COMMISSION DECISION

of 29 June 1983

concerning the aids that the Government of the Federal Republic of Germany proposes to grant to the steel industry

(Only the German text is authentic)

(83/392/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Commission Decision No 2320/81/ECSC of 7 August 1981 establishing Community rules for aids to the steel industry [1], and in particular Article 8 (3) thereof,

Having given notice, in accordance with Article 8 (3) of the abovementioned Decision, to the parties concerned to submit their comments, and having regard to those comments,

Whereas:

I

By letters from its Permanent Representation dated 14, 16, 29 and 30 September 1982, the Federal Government notified the Commission, in accordance with Article 8 (1) of Decision No 2320/81/ECSC, of its plans for aids to the German steel industry.

Excluding Arbed Saarstahl GmbH, the aids covered by the notifications totalled some DM 7 600 million, including DM 2 400 million in guarantees and DM 924 million in aid to research and development.

In addition, the Federal Government notified for Commission approval under Article 8 (5) of Decision No 2320/81/ECSC eight general aid schemes in support of innovation, energy saving and environmental protection under which it also planned to aid the German steel industry.

II

Of the aids notified, the Commission on 12 November 1982 approved payment of DM 93 million in investment aid to Hoesch Werke AG and on 30 November 1982 payment of DM 452 000 in investment aid to Böhler AG and up to DM 12,9 million in investment aid and DM 0,8 million of aid for research and development to the Benteler Group.

Regarding the remaining aid proposals, the Commission, after an initial scrutiny in the light of Articles 2, 3 and 7 of Decision No 2320/81/ECSC, concluded that they did not satisfy all the criteria set out in those Articles. It accordingly initiated in respect of them the procedure provided for in Article 8 (3) of the Decision and gave the Federal Government, the other Member States and other interested parties formal notice to submit their comments.

III

In their replies three Member States expressed general agreement with the conclusions of the Commission.

IV

In March 1983 the Federal Government withdrew the aid proposals in respect of a number of small steel firms and supplied further details of other proposals concerning small and medium-sized firms. It did not, however, offer appropriate reductions in production capacity for hot-rolled products to justify the aids proposed.

V

On 31 March 1983 the Federal Government informed the Commission of the broad outline of its plans for restructuring the steel industry and of the report of the three 'Moderators'. At the same time it announced the beginning of new negotiations on cooperation between the undertakings.

The Federal Government also stated that, in addition to or instead of the aids notified so far, it was planning to grand aid for closures and continued operation.

[1] OJ No L 228, 13. 8. 1981, p. 14.

It also disclosed its plans for aid under the Special Steel Research Programme involving DM 44,7 million of aid for 21 research and development projects. It provisionally announced its intention of aiding further projects from list A notified to the Commission on 30 September 1982, from the appropriations provided in the 1984 and 1985 budgets.

VI

The main elements of the restructuring plans of the major firms were subsequently clarified in talks between the firms, attended by representatives of the German authorities.

VII

On 15 June 1983 the Federal Government informed the Commission that the maximum amounts of aid it now proposed to grant to the steel industry (excluding Arbed Saarstahl) under the various headings was as follows:

1. up to DM 4 200 million in investment and restructuring aid; the investment aid would be limited to 30 % of the investment expenditure; the restructuring aid would cover reimbursement of 50 % of the written-down value of the closed plants, plus part of associated social costs incurred between 1980 and 1985; the bulk of the restructuring aid would be for closures;

2. up to DM 290 million of aid under steel research programmes;

3. up to DM 770 million of aid under other programmes;

4. a standby guarantee of up to DM 2 600 million.

The above maximum amounts covered aid from both Federal Government and Länder sources.

The Federal Government stated that even if it were necessary to react to unforeseen development, not more than DM 4 200 million of the aid under the above programme would be called upon. This limit implied the need for an apportionment of the aid requested in arriving at the support to be given to individual undertakings.

The Federal Government asked the Commission to take a decision on aid to the German steel industry as a whole, except Arbed Saarstahl, on the basis of the above aid plan.

At the time the Federal Government was unable to specify the amount and form of aid to be given to the individual steel firms. Nor had the firms' restructuring plans underlying the new aid proposals been finally worked out.

VIII

Arbed Saarstahl GmbH has been engaged in implementing a restructuring programme with the help of public aid since 1977. In the period up to 1980 considerable reductions in capacity for hot-rolled products were made by or on behalf of the company, which the Commission must, under Article 2 (2) of Decision No 2320/81/ECSC, take into account in its appraisal of the present aid proposals.

IX

Since 1980 net reductions of 673 000 tonnes in capacity for hot-rolled products have been made by or on behalf of Arbed Saarstahl GmbH, partly as justification for aids already approved by the Commission over this period.

The contribution of other undertaking to these reductions was specified by the Federal Government in its letter dated 3 May 1983.

X

A new aid plan for Arbed Saarstahl GmbH was notified by the Federal Government, in accordance with Article 8 (1) of Decision No 2320/81/ECSC, by letter from its Permanent Representation dated 30 September 1982. The plan comprises:

1. investment aid, aid for closures and aid for continued operation totalling DM 1 500 million in the form of conditionally repayable grants for the period 1982 to 1985;

2. DM 70 million of aid to support energy-saving, environmental protection and innovation measures costing DM 253,8 million;

3. aid under the special research and development programme of up to 50 % of the cost of 16 R & D projects.

XI

After an initial scrutiny of this aid plan in the light of Articles 2, 3, 5 and 7 of Decision No 2320/81/ECSC, the Commission concluded that, on the basis of the facts in its possession, the aids proposed did not satisfy all the criteria set out in those Articles. It accordingly initiated the procedure provided for in Article 8 (3) of the Decision and gave the Federal Government, the other Member States and other interested parties formal notice to submit their comments.

XII

In their replies two Member States were in agreement with the conclusions of the Commission.

XIII

By letter dated 2 March 1983 the Commission authorized a tranche of the aid proposed in the plan described at X above, namely DM 154,1 million in aid for continued operation. This authorization, too, was given on the basis of the capacity cuts referred to at IX.

XIV

The Federal Government informed the Commission of the progress of the restructuring of Arbed Saarstahl GmbH by interim reports dated 10 December 1982 and 31 March, 3 May and 1 June 1983.

On the same occasions the Federal Government announced that aid of DM 500 million in the form of conditionally repayable grants and a DM 311 million grant to defray interest and repayments on guaranteed loans were needed to enable the firm to continue operating over the period 1983 to 1985.

No research and development aid had been set aside in the 1983 budget for any of the projects to be undertaken by Arbed Saarstahl GmbH; however, the Federal Government reserved the right to support schemes planned by the company which were on the list A notified on 30 September 1982 (seven R & D projects costing a total of DM 7,445 million) out of the 1984 and 1985 budgets.

XV

The Commission regard the defrayal of interest and repayments on State guaranteed loans before the circumstances legally justifying calling of the guarantee have arisen as new grants of aid. The Commission advised the Federal Government of this view in an opinion dated 8 December 1982.

XVI

On 24 June 1983, the Federal Government requested authorization of further aids to Arbed Saarstahl GmbH, namely an increase of DM 250 million (from DM 500 million to DM 750 million) in the aid for continued operation in the form of conditionally repayable grants and defrayal of all interest and repayments falling due on guaranteed loans beyond 31 December 1985. The last-mentioned aid for continued operation would not be paid until after 31 December 1985 and is therefore, by virtue of Article 5 of Decision No 2320/81/ECSC, not authorizable.

XVII

The Commission regards the restructuring effort so far made by Arbed Saarstahl GmbH as insufficient to justify the proposed aids described in sections XIV and XVI above.

XVIII

Since 1980 the German steel industry has made considerable reductions in operational capacity. Except in the case of Arbed Saarstahl GmbH, the capacity reductions were accomplished with little or no State aid. Further cutbacks of operational capacity of some 3 million tonnes have been promised by 1985. After deduction of the reductions to justify aid to Arbed Saarstahl GmbH under the Commission's Decision of 8 December 1982, these come to some 2,6 million tonnes.

The restructuring record of the German steel industry to date and the present outline aid plan therefore permit the Commission to take an overall conditional decision on the proposed aids despite not having details either of the further restructuring measures planned by the steel firms concerned or of their respective shares of the proposed aid.

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.

Community-wide, a reduction of the order of 30 to 35 million tonnes in capacity for hot-rolled products is required if, in line with the General Objectives for Steel, a level of capacity utilization is to be restored sufficient to secure the viability of the Community steel industry under normal market conditions. All concerned must contribute their fair share to achieving this capacity reduction. 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 German steel industry involving capacity reductions of at least 1,2 million tonnes. The additional closures required must be identified by a definite date.

XIX

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 plants, 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, the 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 aided undertakings must be engaged in the implementation of a restructuring programme which is 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. Two German steel undertakings give the Commission particular cause for doubt in this regard. One of them, which is in breach of fundamental rules of Community law, is unlikely to return to viability under present circumstances.

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.

XX

In the Commission's view, a decision must cover the undertakings of the Federal Republic's steel industry as a whole, especially as a lasting solution to the structural problems of Arbed Saarstahl GmbH can only be achieved with measures involving several undertakings.

XXI

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

The following aids which the Federal Republic of Germany plans to grant to the steel industry 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:

— aids to German steel undertakings except Arbed Saarstahl GmbH:

  — investment and restructuring aid: up to DM 4 200 million,

  — aid under steel research programmes (Federal Ministry for Research): up to DM 290 million,

  — aid under various other programmes: up to DM 770 million,

  — guarantees: up to DM 2 600 million.

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

— aids to Arbed Saarstahl GmbH:

  — aid for continued operation in the form of conditionally repayable grants: DM 750 million, plus defrayal of interest and repayments on guaranteed loans,

  — aid for investment in the field of energy saving, environmental protection and innovation under non-specific aid schemes: up to DM 70 million for all types of aid,

  — aid under the 1984 and 1985 budgets for research and development covering, in line with the Steel Research Programme, up to 50 % of the costs of research projects specified in list A in the Federal Government's notification of 30 September 1982 and amounting to DM 7,445 million or, within the same overall cost limit, other projects planned by the undertaking concerned appearing in list B of the said notification.

The above amounts of aid shall include aid from both Federal Government and Länder sources.

Article 2

1. In addition to the capacity reductions already achieved, the undertakings to which it is planned to grant the aids referred to in Article 1 shall, as justification for the aid, carry out the reductions of 2,6 million tonnes already planned plus further reductions of at least 1,2 million tonnes (i.e., 3,8 million tonnes in all) in capacity for hot-rolled products. The requisite capacity reductions may also be achieved by collective measures involving 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 capacity reductions shall be implemented by 31 December 1985.

Article 3

None of the proposed aid shall be paid unless the Commission is satisfied that the aided undertaking 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 Federal 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 is not in breach of its obligations under the ECSC Treaty, in particular those concerning production quotas.

2. However, aid that is absolutely necessary for the continued operation of an undertaking until 31 January 1984 may be paid, provided that the undertaking is not in breach of its obligations under the ECSC Treaty, in particular those concerning production quotas, if the Commission is satisfied, on the basis of an application by the Federal Government specifying the amount, form and purpose of the aid and the undertaking concerned, 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 financial viability.

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

— 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.

(1) OJ No L 333, 20. 11. 1981, p. 35.

Article 7

1. Without prejudice to any penalties it may impose by virtue of Article 58 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 undertaking is in breach of its obligations under the ECSC Treaty, in particular those concerning production quotas and pricing.

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

Article 8

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 29 June 1983.

For the Commission

Frans ANDRIESSEN

Member of the Commission