II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 February 1996

concerning aid to be granted by Ireland to the steel company Irish Steel

(Only the English text is authentic)

(Text with EEA relevance)

(96/315/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

Over the last two to three years the Community steel industry has gone through its most difficult period since the beginning of the 80s. This was due to the general slowdown in the economy, with a slow but constant decrease in demand for steel and increasing over-supply, accompanied by a collapse in prices. In additon the international market and the exchange rate of the dollar remained unsatisfactory, which together with pressure from imports, in particular from Eastern Europe, and a trade dispute with the USA affecting substantial Community exports to that market, combined to aggravate the financial situation of almost all steel companies in the Community.

Overall there has been a slight recovery of demand and increased prices but prices are still below 1989/90 levels. The strength and duration of the cyclical upturn are uncertain. Moreover, the picture as between product sectors remains somewhat mixed. Demand for structural steel for the contruction industry remains weak, with high stock levels and downward pressure on prices underlining the continuing structural imbalance between supply and demand.

II

On 1 March 1995 the Irish Government notified the Commission of a restructuring plan for Irish Steel and the associated public financial assistance with which it intended to support it. The assistance comprised a total of £ Irl 50 million, made up of £ Irl 40 million in equity and £ Irl 10 million in guaranteed loans (£ Irl 2 million of which had already been drawn down). At the same time the Irish Government announced that negotiations could be opened for the possible sale of shares in and control of the company.

On 4 April 1995 [1] the Commission decided to initiate the procedure provided for in Article 6 (4) of Commission Decision No 3855/91/ECSC [2] (hereinafter referred to as 'the Steel Aids Code') to investigate whether the measures notified, together with a non-notified £ Irl 10 million loan guarantee granted by the Irish Government in 1993, were compatible with the common market.

In the meantime the Irish Government continued with its efforts to find an industrial partner.

On 7 September 1995, the Irish authorities effectively withdrew their earlier notification and submitted a revised notification to the Commission relating to the public financial assistance measures linked to the restructuring of the company within the framework of its sale to the privately-owned company Ispat International following an open bid procedure.

[1] OJ No C 284, 28. 10. 1995, p. 5.
[2] OJ No L 362, 31. 12. 1991, p. 57.

Irish Steel Ltd (ISL) is a 100 % State-owned company, operating Ireland's only steel-making and rolling plant, and is situated in Haulbowline, Cobh, County Cork.

Under the notified restructuring plan, Ispat will purchase all of the shares in Irish Steel for £ Irl 1 and take over all debts and liabilities, except an outstanding interest-free Government loan of £ Irl 17 million (previously approved by the Commission in 1985), which is to be written off. In addition Ispat will make an immediate capital injection of £ Irl 5 million and undertake to make investments over the next five years totalling £ Irl 25 million.

The restructuring plan provides for the full utilization of the existing liquid steel capacity (500 000 tonnes per annum), through the production of billets to use up current spare capacity in the meltshop, as well as existing hot-rolling capacity (343 000 tonnes per annum) in finished products (sections). The annual average workforce level will be maintained at a level of 331 for a period of five years (as at November 1995 the workforce numbered 404).

The proposed public financial assistance measures linked to the sale of the company include aid elements that are incompatible with the ECSC Treaty and with the provisions of the Steel Aids Code. According to the Commission's estmates, this aid amounts to a maximum of £ Irl 38,298 million, serving the following purposes:

— up to a maximum of £ Irl 17 million for the writing off of the interest-free Government loan;

— a cash contribution of up to a maximum of £ Irl 2,831 million to cover a balance sheet deficit;

— a cash contribution of up to a maximum of £ Irl 2,36 million to cover specific remedial environmental works;

— a cash contribution of up to a maximum of £ Irl 4,617 million towards the costs of servicing debts;

— a cash contribution of up to a maximum of £ Irl 0,628 million to cover a deficit in the pension scheme;

— a further cash contribution of up to a maximum of £ Irl 7,2 million to take account of revisions to the restructuring plan as a condition of the Council's assent;

— indemnities of up to a maximum of £ Irl 2,445 million in respect of possible residual taxation and other costs and financial claims arising from the past;

— up to a maximum of £ Irl 1,217 million, representing the aid element contained in State guarantees on two loans amounting to £ Irl 12 million (which were included in the procedure opened under Article 6 (4) of the Steel Aids Code, and which under the sale agreement will now effectively be taken over by the investor providing counter cover indemnifying the State against the risks under the guarantees).

III

The restructuring plan, as revised, on which the sale agreement is based is considered viable by the Commission since a private investor, familiar with the steel business and with an international track record in turning round loss-making steel works, is prepared to risk a considerable amount of own capital. The investor, selected after an open bid procedure, has demonstrated his willingness to assume the risk for the company's future viability without further aid than that covered by the sale agreement.

This assessment of viability is confirmed by a review of the restructuring plan by external experts, applying the same criteria as those imposed by the Commission in previous similar cases, which is accepted by the Commission.

IV

The extremely difficult Community steel market situation in the last few years has endangered the sector in several Member States, including Ireland. The aim of providing the steel industry in Ireland 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 Ireland 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 it is therefore important that there should be adequate counterpart measures, commensurate with the amount of aid being exceptionally approved, so that the aid does not adversely affect trading conditions within the Community to an extent contrary to the common interest.

On the other hand, in addition to the normal competition considerations, the Commission has in its assessment of the case taken into account the special situation of Ireland, particularly in the light of the Council Declaration annexed to the conclusions of the Industry Council meeting on 25 February 1993, where the Commission was invited to examine the problems specific to Member States where there is only one small company or where the measures taken produce special negative effects.

V

In this case, it is not technically possible to have capacity reductions as a counterpart for the aid without closing the plant since Irish Steel has only one hot-rolling mill. However, it is necessary that there should be no increase in existing capacity for liquid 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 payment of aid under the plan, in order to ensure that the current imbalance between supply and demand on the Community steel market is not exacerbated.

Furthermore, in order to ensure that possible market distortive effects are minimized it is essential that a number of further conditions are imposed. The company shall not extend its current range of finished products, as communicated to the Commission in November 1995, in the first five years and will not produce beams of a larger size than it current range of sizes in that period. Within its current range of beams it will limit production for the Community market of its largest U beams (imperial), HE beams (metric) and IPE beams to a cumulative 35 000 tonnes per annum during that period. Moreover, limitations will be imposed on annual levels of production of hot-rolled finished products and semi-finished products (billets) in each financial year up until 30 June 2000. Levels of European sales (defined for the purposes of this Decision as the Community, plus Switzerland and Norway) of finished products will also be subject to limitations during the same period.

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 unfair 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 and up until 30 June 2001.

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

In particular, the following elements will require close attention:

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

— the limitation of capacity,

— production and sales and the effect on the market,

— the investments carried out,

— 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 information provided and in particular 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, in particular, to Article 60 of the ECSC Treaty.

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, Article 88 of the ECSC Treaty shall apply, without prejudice to any penalties the Commission may impose by virtue of the ECSC Treaty.

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 Ireland, to assist it in its monitoring task.

The Commission will, by exercising all its powers, ensure that the aided company meets 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 finanical 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). In view 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. At the same time the Commission can close the procedure opened pursuant to Article 6 (4) of the Steel Aids Code. However, the aid involved, which is intended to restore the company to viability by 30 June 1998, should be regarded as final. Should a return to viability not be achieved by that date, Ireland is not to 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 Ireland plans to grant to the publicly-owned steel company Irish Steel in connection with its sale, may be regarded as compatible with the orderly functioning of the common market provided that the conditions of Articles 2 to 5 are met:

— up to a maximum of £ Irl 17 million for the writing off of an interest-free Government loan,

— a cash contribution of up to a maximum of £ Irl 2,831 million to cover a balance sheet deficit,

— a cash contribution of up to a maximum of £ Irl 2,36 million to cover specific remedial environmental works,

— a cash contribution of up to a maximum of £ Irl 4,617 million towards the costs of servicing debts,

— a cash contribution of up to a maximum of £ Irl 0,628 million to cover a deficit in the pension scheme,

— a further cash contribution of up to a maximum of £ Irl 7,2 million,

— indemnities of up to a maximum of £ Irl 2,445 million in respect of possible residual taxation and other costs and financial claims arising from the past,

— up to a maximum of £ Irl 1,217 million, representing the aid element contained in State guarantees on two loans amounting to £ Irl 12 million.

2. The aid has been calculated to enable the company to return to viability by 30 June 1998. In the case that such viability is not attained by that date, Ireland 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, 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 beneficiary company shall not increase the existing liquid steel capacity of 500 000 tonnes per annum and the existing hot-rolling capacity of 343 000 tonnes per annum in finished products, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last payment of aid under the plan.

2. The beneficiary company shall not extend its current range of finished products, as communicated to the Commission in November 1995, in the first five years and shall not produce beams of a larger size than its current range of sizes in that period. Within its current range of beams it shall limit production for the Community market of its largest U beams (Imperial), HE beams (metric) and IPE beams to a cumulative 35 000 tonnes per annum during that period.

3. The beneficiary company shall not exceed the following levels of production per financial year (1):

(1 000 tonnes)

	1995/96	1996/97	1997/98	1998/99	1999/2000
Hot-rolled finished products	320	335	350	356	361
Billets	30	50	70	80	90

4. The beneficiary company shall not exceed the following levels of European sales (Community, Switzerland and Norway) in hot-rolled finished products per financial year (1):

(1 000 tonnes)

1995/96	1996/97	1997/98	1998/99	1999/2000
298	302	312	320	320

(1) 1 July to 30 June.

Article 3

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

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

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 accordance with the timetable contained therein.

Article 4

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

(a) Ireland 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 Annex, on the beneficiary company and its restructuring. The first report should reach the Commission by 15 March 1996 and the last report by 15 September 2001 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 Ireland 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 Ireland, 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, in particular, to Article 60 of the ECSC Treaty.

Article 6

1. Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may, within the procedure provided for under Article 88 of the ECSC Treaty, *inter alia,* 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 Ireland were to fail to fulfil its obligations under any such decisions, Article 88 of the ECSC Treaty will continue to 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 occurred, it may require Ireland to take appropriate measures to reinforce the restructuring measures of the aided company.

Article 7

This Decision is addressed to Ireland.

Done at Brussels, 7 February 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

ANNEX

THE COMMISSION'S INFORMATION REQUIREMENTS

(a) *Investments*

— details of investments realized,

— date of completion,

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

— the date of aid payment.

(b) *Workforce evolution*

— number and timing of job losses,

— the total costs,

— a breakdown of how the costs are being financed.

(c) *Production and market effects*

— monthly production of liquid steel, semi-finished products and finished products by category as per product range notified to Commission,

— breakdown of products sold, including volumes, prices and markets.

(d) *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).

(e) *Privatization*

— selling price and treatment of existing liabilities,

— disposal of proceeds of sale,

— date of sale,

— financial position of company at time of sale.

(f) *Creation of a new company or new plant incorporating capacity extensions*

— identification 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.