# COMMISSION DECISION

## of 17 July 1996

## concerning aid granted by the Autonomous Province of Bolzano (Italy) to Acciaierie di Bolzano

**(Only the Italian text is authentic)**

**(Text with EEA relevance)**

(96/617/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

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 Article 6 (4) thereof,

Having given the interested parties notice to submit their comments [2] in accordance with the abovementioned provisions and having regard to those comments,

Whereas:

I

By letter dated 1 August 1995 the Commission informed the Italian Government of its decision to initiate the procedure under Article 6 (4) of Decision No 3855/91/ECSC in respect of the aid granted to Acciaierie di Bolzano (ACB).

Following a complaint, the Commission, by letter of 21 December 1994, asked the Italian authorities for information on aid granted to ACB, at the time controlled by the steel group Falck.

On the basis of the information available to it, confirmed by the data sent by the Italian Government on 7 April 1995, the Commission concluded that ACB had, in the period 1982-1990, received aid from the Autonomous Province of Bolzano, under Provincial Law No 25/81, as follows:

— by Decision 784 of 14 February 1983:

(a) loan of Lit 5 600 million,

(b) non-repayable grant of Lit 8 000 million,

— by Decision 3082 of 1 July 1985:

(c) loan of Lit 12 941 million,

— by Decision 6346 of 3 December 1985:

(d) non-repayable grant of Lit 10 234 million,

— by Decision 7673 of 14 December 1987:

(e) loan of Lit 6 321 million,

— by Decision 2429 of 2 May 1988:

(f) non-repayable grant of Lit 3 750 million,

— by Decision 4158 of 4 July 1988:

(g) loan of Lit 987 million,

(h) non-repayable grant of Lit 650 million,

amounting to a total of Lit 25 849 million (ECU 12,025 million) in the form of 10-year loans at 3 %, i. e. about nine percentage points below the normal market rate in Italy at the time (about 12 %) and outright grants totalling Lit 22 634 million (ECU 10,5 million).

Apart from the loan of Lit 5,6 billion which was the subject of Commission Decision 91/176/ECSC [3], none of the other aid measures were ever notified to the Commission, much less authorized by it.

Accordingly, the Commission concluded that the aid granted to ACB was illegal, as it had not been notified, and incompatible with the common market as it did not appear to qualify for exemption from the prohibition under Article 4 (c) of the Treaty.

For those reasons, the Commission decided to initiate the procedure provided for in Article 6 (4) of Decision No 3855/91/ECSC in respect of the abovementioned aid.

II

As part of the procedure, the Commission asked the Italian Government to submit its comments, other Member States and interested parties being invited to do so in a notice of commencement of the procedure, published in the *Official Journal of the European Communities.*

[1] OJ No L 362, 31. 12. 1991, p. 57.
[2] OJ No C 344, 22. 12. 1995, p. 8.
[3] OJ No L 86, 6. 4. 1991, p. 28.

The German producers' association 'Wirtschaftsvereinigung Stahl' and the British Steel Producers' Association sent the Commission their comments by letters of 19 January and 5 February 1996 respectively, which were forwarded to the Italian authorities on 20 February 1996.

In their comments, the other interested parties claimed that the aid was illegal as it had not been notified to the Commission, and that it should be examined in the light of the Community rules in force when the Commission adopted its decision and not when the aid was granted. In their view, the aid should be assessed under Decision No 3855/91/ECSC (the Steel Aid Code). As the aid in question did not qualify for exemption under the code, the interested parties concluded that the Commission should declare it incompatible with the common market for coal and steel.

By letter dated 27 March 1996 the Italian authorities acknowledged both that the Autonomous Province of Bolzano had granted public resources to ACB in the amounts referred to above and that the latter constituted State aid, but claimed that:

— part of the aid, in particular that granted before 1986, fell under Decision 91/176/ECSC,

— the Commission should apply the Community law in force at the time the aid was granted; the aid granted before 31 December 1985, although illegal in so far as it was granted without being notified in advance to the Commission, was compatible with the common market as it complied with the relevant Community rules in force at the time (Commission Decision No 2320/81/ECSC) (1),

— a large part of the aid granted after 1 January 1986, although illegal for not having been notified to the Commission, should be regarded as compatible with the common market as it was intended for investment by ACB in environmental protection, research and development, energy savings and the restructuring of the enterprise,

— as a rule, all the aid was granted as part of a restructuring plan for ACB which had been notified to the Commission and approved by it.

— following authorization of the regional aid scheme established by the Provincial Law in question, the Autonomous Province of Bolzano had notified in 1982 four aid cases under that Law, asking the Commission whether it was necessary to notify other individual aid grants; not having received a reply from the Commission, the Italian authorities concluded that it was not necessary to notify individual cases and that the principle of legitimate expectation applied.

(1) OJ No L 228, 13. 8. 1981, p. 14.

III

ACB manufactures special steel products listed in Annex I to the ECSC Treaty under Code No 4400. By reason of its product, ACB is thus an undertaking covered by the rules of the ECSC Treaty. Article 4 (c) of that Treaty provides that subsidies or aids granted by Member States, in any form whatsoever, are recognized as incompatible with the common market for coal and steel and must accordingly be abolished and prohibited within the Community. The only possible exceptions to this general prohibition are those expressly provided for in the Steel Aid Code.

The Italian authorities consider that some of the aid in question, more particularly that granted before 31 December 1985, was covered by Commission Decision 91/176/ECSC.

In May 1983, the Commission, pursuant to Decision No 2320/81/ECSC, authorized investment aid to Falck under a restructuring plan notified in September 1980. The decision provided that the last date for the payment of the approved aid, consisting in an assisted loan of Lit 5 600 million comprising aid of Lit 2 000 million, i. e. the difference between the rate applied and the market rate, was 31 December 1985, failing which the aid would be considered incompatible with the common market. Despite this, no aid was granted before that date.

In Decision 91/176/ECSC, the Commission found that the aid of Lit 2 000 million to ACB was incompatible as it had been granted after the date specified, owing to the rules on the sharing of powers between the Bolzano provincial authorities and central government. Its decision therefore declared the aid incompatible with the proper functioning of the common market. However, in view of the good faith shown by the recipient and the difficulties caused by the sharing of powers between the local and central authorities that had led to the delay in granting the aid, the Commission did not require repayment of that aid.

The Italian authorities cannot, however, invoke a negative decision in order to bolster its claim that all the other aid granted by Bolzano Province prior to 31 December 1985 is compatible, as the decision did not authorize any aid but merely, for the reasons stated, refrained from requiring repayment of the Lit 2 000 million of aid contained in the abovementioned financing.

According to the comments submitted by the Italian Government, the Commission should consider whether the aid granted before 31 December 1985, like that granted after that date, although illegal for not having been notified, is compatible with the common market under the provisions in force at the time it was granted and not under the present Steel Aid Code.

The question raised by the Italian authorities concerning the rules applicable to the aid in question, in particular that granted prior to 1985, is not relevant in this case. Even if Decision No 2320/81/ECSC were to be applied to the aid granted before 31 December 1985, the measures in question would not be considered compatible with those provisions in view of the conditions set out therein.

Article 2 (1) of that Decision provides that aid to steel may be considered compatible provided that, among other things, the recipient has initiated a restructuring programme capable of restoring its competitiveness and of making it financially viable without aid under normal market conditions and that the said programme results in an overall reduction in production capacity. However, according to the documents in the Commission's possession, neither of these two conditions are met in the case in question, so that the public measures in question must be regarded as incompatible with the common market under Decision No 2320/81/ECSC.

The Steel Aid Code in force provides an exhaustive list of derogations, including the possibility that aid granted to defray expenditure on research and development projects, as well as aid for environmental protection, may be deemed compatible under certain conditions; clearly the rules relating to aid for closures are not applicable in the case in point, as the recipient enterprise has remained in operation.

According to the documents available, it seems that, as regards research and development, contrary to the claims of the Italian authorities, most of the investment costs of ACB and the relevant aid do not come under that heading but rather under that of productive investments which do not as such qualify for exemption from the ban in Article 4 (c) of the ECSC Treaty in accordance with the Community rules in force on State aid for research and development.

As regards environmental protection, the documents indicate that ACB has borne investment costs of around Lit 15 000 million. However, the Italian authorities have failed to show that the conditions for the application of Article 3 of the Steel Aid Code are met, in particular that the investments had the chief aim of safeguarding the environment, enabling the firm to comply with new standards adopted at least two years after its plant had come into operation.

As regards energy saving and improving product quality, the Commission notes that, under the Steel Aid Code, these elements do not qualify for exemption under Article 4 (c) of the ECSC Treaty.

Furthermore, it is not valid to argue that ACB's output is small and would therefore have a limited effect on Community trade, since the ECSC Treaty, unlike the EC Treaty, does not require aid to have an effect on Community trade in order to be deemed incompatible.

Nor can the Italian authorities rely on the fact that the aid was granted under Provincial Law No 25/81, authorized by the Commission. In approving the aid scheme provided for in the Law, the Commission stipulated that the Community rules and provisions on aid to steel should be complied with in full.

Lastly, it is clear that the Commission's authorization of ACB's restructuring plan, notified under Article 54 of the ECSC Treaty, cannot be regarded as constituting automatic authorization of any aid granted under that restructuring plan.

IV

The derogation from the ban in principle on steel aid set out in Article 4 (c) of the ECSC Treaty is not intended to reduce the effect of the Community Steel Aid Code, which is justified by the serious distortions of competition which could be caused by aid that is incompatible with the common market in a sector that is still very sensitive. It is therefore necessary for the code to be complied with strictly, which means that aid to a steel enterprise can be authorized only if the Commission has been able to verify that the conditions laid down by the code have been met.

In the light of the foregoing (under section III in particular), it must be concluded that these conditions have not been met in the case in point and that the Italian authorities' comments are not sufficient to alter the Commission's initial assessment which prompted its initiation of the Article 6 (4) procedure. With the exception of the Lit 5 600 million loan already covered by Decision 91/176/ECSC, the aid granted by the Autonomous Province of Bolzano to ACB must be regarded as illegal as it was not notified to the Commission. The aid is also incompatible with the common market as it does not qualify for exemption from the ban in Article 4 (c) of the ECSC Treaty provided for in the Steel Aid Code.

It is appropriate, however, in the single instance of the State aid granted 10 years ago — before 1 January 1986 — to take account of the very special circumstances surrounding this case.

As the Italian authorities have pointed out, the investment aid in question was notified to the Commission, which expressed a favourable opinion on the basis of Article 54 of the ECSC Treaty. By letter dated 3 November 1982 the Italian authorities notified the first of four grants of aid to the textile sector following the Commission's authorization of the regional aid scheme established by Law No 25/81 of the Autonomous Province of Bolzano. It is under that Law that the aid was granted to ACB.

Not having received any reply from the Commission concerning the first four aid cases, and having also notified the ACB investment plan, the Italian authorities concluded that the Commission was already aware of the aid programme relating to the investments and did not intend to respond. As a result, the Italian authorities concluded that, although individual notifications could be required, they were not necessary in the case in point.

It is also pointed out that, even if it is not relevant under Community law, at the time the aid in question was granted, the rules on the sharing of powers between the local and national authorities with regard to notification of aid to steel undertakings were rather vague. This could have misled the Bolzano authorities, who left notification of aid to the central authorities, as had been the case with the ACB investment plan. For their part, the central authorities believed that it was for the local authorities to notify individual aid grants each time a proposal was decided.

For these reasons, it is possible that the Italian authorities may have been misled with regard to the specific scope of the situations in which aid must be notified.

This line of reasoning, however, is no longer relevant for the following reasons:

(a) Commission Decision No 3484/85/ECSC [1] (which entered into force on 1 January 1986) specifically requires any plans to grant aid to the steel industry to be notified in advance,

(b) there is no provision in the investment plan notified to the Commission for the aid that was granted.

Consequently, it seems appropriate not to require the repayment of the aid granted prior to 1 January 1986 and to require the repayment of aid granted by Decision 7673 of 14 December 1987 in the form of a loan of Lit 6 321 million at 3 % instead of 12 %; by Decision 2429 of 2 May 1988 as a non-repayable grant of Lit 3 750 million; by Decision 4158 of 4 July 1988 as a loan of Lit 987 million at 3 % instead of 12 %, and a non-repayable grant of Lit 650 million.

In accordance with the case-law of the Court of Justice of the European Communities [2], the relevant provisions of national law must be applied in such a way that the recovery required by Community law is not rendered practically impossible,

HAS ADOPTED THIS DECISION:

*Article 1*

The aid granted to Acciaierie di Bolzano under Provincial Law No 25/81 is illegal as it was not notified before being granted. Such aid measures are incompatible with the common market pursuant to Article 4 (c) of the ECSC Treaty.

*Article 2*

Italy shall, acting in accordance with the provisions of Italian law relating to the recovery of amounts owed to the State, recover the aid paid to Acciaierie di Bolzano from 1 January 1986 under Provincial Law No 25/81 by Decisions Nos 7673 of 14 December 1987, 2429 of 2 May 1988 and 4158 of 4 July 1988. In order to abolish the

[1] OJ No L 340, 18. 12. 1985, p. 1.
[2] Case 94/87, Commission v Germany, [1989] ECR 175.

effects of the aid, interest shall be charged on the amount of aid from the date of payment to the date of repayment. The rate shall be that used by the Commission to calculate the net grant equivalent of regional aid in the period in question.

*Article 3*

Italy shall inform the Commission, within two months of the notification of this Decision, of the measures taken to comply herewith.

*Article 4*

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 July 1996.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*