II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 29 June 1983
concerning the aids that the Belgian Government proposes to grant to the steel industry

(Only the French and Dutch texts are authentic)

(83/391/EEC, ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 93 (2) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 257/80/ECSC of 1 February 1980 establishing Community rules for specific aids to the steel industry (1),

Having regard to Commission Decision No 2320/81/ECSC of 7 August 1981 establishing Community rules for aids to the steel industry (2), and in particular Article 8 (3) thereof,

Having given notice, in accordance with Article 93 (2) of the EEC Treaty and Article 8 (3) of Decision No 2320/81/ECSC, to the parties concerned to submit their comments (3), and having regard to those comments,

Whereas:

I

By letter dated 4 November 1980, the Belgian Government notified the Commission of its intention to grant aids to its steel industry. After an initial scrutiny of the aids for compatibility with the criteria laid down in Articles 2, 3, 4 and 5 of Decision No 257/80/ECSC, on the basis of the information supplied to it, the Commission concluded that the restructuring programmes of the Belgian steel firms would result in a net increase in their capacity. It therefore initiated in respect of the non-specific aids in question the procedure provided for in Article 93 (2) of the EEC Treaty, and on 19 December 1980 sent a letter constituting formal notice to the Belgian Government to submit its comments.

By letter dated 10 February 1981, the Belgian Government notified the Commission of its intention to grant emergency aids to steel undertakings. After an initial scrutiny of the aids for compatibility with the criteria laid down in Article 5 of Decision No 257/80/ECSC, on the basis of the information supplied to it, the Commission concluded that in view of the recurrent nature of this type of support, the aids in question were equivalent to aids for continued operation, and that the Belgian restructuring plan did not justify such aid. It therefore initiated in respect of the non-specific aids concerned the procedure provided for in Article 93 (2) of the EEC Treaty, and on 13 April 1981 sent a letter constituting formal notice to the Belgian Government to submit its comments.

By letter dated 4 June 1981, supplemented by letter dated 14 August 1981 and by a detailed paper submitted on 2 October 1981, the Belgian Government notified the

(1) OJ No L 29, 6. 2. 1980, p. 5.
(2) OJ No L 228, 13. 8. 1981, p. 14.
(3) OJ No C 350, 31. 12. 1980, No C 113, 15. 5. 1981, No C 8, 14. 1. 1982, No C 57, 5. 3. 1982, No C 109, 30. 4. 1982, No C 147, 11. 6. 1982, No C 282, 27. 10. 1982, No C 57, 2. 3. 1983.

Commission of its intention to grant aid to Cockerill-Sambre as part of the restructuring of the undertaking. After an initial scrutiny of the aids for compatibility with the criteria laid down in Articles 2 to 5 of Decision No 2320/81/ECSC, on the basis of the information supplied to it, the Commission concluded that the restructuring plan was unlikely either to restore the firm's viability or to lead to the level of capacity utilization and hence productivity necessary for it to regain competitiveness. It therefore initiated in respect of the aids proposed the procedure provided for in Article 8 (3) of Decision No 2320/81/ECSC, and on 26 November 1981 sent a letter constituting formal notice to the Belgian Government to submit its comments.

By letter dated 28 October 1981, the Belgian Government informed the Commission of its intention to grant aid for investment to the firm ALZ. After an initial scrutiny of the proposed aid for compatibility with the criteria laid down in Articles 2 and 3 of Decision No 2320/81/ECSC, on the basis of the information supplied to it, the Commission concluded that the firm's restructuring plan did not involve any capacity reductions to justify the aid. It therefore initiated in respect of the aid the procedure provided for in Article 8 (3) of Decision No 2320/81/ECSC, and on 23 December 1981 sent a letter constituting formal notice to the Belgian Government to submit its comments.

By letter dated 28 December 1981, the Belgian Government notified the Commission of its intention to grant aids to Laminoirs de Saint Éloi. After an initial scrutiny of the notification in the light of Articles 2, 3 and 5 of Decision No 2320/81/ECSC, on the basis of the information supplied to it, the Commission concluded that no capacity reductions were proposed to justify the aid, whereas the high intensity of the aid would require a special restructuring effort to justify it. It therefore initiated in respect of the aids the procedure provided for in Article 8 (3) of Decision No 2320/81/ECSC, and on 26 February 1982 sent a letter constituting formal notice to the Belgian Government to submit its comments.

By letter dated 8 February 1982, the Belgian Government notified the Commission of aids planned under a draft agreement between the Government and private banks on the financing of the firm Cockerill-Sambre. After an initial scrutiny of the notification in the light of the criteria laid down in Articles 2 and 5 of Decision No 2320/81/ECSC, the Commission noted that the agreement involved the grant of new aid and that no justification was given for this aid. It therefore initiated in respect of the aid the procedure provided for in Article 8 (3) of Decision No 2320/81/ECSC, and on 8 April 1982 sent a letter constituting formal notice to the Belgian Government to submit its comments.

By letter dated 11 August 1982, the Belgian Government notified the Commission of its intention to grant aids for investment to three steel firms. After an initial scrutiny of the notification in the light of the criteria laid down in Articles 2 and 3 of Decision No 2320/81/ECSC, on the basis of the information supplied to it, the Commission concluded that no capacity reduction was proposed to justify the aids. It therefore initiated in respect of them the procedure provided for in Article 8 (3) of Decision No 2320/81/ECSC, and on 11 October 1982 sent a letter constituting formal notice to the Belgian Government to submit its comments.

By letter dated 21 September 1982, the Belgian Government notified the Commission of its intention to grant aid for continued operation to Laminoirs d'Anvers. After an initial scrutiny of the notification in the light of Articles 2 and 5 of Decision No 2320/81/ECSC, on the basis of the information supplied to it, the Commission concluded that the aids were not justified since the capacity reduction resulting from the planned closure of Laminoirs d'Anvers had already been adduced to justify clearance of a tranche of aid to ALZ. It therefore initiated in respect of the aid the procedure provided for by Article 8 (3) of Decision No 2320/81/ECSC, and on 25 November 1982 sent a letter constituting formal notice to the Belgian Government to submit its comments.

By letter dated 21 September 1982, the Belgian Government notified the Commission of its intention to grant aid for investment to Sidmar. After an initial scrutiny of the notification in the light of the criteria laid down in Articles 2 and 3 of Decision No 2320/81/ECSC, on the basis of the information supplied to it, the Commission concluded that no capacity reduction was proposed to justify granting the aid. It therefore initiated in respect of the aid the procedure provided for in Article 8 (3) of Decision No 2320/81/ECSC, and on 25 November 1982 sent a letter constituting formal notice to the Belgian Government to submit its comments.

By two letters dated 30 September 1982, the Belgian Government notified the Commission of its new plans for aid for investment to Cockerill-Sambre and Phénix Works and for aid for continued operation to Cockerill-Sambre. After an initial scrutiny of the notification in the light of the criteria laid down in Articles 2, 3 and 5 of Decision No 2320/81/ECSC, on the basis of the information supplied to it, the Commission

concluded that no new reduction in capacity was offered to justify clearance of the aid. It therefore initiated in respect of the aid the procedure provided for in Article 8 (3) of Decision No 2320/81/ECSC, and on 25 November 1982 sent a letter constituting formal notice to the Belgian Government to submit its comments.

By letter dated 30 September 1982, the Belgian Government notified the Commission of further aid to Usines Gustave Boël, Fabrique de Fer de Charleroi and Forges de Clabecq. After an initial scrutiny of this notification in the light of the criteria laid down in Articles 2, 3 and 5 of Decision No 2320/81/ECSC, on the basis of the information supplied to it, the Commission concluded that no capacity reduction was offered to justify the aids. It initiated in respect of them the procedure provided for in Article 8 (3) of Decision No 2320/81/ECSC, and on 25 November 1982 sent two letters constituting formal notice to the Belgian Government to submit its comments.

II

In its replies to the Commission's letters and in the correspondence which followed the opening of the procedures, the Belgian Government offered certain measures to justify the proposed aids, in particular reductions of 2,134 million tonnes of capacity for hot-rolled products for Cockerill-Sambre and 152 000 tonnes for two others firms. On the basis of these capacity reductions, the Commission was able to approve part of the aids notified. The Belgian Government also put forward the following arguments *inter alia:*

— in relation to Cockerill-Sambre, the size of the effort made by the firm to reduce its production capacity and the social costs and regional problems this involved,

— in relation to the other firms, the fact that they had not increased their capacity and that some of them were competitive so that their capacity would help towards the industry's recovery.

In their replies, six Member States, three federations of undertakings of the sector and three individual firms were in general agreement with the conclusions of the Commission.

In letters dated 27 and 29 June 1983, the Belgian Government clarified its intentions regarding aid and the restructuring of the industry.

III

The aids that are still the subject of procedures are as follows:

Cockerill-Sambre

Investment aid

— tax concessions (exemption from property taxes for three years and availability of accelerated depreciation) for all the investment programmes,

— purchase of convertible participating conditional bonds and grant of State guarantees and interest subsidies worth a total of Bfrs 11 250 million,

— purchase of a State shareholding of Bfrs 150 million and of a junior-ranking bond of the same amount.

Aid for continued operation

— guarantees for a total of Bfrs 15 600 million,

— coverage of losses and rebuilding of working capital by subscription of new capital or purchase of convertible participating conditional bonds to a total value of Bfrs 18 100 million and by repayable advances worth Bfrs 5 000 million,

— conversion of Bfrs 51 200 million of debts into capital.

Phénix Works

aid for investment by purchase of a State shareholding of Bfrs 116 million and application of the Economic Expansion Act;

Forges de Clabecq

interest subsidies of Bfrs 102 million for minor investments;

aid for continued operation: purchase of convertible participating conditional bonds worth Bfrs 1 253 million and conversion of debts of Bfrs 1 500 million;

Laminoirs de Longtain

coverage of losses by subscription of convertible participating conditional bonds worth Bfrs 66,5 million;

Laminoirs de Saint-Éloi

aid for investment under the Economic Expansion Act and for continued operation by coverage of losses (Bfrs 101 million of convertible participating conditional bonds) and defrayal of interest on a long-term loan;

Usines Gustave Boël

aid under the Economic Expansion Act to three investment projects;

Fabrique de Fer de Charleroi

aid under the Economic Expansion Act to three investment projects;

Sidmar

possible aid elements contained in the purchase of a State shareholding of Bfrs 3 500 million and the conversion of Bfrs 11 170 million of debts under moratorium into capital or any other stable medium;

ALZ

possible aid elements contained in the purchase of a State shareholding of Bfrs 1 400 million and in the conversion of Bfrs 1 161 million of debts under moratorium into capital or any other stable medium.

The aids under the Economic Expansion Act include guarantees on possible ECSC loans.

The Belgian Government has not yet proposed new reductions in capacity for hot-rolled products big enough to justify the above aids.

IV

The first indent of Article 2 (1) of Decision No 2320/81/ECSC provides that aided undertakings must be engaged in the implementation of a systematic and specific restructuring programme covering the different aspects of restructuring, which is capable of restoring their competitiveness and of making them financially viable without aid under normal market conditions. In the present case, the viability of some of the Belgian undertakings is still in doubt.

The second indent of Article 2 (1) provides that the restructuring programme must result in an overall reduction in the production capacity of the aided undertaking or group of undertakings. The restructuring programmes of most of the firms referred to above do not involve any such reduction and the Belgian Government has not proposed to the Commission capacity reductions by other firms on their behalf.

By virtue of the second indent of Article 3 (1) and the third indent of Article 5 (1) of Decision No 2320/81/ECSC, the amount and intensity of investment aid and aid for continued operation must be justified by the extent of the restructuring effort associated with them. The capacity reductions so far offered are insufficient to justify aid on the scale of that already approved and that now proposed. It is also necessary to ensure an equitable distribution of the capacity reductions that are necessary to achieve, Community-wide, a reduction of the order of 30 to 35 million tonnes in capacity for hot-rolled products, which is required if, in line with the General Objectives for Steel, a minimum level of capacity utilization is to be restored necessary to secure the viability of the Community steel industry under normal market conditions. On this basis, after taking into consideration the restructuring effort to date and the aid prior to 1980, an extra restructuring effort must be accepted by the Belgian steel industry. In addition to the net reductions already offered to justify the clearance of aids by the Commission, the Belgian steel industry should therefore reduce its capacity for hot-rolled products by 825 000 tonnes. The additional closures required must be identified by a definite date.

V

The Commission must supervise the grant of aids authorized and compliance with the conditions imposed by it.

The capacity reductions must be secured by the complete closure of plant, accompanied by measures ensuring that such closure is definitive. The net capacity reductions take into account any capacity increases that may result from approved investment programmes. To achieve the objective of bringing capacity into line with demand, any creation of new capacity must be compensated by additional closures.

The first indent of Article 2 (1) of Decision No 2320/81/ECSC provides that the restructuring programmes of aided undertakings must be capable of restoring their competitiveness and of making them financially viable without aid under normal market conditions. The Commission must therefore be assured that the aids contribute to restoring viability.

The Commission can only authorize aid for undertakings that have fulfilled all their obligations under the ECSC Treaty and measures adopted in implementation of it.

The decisions on the aids under consideration cannot prejudice any decisions that the Commission may have to take under Articles 65 and 66 of the ECSC Treaty.

There exists a system of quotas [1] under Article 58 of the ECSC Treaty and its extension is considered necessary.

VI

In view of the above, the Commission can authorize the aids proposed, subject to observance of the conditions and requirements laid down by it,

HAS ADOPTED THIS DECISION:

Article 1

1. The following aids which the Belgian Government plans to grant to the steel undertakings listed below are compatible with the orderly functioning of the common market to the extent that the conditions and requirements set out in Articles 2 to 5 are satisfied:

Cockerill-Sambre

Investment aid

— tax concessions (exemption from property taxes for three years and availability of accelerated depreciation) for all the investment programmes,

— purchase of convertible participating conditional bonds and grant of State guarantees and interest subsidies worth a total of Bfrs 11 250 million,

— purchase of a State shareholding of Bfrs 150 million and of a junior-ranking bond of the same amount.

Aid for continued operation

— guarantees for a total of Bfrs 15 600 million,

— coverage of losses and rebuilding of working capital by subscription of new capital or purchase of convertible participating conditional bonds to a total value of Bfrs 18 100 million and by repayable advances worth Bfrs 5 000 million,

— conversion of Bfrs 51 200 million of debts into capital;

Phénix Works

aid for investment by purchase of a State shareholding of Bfrs 116 million and application of the Economic Expansion Act;

Usines Gustave Boël

aid under the Economic Expansion Act for an investment project (construction of a rod mill);

Forges de Clabecq

interest subsidies of Bfrs 102 million for minor investments;

aid for continued operation: purchase of convertible participating conditional bonds worth Bfrs 1 253 million and conversion of debts of Bfrs 1 500 million;

Laminoirs de Longtain

coverage of losses by subscription of convertible participating conditional bonds worth Bfrs 66,5 million;

Laminoirs de Saint-Éloi

aid for investment under the Economic Expansion Act and for continued operation by coverage of losses (Bfrs 101 million of convertible participating conditional bonds) and defrayal of interest on a long-term loan.

2. The following aids which the Belgian Government plans to grant to steel undertakings listed below are not compatible with the orderly functioning of the common market unless the conditions and requirements set out in Articles 2 to 5 are satisfied:

Usines Gustave Boël

aid under the Economic Expansion Act for three investment projects;

Fabrique de Fer de Charleroi

aid under the Economic Expansion Act for three investment projects.

[1] OJ No L 191, 1. 7. 1982, p. 1.

3. Any aid elements contained in the operations listed below are not compatible with the orderly functioning of the common market unless the conditions and requirements set out in Articles 2 to 5 are satisfied;

Sidmar

purchase of a State shareholding of Bfrs 3 500 million and conversion of Bfrs 11 170 million of debts under moratorium into capital or any other stable medium;

ALZ

purchase of a State shareholding of Bfrs 1 400 million and conversion of Bfrs 1 161 million of debts under moratorium into capital or any other stable medium.

The proposed operations may not be carried out until the Commission has determined whether or not they contain aid elements.

Article 2

1. (a) The undertakings to which it is planned to grant the aids referred to in Article 1 (1) shall carry out further net reductions in their production capacity for hot-rolled products of at least 825 000 tonnes, in addition to the reductions already accepted as justification for aid authorized by the Commission. The requisite capacity reductions may also be contributed by other undertakings.

(b) In order that the aids referred to in Article 1 (2) and (3) may be compatible with the orderly functioning of the common market the undertakings to which it is planned to grant the aids must carry out appropriate net reductions in their production capacity for hot-rolled products, in addition to the reductions already accepted as justification for aid authorized by the Commission. The requisite capacity reductions may also be contributed by other undertakings.

2. A list of the plants to be closed, giving the closure dates, and a report of increases in capacity resulting from investment shall be sent to the Commission by 31 January 1984 so that it can satisfy itself that the net reductions specified in the first paragraph will be achieved; the closures shall be implemented by 31 December 1985.

Article 3

None of the proposed aid shall be paid unless the Commission is satisfied that the undertaking concerned can return to financial viability by the end of 1985.

Article 4

1. The aids may be paid only if the Commission is satisfied, on the basis of an application submitted by the Belgian Government specifying the amount, form and purpose of the aid and the undertaking concerned, that the conditions set out in Articles 2 and 3, or a sufficient part thereof, are fulfilled and that the undertaking in question fulfils its obligations in respect of the ECSC Treaty rules, in particular those governing production quotas.

2. However, aid that is absolutely necessary for the continued operation of the undertakings concerned until 31 January 1984 may be paid, provided that the undertakings fulfil their obligations in respect of ECSC Treaty rules, in particular those governing production quotas, if the Commission is satisfied, on the basis of an application by the Belgian Government specifying the amount, form and purpose of the aid, that the conditions set out in Article 2, or a sufficient part thereof, are fulfilled.

Article 5

1. The aid for investment may be granted only if the Commission, on the basis of the notification of the investment programmes, where this is required under Commission Decision No 3302/81/ECSC [1], has delivered a favourable opinion on the programmes pursuant to Article 54 of the ECSC Treaty.

2. Such aid shall be disbursed as and when the undertaking incurs expenditure in connection with the investment.

Article 6

1. For the purposes of monitoring aid payments for compliance with the conditions and requirements laid down in this Decision, the Commission may require that the six-monthly reports supplied to it under Article 9 of Decision No 2320/81/ECSC contain details of the progress the aided undertakings have made towards achieving financial viability.

2. To enable it to check that investment aid is disbursed in accordance with the provisions of Article 5 (2) of this Decision, the Commission shall be informed at the beginning of each quarter of:

[1] OJ No L 333, 20. 11. 1981, p. 35.

— the expenditure to be incurred by the undertakings during the quarter concerned both in respect of work already done and as payments on account in respect of future work,

— the investment aid to be disbursed during the same period.

3. The Commission may also carry out on-the-spot inspections to verify that the reductions in capacity referred to in Article 2 (1) have been implemented.

Article 7

1. Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may order the suspension of aid payments if at any time it should find that:

— aid has been paid in disregard of the conditions attached to its authorization in this Decision,

— the six-monthly reports supplied to it give reason to doubt that the undertaking concerned will return to financial viability by the end of 1985; in such a case the Commission may impose additional conditions relating to the restructuring of the undertaking,

— that the aided undertaking has breached its obligations under the provisions of the ECSC Treaty, in particular those governing the system of production quotas established under Article 58 and the rules on pricing.

2. The aid payments may not be resumed until the Commission has decided whether and to what extent the infringements committed call for a reduction in the amount of the aid still outstanding.

Article 8

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 29 June 1983.

For the Commission

Frans ANDRIESSEN

Member of the Commission