# COMMISSION

## COMMISSION DECISION
## of 15 November 2000
## concerning State aid granted by Belgium to Cockerill Sambre SA

*(notified under document number C(2000) 3563)*

**(Only the French and Dutch texts are authentic)**

**(Text with EEA relevance)**

(2001/198/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 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry [1],

Having called on interested parties to submit their comments pursuant to the abovementioned Decision [2] and having regard to those comments,

Whereas:

### I. PROCEDURAL STEPS

(1) Further to information published in the Belgian press, the Commission wrote to the Belgian authorities on 23 November 1998 (ref. D/54789) to request details of the aid allegedly granted to the steel company Cockerill Sambre SA as part of a scheme to reduce working time. The Belgian authorities replied by letter dated 11 December 1998 stating that they had indeed taken the measures in question but that, in their view, they did not constitute State aid.

(2) By letter of 25 January 2000, the Commission informed Belgium of its decision to initiate the procedure in Article 6(5) of Decision No 2496/96/ECSC (hereinafter the 'steel aid code') in respect of the measures in question.

(3) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* [3]. The Commission invited interested parties to comment on the measures in question.

(4) The comments which the Commission received were forwarded to Belgium on 23 May 2000 to give the latter an opportunity to respond, which it did by letter of 8 June 2000.

### II. DETAILED DESCRIPTION OF THE AID

(5) The aid granted by Belgium to Cockerill Sambre SA totals BEF 553,3 million (EUR 13,7 million) and consists of two parts:

1. A reduction in employers' social security contributions, decided by the Federal Government, amounting to BEF 418 million (EUR 10,36 million) over a seven-year period from 1999 to 2005.

2. A grant of BEF 135,3 million (EUR 3,35 million) from the Walloon Government over the same seven-year period.

(6) The aid was granted in connection with a reduction in the working week of the company's established employees from 37 to 34 hours. It applies to 1 852 employees and covers the period 1999 to 2005.

(7) The federal aid was granted pursuant to the Royal Decree of 24 December 1993, which provides for certain reductions in social security payments with a view to job redistribution [4]. The Decree was supplemented by the Royal Decree of 24 February 1997, which provides for more favourable conditions for firms in difficulty or undergoing restructuring. The special facilities allowed are related in particular to the number of jobs to be created and the period in which the reduction can be granted, which for present purposes is the period in which the firm is recognised as being in difficulty or undergoing restructuring, with a maximum

[1] OJ L 338, 28.12.1996, p. 42.
[2] OJ C 88, 25.3.2000, p. 8.
[3] See footnote 2.

[4] The Decree was approved by the Commission, as aid compatible with the EC Treaty, by letter of 30 June 1994 (ref. D/9395).

extension of seven years. On 28 July 1997 the Federal Government accorded Cockerill Sambre SA the status of a firm undergoing restructuring, and on 19 May 1998 it granted it a reduction in social security contributions provided for in the Royal Decree of 24 December 1993 under the more favourable conditions in the Decree of 24 February 1997.

(8) The Walloon Government granted aid on 18 December 1998 to supplement the federal aid. The Walloon Government aid was paid to the employees through a non-profit making association set up for that purpose.

(9) The aid was granted to maintain the level of remuneration of the established employees of the firm for seven years, despite the reduction in working time; the firm was to pay only the same hourly rate as before. During the 1997 to 1998 wage negotiations, the established employees had demanded and obtained a reduction in the working week from 37 to 34 hours, as follows:

1. working week reduced from 37 to 34 hours for an indefinite period;

2. total working hours for all established employees together to be maintained at the level envisaged in the firm's business plan, 'Horizon 2000'; this resulted in the creation of 150 new jobs, bringing the total workforce to 1 852;

3. wages to be maintained at 1998 levels, until reabsorbed through wage indexing on the basis of 34 hours (by the end of 2005).

(10) The company itself pays only the part of the wage corresponding to what would be payable on the basis of 34 hours, indexed yearly. The difference between the amount paid by the company and the wage received by the employees is financed by resources from different sources:

1. the employees themselves, who contribute the wage increase to which they were entitled in 1997 and 1998, but which they waived (BEF 29,2 million = EUR 0,7 million);

2. the Federal Government, which contributes the aid granted in respect of the 150 new jobs resulting from the reorganisation of working time (BEF 418 million = EURO 10,4 million);

3. the Walloon Regional Government, which contributes aid to supplement the federal aid (BEF 135,3 million = EUR 3,4 million).

## III. COMMENTS FROM INTERESTED PARTIES

(11) As part of the procedure, the Commission received comments from the UK Steel Association and the United Kingdom Permanent Representation to the European Union.

(12) The comments from both parties reflect the same doubts as those raised by the Commission in its decision to initiate the procedure. Both parties consider that the measures in question constitute aid to Cockerill Sambre that is incompatible with the steel aid code.

## IV. COMMENTS FROM BELGIUM

(13) In its comments, Belgium reiterates the position it had already expressed before the procedure was opened, namely that the measures do not constitute State aid.

(14) Belgium claims that the measures do not confer any financial advantage on the company either directly or indirectly, and that therefore they do not constitute State aid. Belgium argues that there is no financial advantage for the following reasons:

1. The concept of the working time reduction plan was put forward by the employees, and Cockerill Sambre agreed only on condition that the operation did not impose any extra burdens on the firm. Accordingly, the State aid, it is claimed, does not finance commitments given by Cockerill to its established employees. The 1998 collective agreement, which approved the plan, states that the agreement is dependent on obtaining public funds, the amount being decided jointly. In the event of failure to obtain the funds, the parties are to examine the situation and the possibility of implementing the agreement.

2. It is also claimed that lower social security contributions do not entail any financial benefits for Cockerill Sambre. This is due to the fact that the money saved in federal contributions has been paid over in full to the workforce, and has merely transited through the firm without reducing its burdens by comparison with the past. The regional funds do not even go through the firm.

3. The total number of hours worked by the established employees before the reduction in working time continues to be paid for, at the same statutory and contractual rate, by Cockerill Sambre. The hourly wage cost incurred by the firm is exactly the same after the reduction as before, because, as stated above, Cockerill authorised the new working time only on condition that it did not incur any extra costs.

4. Cockerill has to bear extra disadvantages and burdens, such as additional training costs, loss of availability, higher fixed unit costs, extra administrative costs, organisational difficulties, etc. The extra costs are relatively high, it is argued, and are borne by Cockerill.

5. Cockerill commissioned reports from two auditing firms, which find that the calculation method used by Cockerill is reasonable and that the financial and accounting data relating to reduced working time in 1999 can be endorsed. Belgium concludes that all the financial flows concerned, including the assistance from the State, are of sole benefit to the workforce, and that Cockerill does not benefit from any public funds at all.

(15) Belgium considers that the fact that the aid was granted to workers in their capacity as employees of a particular firm is not enough to disqualify it from being regarded as aid to persons. The Belgian authorities state that they base their position on a Commission Decision on Belgian financial aid to SA Duferco Clabecq ([5]), in which the Commission took the view that the additional unemployment benefit paid to former employees of Forges de Clabecq until the age of 65 constituted aid to persons rather than aid to the firm.

(16) Belgium also claims that the Belgian State aid constitutes social assistance for the established employees of Cockerill Sambre. The Commission, it claims, has in the past approved similar measures, in particular aid which the French authorities granted to the fishing industry in view of the concrete circumstances and their immediate needs, with no economic impact that might affect free competition.

## V. ASSESSMENT

### Legal basis for the assessment

(17) Cockerill Sambre SA is an integrated steel company located in the Walloon Region of Belgium. Until early 1999 it was a publicly owned company, in which the Walloon Region held a majority stake. It was privatised in that year, and has since been owned by the French steel group Usinor. As it is an integrated steel company it is covered by the ECSC Treaty, and therefore the aid granted to it must be examined in relation to the steel aid code.

(18) Article 6 of the steel aid code requires Member States to notify the Commission of all transfers of State resources to steel undertakings. They must also notify any plans to grant aid to the steel industry under schemes which the Commission has approved in accordance with the EC Treaty. The Commission determines whether the measures constitute aid under Article 1(2) of the code and, if so, whether they are compatible with the common market.

(19) The Commission guidelines on aid to employment ([6]) set out the criteria the Commission applies to determine whether State measures to assist employment constitute State aid. The guidelines apply to the present case; if the measures do constitute State aid, however, it has still to be determined whether they are compatible with the common market under the ECSC Treaty and the steel aid code. The latter makes no provision for employment aid or operating aid related to wage costs.

### Analysis of the arguments put forward by the Belgian authorities

(20) As the Belgian authorities have stated, State aid must indeed give the recipient an edge over its competitors. However, contrary to the claim made by Belgium, Cockerill Sambre has in fact enjoyed financial and economic benefits from the aid received. The benefits must be determined by comparing the present situation with the position of the firm if it had not received (or could not expect to receive) such aid, and not with its position in the past, for the following reasons.

1. The fact that the initiative came from the workforce and was accepted by the firm only on condition that it did not have to pay the resulting additional costs does not in any way affect the classification of the public intervention as State aid. The charges resulting from collective agreements have to be borne by the firm, irrespective of which party initiated the process. If the State acts to bear the expense, either as a direct party to the negotiations or afterwards, the firm has benefited from State aid. The fact that Cockerill Sambre insisted from the start of the negotiations that the financial burdens of the agreement be financed by the public authorities, and included that position in the collective agreement, does not mean that it was no longer liable for the wage costs of its workforce. Its behaviour shows that, on the contrary, it is very much aware of the importance of the advantage acquired.

([5]) OJ C 20, 22.1.1998, p. 3.

([6]) OJ C 334, 12.12.1995, p. 4.

2. Similarly, the fact that the public funds were only channelled through the firm, or did not pass through it at all, and that their final destination was the workforce, does not alter the fact that they constitute State aid. The point is that public resources are financing part of the wages of a group of Cockerill Sambre employees. The important factor in defining these resources as State aid is not the way the funds are organised and managed, but the nature of the expenditure they finance.

3. Belgium also argues that the firm's hourly wage cost remains exactly the same. In fact, it is the hourly cost borne by the firm that stays the same, the additional costs resulting from the reduction in working time being financed by the public authorities. Unit wage costs borne by businesses would never change if the State were to pay for the extra costs resulting from new wage agreements that included financial advantages for workers. The advantage for Cockerill resides precisely in the fact that it has not assumed financial liability for the increase in wage costs agreed with its established employees.

4. The fact that Cockerill did not refuse to pay the indirect additional costs relating to the reduction in working time is not relevant either, since, as stated above, its refusal to pay other costs does not help to determine whether the public resources it received constitute State aid, even though they may have been tied to such a refusal. Work-related costs are part of any firm's essential costs, and cannot be passed on to the public authorities.

5. As stated above, a firm's management and organisation of public funds is not relevant to the decision whether such funds constitute State aid. Thus the fact that the auditors concluded that the financial flows relating to the public funds in question were normal is not relevant in determining whether the State measures constitute State aid.

(21) According to the Belgian authorities, the fact that the aid was paid to the workers in question only because they were employed by Cockerill Sambre does not mean that the aid is to be regarded as aid to the firm rather than aid to persons. Belgium considers that the Commission took this view in its decision on the former employees of Forges de Clabecq. But the aid granted by the State to the former workers of Forges de Clabecq could be regarded as aid to persons because Forges de Clabecq had gone bankrupt. At the time the aid was granted the workers were no longer employed by Forges de Clabecq.

(22) In addition, Belgium states that it regards the State aid in question as social assistance for that group of workers. It claims that the Commission took a decision along these lines in a similar case of aid granted by France in the fisheries sector. As it has not provided details of the case, the Commission has been unable to find the decision in question and cannot comment on it. It would point out, however, that the fisheries sector is covered by the EC Treaty and qualifies for certain forms of aid under conditions that are not permitted under the ECSC Treaty, which covers Cockerill Sambre.

**Assessment of the compatibility of the aid**

(23) As stated above, the Commission cannot accept the arguments put forward by Belgium. It must conclude, on the basis of the guidelines on aid to employment, that the aid in question constitutes aid to the firm and not aid to persons, and that it finances the costs of the work provided by Cockerill Sambre employees. Such costs form an essential part of the operating costs of all businesses and, if their financing receives support from the State, any such support certainly constitutes State aid to the firm.

(24) The Commission also notes, as already stated in the decision initiating the procedure, and repeated above, that the State aid was granted under a law which was approved by the Commission as compatible with the EC Treaty in a decision which required Belgium to grant federal aid only in accordance with specific sectoral rules. This part of the aid was therefore granted in breach of the Commission decision approving the federal aid scheme. The regional aid was granted as a one-off measure. That aid does not therefore constitute a general measure, but aid which benefited a specific firm.

## VI. **CONCLUSION**

(25) The Commission concludes that Belgium granted the aid to Cockerill Sambre SA unlawfully, in breach of Article 6(1) and (2) of the steel aid code.

(26) The measure in question constitutes State aid within the meaning of Article 1 of the steel aid code. It does not fit the description of any of the aid measures in Articles 2 to 5 of the code, and is therefore incompatible with the ECSC Treaty and the proper functioning of the common market,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid totalling BEF 553,3 million (EUR 13,7 million) granted by Belgium to the steel company Cockerill Sambre SA constitutes State aid under Article 1 of the steel aid code and is incompatible with the common market.

*Article 2*

1. Belgium shall take all the necessary steps to recover from Cockerill Sambre SA the aid referred to in Article 1 which has already been unlawfully paid, and to suspend payment of the balance.

2. Recovery shall be effected without delay in accordance with the procedures of national law, provided that they allow the immediate and effective execution of this Decision. The aid to be recovered shall bear interest from the date on which it was paid to the recipient until the date of its recovery. The interest shall be based on the reference rate used to calculate the grant equivalent of regional aid, in force at the time the aid was granted.

*Article 3*

Belgium 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 4*

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 15 November 2000.

*For the Commission*

Mario MONTI

*Member of the Commission*