COMMISSION DECISION

of 29 June 1983

concerning the aids that the Italian Government proposes to grant to certain steel undertakings

(Only the Italian text is authentic)

(83/396/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 [2], and having regard to those comments.

Whereas:

I

By letters dated 1 October, 20 November and 3 December 1981 and 30 September 1982, the Italian Government notified the Commission of its intention to grant aids to the Finsider group and Sisma (subsidiaries of IRI, the Istituto per la Ricostruzione Industriale) and to all steel producers over 50 % of whose total annual consumption of electricity was accounted for by the use of electric arc furnaces. After an initial scrutiny of the aids for compatibility with Articles 2, 3 and 5 of Decision No 2320/81/ECSC, on the basis of the information supplied to it, the Commission concluded that the capacity reductions proposed for Finsider and Sisma were insufficient and that the two companies were not certain to return to viability. The Commission also noted that the electric steel-makers did not propose a restructuring programme involving a net capacity reduction over all the firms receiving aid to justify that aid. The Commission therefore initiated in respect of the proposed aids the procedure provided for in Article 8 (3) of Decision No 2320/81/ECSC and on 4 December 1981 and 22 January and 30 November 1982 sent letters constituting formal notice to the Italian Government to submit its comments. However, it authorized part of the aid to Finsider because of the group's pressing cash flow problems and the net capacity reductions that had been offered.

II

In its replies to the abovementioned letters and in other correspondence and contacts with the Commission, the Italian Government submitted with regard to Finsider *inter alia* that:

— the undercapitalization of the State-owned enterprises placed the Italian steel industry in a different position from that of the other Member States and therefore justified injections of capital by way of financial restructuring,

— in judging the restructuring effort, particularly as regards capacity reductions, account should be taken of the fact that Finsider's plants were in general more modern and efficient than those operated by the other main steel groups in the Community and furthermore that in the flat products sector demand was greater than national output,

— in view of the trade deficit just referred to and the nature of domestic Italian demand, which was more sustained than in the other Member States, an increase in sales would not affect intra-Community trade to an extent contrary to the common interest.

The Italian Government also stated that, contrary to what had been said in its letter of 30 September 1982, no investment aid would be given to Sisma under Law No 675 of 12 August 1977 and recalled that this company's restructuring programme had received a favourable opinion from the Commission under Article 54 of the ECSC Treaty and would involve a considerable number of redundancies.

(1) OJ No L 228, 13. 8. 1981, p. 14.
(2) OJ No C 123, 14. 5. 1982, No C 185, 20. 7. 1982, No C 46, 17. 2. 1983 and No C 52, 24. 2. 1983.

The Italian Government also maintained that the payment by the exchequer of part of the energy costs of electric steel-making plants was not an aid to the steel industry, since its sole purpose was to bring about a more efficient loading of the electricity grid by encouraging consumption in periods of trough demand.

Two Member States and two federations of undertakings of the sector were in general agreement with the position taken by the Commission.

During the course of the procedure, the Italian Government submitted a revised restructuring programme for Finsider to the Commission, offering larger capacity cuts than originally proposed. The new proposals were confirmed in a letter from the Italian Government dated 20 June 1983. Revised figures were also submitted for the amount of aid that was thought necessary in connection with the new plan. By letter dated 28 June 1983 the Italian Government also notified the Commission of new aids for continued operation that it proposed to grant to the private sector.

III

Taking into account the revised figures referred to above and the amount of aid already authorized by the Commission, the aid to Finsider that is still subject to the procedure is as follows:

— investment aid:

  — interest subsidies on bank loans totalling Lit 1 203 600 million,

  — regional grants totalling Lit 284 400 million,

  — exchange risk cover on loans requested from ECSC;

— aid for continued operation:

  — interest subsidies and State guarantee on a seven-year, Lit 2 000 000 million loan to Finsider from IRI,

  — coverage of losses of plants formerly belonging to the EGAM group: Lit 994 400 million,

  — coverage of so-called 'indirect' or 'non-inherent' charges: Lit 313 000 million,

  — aid for research and development up to Lit 57 000 million.

In addition to the aids listed above, a capital fund is to be set up from which IRI can carry out a recapitalization of Finsider. This arrangement involves a further sum of Lit 5 937 900 million that has to be considered by the Commission under the procedure.

A further tranche of aid in the form of a capital injection of Lit 49 007 million is to be given to rebuild and increase the capital and cover the losses of Sisma.

The aid that it is proposed to grant to the private sector is as follows:

— defrayal by the exchequer of part of the energy costs of electric steel-makers,

— grants for firms making net reductions of capacity (budget: Lit 50 000 million),

— defrayal by the exchequer of up to 10 percentage points of the financial charges on medium-term loans (maximum budget: Lit 500 000 million).

The Italian Government proposes to justify the aid to Finsider by a net reduction of 2,374 million tonnes in its capacity for hot-rolled products; this includes 130 000 tonnes accepted as justification for aid already authorized.

The net capacity reduction for hot-rolled products planned in Sisma's restructuring programme is 25 000 tonnes.

The Italian Government has undertaken to obtain from the private steel producers for whom aid has already been authorized by the Commission a net capacity reduction of between 1,8 million and 2,2 million tonnes between 1980 and 1985. It has also promised to ensure that private steel producers not receiving aid do not increase their net capacity by a margin exceeding that amount during the same period.

IV

Article 1 (2) of Decision No 2320/81/ECSC provides that the concept of aid includes any aid elements contained in the financing measures taken by Member States in respect of the steel undertakings which they directly or indirectly control and which do not count as the provision of risk capital according to standard

company practice in a market economy. In view of the financial situation of Finsider and Sisma and the approach likely to be adopted by a private entrepreneur in similar circumstances, any injection of funds into the companies to recapitalize them inevitably contains substantial aid elements.

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.

In the present case, Finsider's restructuring programme does not point to a return to viability except on extremely optimistic assumptions particularly as to the trend of sales. Such assumptions are not supported by the forecasts in the General Objectives for Steel. It is hence doubtful whether the firm can return to viability in these circumstances. Consequently, an additional restructuring effort must be made, aimed in particular at taking out plant that is old and ill-adapted to market requirements. Such an effort is all the more warranted since 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.

In Sisma's case, the planned concentration of production on one plant, already modernized, should help to restore its viability. However, the amount and intensity of the aid are not justified by the restructuring effort made, as this is reflected in particular in capacity reductions.

As far as the aid to the electric steel producers is concerned, Article 1 of Decision No 2320/81/ECSC provides that all aids to the steel industry are compatible with the orderly functioning of the common market only if they respect the rules set out in Articles 2 to 7.

The payment of the electricity surcharge (sovrapprezzo termico) by the Government from general taxation is not a general scheme but one which applies specifically to the steel industry. Even though the costs of the various factors of production may vary from one Member State to another, this does not justify excluding this aid from the scope of Decision No 2320/81/ECSC. Therefore, such aid can be considered compatible with the provisions of Decision No 2320/81/ECSC only if it forms part of a restructuring programme involving capacity reduction. The other aids that it is proposed to give for continued operation can likewise only be justified by the acceptance of capacity reductions by the firms receiving them.

In line with the General Objectives for Steel, an overall reduction Community-wide of 30 to 35 million tonnes of capacity for hot-rolled products is necessary to restore a level of capacity utilization that is considered the minimum required to secure the viability of the Community steel industry under normal market conditions. It is necessary to ensure that this overall capacity reduction is distributed fairly. On this basis, an extra restructuring effort must be accepted by the Italian steel industry as a whole. It is necessary to set a deadline by which the additional closures required must be identified.

V

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

The capacity reductions must be obtained 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, 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.

The Commission can only authorize aid for undertakings which have fulfilled all their obligations resulting from the application of the ECSC Treaty.

The authorization of 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 all 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 Italian Government plans to grant to the Finsider Group, Sisma and steel producers over 50 % of whose annual consumption of electricity is accounted for by the use of electric arc furnaces 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:

1. Aids to Finsider:
   - Investment aid:
     - interest subsidies on bank loans totalling Lit 1 203 600 million,
     - regional grants totalling Lit 284 400 million,
     - exchange risk cover on loans requested from the ECSC totalling Lit 675 600 million;
   - Aid for continued operation:
     - interest subsidies and State guarantee on a Lit 2 000 000 million loan to Finsider from IRI,
     - coverage of losses of plants formerly belonging to the EGAM group: Lit 494 400 million,
     - coverage of so-called 'indirect' or 'non-inherent' charges: Lit 313 000 million;
   - Aid for research and development up to Lit 57 000 million:
     - endowment of a fund from which IRI can carry out a recapitilization of Finsider: Lit 5 937 900 million.

(1) OJ No L 191, 1. 7. 1982, p. 1.

2. Aids to Sisma: endowment of a fund from which IRI can carry out a recapitalization: Lit 49 007 million.

3. Aids to private steel producers:
   - defrayal by the exchequer of increases in the electricity surcharge (sovrapprezzo termico) decided by the Interministerial Price Committee between 31 March 1981 and 31 December 1982,
   - subsidy of up to 10 percentage points of the financial charges on existing or future medium-term loans for a maximum of three years (maximum budget: Lit 500 000 million),
   - closure grants for firms making net reductions of capacity (budget: Lit 50 000 million).

Article 2

1. The undertakings to which it is planned to grant the aids referred to in Article 1 shall carry out further net reductions in their production capacity for hot-rolled products of at least 3,46 million tonnes, in addition to the reduction of 2,244 million tonnes that has been proposed to justify the aids and 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 Italian 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 met 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 an undertaking until 31 January 1984 may be paid provided that the undertaking fulfils its 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 Italian 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 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.

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 stil outstanding.

Article 8

This Decision is addressed to the Italian Republic.

Done at Brussels, 29 June 1983.

For the Commission

Frans ANDRIESSEN

Member of the Commission

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