COMMISSION DECISION

of 12 April 1994

concerning aid to be granted by Italy to the public steel sector (Ilva group)

(Only the Italian text is authentic)

(94/259/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,

After consulting the Consulative Committee and with the unanimous assent of the Council,

Whereas :

I

The Community steel industry is currently experiencing its most difficult period since the first half of the 1980s. This is due to the general slowdown in the economy, which has had a significant effect on industrial activities in general, and on the steel industry in particular, leading to a serious imbalance between supply and demand, accompanied by a collapse in prices. In addition, the international market generally has been weak : there is pressure from imports and there has been a trade dispute with the United States of America affecting substantial Community exports to that market. All of these factors have combined to aggravate the financial situation of almost all steel companies in the Community.

II

Under Commission Decisions 89/218/ECSC [1], 90/89/ECSC [2] and 92/17/ECSC [3] concerning aid that the Italian Government proposed to grant to the public steel sector, the Commission authorized considerable State aid for Ilva, the Italian public steel sector undertaking, during the period 1998 to 1991, so as to help it carry out a restructuring programme providing, in particular, for the closure of 2 700 000 tonnes per year of liquid steel production capacity, 1 180 tonnes per year of hot-rolling capacity and 780 000 tonnes per year of coldot-rolling capacity and 385 000 tonnes per year of liquid steel production capacity and 510 000 tonnes per year of hot-rolling capacity, plus the shedding of 27 196 jobs, equivalent to 38,7 % of the workforce in 1988, all of which was supposed, under normal market conditions and on the basis of strict implementation and rgirorous management control, to ensure the viability of the undertaking.

Despite the major restructuring effort, the objective of restoring viability was not achieved over subsequent years by Ilva, which, since 1991, has continued to build op deficits and has experiences difficulties in maintaining its position on the market.

By the end of 1992 the total debts of the Ilva group, including both its ECSC and EEC activities, had reached Lit 7 600 billion, i.e. a debt/equity ratio of 8,24. It may be estimated that, for the financial year 1993, indebtedness will amount to some Lit 10 067 billion, thus exceeding turnover.

The injection by the Instituto nazionale per la ricostruzione industriale (IRI) of Lit 650 billion into the capital of Ilva prompted the Commission, on 8 July 1992, to initiate proceedings pursuant to Article 6 (4) of Commission Decision No 3855/91/ECSC [4] in respect of the aid contained in that financial transfer, since it could not be deemed to be a genuine provision of risk capital according to usual investment practice in a market economy.

Subsequently, first the continued granting of loans mainly through the unlimited liability of the single shareholder established in Article 2362 of the Italian Civil Code to a group of public sector undertakings such as the Ilva group, whose financial structure is highly imbalanced and which has been showing heavy losses since 1991, and, secondly, the proposed assumption by IRI of the bulk of the Ilva group's indebtedness, prompted the Commission, on 7 July 1993, to extend the proceedings previously initiated to include the aid elements contained in the two aid measures.

In first initiating and then extending proceedings under the abovementioned Article 6 (4), the Commission took

[1] OJ No L 86, 31. 3. 1989, p. 76.
[2] OJ No L 61, 10. 3. 1990, p. 19.
[3] OJ No L 9, 15. 1. 1992, p. 16.
[4] OJ No L 362, 31. 12. 1991, p. 57.

the view that all the aid measures referred to above contained elements of illegal State aid that were incompatible with the ECSC Treaty and with the provisions of Decision No 3855/91/ECSC.

By letter dated 13 December 1993, Italy informed the Commission of the new programme for the reorganization and privatization of the Ilva group, endorsed by IRI in September 1993, and also informed it of its commitments concerning the privatization of the group by the end of 1994 and the sale of 100 % of the capital of the companies concerned.

The basic objective of the abovementioned programme is to privatize the steel group by the end of 1994 through the direct sale on the market, in the near future, of Ilva's and IRI's holdings. The programme also provides for the complete closure of the Bagnoli steelplant, a 1,2 million tonnes per year reduction in the capacity for hot-rolled finished products at Taranto by 30 June 1994 and the imposition on the acquirer of the Taranto plant of the requirement that, within a period of six months of the date of the contract of sale, a capacity of 0,5 million tonnes per year of hot-rolled production capacity will be shut down.

The reorganization of the Ilva group will be carried out notably by the splitting of its core business into two new companies, ILP (Ilva Laminati Piani Srl) and AST (Acciai Specialéi Terni Srl), whose return on capital employed and return on equity should allow their immediate privatization.

ILP's activities will cover ordinary steel flat products at the Taranto, Novi Ligure, Torino Laf, Genova Cornigliano and Marghera plants.

AST's activities will cover special-steel and stainless-steel flat products at the Terni and Turin plants.

The rest of the group, to be known as Ilva Residua, will be liquidated and will transfer to private operators all the companies and groups that can be sold, such as, for example, Dalmine (tubes), Ise (electricity generation), Cogne (special-steel long products) and Sidermar (sea transport), TDI and ICMI.

In addition, Ilva Residua will take over temporarily all the workforce to be made redundant or retired early. The total number of jobs to be shed is 11 500, equivalent to 28 % of the Ilva group's workforce at 31 December 1992.

In addition to the provision of Lit 650 billion by IRI, the Ilva group will receive other public assistance intended to finance the abovementioned programme. First, IRI will take over residual indebtedness amounting to Lit 2 943 billion. On completion of the programme, the Ilva group's indebtedness of Lit 10 067 billion will have decreased by only Lit 7 124 billion, i.e. Lit 4 166 billion through the income received from the sale of assets and Lit 2 958 billion through the debts transferred to the companies being sold off.

Secondly, IRI will have to cover expenditure amounting to Lit 1 197 billion involved in continuing Ilva Residua's activities until its liquidation. This means that the total public assistance would amount to Lit 4 790 billion.

III

Applying the same criteria as those imposed by the Commission during the previous restructuring of the Community steel and industry, the Commission has accessed the abovementioned programme in terms of its capacity to ensure the viability of the undertakings. With the assistance of outside experts, it has identified the hot-rolling mills that can be closed without jeopardizing the viability of the newly-created companies. It has specifically identified six options, amongst the options examined, that would not jeopardize viability.

It has concluded, provided the privatization and reorganization programme is implemented strictly, the Ilva group and, more precisely, the new companies ILP and AST would have reasonable chances of being viable by the end of 1994, under normal market conditions.

IV

The sharp deterioration in the Community steel market since mid 1990 has created serious difficulties in the steel industry in several Member States, including Italy. The aim of providing the Italian steel industry with a sound and economically viable structure contributes to achieving the objectives laid down in the ECSC Treaty, and in particular those set out in Articles 2 and 3. The Commission considers that, in terms of compliance with the specific conditions dictated by the Community's common interest a interest and set out in this Decision, the public assistance to be granted by Italy is necessary and proprotionate to achieving these aims.

The Community therefore finds istself faced with a situation not specifically provided for in the ECSC Treaty and one in which it is necessary for it to act. Use should accordingly be made of the first paragraph of Article 95 of the ECSC Treaty so as to enable the Community to pursue the objectives set out in the initial Articles thereof.

V

So as to limit the impact on competition to the minimum, it is important that the Italian public steel sector should make a crucial contribution to the structural adjustment still necessary in that sector, through capacity reductions carried out in return for the aid exceptionally approved.

In this respect, the Italian programme provides for the reductions and closures specified above. With regard to the plant at Taranto, the capacity reductions amounting to 1,2 million tonnes per year will be irreversible, involving the demolition of the two reheating furnaces at the hot-wide-strip mill No 1 and the plate-rolling mill respectively.

The closure of the Bagnoli plant will entail either its scrapping or its dismantling and sale outside Europe.

As far as the condition imposed on the acquirer of ILP is concerned, the reduction in capacity of 0,5 million tonnes per year could involve the demolition of a reheating furnace at rolling mill No 2 at Taranto or the demolition of another Italian plant situated elsewhere provided that such a plant has been manufacturing hot-rolled finished products up to the date of privatizing and belongs to the new owner of ILP. The capacity reduction will take place within a period of six months as from the date of the contract of sale.

So as to contribute effectively to the reduction in existing over-capacity in the Community steel sector, it is important that, apart from capacity increases due to productivity gains, the abovementioned reductions and closure should not be offset by any investment liable to increase the remaining production capacity for crude steel and hot-rolled finished products of the undertakings covered by the programme; this should apply for a period of five years as from the date of the last capacity closure or of the last payment of aid in respect of investments under the programme, whichever is the later.

VI

The granting of operating aid must be limited to what is strictly necessary.

Consequently, if the income obtained from the sales is greater than the amounts anticipated, the excess will be used to reduce the indebtedness borne by IRI and thus to reduce the amount of aid. On the other hand, if the income obtained is less than the amounts anticipated, the resulting increase in the amount of aid required could be deemed to be covered by the abovementioned counter-concessions, in particular by the closure of the Bagnoli plant, provided that such aid does not exceed the ceiling of Lit 750 billion. It should be noted that Italy's strict compliance with its pledges that it will sell 100 % of the capital of the companies covered by the privatization and will carry out such privatization by the end of 1994 will contribute not only to the success of the privatization and reorganization programme through its implementation under the conditions and within the timetable provided for, but will also help to ensure that the amount of aid remains below the abovementioned ceiling.

So as to ensure that the new companies do not receive any further public assistance in the form o a carry-over of tax credit on to future profits, ILP and AST should not be able to claim any tax credits in respect of the losses recorded in the past by the Ilva group, since such losses are to be absorbed through the State aid.

It should also be ensured that the rules of fair competition are complied with as regards the conditions governing privatization. It is therefore necessary that the acqusitions of the undertakings or the acquisitions of majority shareholdings by private investors should not be financed by State aid. In addition, they should be open to all interested parties and should not be subject to discriminatory conditions.

Not only is it necessary to ensure that, throughout the period covered by the privatization and reorganization programme, the aid approved provides sufficient prospects of viability for ILP and AST by the end of the privatization period (end of 1994), but it must also be ensured that these steel undertakings do not, following the financial restructuring of the public steel sector, obtain an unfair advantage over competitors through a reduction in net financial charges to a level below 3,5 % and 3,2 % of turnover respectively, this being the level of the Community average in the ordinary-steel flat-products subsector and in the stainless-steel products subsector respectively. The indebtedness of the Ilva group transferred to the abovementioned undertakings must be set at a sufficiently high level to ensure that the resulting net financing costs are in line with the Community averages referred to above.

Furthermore, the Commission should ensure in particular that, without prejudice to the financing of the privatization and reorganization programme, any financing stemming from loans to the undertakings is granted on normal commercial terms. It must also ensure that there is no remission of debts or any preferential treatment of debts to the State.

Lastly, it should be ensured that the aid approved is not used for purposes of unfair competition and does not affect the conditions of trade in the Community steel industry to an extent that is incompatible with the common interest.

VII

The implementation of this Decision requires strict monitoring by the Commission of the application of the programme until its completion.

For this purpose, Italy should cooperate fully and provide the Commission twice-yearly with detailed reports on :

— the reduction of capacity,

— the investments carried out,

— the reductions in the workforce,

— the effects on the market and production,

— financial performance,

— privatization,

— the creation of the new enterprises.

The first report should reach the Commission by 15 March 1994, and the following reports every six months. The last report should reach the Commission by 15 September 1998.

In order to enable the Member States to monitor the implementation of the programme and the payment of the relevant aid, the Commission will draw up six-monthly reports, on the basis of the reports submitted by Italy, which will be submitted to the Council not later than 1 May and 1 November respectively, in order to allow discussion in the Council, if appropriate. In particular, if an undertaking which has received aid pursuant to Article 95 of the ECSC Treaty intends to participate in an investment creating or extending capacity, the Commission will inform the Council on the basis of a report setting out the financing arrangements and showing that there is no State aid involved.

In addition to the monitoring system established by the reports provided by Italy, the Commission may have any necessary checks made of the recipient undertakings in accordance with Article 47 of the ECSC Treaty, in order to verify the information provided and in particular compliance with the conditions provided for in its decisions.

In that context, should a Member State make a complaint to the Commission that Stade aid is enabling one of the recipient companies to under-price, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

Furthermore, should the Commission, on the basis of the information provided, find that the conditions laid down in its decisions pursuant to Article 95 have not been met, it may require the suspension of payments of aid and/or the recovery of aid already paid. In the event of Italy's failing to fulfil the obligations imposed on it by any such decision, Article 88 of the ECSC Treaty would have to be applied.

In addition, if, on the basis of the reports from Member States, the Commission finds substantial deviations from the financial data on which the viability assessment was based, it may request that the abovementioned reports be submitted every three months, and it could require Italy to take appropriate measures to reinforce the restructuring of the undertaking receiving the aid.

The Commission may, in respect of each individual case, decide to carry out its monitoring on a quarterly basis. It may also decide to mandate an independent consultant, selected with the agreement of Italy, to evaluate the monitoring results and report on them to the Member States.

VIII

In view of all the above, the Commission may, pursuant to Article 95 of the ECSC Treaty, authorize the abovementioned aid, subject to observance of the conditions and requirements it lays down. However, the aid which, under this Decision, is deemed to be compatible with the proper functioning of the common market has been calculated in such a way as to allow the undertakings concerned to become viable by the end of 1994. Accordingly, should a return to viability not be achieved by that date, Italy will not request any further derogation pursuant to Article 95 for such undertakings.

The Commission will at the same time terminate the proceedings initiated pursuant to Article 6 (4) of Decision No 3855/91/ECSC to the extent that it relates to the authorized aid,

HAS ADOPTED THIS DECISION :

Article 1

1. The following maximum amounts of aid which Italy plans to grant directly or through its public holding IRI to the Ilva steel group, and in particular to Ilva Residua, may be regarded as compatible with the orderly functioning of the common market provided that the conditions and requirements set out in paragraphs 2 to 5 and in Articles 2 to 6 are met :

(a) a capital injection of Lit 650 billion by IRI into the group ;

(b) coverage by IRI of the remaining indebtedness up to a maximum of Lit 2 974 billion. However, if the revenue received from the sale of the undertakings concerned is less than the amounts anticipated, an increase in the residual indebtedness covered by IRI may be accepted provided that it does not exceed the ceiling of Lit 750 billion.

Conversely, if the revenue obtained from such sales exceeds the amounts anticipated, the extra amounts will be used to reduce the indebtedness covered by IRI and thus to reduce the amount of aid;

(c) coverage by IRI of restructuring and liquidation expenditure, up to a maximum of Lit 1 197 billion.

2. The aid has been calculated to enable the undertakings to return to viability by the end of 1994. In the case that such viability is not attained by that date, Italy shall not request any further derogation pursuant to Article 95 of the ECSC Treaty for such undertakings.

3. In addition, such aid shall not be used for the purpose of unfair competition practices.

4. Italy shall comply strictly with its firm pledges to sell 100 % of the capital of the companies being privatized and to carry out such privatization by the end of 1994.

5. Without prejudice to the financing of the privatization and reorganization programme approved by the Commission and described in this Decision, any financing deriving from loans to the undertaking being monitored shall be granted on normal commercial terms. The undertakings in the Ilva group shall not receive debt holidays or friendly treatment of debts to the State.

Article 2

Italy shall ensure that the Ilva group:

1. closes completely and definitively the hot-rolling mill at Bagnoli;

2. reduces irreversibly by 1,2 million tonnes per year the capacity for producing hot-rolled finished products at Taranto, through the demolition of a reheating furnace at the hot-rolled wide strip mill No 1 and at the heavy plate mill respectively;

3. reduces capacity by 0,5 million tonnes per year either throught the demolition of a reheating furnace at mill No 2 at Taranto or through the demolition of other Italian plant situated elsewhere provided that such plant has manufactured hot-rolled finished products up to the date of privatization and belongs to the new owner of ILP. It shall take place within a period of six months as from the date of the contract of sale;

4. closes the Bagnoli plant by either scrapping it or dismantling it and selling it outside Europe;

5. does not, apart from capacity increases due to productivity gains, increase the remaining production capacity for crude steel and hot-rolled finished products of the undertakings covered by the programme, for a period of five years starting from the date of the last closure or the date of the last payment of aid in respect of investments under the programme, whichever is the later.

Article 3

1. The acquisition of the undertakings by private investors shall not be financed by State aid. It must be open to all interested parties and must not be subject to discriminatory conditions.

2. The income obtained through the sale of the companies in the Ilva group shall be used in full to reduce the indebtedness of the group.

3. The debts taken over by the new companies Ilva Laminati Piani Srl and Acciai Speciali Terni Srl must at the outset put the levels of their net financing costs at 3,5 % and 3,2 % respectively of annual turnover.

4. The undertakings ILP and AST shall not receive any tax credits on past losses of the Ilva group to be coverd by State aid.

5. The beneficiary undertakings shall carry out all the measures laid down in the programme for the privatization and reorganization of the Ilva group notified to the Commission, in accordance with the timetable contained therein.

Article 4

1. Italy shall cooperate fully with the following arrangements for monitoring this Decision:

(a) Italy shall supply the Commission twice a year, and not later than 15 March and 15 September respectively, with reports containing full information in accordance with the enclosed Annex on the undertakings covered by the proposals pursuant to Article 95 of the ECSC Treaty. The first report should reach the Commission by 15 March 1994 and the last report by 15 September 1998, unless the Commission decides otherwise;

(b) the reports shall contain full information necessary for the Commission to monitor the implementation of the privatization and reorganization programme and in particular contain all the financial data necessary to allow the Commission to assess whether its conditions and requirements are fulfilled. In addition, the reports shall contain full information in accordance with the Annex, which the Commission reserves the right to modify in line with its experience during the monitoring process. It is up to Italy to oblige the beneficiary undertakings to disclose all relevant data which may, under other circumstances, be considered as confidential.

2. The Commission shall, on the basis of the reports, draw up half-yearly reports, which shall be submitted to the Council not later than 1 May and 1 November respectively, in order to allow discussion in the Council, if appropriate. In particular, if an undertaking which has received aid pursuant to Article 95 of the ECSC Treaty plans to participate in an investment creating or extending capacity, the Commission shall inform the Council on the basis of a report presenting the financing arrangements and demonstrating the absence of State aid.

Article 5

1. The Commission may at any time decide that the reports referred to in Article 4 (1) should be on a quarterly basis if it deems such necessary to fulfil its monitoring tasks. The Commission may at any time decide to mandate an independent consultant, selected with the agreement of Italy, to evaluate the monitoring results, to undertake any research necessary and to report on them to the Council.

2. The Commission may have any necessary checks made in the aided companies in accordance with Article 47 of the ECSC Treaty in order to verify the accuracy of the information given in the reports referred to in Article 4 (1) and in particular compliance with the conditions laid down in this Decision. In the case that a Member State makes a complaint that State aid is enabling one of the companies concerned to under-price, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

3. In assessing the reports referred to in Article 4 (1), the Commission will ensure that the requirements of Article 1 (5), in particular, are being respected.

Article 6

1. Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may require the suspension of payments of aid and/or the recovery of aid already paid if, on the basis of the information received, at any time it were to find that the conditions laid down in this Decision have not been met. If Italy fails to fulfil the obligations imposed on it by any such decision, Article 88 of the ECSC Treaty shall apply.

2. Moreover, if the Commission establishes, on the basis of the reports submitted by Italy, that substantial deviations from the financial data, on which the viability assessment has been made, have occurred, it shall request that the reports referred to in Article 4 (1) be provided quarterly, and it may require Italy to take appropriate measures to reinforce the restructuring measures of the aided company.

Article 7

This Decision is addressed to the Italian Republic.

Done at Brussels, 12 April 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

ANNEX

The Commission's information requirements

(a) **Capacity reductions**

— date (or expected date) of cessation of production,

— date (or expected date) of dismantling (1) of the installation concerned,

— where installation is sold, date (or expected date) of sale, identity and country of purchaser,

— sale price;

(b) **investments**

— details of investments realized,

— date of completion,

— the costs of the investment, the sources of finance and the sum of any related aid involved,

— the date of aid payment;

(c) **workforce reductions**

— number and timing of job losses,

— the total costs,

— a breakdown of how the costs are being financed;

(d) **production and market effects**

— monthly production of crude steel and finished products per category,

— products sold, including volumes, prices and markets;

(e) **financial performance**

— evolution of selected key financial ratios to ensure progress is being made towards viability (the financial results and ratios must be provided in a way allowing comparisons with the company's financial restructuring plan),

— level of financial charges,

— details and timing of aids received and costs covered,

— terms and conditions of any new loans (irrespective of source);

(f) **Privatization**

— selling price and treatment of existing liabilities,

— disposal of proceeds of sale,

— date of sale,

— financial position of company at time of sale;

(g) **creation of a new company or new plants incorporating capacity extensions**

— identity of each private and public sector participant,

— sources of their financing for the creation of the new company or new plants,

— terms and conditions of the private and the public shareholders' participation,

— management structure of a new company.

(1) As defined in Commission Decision No 3010/91/ECSC (OJ No L 286, 16. 10. 1991, p. 20).