II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 May 1996

concerning State aid to the Greek steel company Halyvourgia Thessalias SA

(Only the Greek text is authentic)

(Text with EEA relevance)

(96/573/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 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry [1], and in particular Articles 1 (1) and 6 thereof,

Having, in accordance with Article 6 (4) of the abovementioned Decision, given notice to interested parties to submit their comments,

Whereas:

I

By letter dated 10 February 1995, registered on 15 February 1995, the Greek Permanent Representation notified investment aid in respect of the steel company Halyvourgia Thessalias SA under Law 1892/90 for the modernization of the existing unit producing concrete reinforcing bars.

On 24 May 1995 the Commission decided to open the procedure pursuant to Article 6 (4) of Decision No 3855/91/ECSC (hereinafter referred to as 'SAC') with respect to the above aid, and it informed the Greek Government accordingly by letter of 8 June 1995 [2].

The Commission considered that the aid fell under Article 5 SAC and that aid falling under that Article had to be notified by 30 June 1994 at the latest, according to Article 6 (1) SAC, and could only be deemed compatible with the common market before 31 December 1994.

A. The Greek Government replied by letter of 4 July 1995 saying, notably:

(1) the structure of Greek steelmaking (single-product undertakings) has not allowed firms to make use of the special measures for the restructuring of the Community steel industry;

(2) for the same reason, there would be no point in reducing the potential output of the company in question, which would be tantamount to closing the plant;

(3) Halyvourgia Thessalias had submitted its application to the Greek authorities in good time. It did so on 31 May 1994;

(4) aid in the order of some ECU 320 000 has been proposed, which is insignificant compared with funds approved for steel firms in other Member States, either under Article 5 of the Steel Aid Code

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

[2] OJ No C 284, 28. 10. 1995, p. 13.

or Article 95 of the ECSC Treaty. Because of the size of the proposed aid, it is believed that the aid does not infringe the principles of competition or adversely affect trading conditions to an extent contrary to the common interest;

(5) because of the procedures available at national level, the appropriations required for this investment had been entered in the 1994 budget.

B. The Commission received the following observations from third parties and other Member States:

(1) on 27 November 1995 from the government of one Member State indicating that Article 5 SAC only allowed an approval of investment aid for Greece until 31 December 1994 and that investment aid after 31 December 1994 could not be endorsed;

(2) on 28 November 1995 from the Permanent Representation of another Member State indicating support for the opening of the procedure, as the Greek authorities had not notified in time;

(3) on 24 November 1995 from an association of steel producers indicating that the application for regional investment aid was submitted after the expiry of the period during which such aid could be allowed under the terms of Article 5 SAC and that the Commission was no longer empowered to authorize the aid.

Those observations were sent to the Greek authorities by letter of 27 December 1995.

By letter of 23 January 1996, the Greek authorities gave their comments on those observations by reiterating the arguments they had put forward by letter of 4 July 1995.

II

The investment to be aided is aimed at the modernization of the existing installations for producing concrete reinforcing iron bars. This type of product falls under the ECSC Treaty and, consequently, the aid is caught by the general prohibition of State aid as laid down in point (c) of Article 4 of the ECSC Treaty.

However, pursuant to the SAC, certain aid measures may be deemed compatible with the common market for steel. Articles 2, 3 and 4 SAC cannot be applied since the aid is not intended for R&D, environmental protection or closure.

As far as this case is concerned, Article 5 SAC is of relevance since it stipulates that aid granted to steel undertakings for investment under general regional aid schemes may until 31 December 1994 be deemed compatible with the common market provided that the aided undertaking is located in the territory of Greece and the aided investment does not lead to an increase in production capacity.

As to the situation until 31 December 1994, it has to be noted that Article 6 (1) of the SAC stipulates that regional investment aid as meant by Article 5 of the SAC had to be notified at the latest by 30 June 1994. This deadline was set in order to give the Commission sufficient time to assess the proposed aid measures before 31 December 1994. This deadline was clearly not observed, since the notification was lodged with the Commission on February 1995.

Article 5 of the SAC states clearly that the Commission has the authority and the discretionary power to declare regional investment aid compatible with the common market for steel but only before 31 December 1994, and it follows from this that is has no such authority after 31 December 1994.

As from 1 January 1995 the SAC no longer allows the possibility of declaring regional investment aid for steel undertakings in Greece compatible with the common market for steel, since the wording of its Article 5, providing the legal basis for such a decision, does not admit of such compatibility with the common market after 31 December 1994, regardless of whether the aid would have been authorizable had it been notified in time.

III

The arguments of the Greek Government plead in favour of declaring the aid compatible with the common market. However true these arguments may be, either they are irrelevant or they do not alter the fact that the ECSC Treaty and the SAC do not allow the Commission to adopt a positive decision after 31 December 1994.

The comments from other Member States and third parties seem to endorse the Commission's view and therefore need no further discussion.

Since Article 5 of the SAC stipulates that regional investment aid can only be declared compatible with the common market by the Commission before 31 December 1994, and since the Commission was not in a position to take a decision on the notified State aid before that date, the State aid notified is incompatible with the common market according to Article 1 (1) of the SAC and is prohibited by point (c) of Article 4 of the ECSC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The financial assistance to be granted by Greece to Halyvourgia Thessalias SA, on the basis of Law 1892/90 and notified to the Commission by letter of 10 February 1995,

constitutes State aid prohibited under the provisions of the ECSC Treaty and not permissible under Decision No 3855/91/ECSC and shall therefore not be granted.

Article 2

Greece 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 3

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 29 May 1996.

For the Commission

Karel VAN MIERT

Member of the Commission