II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 July 1996

concerning certain aid proposed by Italy as part of a programme for the restructuring of its private steel industry

(Only the Italian text is authentic)

(Text with EEA relevance)

(96/678/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],

After giving notice to the parties concerned, in accordance with the abovementioned Decision, to submit their comments and taking into account those comments [2],

Whereas:

I

By letters of 15 December 1995 and 2 February 1996 the Commission notified the Italian authorities of its decision to initiate the procedure provided for in Article 6 (4) of Commission Decision No 3855/91/ECSC, hereinafter referred to as the 'Steel Aid Code', in respect of aid they planned to grant, under a programme for the restructuring of Italy's private steel industry, to the following enterprises in the steel sector:

— Ferriera Acciaieria Casilina SpA,

— Acciaierie del Sud SpA,

— Officine Laminatoi Sebino SpA,

— Moccia Irme SpA,

— Mini Acciaieria Odolese SpA,

— Prolafer Srl,

— Dora Srl,

— Acciaierie San Gabriele SpA,

— Montifer Srl.

When, by Decision of 12 December 1994, it authorized Italian Law No 481 of 3 August 1994 on the restructuring of Italy's private steel sector after verifying that the Law complied with the Steel Aid Code and in particular with Article 4 thereof, the Commission requested that the Italian authorities notify it in advance of cases in which the Law was to be applied.

The Decision also specified that, in order to qualify for aid for closure, the firms concerned had to have been in operation for on average at least one shift per day, i.e. at least eight hours per day, five days per week for the whole of 1993 and up to February 1994, when Decree-Law No 103/94 was notified to the Commission; the provisions of the Decree-Law were subsequently adopted as Law No 481/94.

According to information in the possession of the Commission, the firms concerned satisfied the other requirements applicable under Article 4 of the Steel Aid Code governing aid for closures, but were not in regular production at the time of their closure.

[1] OJ No L 362, 31. 12. 1991, p. 57.
[2] OJ No C 101, 3. 4. 1996, p. 4; OJ No C 121, 25. 4. 1996, p. 3.

In Case 790/95, Officine Laminatoi Sebino SpA had produced only 57 000 tonnes of hot-rolled products, equivalent to 21 % of its capacity; in Case 794/95, Mini Acciaieria Odolese SpA had produced only 30 973 tonnes of hot-rolled products, equivalent to 16,7 % of its capacity; in Case 777/95, Casilina SpA had produced only 11 356 tonnes of hot-rolled products, equivalent to 14,2 % of its capacity; in Case 791/95, Montifer Srl had produced only 32 000 tonnes of hot-rolled products, equivalent to 21,1 % of its capacity; in Case 978/95, Dora Srl had produced only 21 444 tonnes of hot-rolled products, equivalent to 8,6 % of its capacity; and in Case 780/95, Acciaierie del Sud SpA had produced only 13 934 tonnes of hot-rolled products, equivalent to 5 % of its capacity. Moccia Irme SpA (Case N 793/95), Prolafer Srl (Case 977/95) and Acciaierie San Gabriele SpA (Case 979/95) were not in production in 1993.

Accordingly, since it was very difficult to determine whether the aids were compatible with the common market, the Commission decided to initiate the procedure provided for in Article 6 (4) of the Steel Aid Code in respect of the nine abovementioned cases.

By letter of 27 March 1996, the Italian authorities withdrew the notification given in the Montifer Case (791/95), on the grounds that they no longer intended to grant closure aid to that firm; in Case N 794/95 (Mini Acciaieria Odolese), the process of taking evidence is not yet over and the Commission accordingly reserves the right to adopt a final decision at a later stage.

This Decision accordingly covers the other seven cases.

II

In accordance with the procedure, the Commission invited the Italian Government to submit its comments, whilst the other Member States and interested parties were informed by way of publication of the decision to initiate the procedure.

By letter of 10 May 1996 the German Government notified the Commission of its comments, which were forwarded to the Italian authorities by letter of 24 May 1996. In the abovementioned comments, the German Government expresses support for the Commission's decision to initiate the procedure.

By letter of 31 January 1996, in response to the opening of the procedure, the Italian Government argued the following:

— while referring back to the Decision of 12 December 1994, which allowed the Italian authorities to put forward objective criteria whereby plants that had operated at less than 25 % capacity could still be deemed eligible for aid for closure, the Commission Decision initiating the procedure merely stated that the criteria put forward by Italy as an alternative to the concept of regular production were unsuitable;

— the criteria the Italian authorities presented to the Commission for consideration were based on the view that the low or zero output recorded by some firms in 1993 and early 1994 was indicative not of a desire to abandon the steel market or of obsolescent or uncompetitive plant but of unfavourable trade conditions connected with financial difficulties and a market crisis;

— by not redeploying their workforce, preferring instead to call in the Cassa integrazione guadagni (earnings supplement fund), by implementing training schemes and applying for public early retirement benefits in pursuance of a restructuring plan, the firms clearly showed that they intended to restructure in order to overcome the crisis that was affecting them;

— the plants covered by the cases submitted to the Commission for scrutiny are not experiencing any problems of productivity due to technical factors. Some have recently benefited under major modernization schemes designed to increase efficiency and, since they have all been regularly maintained, each one could still, at little cost, resume regular production within a short space of time. The best proof of this is the very strong interest numerous potential buyers have shown in the plants;

— additional factors should be taken into account, e.g. the fact that electricity supply contracts have not been terminated, that the firms have remained active on the steel market, and that returns, in particular forms 260-261, have been sent to the Community, confirming that the reduced or zero output in 1993 is attributable to unfavourable cyclical conditions and that the firms wanted to remain on the market and wait for the right conditions before resuming regular production.

III

By virtue of their production, the firms are subject to the terms of the ECSC Treaty, Article 4 (c) of which stipulates that subsidies or aids granted by States in any form whatsoever are recognized as incompatible with the common market for coal and steel and are accordingly abolished

and prohibited within the Community. The only possible exceptions to this general prohibition are set out explicitly and restrictively in Article 2 (aid for research and development), Article 3 (aid for environmental protection) and Article 4 (aid for closures) of the Steel Aid Code.

The purpose of the exceptions to the general prohibition on aids to the steel industry under Article 4 (c) of the ECSC Treaty is not to make the Community rules governing aids to the steel industry less strict, since those rules are justified by the serious distortion of competition that might be caused by aids that are incompatible with the common market in a sector that continues to be very sensitive. Is is therefore necessary for those rules to be strictly adhered to, which means that aid to an enterprise in the steel sector may be authorized by the Commission only if the requirements applicable under the Steel Aid Code have effectively been complied with.

Article 4 of the Steel Aid Code lays down that aid to firms which permanently cease production of ECSC iron and steel products may be deemed compatible with the common market on condition that those firms:

— became a legal entity before 1 January 1991 and have not reorganized their production or plant structure since 1 January 1991,

— have been regularly producing ECSC iron and steel products up to the date of notification of the aid,

— are not directly or indirectly controlled, within the meaning of Decision No 24/54 of the High Authority [1], by, and do not themselves directly or indirectly control, an undertaking that is itself a steel undertaking or controls other steel undertakings.

Article 4 further provides that the amount of the aid may not exceed the higher of the following two values:

— the discounted value of the contribution to fixed costs obtainable from plants over a three-year period, less any advantages the aided firm derives from their closure,

— residual book value of the plants (ignoring that portion of any revaluations since 1 January 1990 which exceeded the national inflation rate).

The cases under consideration satisfy every requirement except the one — regarding regular production — that had led to the initiation of proceedings.

In this connection, although it stipulates that, in order to be eligible for aid, a firm must be in regular production at the time of the closure, the Steel Aid Code does not give a precise definition of 'regular'. Accordingly, in its Decision of 12 December 1994, the Commission stated that the requirement concerned would be deemed met if the firm receiving the aid had been in production for on average at least one shift per day, i.e. at least eight hours per day, for five days per week for the whole of 1993 and up to 28 February 1994, when Decree-Law No 103/94 was notified to the Commission. The latter decided, moreover, that the Italian authorities should be allowed to demonstrate on the basis of objective criteria that a firm which did not satisfy this requirement had nonetheless regularly produced ECSC iron and steel products.

The Commission would then have examined the aid in the light of the particular circumstances of the case, in order to ensure that the criterion of regular production had been met.

The purpose of Article 4 of the Steel Aid Code and of the Decision of 12 December 1994 is clear: aid for closures may be granted only to firms that are significantly active, in other words whose production on the market in iron and steel products is regular. The Community legislator did not, however, feel it necessary or advisable to allow an exception to the general prohibition under Article 4 of the ECSC Treaty in the absence of significant effects on the market resulting from the closure of a firm which is not in regular production.

It therefore follows that criteria could, provided they demonstrated the regularity of production, be accepted as an alternative to the one laid down by the Commission in its Decision. The criteria put forward by the Italian Government (non-cancellation of the electricity-supply contract, continued employment of the workforce, maintenance of the facilities, etc.), however, demonstrate not that the firms in question were in regular production, but that they were capable of producing on a regular basis.

Article 4 of the Steel Aid Code is drafted in such a way as to rule out a broad interpretation which would allow aid to go to firms which, although they had not been in regular production, were capable of producing ECSC products on a regular basis. It would therefore appear that, in the light of the alternative criteria they have put forward, the way in which the criterion of regularity has been interpreted by the Italian authorities is not founded in law and cannot, therefore, be accepted.

As regards the claim made by the Italian authorities that the low output recorded by the firms in 1993 was due to particularly unfavourable cyclical conditions and to a

[1] OJ No 9, 11. 5. 1954, p. 345/54.

major crisis on the market in long products, it must be stated that production was in fact only slightly down in the case of long products, in particular in the case of wire rod and other flat bars and sections:

(millions of tonnes)

Italy	1990	1991	1992	1993
long products	12,7	13,3	13,2	12,5
wire rod	2,8	3,0	3,2	3,1
bars and sections	3,6	3,5	3,3	3,2

The same applies to the market in bars for reinforcing concrete — the most important as far as the firms in question are concerned — in respect of which there was a slight reduction in the rate of use of production capacity at both European and Italian level during the relevant period, i.e. 1992 and 1993:

(millions of tonnes)

EUR-12	Capacity	Output	Rate of use of production capacity (%)
1991	19,98	12,24	61,3
1992	22,39	12,53	55,9
1993	22,84	12,92	56,5
Italy	**Capacity**	**Output**	**Rate of use of production capacity (%)**
1991	9,4	5,5	58,8
1992	10,4	5,7	54,3
1993	10,3	5,4	52,1

On the basis of these figures it must be concluded that the argument put forward by the Italian authorities, namely that the low level of production of the firms in question was attributable to unfavourable market conditions in 1993, cannot be accepted.

Relevant though they may be in the context of the restructuring of the steel sector, the comments on the positive impact of these irreversible closures on a market displaying heavy overcapacity cannot be accepted in the context of the application of Article 4 of the Steel Aid Code.

Finally, concerning the comment by the Italian authorities that the Commission had not set about defining any criteria as an alternative to the one referred to in the Decision of 12 December 1994, it should be emphasized that it was for the Italian authorities alone to demonstrate, by reference to other suitable criteria than the criterion put forward by the Commission, that production was regular.

In the light of the provisions of the Steel Aid Code, the other comments put forward by the Italian authorities are not founded in law.

The Commission notes, however, that in the case of OLS (Officine Laminatoi Sebino SpA), which in 1993 had produced 57 000 tonnes of hot-rolled products — equivalent to 21 % of its capacity — an overhaul of the electrical and electronic equipment of the mill producing reinforced concrete bars had been undertaken in the first quarter of 1993. Production was completely halted by OLS during that period and subsequently became regular again. The annual production at OLS should have been at least 76 000 tonnes in 1993, equivalent to 28 % of capacity. In view of this and, in particular, the output that the firm would have been able to achieve had it not been for the abovementioned overhaul of its mill, the Commission has reason to believe that OLS was in regular production (in other words, that it was in production for at least one shift per day, five days per week), at the time of its closure.

IV

In the light of the above, in particular Part III, it must be concluded that the requirements applicable under Article 4 of the Steel Aid Code have not been satisfied except in the case of OLS and that the comments put forward by the Italian authorities are not such as to alter the initial assessment which the Commission made when it decided to initiate the procedure under Article 6 (4) of the Steel Aid Code.

It should therefore be concluded that the aid Italy plans to grant to:

1. Ferriera Acciaierie Casilina SpA, totalling LIT 2 908 billion;

2. Acciaierie del Sud SpA, totalling LIT 21 647 billion;

3. Moccia Irme SpA, totalling LIT 13 509 billion;

4. Prolafer Srl, totalling LIT 2 038 billion;

5. Dora Srl, totalling LIT 3 438 billion;

6. Acciaierie San Gabriele, totalling LIT 10 123 billion;

is to be regarded as incompatible with the common market, in that it does not, under the Steel Aid Code, qualify for exemption from the general prohibition provided for in Article 4 (c) of the ECSC Treaty.

However, the aid totalling LIT 20 280 billion that Italy plans to grant to Officine Laminatoi Sebino SpA can be declared compatible with the common market since it satisfies the requirements applicable under Article 4 of the Steel Aid Code,

HAS ADOPTED THIS DECISION:

Article 1

The State aid Italy plans to grant, as part of the restructuring of the private steel sector, to the firms Ferriera Acciaieria Casilina SpA, Acciaieria del Sud SpA, Moccia Irme SpA, Prolafer Srl, Dora Srl and Acciaierie San Gabriele SpA is incompatible with the common market as defined by Article 4 (c) of the ECSC Treaty. Accordingly, the aid may not be granted.

Article 2

The State aid that Italy plans to grant, as part of the restructuring of the private steel sector, to Officine Laminatoi Sebino SpA is compatible with the common market. The granting of the aid is therefore authorized.

Article 3

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

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 July 1996.

For the Commission

Karel VAN MIERT

Member of the Commission