COMMISSION DECISION

of 12 April 1994

concerning aid to be granted by Germany to the steel company Sächsische Edelstahlwerke GmbH, Freital/Sachsen

(Only the German text is authentic)

(94/260/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 Consultative 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 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

On 18 January 1993, Germany notified the Commission of a plan of the Treuhandanstalt, a public body in charge of the privatization of the State-owned enterprises of the former German Democratic Republic, to grant aid to its steel company Sächsische Edelstahlwerke GmbH, Freital/ Sachsen (hereinafter referred to as 'SEW Freital') in the framework of its privatization, with a request for the application of Article 95 of the ECSC Treaty in respect of the aid measures that cannot be approved under Commission Decision No 3855/91/ECSC [1] (Steel Aid Code, hereinafter referred to as 'the SAC').

The company in question was founded in the 19th century and is held by the Treuhandanstalt since the German economic, monetary and social unification in June 1990. The undertaking was offered for sale in an unconditional and open bidding procedure. Five applicants demonstrated interest in the acquisition of SEW Freital. Following talks between the Treuhandanstalt and those five applicants, concrete contractual negotiations were conducted until October 1992 with three of them. While one of the remaining three withdrew its offer in August 1992, the proposal of the second was considered not to be backed by a reliable financial plan. The private West-German Boschgotthardtshütte O. Breyer GmbH (hereinafter referred to as 'BGH') remained as sole bidder. The purchase contract was signed in December 1992, *inter alia,* subject to approval by the Commission. Through is contract, SEW Freital has been taken over by SEW Edelstahl GmbH and Co Holding, which is entirely owned by BGH.

The plan of the purchaser provides for a reduction of the hot-rolling capacity of the company by at least 160 kt/y (47 %) and a reduction of the crude-steel capacity by 100 kt/y (33 %) compared to the situation on 1 July 1990. The comany will close down all existing hot-rolling facilities and replace them by a merchant-bar mill with a capacity of 180 kt/y of which some parts will be provided to the company by BGH for free. It will close down all of its remaining crude-steel facilities and replace them by an electric arc furnace with a capacity of 200 kt/y. The capacity reduction will be accompanied by a substantial reduction in the workforce, namely by 49 %.

The privatization provisions include aid elements that are incomptible with the ECSC Treaty and with the provisions of the SAC. According to the Commission's estimates, this aid amounts to a maximum of DM 274 million, serving the following purposes :

— a maximum amount of DM 34 million has been accorded to cover social charges relating to the release of 1 056 of 2 166 employees,

— a maximum amount of DM 189 million is to cover debts accumulated until privatization,

— a maximum amount of DM 42 million which the Treuhandanstalt will pay to the company for repair and maintenance of installations,

[1] OJ No L 362, 31. 12. 1991, p. 57.

— a maximum amount of DM 9 milion by which the Treuhandanstalt guarantees the valuation of certains assets.

Additional investment aid up to a maximum of DM 47,8 million, a tax allowance of DM 12,8 million and a guarantee covering up to 80 % of the investment loans of DM 100,8 million has been approved by the Commission under the SAC.

III

The restructuring plan on which the purchase agreement is based is considered viable by the Commission since a private investor experienced in the steel sector is prepared to risk a considerable amount of own capital. The investor, chosen after an open and unconditional bidding procedure, has demonstrated his willingness to assume the risk for the company's future viability without further aid than that covered by the purchase contract.

IV

The extremely difficult Community steel market situation has endangered the sector in several Member States, including Germany. The aim of providing the steel industry in the territory of the former German Democratic Republic with a sound and economically viable structure contributes towards the achievement of the objectives of the Treaty, in particular Articles 2 and 3. The Commission considers that the public financial assistance measures proposed by Germany are necessary to achieve these aims. The Commission therefore finds itself faced with a situation not specifically provided for in the Treaty. In these exceptional 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, however, it is essential to ensure that the aid approved is limited to what is absolutely necessary and that it does not adversely affect trading conditions within the Community to an extent contrary to the common interest, particularly given the current difficulties on the Community steel market. It is therefore important that there should be adequate counterpart measures, commensurate with the amount of aid being exceptionally approved, so that a major contribution is made to the structural adjustment required in the sector.

V

As regards the capacity reductions envisaged under the plan, it is necessary to require that all the closures are definitive and irreversible so that the capacity concerned no longer depresses the Community steel market. The closed installations must therefore be scrapped or sold for use outside Europe. In addition, there should be no increase in remaining capacity for crude-steel and hot-rolled finished products, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last capacity closure, or of the last payment of aid in respect of investments under the plan, whichever is the later, in order to ensure a long-term and real effect on reducing the current imbalance between supply and demand on the Community steel market. It is also essential that the timetable for closures set out in the restructuring plan is complied with.

VI

It is not only necessary to ensure during the whole restructuring period that the aid approved enables the company to return to viability, the aid must also be kept to the amount strictly necessary. In that context, it must also be ensured that the company does not, as a result of the financial restructuring measures, obtain an unfaire advantage over other companies in the sector by being provided at the outset with net financial charges below 3,5 % of annual turnover, which is the current average for Community steel companies. It is also appropriate to require that the company or its legal successor is not allowed to claim or be granted tax reduction or relief on past losses covered by aid. Furthermore, any additional loans must be on normal commercial conditions and no preferential treatment accorded to any fresh public debts incurred.

VII

The implementation of this Decision requires strict monitoring by the Commission during the whole restructuring period up and until the end of 1998.

In order to carry out this monitoring effectively, the Commission will require the full and close collaboration of Germany, on whom clear and strict reporting obligations will be imposed.

In particolar, the following elements will require close attention :

— the reduction of capacity,

— the granting of aid under the present privatization plan and the source, terms and conditions of any further financing over and above that period for in the plan,

— the investments carried out,

— reductions in the workforce,

— production and the effects on the market,

— financial performance.

The Commission will submit six-monthly reports to the Council to keep it informed of developments.

It is also necessary to ensure that the aid is not used for the purpose of unfair competition practices. In addition the Commission may require on-the-spot checks made in accordance with Article 47 of ECSC Treaty, in order to verify the informations provided and in particular the compliance with the conditions attached to the authorization of the aid. In that context, should a Member State make a complaint to the Commission that State aid is enabling the company to underprice, 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 decision pursuant to Article 95 had not been met, it may require the suspension of payments of aid or the recovery of aid already paid. In the event of a Member State's failing to comply with such decision, Article 88 of the ECSC Treaty shall apply.

The Commission may decide that all reports should be on a quarterly basis. It may also decide to mandate an independent consultant, selected with the agreement of Germany, to assist it in its monitoring task.

The Commission will, by exercising all its powers, ensure that the aided company fulfils the conditions of this Decision, including the necessary progress towards viability and its other obligations resulting from the application of the ECSC Treaty. Should the monitoring reports indicate substantial deviations from the financial data on which the viability assessment has been made, the Commission may require appropriate measures to be taken to reinforce the restructuring measures.

VIII

A decision pursuant to Article 95 of the ECSC Treaty to authorize State aid is extraordinary in character given the provisions of Article 4 (c). Inview of all the above, the Commission can exceptionally authorize the aid proposed in this case subject to observance of the conditions and requirements it lays down. However, the aid involved, which is intended to restore the company to viability by the end of 1997, should be regarded as final. Should a return to viability not be achieved by that date, Germany shall not request any further derogation pursuant to Article 95 for the company,

HAS ADOPTED THIS DECISION :

Article 1

1. The following maximum amounts of aid which Germany plans to grant to Sächsische Edelstahlwerke GmbH, Freital/Sachsen may be regarded as compatible with the orderly functioning of the common market provided that the conditions and requirements of Articles 2 to 5 are met :

— an amount of DM 34 million to cover social charges relating to the release of 1 056 employées,

— an mount of DM 189 million to cover debts accumulated until privatization,

— an amount of DM 42 million for repair and maintenance of installations,

— an amount of DM 9 million by which the Treuhandanstalt guarantees the valuation of certain assets.

2. The aid has been calculated to enable the company to return to viability by the end of 1996. In the case that such viability is not atteined by that date, Germany shall not request any further derogation pursuant to Article 95 of the ECSC Treaty for this company.

3. The aid shall not be used for the purpose of unfair competition practices.

4. Without prejudice to the aid measures referred to in this Article under the privatization plan, any loans to the company must be on normal commercial terms ; and the beneficiary company must not receive debt holidays or friendly treatment of debts to the State.

Article 2

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

— the existing mill for hot-rolled semi-finished products with a capacity of 90 kt/y, the medium-section mill with a capacity of 170 kt/y and the light-section mill with a capacity of 80 kt/y shall be closed down and replaced by a merchant-bar mill with a capacity of 180 kt/y, parts of which being moved from the BGH plant in Siegen,

— the existing crude-steel production facilities with a capacity of 300 kt/y shall be closed down to be replaced by a new electric arc furnace with a capacity of 200 kt/y.

2. All the capacity closures must be achieved by the end of 1996 at the latest.

3. The finality of the closures referred to in paragraph 1 shall be ensured either by the demolition of the installations concerned or by their disposal by sale outside Europe.

4. The beneficiary company shall not increase its remaining capacity for crude steel and hot-rolled finished products, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last capacity closure under the plan or the date of the last payment of aid in respect of investments under the plan, whichever is the later.

Article 3

The approval of aid as outlined in Article 1 is in addition subject to the following conditions :

1. the level of net financial charges of the new company will be set at least at 3,5 % of annual turnover, at the date of its privatization ;

2. the company or its legal successor will not claim or be granted tax reduction or relief on the basis of past losses which are being covered by State aid ;

3. the beneficiary company shall carry out all the restructuring measures laid down in the restructuring plan as it has been submitted to the Commission, in accordanced with the timetable contained therein.

Article 4

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

(a) Germany 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 beneficiary company and its restructuring. 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 restructuring process, the creation and use of capacity and show sufficient financial data to allow the Commission to assess whether its conditions and requirements are fulfilled. The reports shall at least contain full information in accordance with the Annex, which the Commission reserves the right to modify in line with its experiences during the monitoring process. It is up to Germany to oblige the beneficiary company 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. If the beneficiary company envisages investments 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) shall 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 Germany, to evaluate the monitoring results, to undertake any research necessary and to report to the Council.

2. The Commission may have any necessary checks made in the aided company 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 the aided company to underprice, 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 (4), 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 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 had not been met. If Germany were to fail to fulfil its obligations under any such decision, Article 88 of the ECSC Treaty shall apply.

2. Moreover, if the Commission establishes, on the basis of the reports referred to in Article 4 (1), that substantial deviations from the financial data, on which the viability assessment has been made, have occured, it may require Germany to take appropriate measures to reinforce the restructuring measures of the aided company.

Article 7

This Decision is adressed to the Federal Republic of Germany.

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).