II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 23 December 1988

concerning aid that the Italian Government proposes to grant to the public steel sector

(Only the Italian text is authentic)

(89/218/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular the first and second paragraphs of Article 95 thereof,

Having consulted the Consultative Committee and with the unanimous assent of the Council,

Whereas :

I

Under Commission Decisions No 257/80/ECSC [1] and No 2320/81/ECSC [2] establishing Community rules for aids to the steel industry considerable State aid was authorized by the Commission in favour of the Italian public steel enterprise Finsider during the period 1980 to 1985, in order to assist it in carrying out a restructuring programme which involved in particular the closure of hot rolling capacities of 4 604 000 tonnes, representing 23,6 % of its production capacity in 1980, and a reduction in employment of 43 200 persons, i.e. 32 % of its 1980 level of employment, and which was assessed to have the capability under normal market circumstances and by strict implementation and management control to restore the concern's viability.

In spite of these major structural changes the viability target was not attained during the following years by Finsider, which, by contrast to its main competitors in other Member States, continued to accumulate losses and had difficulties in maintaining its market position.

An expert investigation into the reasons underlying this failure by Finsider to attain viability established that it had been mainly caused by an industrial and commercial structure still insufficiently competitive, by delays in the implementation of investments and by insufficiently rigorous management.

Consequently Finsider's losses in 1987 — a year in which most other flat product producers of the Community generated enough gross profits to assure not only a sufficient level of self-financing but also net profitable results — rose by Lit 1 700 thousand million, of which the flat product subsidiary Italsider alone representing the main activities of Finsider counted for Lit 1 000 thousand million. By the end of 1987 the total debts of the Finsider Group, including its ECSC as well as its EEC activities, had reached the level of Lit 10 030 thousand million, i.e. 104 % of consolidated turnover.

The continued credit extension, predominantly from credit institutions subject to state control, to a public undertaking which having reached a level of indebtedness which exceeds its yearly turnover is unable to finance its activities from own resources, led the Commission on 7 May 1988 to initiate the infringement procedure of Article 88 of the ECSC Treaty against the Italian Government as regards the net credit extensions of Lit 1 155 thousand million granted by public and private credit institutions to Finsider during 1987. This decision reflected the Commission's opinion that these debt extensions had not been granted under circumstances

[1] OJ No L 29, 6. 2. 1980, p. 5.
[2] OJ No L 228, 13. 8. 1981, p. 14.

acceptable to a private investor operating under normal market economy conditions, but under the influence of a state guarantee and accordingly contained elements of illegal state aid incompatible with Article 4 (c) of the ECSC Treaty and with the provisions of Commission Decision No 3484/85/ECSC of 27 November 1985 establishing Community rules for aid to the steel industry (1).

On 10 May 1988, the General Assembly of Finsider's shareholders of decided to let Finsider go into voluntary legal liquidation. 99,8 % of Finsider shares is held by the public holding company IRI.

On that occasion IRI, covered by its shareholder the Italian state, issued an explicit guarantee to the Finsider Group's creditors that all the principal and interest of the Group's existing loans would be repaid. This fact caused the Commission on 15 June 1988 to extend the Article 88 procedure already initiated against the Italian Government to include the grant of this guarantee.

II

On June 16 1988, the Italian Government advised the Commission of a plan to restructure the Italian public steel industry and notified the financing by which it intends to support this plan.

The restructuring plan submitted by the Italian Government envisages the transfer to a new public steel company ILVA of the most effective ECSC and non-ECSC steel activities of Finsider in liquidation, such as the steel-making facilities and plate and strip mills at Taranto, the steel-making facilities and long products mills at Piombino, the Novi Ligure and Cornigliano cold-rolling mills, the Dalmine, Torre Annunziata and Piombino tube plants, the Terni and Torino special steel plants and the Condove cold-drawing installations.

The plan on the other hand foresees the definite closure during the period end 1988 to 1990 of the steel-making facilities and the plate mill at Campi, the steel-making facilities and the bar and rod mill at Torino, the Terni concrete reinforcing bar mill, the bar and rod mill at Sesto S. Giovanni and the Torino cold-rolling mill, involving a total capacity reduction in hot-rolled and cold-rolled finished products of respectively 1 180 000 and 708 000 tonnes.

Furthermore, it is part of the plan that during the same period, besides Finsider's non-steel assets, the following steel assets will be sold to the private sector : the pig iron plant at Trieste, the Sisma steel-making facilities and the bar and rod mill, the Marghera and S. Giovanni Valdarno section mills and the Lovere steel-making facilities, while the Aosta steel-making facilities and bar and rod mill will be partly sold off to be operated in conjunction with the private sector. Thus hot-rolled finished product capacity totalling 575 000 tonnes will be transferred to the private sector.

The future of the steel-making activities at the Bagnoli plant is subject to particular provisions by which in principle the upstream facilities will be closed no later than 1 July 1989 while the hot wide strip mill which in return for aid granted under the previous aid code by the demolition of a reheating furnace was held to a maximum production capacity of 1,2 million tonnes, could be incorporated into ILVA and will be operated according to the characteristics of the available rolling facilities, market trends and the overall economics of the operation.

The restructuring plan envisages employment reductions of 19 915 persons from 70 340 persons, i.e. a reduction of 28 %.

The aid proposed by the Italian Government in support of the plan amounts to a maximum of Lit 7 670 thousand million to be supplied directly by the state or indirectly through the state-owned holding company IRI and serves the following purposes :

— up to a maximum of Lit 6 932 thousand million for redemption of part of Finsider's debts, the remaining portion of these debts which total around Lit 10 500 thousand million will be partly transferred to ILVA and partly covered by the receipts from sales of steel and non-steel assets,

— up to a maximum of Lit 245 thousand million to cover losses derived from the continued provisional operation of Finsider's ECSC installations to be closed down or sold off,

— up to a maximum of Lit 288 thousand million, as contingency appropriation to cover the risk that the proceeds from the realization of Finsider's assets are less than forecast in the plan,

— up to a maximum of Lit 205 thousand million to cover expenditure incurred by the closure of steel plants.

The Commission, assisted by external experts has, by applying the same criteria as those which were imposed by the Commission during the previous restructuring of the Community steel industry, examined the submitted restructuring plan with regard to its capacity to assure the future viability of ILVA.

It has concluded that by a strict implementation of the restructuring plan the Italian public steel sector in the form of its new company ILVA would stand reasonable chances of achieving financial viability under normal market conditions by 1990.

III

The aim of providing the Italian steel industry with a solid and economically viable structure contributes to the achievement of the objectives of the Treaty, in particular Articles 2 and 3. The Commission considers that, so as to respect the specific conditions of the common interest of

(1) OJ No L 340, 18. 12. 1985, p. 1.

the Community as laid down in this Decision, the public interventions contemplated by the Italian government are necessary for and proportional to the effect sought.

The Community thus finds itself faced with a situation not specifically provided for in the ECSC Treaty and yet requiring action. In these circumstances, recourse must be had to the first paragraph of Article 95 of the Treaty, so as to enable the Community to pursue the objectives set out in the initial Articles thereof.

At the same time it is, however, important to ensure that aid approved does not adversely affect trading conditions within the Community steel industry to an extent contrary to the common interest.

In the latter context it is important that a major contribution to the structural adjustment still required in this sector be made by the Italian public steel sector in the form of capacity reductions as counterpart for the aid exceptionally approved.

It must, however, be taken into account in this connection that the state of the steel market is presently cyclically in a boom situation which makes it difficult for the time being to call for capacity cuts which are proportional to the approval of the full aid amount proposed by the Italian Government.

Under these circumstances it seems appropriate and reasonable as counterpart for the capacity reductions contained in the restructuring plan for the Italian public steel sector communicated to the Commission on 16 June 1988, including the closing down of the upstream steel-making facilities of the Bagnoli plant, to authorize two-thirds of the public financing envisaged by the Italian Government to accompany the plan.

The discussion of the anticipated requirement for the balance of the aid and for the release of that aid shall be postponed until September 1990 or earlier in the event of a rapid market decline. At such time a decision shall be taken by the Commission, following the assent of the Council, in accordance with Article 95 ECSC, on the release of the aid and, in the light of the prevailing Community market situation, on the proportional additional reduction in production capacity where there are major problems of overcapacity.

IV

The grant of operating aid must be limited to what is absolutely necessary.

Therefore the timetable for the closures foreseen in the plan must be tightened considerably, and all closures must, unless there are well-founded technical reasons, be achieved at the latest by 31 March 1989, apart from that of the liquid phase of Bagnoli where the envisaged date of 30 June 1989 is acceptable.

It must be ensured that all the envisaged closures are definite and irreversible and that the capacities concerned no longer depress the Community steel market.

Considerations of aid necessity and the present favourable state of the market make it necessary to impose a similar tightening of the calendar for the envisaged disposals of steel plants to the private sector and, in case this timetable is not complied with, to demand their closures three months later on 30 June 1989. Due to the more complicated solution pursued for the Aosta plant the corresponding dates of respectively partial disposal or closure are extended by six months.

V

It is not only necessary to make sure during the whole restructuring period that the aid approved gives sufficient viability prospects for ILVA by the end of the restructuring period, end 1990, but it must also be ensured that this steel enterprise does not as a result of the financial restructuring of the public steel sector obtain an unfair advantage in relation to other competitors by being provided with financial charges below 4,5 % of turnover, which was the level set as a minimum threshold for aid for financial restructuring according to the principles laid down in Commission Decision No 1018/85/ECSC of 19 April 1985 amending Decision No 2320/81/ECSC establishing Community rules for aids to the steel industry [1]. It is even appropriate, for reasons of control during the interval until a position has been taken on the unapproved balance of the notified aid, by a sufficient debt transfer from Finsider to impose a level of financial charges for ILVA of 5,5 % of its turnover.

As part of the steel activities transferred to ILVA are non-ECSC steel activities it must be ensured that these are being transferred with all their existing total liabilities.

VI

The implementation of this Decision requires close surveillance by the Commission during the whole restructuring period of elements such as for example :

— assets being sold at market value and the proceeds being applied to reduce the aid requirement of the public steel sector as much as possible,

— compliance with revised timetable for closures and disposals by sales,

— closure aid only covering normal costs resulting from closures,

[1] OJ No L 110, 23. 4. 1985, p. 5.

— ILVA strictly implementing the restructuring measures laid down in the restructuring plan and making the envisaged progress towards viability,

— ILVA not operating below the level of financial charges imposed.

In order to exercise this surveillance with the necessary authority the Commission will proceed by release of the approved aid in segments in line with the fulfilment of the imposed conditions.

The implementation of the Decision also necessitates close collaboration between the Commission and the Italian Government in the form of clear and strict reporting obligations for the latter.

The Commission will by exercising all its powers in the field of state aid ensure that the aided undertaking fulfils the conditions of this Decision, additional conditions imposed as regards progress towards viability and its other obligations resulting from the application of the ECSC Treaty.

VII

In view of all the above, the Commission can authorize two-thirds of the aid proposed subject to observance of the conditions and requirements it lays down.

The Commission will at the same time close the initiated Article 88 ECSC Treaty procedure to the extent that it involves the authorized aid,

HAS ADOPTED THIS DECISION:

Article 1

The following maximum amounts of aid which the Italian Government plans to grant directly or through its public holding IRI to the public steel undertaking Finsider in liquidation and in the same context to the new public steel undertaking ILVA which will take over and continue part of the steel-making activities of Finsider may be regarded as compatible with the orderly functioning of the common market to the extent that the conditions and requirements set out in Articles 2 to 7 are satisfied:

(a) *Aid for financial restructuring and other operating aid:*

— redemption of up to a maximum of Lit 4 432 000 million of Finsider's debts which on 1 October 1988 amounted to around Lit 10 517 000 million,

— coverage of losses up to a maximum of Lit 245 000 million deriving from the continued provisional operating of the ECSC installations of Finsider to be closed down or to be sold off,

— a contingency appropriation of maximum Lit 288 000 million to cover the risk that the proceeds from the realization of Finsider's assets do not reach Lit 1 500 000 million forecasted by the restructuring plan submitted by the Italian Government to the Commission on 16 June 1988;

(b) *Closure aid:*

— coverage of expenditure incurred by the closure of steel plants up to a maximum of Lit 205 000 million.

Article 2

1. The following definitive closures of production capacity shall be carried out:

(thousand tonnes)

	Pig iron	Steel	Finished products	
			Hot-rolled	Cold-rolled
Bagnoli	2 350	2 700		
Campi (heavy plate)		350	400	
Turin (merchant bar, wire rod)		375	250	
Terni (concrete reinforcing bar)			300	
Sesto S. Giovanni (merchant bar, wire rod)			230	
Turin				708
Total	2 350	3 425	1 180	708

2. The capacity of the hot wide strip mill at Bagnoli shall not be increased by the reinstallation of a second reheating furnace.

3. To the extent that the closures mentioned in paragraph 1 are not according to the restructuring plan submitted to the Commission on 16 June 1988 envisaged to take place at an earlier date, they must be achieved at the latest by 31 March 1989 with the exception of the closure of the liquid phase at Bagnoli, which must be achieved at the latest by 30 June 1989.

4. The Commission may, if provided with well-founded technical reasons, accord a short-term extension of the 31 March 1989 closure deadline.

5. The finality of the closures mentioned in paragraph 1 shall be ensured either by the demolition of the installation concerned or by their disposal outside Europe.

Article 3

1. The recipient public steel group shall dispose by sale totally of the following steel plants:

(in thousand tonnes)

	Pig iron	Steel	Finished products	
			Hot-rolled	Cold-rolled
Marghera (heavy and light sections)			130	
S. Giovanni Valdarno (light sections)			150	
Sisma (heavy and light sections, wire rod)		240	230	
Trieste	590			
Lovere		145		
Total	590	385	510	

2. If the abovementioned plants have not been sold at the latest by 31 March 1989 they shall be definitively closed at the latest by 30 June 1989.

3. The recipient public steel industry shall also dispose by sale to the private sector in total or in a substantial part its steel plant in Aosta (crude steel 460 000 tonnes, merchant bars/wire rod 65 000 tonnes) at the latest by 30 September 1989. If this has not been achieved the plant must be definitively closed down by 31 December 1989, unless its individual viability has been undisputably demonstrated to the Commission.

Article 4

1. The transfer of assets and liabilities from Finsider to ILVA shall be accomplished at the latest by 31 March 1989.

2. Any non-ECSC undertaking being transferred from Finsider to ILVA shall be taken over with its existing total liabilities.

3. The liabilities to be transferred from Finsider to ILVA shall reach such a level that the total net financial charges to be borne by the latter company during the restructuring period ending 31 December 1990 are brought to a level of 5,5 % of the company's turnover, unless during that period assent is received from the Council according to Article 95 of the ECSC Treaty to a Commission proposal to authorize an additional part of the total aid which has been notified by the Italian Government on 16 June 1988 in support of the restructuring plan of the public steel sector. In the latter case the financial charges of ILVA may by such aid be allowed to be reduced to a minimum level of 4,5 % of the company's turnover.

Article 5

1. Subject to the modifications imposed by the previous Articles, ILVA and all present and future interested parties shall carry out, according to the timetable, as a minimum, all the restructuring measures laid down in the restructuring plan submitted by the Italian Government to the Commission on 16 June 1988.

2. For the purpose of monitoring both this requirement and the minimum level of financial charges to be borne by ILVA according to Article 4 (3), the Italian Government shall supply six-monthly reports to the Commission containing details of the progress that the aid recipient has made towards viability under the restructuring plan.

3. This report shall be supplied within two months of the end of each six-month period in a form to be determined by the Commission. The first report shall be submitted at the latest by 31 August 1989 covering the period 1 October 1988 to 30 June 1989.

4. If the six-monthly reports give reason to doubt that the aid recipient will not return to viability by the end of 1990, the Commission may impose additional conditions relating to its restructuring.

Article 6

1. None of the aid referred to in Article 1 shall be paid unless the following conditions are fulfilled:

(a) as regards aid for debt redemption:

— that the selling price of assets corresponds to their market value,

— that all proceeds from assets sold are being used exclusively to bring down Finsider's debts,

— that these proceeds, and the aid, are being paid to a blocked account which can only be drawn upon for the purpose of bringing down Finsider's debts,

— that in the case of sales of assets, account is taken of the possible debt reduction as a corollary of these sales,

— that the net financial charges of ILVA are at a level of 5,5 % of turnover;

(b) as regards other operating aid:

— that it is limited in amount to what is absolutely necessary in order to enable the provisional operating at orderly market terms of the installations to be closed down or sold off within the time limits set down in Article 2 (3) and (4) and Article 3 (2), (3) and (4);

(c) as regards the contingency aid :

— that the assets have been disposed of at the highest obtainable market price ;

(d) as regards the closure aid :

— that the expenditures defrayed are normal costs resulting from the partial or total closures of plants.

2. The Commission releases the aid in segments after being satisfied of the fulfilment of the aforementioned conditions.

3. An initial segment of the debt redemption referred to in Article 1 (a) first indent, will be released by the Commission for payment at the latest by 31 March 1989. When deciding on the size of the aid segment then to be released the Commission shall take into consideration the state of progress of the restructuring programme and the legal requirements connected with the foundation of ILVA.

4. Another segment of aid comprising the aid referred to in Article 1 (a) second and third indents, and Article 1 (b) will be released by the Commission by 15 July 1989 conditional upon the complete fulfilment of the closure and transfer conditions laid down in Articles 2 (3) and 3 (2).

5. The aid must be paid at the latest by 31 December 1990.

Article 7

Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may refuse to release aid for payment, require the suspension of payments of aid already released or order the recovery of paid aid, if at any time it were to find that :

— aid has been paid in disregard of the conditions laid down in the preceding Articles,

— the aid benificiary does not comply with additional conditions relating to the restructuring of the undertaking imposed by the Commission under Article 5 (4),

— that the recipient public steel industry has breached its obligations according to the price rules of the ECSC Treaty.

Article 8

1. Besides the six-monthly reports on progress towards viability referred to in Article 5 (2), the Italian Government shall supply the Commission with reports on aid disbursed in the course of the preceding six months, on the uses made of such aid and on the results achieved during the same period as regards restructuring. These reports must be supplied within two months of the end of each six-monthly period. The first of these reports will concern the year 1988, and subsequent reports will concern each succeeding half-year period.

2. The Commission may carry out on-the-spot inspections to verify that the closures and production limitations referred to in Article 2 (1) and (2) and Article 3 (2) and (3) have been implemented.

3. The Commission may at any time during the restructuring period demand the insertion of a close on-the-spot surveillance system in order to supervise the strict implementation of the restructuring plan.

Article 9

This Decision is addressed to the Italian Republic.

Done at Brussels, 23 December 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission