscellaneous

1. This Agreement shall be governed by Belgian law.
2. All disputes arising out of, or in connection with this Agreement shall be exclusively referred to arbitration the details of which will be set forth by separate agreement.
3. If any provision of this Agreement is or become, in whole or in part, invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision which has, in view of the purpose of this Agreement, an economic effect as close as legally possible to the invalid/unenforceable provision.

Financial Arrangement for Support of Restructuring of Hot Rolled Wide and Narrow Strip in the European Community for Coal and Steel

Preamble

The present situation of the steel industry in the European Community for Coal and Steel is characterized by considerable overcapacities which are structural in nature. This holds, inter alia, true with respect to the capacities for hot-rolled wide and narrow strip and the corresponding up-stream facilities (hereinafter jointly referred to as "Steel").

Pursuant to the provisions of the ECSC-Treaty, in particular in implementation of its responsibilities under Art. 2, 3 and on the basis of its competences under Art. 46, the European Commission (hereinafter referred to as the "Commission") has investigated the situation and, on the basis of its findings, noted the necessity of a restructuring programme reducing the capacities and the production in question. The European steel industry shares the view of the Commission and is prepared to make efforts to this effect.

In its communication of November 23, 1992 to the Council and the Parliament (SEC (92) 2160 final) the Commission has declared that the process of adaption of the present steel production structures is susceptible for direct support by different ECSC measures, including, in particular, the authorization of final mechanisms under Art. 53 lit. a ECSC-Treaty and the grant of investment loans under Art. 54 § 1 ECSC-Treaty. Pursuant to said communication, the public and private financial measures can include the funding of the cost this restructuring process is causing to the companies concerned.

In its conclusions dated February 25, 1993 the Council has welcomed the declaration of the Commission to accompany and support the restructuring programme by measures of market stabilization, by financial support for the cost of redundancies and by measures against unfair imports.

On this basis, the companies producing Steel which are listed in Annex hereto agree, pursuant to Art. 53 lit. a ECSC-Treaty and upon approval of the Commission, as follows :

Article 1 Formation

The Parties herewith establish a financial arrangement according to Art. 53 lit. a ECSC-Treaty. This arrangement is open to accession by other Steel producing companies. Steel producing companies which have received or will receive state aids in connection with the restructuring programmes referred to in the preamble shall not become Closing Parties as defined in Article 3 1.a) (1) for such capacity reductions which are or will be financed by state aids.

Article 2 Object

The object of the financial arrangement shall be contributing to the financing of Steel capacity reductions as provided in more detail in Art. 3.

The Parties will make financial contributions to the cost of closure of Steel capacity. The parties consider a capacity reduction of 6 million tonnes (maximum production possible as defined in questionnaire 2-61) of Steel per year necessary for the reestablishment of those conditions set forth by the objectives referred to in Art. 3 of the ECSC-Treaty. These closures mentioned are in addition to those capacity reductions financed by state aids as referred to in Art. 1, sentence 3.

Article 3 Functioning and Implementation

1. Basis for the functioning of the financial arrangement common to the Parties will be plans (hereinafter referred to as the "Restructuring Plan") both for the reduction of Steel capacity (hereinafter referred to as "Closing Measures") and its financing by financial contributions of the Parties not involved in the Closing Measures in question (hereinafter referred to as the "Other Parties").

The Restructuring Plan will be submitted to the European Commission for approval under the procedures established in the Decision 3010/91/ECSC in order to ensure that its aim corresponds to a general commitment of reduction of capacities. This must be done within 3 months of the approval by the Commission of the Financial Arrangement under Art. 53a of the ECSC Treaty.

- a) The Restructuring Plan shall
- (1) list the Parties partly or completely closing Steel capacities (hereinafter referred to as the "Closing Parties")
 - (2) describe the plants and facilities to be closed to this effect and define the remaining production capacity figures (hereinafter referred to as "Remaining Capacity"), if any, of the Closing Members remaining after the Closing Measures. The definition of Remaining Capacity will be based on the maximum production possible figures, that have been declared to the Commission under questionnaire 2-61 by the Closing Members in the years 1991 and 1992.
 - (3) fix stages and deadlines for the Closing Measures which, in any event, have to become effective not later than December 31, 1994.
- b) Closing of capacities shall have the meaning defined in Art. 8 of Decision 3010/91/ECSC of the Commission dated October 15, 1991 with the proviso that a plant/facility is not considered closed if it is reinstalled at another location from where products manufactured thereby are to be expected to enter the ECSC market. The Commission or its nominated experts will be invited to control the reductions in capacity detailed in the Restructuring plans. The right of visit and control by the Commission will be ensured by the Parties.
- c) A closing Party shall, until the later of the end of (1) the term of the financial arrangement or (2) a period of 5 years upon completion of its respective Closing Measures, not increase Steel capacities to a level exceeding its Remaining Capacity. This obligation extends to all companies affiliated with such Closing Party at or after the date to the establishment of the Restructuring Plan as well as the Financing and Repayment Plan referred to in item 2 (hereinafter referred to as the "Plans"). However, in the event a Party becomes affiliated with another Party after the establishment of the Plans, such Party shall, for the purposes of this item c, be considered to remain unaffiliated unless the non-affiliation has the result to circumvent the obligations of the Closing Party with the effect of increasing the remaining Steel capacity. In the case of such circumvention the respective Other Party must reimburse to the remaining Other Parties those contributions for Closing Measures received by the Closing Party.

An "affiliate" of a company shall be construed as a reference to another company which is a subsidiary or holding company, or a subsidiary of a holding company of that other company.

A "subsidiary" of a company or corporation shall be construed as a reference to any company or corporation :

- (i) which is controlled, directly or indirectly, by the first-mentioned company or corporation;
- (ii) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned company or corporation; or
- (iii) which is a subsidiary or another subsidiary of the first-mentioned company or corporation.

A "holding" company of a company or corporation shall be construed as a reference to any company or corporation of which the first-mentioned company or corporation is a subsidiary.

In addition a Closing Party shall, until the later of the end of (1) the term of the financial arrangement or (2) a period of 5 years upon completion of its respective Closing Measures, not increase its present respective capacities for steel products for which a similar financial arrangement as the present one has been established.

Investments in new technologies are unrestricted insofar as they do not lead to an increase in Remaining capacities. The Closing Party is entitled to invest for the purpose of plant maintenance and to improve productivity without any notice to or restrictions from any other party. In the case of such investments leading to an increase of Remaining capacity of more than 2 % per year in a period of 5 years upon completion of its respective Closing Measures then the rules detailed under Art. 2a will be applied to the excess capacities.

2. The Other Parties shall contribute to the industrial cost (social cost excluded) of the Closing Measures for the Closing Parties. Such contributions shall be paid out to the Closing Parties according to the stages and deadlines of the Closing Measures set forth in the Restructuring Plan.

The contributions shall be financed by loans of third parties. The contributions shall be substantial in regard to said cost and thus be an incentive for such Closing Measures. The amount of 60 ECU per ton capacity of hot rolled wide and narrow strip and of 100 ECU for related upstream facilities are, in principle, regarded to cover the industrial costs of Closing Measures. The contributions of the Other Parties will be 50 % or more of these amounts. The total amount of loans required, in view of the capacity reductions mentioned in Art. 2, will not exceed 700 million ECUs.

The level of contribution per tonne of Steel capacity recognized as eligible for financial support is the same in all cases. Eligible for financial support are all Steel capacities of a Party (including affiliated companies) as far as they were utilized in the years 1991 and 1992 (hereinafter referred to as "Eligible Capacities"). Each case will be considered individually taking into account the difference between the Eligible Capacities and the Remaining Capacities of the Closing Party (in each case including affiliated companies). The details shall be established by the Parties in a financing and repayment plan (hereinafter referred to as the "Financing and Repayment Plan") which shall have the following basis:

- a) The Closing Parties shall be obligated to implement their respective obligations under the Restructuring Plan and shall provide adequate security therefor to the Other parties.

In case a Closing Party fails either to implement its obligations under the Restructuring Plan in due time, or violates item 1 c), it shall reimburse the contribution received. In addition, it shall pay a penalty of 100 ECU per Tonne/year if capacity is wilfully not closed, or, as the case may be, constitutes a deliberate violation of item 1.c) by the Closing Party.

- b) Each of the Other Parties shall contribute a percentage to the repayment of said loans to the respective lenders. The respective percentage will be established in the Financing and Repayment Plan on the basis of the following elements:

- (i) a basic percentage payable in relation to the respective Other Party's Steel deliveries during the calendar year preceding the year in which repayment of the loan/instalments becomes/become due.
- (ii) an additional percentage in the event of a specific benefit accruing to the respective Other Parties as a result of the Closing Measures.

Such repayment shall be deferred and the open amounts shall bear interest. The period of deferral shall in no event exceed 2002. Repayment will start immediately closure becomes effective.

- c) Each of the Other Parties shall be liable only for the portion of said repayments attributed to it under the Financing and Repayment Plan. Joint liability is excluded.
 - d) The Other Parties, where appropriate, shall respectively provide security for their repayment obligations considering the special purpose of the loans and the need to establish the Restructuring Plan.
 - e) It is in the sole discretion of each Party to publish in its price lists the cost increase resulting from the repayments as extra charge.
3. A Closing Party can, in relation to Closing Measures of another Closing Party, be an Other Party.

Article 4

Assignment/Transfer

1. A Party can assign its rights and obligations hereunder upon prior unanimous consent of all Parties only.
2. If a Closing Party transfers all or an essential part of its assets to a third party; it shall impose its obligations hereunder (including the obligation of this item 2) and under the Restructuring Plan as well as under the Financing and Repayment Plan, to said third party. With the consent of the Other Parties and after the approval of the European Commission the obligation of a Closing Party may be substituted by a Third Party provided that the substitution has equivalent effect.

Article 5

Term

This financial arrangement shall end at the later of

- full implementation of the Restructuring Plan
- full implementation of the Financing and Repayment Plan and
- settlement of all loans incurred in connection with the Plans.

Article 6

Miscellaneous

1. This Agreement shall be governed by Belgian law.
2. All disputes arising out of, or in connection with this Agreement shall be exclusively referred to arbitration the details of which will be set forth by separate agreement.
3. If any provision of this Agreement is or become, in whole or in part, invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision which has, in view of the purpose of this Agreement, an economic effect as close as legally possible to the invalid/unenforceable provision.

Financial Arrangement for Support of Restructuring of Quarto Plate in the European Community for Coal and Steel

Preamble

The present situation of the steel industry in the European Community for Coal and Steel is characterized by considerable overcapacities which are structural in nature. This holds, inter alia, true with respect to the capacities for plate and the corresponding up-stream facilities (hereinafter jointly referred to as "Steel").

Pursuant to the provisions of the ECSC-Treaty, in particular in implementation of its responsibilities under Art. 2, 3 and on the basis of its competences under Art. 46, the European Commission (hereinafter referred to as the "Commission") has investigated the situation and, on the basis of its findings, noted the necessity of a restructuring programme reducing the capacities and the production in question. The European steel industry shares the view of the Commission and is prepared to make efforts to this effect.

In its communication of November 23, 1992 to the Council and the Parliament (SEC (92) 2160 final) the Commission has declared that the process of adaption of the present steel production structures is susceptible for direct support by different ECSC measures, including, in particular, the authorization of final mechanisms under Art. 53 lit. a ECSC-Treaty and the grant of investment loans under Art. 54 § 1 ECSC-Treaty. Pursuant to said communication, the public and private financial measures can include the funding of the cost this restructuring process is causing to the companies concerned.

In its conclusions dated February 25, 1993 the Council has welcomed the declaration of the Commission to accompany and support the restructuring programme by measures of market stabilization, by financial support for the cost of redundancies and by measures against unfair imports.

On this basis, the companies producing Steel which are listed in Annex hereto agree, pursuant to Art. 53 lit. a ECSC-Treaty and upon approval of the Commission, as follows :

Article 1

Formation

The Parties herewith establish a financial arrangement according to Art. 53 lit. a ECSC-Treaty. This arrangement is open to accession by other Steel producing companies. Steel producing companies which have received or will receive state aids in connection with the restructuring programmes referred to in the preamble shall not become Closing Parties as defined in Article 3 1.a) (1) for such capacity reductions which are or will be financed by state aids.

Article 2

Object

The object of the financial arrangement shall be contributing to the financing of Steel capacity reductions as provided in more detail in Art. 3.

The Parties will make financial contributions to the cost of closure of Steel capacity. The parties consider a capacity reduction of 2 million tonnes (maximum production possible as defined in questionnaire 2-61) of Steel per year necessary for the reestablishment of those conditions set forth by the objectives referred to in Art. 3 of the ECSC-Treaty. These closures mentioned are in addition to those capacity reductions financed by state aids as referred to in Art. 1, sentence 3.

Article 3

Functioning and Implementation

1. Basis for the functioning of the financial arrangement common to the Parties will be plans (hereinafter referred to as the "Restructuring Plan") both for the reduction of Steel capacity (hereinafter referred to as "Closing Measures") and its financing by financial contributions of the Parties not involved in the Closing Measures in question (hereinafter referred to as the "Other Parties").

The Restructuring Plan will be submitted to the European Commission for approval under the procedures established in the Decision 3010/91/ECSC in order to ensure that its aim corresponds to a general commitment of reduction of capacities. This must be done within 3 months of the approval by the Commission of the Financial Arrangement under Art. 53a of the ECSC Treaty.

- a) The Restructuring Plan shall
- (1) list the Parties partly or completely closing Steel capacities (hereinafter referred to as the "Closing Parties")
 - (2) describe the plants and facilities to be closed to this effect and define the remaining production capacity figures (hereinafter referred to as "Remaining Capacity"), if any, of the Closing Members remaining after the Closing Measures. The definition of Remaining Capacity will be based on the maximum production possible figures, that have been declared to the Commission under questionnaire 2-61 by the Closing Members in the years 1991 and 1992.
 - (3) fix stages and deadlines for the Closing Measures which, in any event, have to become effective not later than December 31, 1994.
- b) Closing of capacities shall have the meaning defined in Art. 8 of Decision 3010/91/ECSC of the Commission dated October 15, 1991 with the proviso that a plant/facility is not considered closed if it is reinstalled at another location from where products manufactured thereby are to be expected to enter the ECSC market. The Commission or its nominated experts will be invited to control the reductions in capacity detailed in the Restructuring plans. The right of visit and control by the Commission will be ensured by the Parties.
- c) A closing Party shall, until the later of the end of (1) the term of the financial arrangement or (2) a period of 5 years upon completion of its respective Closing Measures, not increase Steel capacities to a level exceeding its Remaining Capacity. This obligation extends to all companies affiliated with such Closing Party at or after the date to the establishment of the Restructuring Plan as well as the Financing and Repayment Plan referred to in item 2 (hereinafter referred to as the "Plans"). However, in the event a Party becomes affiliated with another Party after the establishment of the Plans, such Party shall, for the purposes of this item c, be considered to remain unaffiliated unless the non-affiliation has the result to circumvent the obligations of the Closing Party with the effect of increasing the remaining Steel capacity. In the case of such circumvention the respective Other Party must reimburse to the remaining Other Parties those contributions for Closing Measures received by the Closing Party.

An "affiliate" of a company shall be construed as a reference to another company which is a subsidiary or holding company, or a subsidiary of a holding company of that other company.

A "subsidiary" of a company or corporation shall be construed as a reference to any company or corporation :

- (i) which is controlled, directly or indirectly, by the first-mentioned company or corporation;
- (ii) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned company or corporation; or
- (iii) which is a subsidiary or another subsidiary of the first-mentioned company or corporation.

A "holding" company of a company or corporation shall be construed as a reference to any company or corporation of which the first-mentioned company or corporation is a subsidiary.

In addition a Closing Party shall, until the later of the end of (1) the term of the financial arrangement or (2) a period of 5 years upon completion of its respective Closing Measures, not increase its present respective capacities for steel products for which a similar financial arrangement as the present one has been established.

Investments in new technologies are unrestricted insofar as they do not lead to an increase in Remaining capacities. The Closing Party is entitled to invest for the purpose of plant maintenance and to improve productivity without any notice to or restrictions from any other party. In the case of such investments leading to an increase of Remaining capacity of more than 2 % per year in a period of 5 years upon completion of its respective Closing Measures then the rules detailed under Art. 2a will be applied to the excess capacities.

2. The Other Parties shall contribute to the industrial cost (social cost excluded) of the Closing Measures for the Closing Parties. Such contributions shall be paid out to the Closing Parties according to the stages and deadlines of the Closing Measures set forth in the Restructuring Plan.

The contributions shall be financed by loans of third parties. The contributions shall be substantial in regard to said cost and thus be an incentive for such Closing Measures. The amount of 60 ECU per tonne capacity of plate and of 100 ECU for related upstream facilities are, in principle, regarded to cover the industrial costs of Closing Measures. The contributions of the Other Parties will be 50 % or more of these amounts. The total amount of loans required, in view of the capacity reductions mentioned in Art. 2, will not exceed 160 million ECUs.

The level of contribution per tonne of Steel capacity recognized as eligible for financial support is the same in all cases. Eligible for financial support are all Steel capacities of a Party (including affiliated companies) as far as they were utilized in the years 1991 and 1992 (hereinafter referred to as "Eligible Capacities"). Each case will be considered individually taking into account the difference between the Eligible Capacities and the Remaining Capacities of the Closing Party (in each case including affiliated companies). The details shall be established by the Parties in a financing and repayment plan (hereinafter referred to as the "Financing and Repayment Plan") which shall have the following basis:

- a) The Closing Parties shall be obligated to implement their respective obligations under the Restructuring Plan and shall provide adequate security therefor to the Other parties.

In case a Closing Party fails either to implement its obligations under the Restructuring Plan in due time, or violates item 1 c), it shall reimburse the contribution received. In addition, it shall pay a penalty of 100 ECU per Tonne/year if capacity is wilfully not closed, or, as the case may be, constitutes a deliberate violation of item 1.c) by the Closing Party.

- b) Each of the Other Parties shall contribute a percentage to the repayment of said loans to the respective lenders. The respective percentage will be established in the Financing and Repayment Plan on the basis of the following elements:
 - (i) a basic percentage payable in relation to the respective Other Party's Steel deliveries during the calendar year preceding the year in which repayment of the loan/installments becomes/become due.
 - (ii) an additional percentage in the event of a specific benefit accruing to the respective Other Parties as a result of the Closing Measures.

Such repayment shall be deferred and the open amounts shall bear interest. The period of deferral shall in no event exceed 2002. Repayment will start immediately closure becomes effective.

- c) Each of the Other Parties shall be liable only for the portion of said repayments attributed to it under the Financing and Repayment Plan. Joint liability is excluded.
 - d) The Other Parties, where appropriate, shall respectively provide security for their repayment obligations considering the special purpose of the loans and the need to establish the Restructuring Plan.
 - e) It is in the sole discretion of each Party to publish in its price lists the cost increase resulting from the repayments as extra charge.
3. A Closing Party can, in relation to Closing Measures of another Closing Party, be an Other Party.

Article 4

Assignment/Transfer

- 1. A Party can assign its rights and obligations hereunder upon prior unanimous consent of all Parties only.
- 2. If a Closing Party transfers all or an essential part of its assets to a third party; it shall impose its obligations hereunder (including the obligation of this item 2) and under the Restructuring Plan as well as under the Financing and Repayment Plan, to said third party. With the consent of the Other Parties and after the approval of the European Commission the obligation of a Closing Party may be substituted by a Third Party provided that the substitution has equivalent effect.

**Article 5
Term**

This financial arrangement shall end at the later of

- full implementation of the Restructuring Plan
- full implementation of the Financing and Repayment Plan and
- settlement of all loans incurred in connection with the Plans.

**Article 6
Miscellaneous**

1. This Agreement shall be governed by Belgian law.
2. All disputes arising out of, or in connection with this Agreement shall be exclusively referred to arbitration the details of which will be set forth by separate agreement.
3. If any provision of this Agreement is or become, in whole or in part, invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected thereby. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision which has, in view of the purpose of this Agreement, an economic effect as close as legally possible to the invalid/unenforceable provision.

ANNEXE II

MAIN OPERATING PRINCIPLES FOR ECSC LOANS DIRECTLY TO COMPANIES

I.- Loans agreements will be **directly negotiated and concluded** in conformity with the approved restructuring plan, with the closing companies (beneficiaries of the loan) and the other companies participating to the plan (other/paying companies).

II.- The **closing** companies undertake to carry out the approved restructuring plan; the **paying companies** undertake the financial responsibility for repaying the loan on a pro rata basis subject to point VI below.

A disbursement of ECSC loans can only be made if the repayment obligations of the Other Parties are fixed and the respective [bank] guarantees covering 100 % of the loan including interest and other costs are available before the disbursement of the loan.

The initial repayment plan of each reimbursement quotas of the ECSC loan of the Other Members should remain unchanged until final repayment of the loan. The other parties getting a specific benefit as a result of the closing measures may have an increased repayment quota.

Changes in the quotas of the Other Parties, as a consequence of changes of the respective Other Parties steel world deliveries during the calendar year preceeding the year in which repayment of instalment becomes due, shall be settled internally by the Other Parties without having influence on the repayment obligations under the loan agreements.

III.- A detailed program of **all measures related to envisaged closures** (in the restructuring plan and, the repayment and financing plan) shall be submitted and approved by the Commission before considering any loan application. The Commission shall issue a reasoned opinion on the basis of art.54 ECSC. (see points 2 and 3 . page 6 above).

IV.- Regular **reports** on the respect of approved restructuring plan and the **rights of visits and controls** by ECSC representatives and the Court of Auditors shall be contractually ensured. (see point 4 , page 7 above)

V.- Adequate **guarantees**, negotiated case by case, shall be offered in each request of loan by all paying companies proportional to their exposure and accepted by ECSC before granting any loan. This mechanism requires bank guarantees callable on first demand - except in those specific cases where de Commission decides to the contrary.

VI.- Principal **defaults** will be considered:

- a) failures to make payments on due dates;
- b) alteration of the membership or other substantial modifications of the Articles of Association or Group without the prior approval of the Commission;
- c) deterioration of its financial situation.
- d) non-respect of the approved restructuring plan.

Repayment of the loan for a default may be requested by ECSC to each responsible company under the loan agreement. Alternative arrangements may be negotiated between ECSC and the paying companies.

In any case ECSC shall be kept fully indemnified for any losses, damages or costs incurred by ECSC due to the need to replace the funds until final maturity.

In addition, events of default attributable to the guarantor will establish a right of the ECSC to request early repayment of the loan if alternative guarantee arrangements cannot be found. Cross-default cases shall also be introduced.