COMMISSION DECISION

of 25 July 1990

on aid granted by the Province of Bolzano to the Bolzano steelworks

(Only the Italian text is authentic)

(91/176/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 4 (c) thereof,

Having regard to Commission Decision No 3484/85/ECSC of 27 November 1985 establishing Community rules for aid to the steel industry [1], and in particular Articles 1, 3, 5 and 6 thereof,

Having given the interested parties notice to submit their observations and having regard to those observations,

Whereas :

I

In December 1987, the authorities of the Province of Bolzano granted the Bolzano steelworks (Falck Group) a subsidized loan of Lit 6 billion (ECU 3,9 million) towards an investment of Lit 23 billion (ECU 15 million) aimed at converting plant in order to produce special steels with high added value.

The 11-year loan carries an interest rate of 3,5 %. On the basis of the 12,8 % reference rate [2] established by the Commission for Italy that year, the subsidy therefore amounts to 9,3 percentage points. The legal basis for a subsidized loan of this kind is Provincial Law No 25 of the Province of Bolzano of 8 September 1981 on financial assistance for industry.

By letter dated 26 July 1988, the Commission requested further details on the loan from the Italian authorities. It pointed out that the aid, which had not been notified to the Commission beforehand as required by Article 6 (1) of Decision No 3484/85/ECSC, did not qualify for any of the exemptions listed in that Decision from the basic prohibition on aid to the steel industry contained in Article 4 (c) of the ECSC Treaty.

The Italian authorities replied on 5 November 1988, stressing that the investment in question was part of the restructuring plan for the Bolzano steelworks which had been communicated to the Commission in September 1982 and approved by it in 1983.

They informed the Commission that the loan in question had been decided in principle by the Bolzano provincial authorities on 14 February 1983.

Arguing that the loan had been granted under a provincial law, they considered that the aid could be covered by Article 5 of Decision No 3484/85/ECSC as a regional aid to investment.

II

The Commission does not dispute that it approved the Falck restructuring plan which had been notified under Commission Decision No 2320/81/ECSC [3], as amended by Decision No 1018/85/ECSC [4].

On 25 May 1983, the Commission had approved, under Decision No 2320/81/ECSC, aid for the restructuring of certain Italian firms in the private sector, including an amount of Lit 2 billion for the Bolzano steelworks to be granted under National Law No 675/77.

The Italian Government, however, informed the Commission during its examination of the case that, because of the administrative structure in Italy, which confers considerable autonomy on the Provinces of Trentino and Bolzano in particular, National Law No 675/77 was not applicable in those territories. In the Province of Bolzano, it is replaced by Provincial Law No 25/81, referred to above. This was one of several factors which delayed the granting of aid in connection with the restructuring plan, the aid finally being granted only in December 1987.

[1] OJ No L 340, 18. 12. 1985, p. 1.
[2] For the definition of this rate, see OJ No C 31, 3. 2. 1979.
[3] OJ No L 228, 13. 8. 1981, p. 14.
[4] OJ No L 110, 23. 4. 1985, p. 5.

According to the information in the Commission's possession, the restructuring plan provides for total investments of Lit 40 billion (some ECU 26 million). This includes an investment of Lit 22,8 billion (some ECU 15 million) for improving the quality of the wire rod mill products at Bolzano and increasing the final weight of the coils; the Lit 6 billion loan in question appears to be intended for this particular investment. These investment measures were part of the restructuring plan, for which the Commission approved a similar investment aid (subsidized loan) in 1983.

III

The Commission has at no time been informed about subsequent developments with regard to that aid and discovered purely by chance that the loan had been granted in December 1987.

Under the fifth indent of Article 2 of Decision No 2320/81/ECSC, it was essential that the approved subsidized loan should have been granted before the absolute deadline of 31 December 1985.

It transpires that the aid was not paid before that date. It therefore became an illegal aid, since it was not re-notified and approved by the Commission in accordance with the new rules on the granting of aid to the steel industry, which entered into force in 1986 (Decision No 3484/85/ECSC).

IV

Under Decision No 3484/85/ECSC and under Decision No 322/89/ECSC [1], which replaced it on 1 January 1989, the aid in question cannot be considered compatible with the common market. In particular, Article 5 of Decision No 3484/85/ECSC may not be invoked in this case since it is applicable only within the territory of a Member State where no aid has been granted under Decision No 257/80/ECSC [2] or No 2320/81/ECSC, and this is not the case with Italy.

On the basis of these considerations, the Commission initiated the procedure provided for in Article 6 (4) of Decision No 3484/85/ECSC and, by letter dated 22 March 1989, gave the Italian authorities notice to submit their observations.

Under that procedure, the Italian authorities sent in their observations by letter dated 30 May 1989.

They pointed out first that, by letters dated 3 November 1982 and 5 November 1986, the authorities of the Province of Bolzano had enquired of the Commission whether or not it was necessary to notify the specific cases in which Provincial Law No 25 had been applied, starting with four individual cases [3] which had arisen at that time. Having received no reply from the Community authorities, they had concluded that notification of individual cases was not necessary.

Second, they drew attention to the stated objectives as regards aid for research and development set out in Decisions No 3484/85/ECSC and No 322/89/ECSC, namely:

— reduction of production costs, particularly through energy conservation;

— improvements in productivity and product quality;

— protection of the environment.

Their aim in so doing was to stress the fact that the investment in question was designed with those very objectives in mind.

Third, they referred to the lack of experience on the part of the Province of Bolzano in distinguishing between the rules of the EEC Treaty and those of the ECSC Treaty. They also stressed that, under the circumstances, the aid had been granted as a matter of urgency, and only after the investment in question had been approved by the Commission under Article 54 of the ECSC Treaty. In addition, they pointed out that the output of the Bolzano steelworks accounted for only around 1 % of national production and that there was, therefore, no justification for claiming that there would be a distortion of competition liable to affect trade between Member States.

Lastly, they contended that, as the investment had an impact on the improvement of the environment, it had been the intention of the provincial authorities in providing assistance to take account of the general interest, in particular as regards the preservation of agricultural and tourist activities in the Province of Bolzano.

This having been said, given the profitability of the enterprise, there was no question at the time of covering operating losses.

In the course of the procedure, comments were received from only one trade association, and not from any Member State. They were forwarded to the Member State in question, which did not make any particular observations.

V

The Bolzano steelworks manufacture special-steel products. These are listed in Annex I to the ECSC Treaty under code No 4.400 and are therefore covered by the rules laid down in that Treaty.

[1] OJ No L 38, 10. 2. 1989, p. 8.
[2] OJ No L 29, 6. 2. 1980, p. 5.

[3] These cases concern the textiles sector as opposed to the steel sector.

Article 4 (c) of the ECSC Treaty provides that subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever, are recognized as incompatible with the common market for coal and steel and are accordingly to be abolished and prohibited within the Community, as provided in the Treaty.

This prohibition applies both to individual grants specifically provided for and to general, regional or sectoral schemes in the steel industry.

The only exceptions to the above general prohibition which could or can be granted were or are spelt out in the various steel aid codes: Decision No 2320/81/ECSC followed by Decision No 1018/85/ECSC up to 31 December 1985, then Decision No 3484/85/ECSC from 1 January 1986 to 31 December 1988, and, lastly, Decision No 322/89/ECSC as from 1 January 1989.

With regard to the first Decision, investment aid was authorized by the Commission in May 1983 for the Bolzano steelworks in connection with a restructuring plan notified in September 1982.

However, pursuant to the last indent of Article 2 (1) of that Decision, the deadline for payment of the approved aid, i.e. the granting of the subsidized loan, was 31 December 1985. Since the payment deadline was not met, it is not Decision No 2320/81/ECSC nor its amendment No 1018/85/ECSC which is applicable in this case, but Decision No 3484/85/ECSC, namely the steel aid code which was in force at the time the subsidized loan was granted. The code which is now in force (322/89/ECSC) and which extends the original code on the same terms is mentioned here simply for the record.

This distinction is very important inasmuch as, up to 31 December 1985, the Commission's steel policy consisted in authorizing certain aids to promote industrial restructuring and especially the financial viability of companies in this sector. By contrast, after that date, the only aids which could qualify for exemption from the prohibition in Article 4 (c) of the ECSC Treaty are spelt out: aid for research and development, environmental protection aid under certain conditions, certain forms of closure aid and, in cases where the recipient firm is located on the territory of a Member State not authorized to grant aid under Decision No 257/80/ECSC or No 2320/81/ECSC, certain regional investment aids. Since the last clause does not apply to Italy, it is not relevant here.

The same is true of the other clauses referred to above: the aid in question is not for research and development or for closures, but for investments which are not therefore eligible for exemption under the rules in force.

VI

The Italian authorities invoked a number of arguments mentioned at IV above.

By letter dated 5 July 1982, the Commission informed the Italian authorities of its approval of the regional aid scheme established by Provincial Law No 25 of the Province of Bolzano. Page 2 of that letter states that: 'the Bolzano authorities will also have to comply in full with the Community rules and codes on the award of aid to the steel industry'. This provision is unambiguous; it is therefore not possible in this connection to invoke any misunderstanding or error of interpretation due to the absence of a reply from the Commission.

The second point made by the Italian authorities concerned the objectives to which research and development in the steel industry must be tailored in order to be eligible for aid. As the present case concerns investment in production and not in research, this argument is not relevant. Furthermore, energy conservation and improved product quality are not admissible as reasons for exemption under Decision No 3484/85/ECSC.

Reference is then made to the improvement in working conditions and in the quality of air and water stemming from the investment. The Italian authorities would here have had to comply with the conditions for the application of Article 3 of Decision No 3484/85/ECSC by indicating that the investments were aimed at bringing the firm into line with new standards adopted at least two years after entry into service of the plant and were below the intensity ceiling specified in that Article. The letter initiating the procedure drew their attention to this point. They did not, however, supply any information that would have allowed the Commission to apply the exemption provided for in Article 3.

It has already been stated that a favourable opinion on an investment under Article 54 of the ECSC Treaty cannot be a substitute for an authorization of aid. Similarly, a situation requiring urgent action does not justify the granting of aid without authorization, in breach of Community law and the Commission's long-established policy. Nor can it be claimed that it was necessary to await clarification from the Commission, at least as regards the steel industry, where the rules in force are both explicit and familiar to national administrations by dint of having been published. Ignorance of the law is no defence.

The relatively small output of the Bolzano steelworks and its allegedly limited impact on Community trade cannot be invoked. Under ECSC rules, the fact that trade is affected is not a necessary condition for the incompatibility of aid.

In the case in point, the general interest of the Province of Bolzano cannot be adduced as a valid argument since it is the Community interest which has to be taken into account here, and this is for the Commission to assess, essentially on the basis of whether or not competition is maintained within the common market.

VII

The exceptions to the basic prohibition of aid to the steel industry laid down in Article 4 (c) of the ECSC Treaty are in no way designed to relax Community policy on such aid, which is justified by the serious distortions of competition which could be caused by aid that was incompatible with the common market in an industry which, despite recent restructuring, remains sensitive. Strict compliance with this Community policy must be ensured, and this means that aid to a steel firm may be authorized only after the Commission has been able to check that the conditions spelt out in exhaustive fashion in the aid code have effectively been met.

It is clear from the foregoing that these conditions have not been met and that the arguments advanced by the Italian authorities have not caused the Commission to change its initial assessment. The aid in question must therefore be considered incompatible with the common market.

It is, however, necessary to take account of the special circumstances surrounding the case. As the Italian authorities have pointed out, the aid objected to was originally compatible with the common market and, on 25 May 1983, the Commission approved aid of Lit 2 billion to the Bolzano steelworks under Decision No 2320/81/ECSC. The aid subsequently became incompatible only because of the delay in its being granted due to the rules on the division of responsibility between the Province of Bolzano and the Italian national authorities. The Commission has therefore decided not to require repayment of the aid paid up to the date of notification of this Decision. It considers that the illegal aid in question will effectively be abolished provided that the interest subsidy ceases to be granted after the date of notification and until the loan in question matures. It therefore requests the Italian authorities to align the terms of the loan on the reference rate for Italy in force at the time the loan was granted, i.e. 12,8 %,

HAS ADOPTED THIS DECISION:

Article 1

The interest subsidy on a loan granted in December 1987 by the Province of Bolzano in Italy to the Bolzano steelworks under Provincial Law No 25 of 8 September 1981 is illegal State aid because it was made available without prior authorization from the Commission and, furthermore, is incompatible with the common market pursuant to Commission Decision No 3484/85/ECSC.

As from the date of notification of this Decision, the authorities of the Province of Bolzano shall refrain from granting an interest subsidy on the annual instalments of the abovementioned loan until the loan matures.

Article 2

The Italian authorities shall apply to the loan in question a rate consistent with the market rate in force when the loan was granted, such rate being defined by the Commission as the average reference rate applicable to interest subsidies paid by central government to credit institutions. The new rate shall apply to each annual instalment of the loan from the date of notification of this Decision until the loan matures.

Article 3

The Italian authorities shall inform the Commission, within two months of the date of notification of this Decision, of the measures it has taken to comply herewith.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 25 July 1990.

For the Commission

Leon BRITTAN

Vice-President