COMMISSION

COMMISSION DECISION

of 21 December 2000

on the State aid which Italy is planning to implement in favour of the steel companies Lucchini SpA and Siderpotenza SpA

(notified under document number C(2000) 4368)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/466/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 the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof read in conjunction with Protocol 14,

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry (hereinafter referred to as the 'Steel Aid Code') [1],

Having called on interested parties to submit their comments pursuant to the provisions cited above [2] and having regard to those comments,

Whereas:

I. PROCEDURE

(1) By letter dated 16 March 1999, Italy notified the Commission of aid, under Article 3 of the steel aid code, in favour of Lucchini SpA, for investments at its Piombino plant. By letter dated 29 November 1999, Italy notified further investment aid under Article 3 in favour of Lucchini SpA, Piombino, and also in favour of Siderpotenza SpA, a steel company owned by the Lucchini family.

(2) By letter dated 26 April 2000, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 6(5) of the Steel Aid Code in respect of the aforementioned aid.

(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 submit their comments on the aid.

(4) The Commission received comments from the UK Steel Association and from the UK Permanent Representation to the European Union. It forwarded them to Italy, which was given the opportunity to react and sent its reply thereto by letter dated 13 October 2000.

II. DESCRIPTION OF THE AID

(5) The notified investments and the expected effect on the environment have been described in detail in the decision to initiate the procedure. That description remains valid for the purposes of the present Decision.

(6) The investments carried out by Lucchini SpA and notified as eligible for environmental aid concern the coking plant, the steel works, the blast furnace, the fumes extraction system and the water and sewage system. The total notified investment costs, considered eligible by the Italian authorities, amount to ITL 190,9 billion (EUR 98,58 million). The proposed aid amounts to ITL 13,5 billion (EUR 6,98 million), representing an aid intensity of 7 %.

[1] OJ L 338, 28.12.1996, p. 42.
[2] OJ C 184, 1.7.2000, p. 2.
[3] See footnote 2.

(7) The investments carried out by Siderpotenza SpA and notified as eligible for environmental aid concern the fume suction plant of the steel works, the after-burning system and a new loading system for the rolling mill. The total cost considered eligible by the Italian authorities amounts to ITL 5,9 billion (EUR 3,4 million) and the proposed aid to ITL 1,3 billion (EUR 0,68 million), representing an aid intensity of 22,3 %.

III. COMMENTS FROM INTERESTED PARTIES

(8) The UK Steel Association and the UK Representation to the European Union sent their comments and take the view that the aid proposed by the Italian authorities is incompatible with the rules set out in the Steel Aid Code for environmental aid because the investment was made primarily on economic and not environmental grounds.

IV. COMMENTS FROM ITALY

Lucchini SpA

(9) In its comments Italy rejects the Commission's doubts expressed as to the eligibility of the investments carried out by Lucchini SpA at Piombino. In particular, the Italian authorities contest the Commission's belief that the reasons for the notified investments were primarily concerned with production and not environmental protection. They state that the investments for upgrading and reorganising production were made in parallel with an environmental improvement plan. The technical characteristics of the environmental equipment relating to the blast furnace and the steelworks were such that the old environmental equipment could have continued to operate with the new production plant and comply with the rules in force on emission levels. Its replacement was completely unrelated to the renovation of the means of production (blast furnace and steelworks converters), the sole purpose being to reduce emissions more significantly than the statutory minimum with which the previous plant had already complied.

(10) In this context, the Italian authorities state that, as regards the pig-iron production installations, the main investments carried out for production consisted in the replacement of the blast furnace with a new one, better suited to new production requirements. The corresponding system for reducing dust and extracting gas from the old blast furnace could have remained in operation with the new blast furnace as it complied with the emission requirements (the output of gas is the same with the new blast furnace despite the (limited) increase in its capacity). However, the dust reduction and gas extraction system attached to the furnace was renewed in order to obtain a significant environmental improvement on existing standards. A new water spray tower (a Baumco tower to replace the old Venturi system) was installed and the dust bag modified, in order to ensure that the level of emissions is lower than before.

(11) As regards the steelworks installations, the main production investments carried out involved the replacement of existing converters with ones better suited to the production requirements. The existing wet systems for extracting and abating dust from the converter fumes could have continued to operate with the new converters. They would have complied with the rules on emissions (fume output before the intervention was greater than after the new converters were installed, despite the (limited) increase in the capacity of the new converters). However, new systems were installed in order to produce a significant environmental improvement on the rules in force. The new systems, with dry electrostatic filters, produce far lower emissions than previous levels.

(12) To back up their claim that the environmental installations were not replaced for economic reasons, the Italian authorities also refer to the independent expert's report that they sent with the notification. The report concluded that from the standpoint of age, the environmental protection plant still had a useful life of at least 25 % before it need be replaced or modified. The investments were carried out only because the old equipment would not have produced the significant environmental improvement in relation to existing levels necessary, in view of the plant's location in a densely populated area, even before the work on the new production facilities. Although the existing environmental plant complied with the statutory emission requirements and could function with the renovated production plant, it could not produce a significant environmental improvement. Therefore, with regard to that objective, the existing plant was technically outdated. This is why it was replaced with new, modernised or modified equipment.

(13) As regards the necessity for the investor to demonstrate that a clear decision was taken to opt for higher standards, which necessitated additional investment, the Italian authorities consider that all the investments notified must be regarded as additional. This would be because the company decided to opt for significantly higher environmental standards irrespective of the investments in production which would not have required any investment in the environmental equipment in order to comply with emission levels.

(14) As regards the low level of emission reductions obtained with the investments in the coking plant, the Italian authorities point out that although the investments were notified on two different dates, they were carried out consecutively as part of a single programme. Therefore, the results to be compared in order to assess the improvement on emissions are the results after the last investment. That way, they concluded, the reductions in dust emissions from the coking furnaces are of the order of 25 %, which is significant.

(15) As regards the doubts raised by the Commission on the possible use for production of the equipment declared for environmental purposes, the Italian authorities state that the total cost to the company of the environmental measures was ITL 247,6 billion (206,2 + 41,4). However, at the appraisal stage, the Italian authorities, on the basis of the independent expert's report, decided to reduce the eligible basis to ITL 190,9 billion (ITL 152,5 billion in the first notification and ITL 38,4 in the second), in view of the fact that some of the measures, either in full or in part, were not eligible under the more restrictive terms of the Steel Aid Code.

(16) As regards the position taken by the Commission on the inclusion of the depreciation costs of the investments in the calculation of the cost advantage to production, the Italian authorities refer again to standard accountancy practice with respect to calculation of production costs. The depreciation costs being a normal element of production costs, they consider that they must be taken into consideration without question.

(17) As regards the period during which the cost advantage is calculated, the Italian authorities state that they used the annual amortisation, which was calculated in accordance with Italian rules. For the five investment projects in question, the coefficients provided for by law yielded the corresponding periods of time during which the advantages in terms of production costs are deducted, namely 100/15 = 6,66 years.

Siderpotenza SpA

(18) The Italian authorities justify the aid intensity (22,3 %) for the investments made by the undertaking in the fume suction plant and the afterburners, on the grounds that the maximum aid intensity in the present case is 50 %. Regarding the level of improvement achieved, the Italian authorities take the view that the 30 % reduction in dust emissions and the 10 % cut in the CO in the fumes are highly significant, in particular because the investments ensure the stability of the lower level of emissions obtained. The investment should therefore be assessed not only from the standpoint of the absolute improvement in the level of emissions but also from that of the guaranteed continuity and hence the enhanced reliability of the system as a whole.

(19) As regards the investment in the plant for the loading of continuously cast hot billets and its possible effects on productivity, the Italian authorities insist that there is no change in the productivity of the plant. In the case of plants like this, made up of a series of in-line machines, the productivity of the plant is regulated by the productivity of the 'slowest' machines (bottleneck). The investment in the hot loader does not help to remove any of the plant's bottlenecks, i.e. the carrier plate (sliders) and the machinery used to make the finished product (beams).

(20) As regards the Commission's observation that the investments were made to improve the health and safety conditions of workers, the Italian authorities say that this does not fit the facts. The investment modifies the procedure for reheating billets for rolling, with a consequent reduction in CO_2 emissions into the air. The reheating process is carried out by a pusher type reheating furnace, i.e. to a static machine, completely automated, its cycles being regulated by a PLC. Only one operator per shift is needed to control the furnace, from a control cabin which is located in another area and from which the sensors are monitored that control the progress of the cycle. Thus the safety of the workforce was taken care of before the investments in question.

Third parties' comments

(21) As regards the comments made by the UK Steel Association and the UK Representation to the European Union, the Italian authorities stated that they took note of them but reiterated their position as set out in their reply to the Commission's decision.

V. ASSESSMENT OF THE AID

Legal basis

(22) Article 3 of the Steel Aid Code allows steel companies to receive aid for environmental investments. The conditions for such aid to be considered compatible are set in the Annex to the Steel Aid Code and in the *Community guidelines to State aid for environmental protection* [1] (hereinafter referred to as the 'environmental guidelines').

[1] OJ C 72, 10.3.1994, p. 3.

(23) According to the environmental guidelines, aid ostensibly intended for environmental protection measures but which in fact is aid for general investment is not covered by the guidelines. The eligible costs must be strictly confined to the extra investment costs necessary to meet environmental objectives [1]. Also according to the guidelines (point 3.2.3B, first paragraph), aid for investment that allows significantly higher levels of environmental protection may be authorised, up to 30 %, in proportion to the improvement of the environment that is achieved and to the investment necessary for achieving the improvement.

(24) According to the Annex to the Steel Aid Code, the Commission will, as appropriate, impose strict conditions and safeguards so as to avoid general investment aid for new plant or equipment being granted under cover of environmental protection.

24.1. In the case of aid to encourage firms to contribute to significantly improved environmental protection, investors will have to demonstrate that a clear decision was taken to opt for higher standards, which necessitated additional investment, that is, that a lower-cost solution existed which would meet the legal standards. The higher aid level will only apply to the additional environmental protection achieved. Any advantage in regard to lower production cost will be deducted.

24.2. The Commission will also analyse the economic and environmental background of a decision to opt for the replacing of existing plant or equipment. In principle a decision to undertake new investment which would have been necessary in any event on economic grounds or due to the age of the existing plant or equipment (useful life left less than 25 %) will not be eligible for aid.

Assessment of the aid in the light of the comments from the Italian authorities

Lucchini SpA, Piombino

(25) The main point made by the Italian authorities is that although the company carried out an investment programme for the modernisation and rationalisation of the production equipment, the investments carried out in the environmental installations were not a result of such production investment programme. The environmental installations were not obsolete either. They could have continued to be used in conjunction with the new production equipment and environmental standards would have been met. The reason for their replacement was a voluntary decision to improve on environmental protection.

(26) However, no proof was provided that such have been the reasons for the decisions or that the old equipment could indeed have been compatible with the new production equipment. As stated by the UK Steel Association, which intervened as a third party, when a company carries out a major modernisation of its production facilities, as Lucchini did, the associated expenditure on environmental equipment is no more than what would normally be necessary as part of a modern production plant.

(27) It is even more difficult to accept that the company would have kept the old 'environmental' equipment together with the new production equipment when account is taken of the age of equipment, which dated from 1971 and 1978. And, as stated in the expert's report by the Italian authorities on the age of the installations, the lifetime of the environmental equipment is the same as that of the whole plant because such equipment is just a component of that plant. This is so for the three areas involved, i.e. the coking plant, the steel works and the blast furnace. It is therefore difficult to believe that once the main production equipment was replaced because it was technologically obsolete, the environmental protection equipment that went with it might have stayed in place.

(28) The Italian authorities also state that the improvement in terms of environmental protection was necessary already before the production investment plan because the undertaking is located in a very densely populated area. This supplements the information given in the notification (letter of 15 February 2000) where it was stated that 'As a result of environmental measures, the steelworks and hence the employment it provides, will be able to continue to operate alongside the existing social fabric, a particularly important factor given that the Piombino plant is located in a densely populated area'. From this information the Commission can only conclude that the environmental investments were necessary for the company to be allowed to continue to do business and hence that the decisive reason for the investments was of an economic nature.

(29) In conclusion, as regards the primary reasons for the investments by Lucchini, Piombino, in the coking plant, the steel works and blast furnace, the Commission considers that the Italian authorities have not demonstrated, as required by the Annex to the Steel Aid Code, that a clear decision was taken to invest for environmental reasons. On the contrary, all facts tend to prove that the environmental investments were made as a condition or as a consequence of necessary production investments.

[1] See point 3.2.1 of the guidelines.

(30) As regards the obligation to limit the eligible costs to the additional investments necessary to go beyond the mandatory standards, the Italian authorities simply say that all the investments notified must be regarded as additional, because the undertaking could have continued to use the old environmental equipment. The Commission does not agree with this position. The investments made consist mainly in the replacement of existing equipment, as explained by the Italian authorities, when they say that the undertaking might have kept the old systems but opted to replace them with newer, more environmentally efficient ones. Given that the undertaking must, in any case, operate with environmental equipment that ensures compliance with mandatory standards, the hypothetical cost of such equipment, if it exists, must be deducted from the cost of the one it opted for and that provided for a higher standard. The cost of the old equipment cannot be taken into account because its remaining life, even according to the Italian authorities, was already reduced to 25 %, which would mean in any case that 75 % of the equipment's life would be illegally subsidised. The Commission therefore concludes that the notified costs, concerning all the installations, do not relate solely to the extra costs necessary to ensure the additional environmental protection, as required by the Annex to the Steel Aid Code.

(31) As regards the possibility that the notified costs also relate to production equipment that is not eligible for environmental aid, Italy contests such a possibility only by stating that the notified costs has already been greatly reduced compared to the initial request submitted by the company. The Commission can only conclude that, as stated in its decision to initiate the procedure, most of the notified equipment has a direct use in production and, since no information was sent as to how to separate this equipment from the rest, it cannot accept that all the notified costs are eligible for environmental aid.

(32) The Commission accordingly concludes that the investment costs notified by the Italian authorities do not represent only costs related exclusively to environmental protection. The cost of equipment that can be used for production has not been deducted accordingly and in the single case where some deduction is made for the economic gains obtained from energy savings, the method used does not ensure that all the economic advantages have been excluded.

(33) Indeed, in calculating the cost advantages that the undertaking gets from the new fume extraction plant in the steel works, the Italian authorities insist on using the period of 6,66 years to deduct the cost savings obtained. The Commission cannot accept that the tax depreciation period used by the Italian authorities in the present case will ensure that all the economic advantages are excluded. Italy gives no justification on that score but only justifies the length of its depreciation period as being in accordance with the law. The Steel Aid Code requires that all advantages be deducted. The Commission considers that this can only be ensured if the economic life of the equipment is used. When, according to the expert's report sent by the Italian authorities, the economic life of the equipment it replaced was 36 years, the tax depreciation period of 6,66 years can certainly not be used as a substitute for the life period of the equipment in question.

(34) As regards the inclusion of the depreciation costs questioned by the Commission, the Italian authorities reiterate that the calculation of the cost advantage obtained from the investment is made according to standard accountancy rules on production cost elements. The Commission does not however question what are the standard elements of production costs of an undertaking. What it cannot accept is that in the calculation of the financial advantage that an undertaking gets from entering into a given investment expenditure, the depreciation costs of the investment itself should be considered. As indicated in the decision to initiate the procedure, this in practice means counting the same investment cost twice and would ensure that such investment would always be eligible for aid. The objective is, on the contrary, to ensure that the company will not use for its own advantage investments subsidised for environmental protection. The Commission therefore concludes that, in calculating the cost advantage that the company gets from a given investment, the Italian authorities do not exclude all the advantages that the company gets from such investment.

(35) As regards the pollution levels obtained with the second notification of investments in the coking plant, the Italian authorities seem to agree with the Commission that they cannot be considered significant enough to be eligible for aid. They consider however that they should be seen in conjunction with the investments in the first notification and that only the final results should be considered for comparison. However, the Italian authorities did not notify the second part of the investments as an addendum to the first notification, one notification having been made in March and the other in November 1999. And to justify the environmental improvement to be attained with the investments notified in November the Italian authorities considered as departing pollution levels the ones that had been obtained as a result of the investments notified in March. This means that such levels were already reached. Any investment to improve on the environment has to be considered in relation to the existing levels of pollution and not in relation to earlier ones. The Commission therefore concludes that the investments notified in September for the coking plant at Lucchini, Piombino, do not bring about a significant improvement in environment protection, as required by the Steel Aid Code, and that for that reason they are not eligible for environmental aid from the outset.

Siderpotenza SpA

(36) As regards the investments made in the fume suction plant and the afterburners system, the Commission accepts that the applicable ceiling is not the usual 30 %, but the regional aid ceiling of 50 %. Indeed, the environmental guidelines provide for the possibility of investments made by undertakings located in assisted areas to improve significantly on mandatory standards up to the prevailing rate of regional aid authorised by the Commission for the area (point 3.2.3B second paragraph) and this bonus is not prohibited by the Annex to the Steel Aid Code.

(37) Considering that the investments are not production related and that the aid represents only half of the authorised ceiling, the Commission considers that its initial doubts regarding the aid to these investments have been lifted. It accepts that the aid notified for these two projects fulfils the requirements set out in the Steel Aid Code for environmental aid.

(38) As regards the investment for the rolling mill, the Commission takes note that it did not serve the purposes of improving health and safety conditions. However, the Italian authorities have not demonstrated that such investment was not primarily made for economic reasons. The fact that the overall productivity of the plant is not improved because the gains obtained at a certain point of the production chain are limited because of the existence of bottlenecks at other points, does not prove that the investments are not made for economic/production reasons. On the other hand, no information is given on the improved levels of pollution that the investment is supposed to have achieved. Any improvement appears to be an indirect result of the investment and not the decisive reason for it to have been carried out. The Commission therefore concludes that the investments are not eligible for environmental aid because the conditions set out in the Annex to the Steel Aid Code are not fulfilled.

Conclusion

(39) The aid notified by Italy for Lucchini SpA in the coking plant, the steel works and the blast furnace, of ITL 13,5 billion is not eligible for environmental aid because the Italian authorities failed to demonstrate that the investments were not made for economic reasons. In any case, when assessed in the light of the detailed criteria, the notified aid does not meet the various requirements, for several reasons as already assessed in detail. The notified costs do not refer only to the extra costs necessary for the additional improvement in environmental protection, not all cost advantages have been deducted and, in some cases, the reduction in pollution levels does not allow such improvement to be considered 'significant'. The aid is accordingly incompatible with the common market and may not be implemented.

(40) The aid notified by Italy for Siderpotenza SpA of ITL 203,2 million, in so far as it concerns investment in the rolling mill totalling ITL 910 million, is not eligible for environmental aid because the Italian authorities did not demonstrate that the investment was for environmental purposes. The aid is accordingly incompatible with the common market and may not be implemented.

(41) The aid notified for Siderpotenza SpA of ITL 1 112 million, in so far as it concerns investment in the fume suction plant and in the afterburners system totalling ITL 4 980 million is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy is planning to implement for Lucchini SpA, amounting to ITL 13,5 billion (EUR 6,98 million) and for Siderpotenza SpA amounting to ITL 203,2 million (EUR 104 944) is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

The State aid which Italy notified for Siderpotenza SpA amounting to ITL 1 112 million (EUR 574 300) is compatible with the common market.

The aid may accordingly be implemented.

Article 3

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

Article 4

This Decision is addressed to the Republic of Italy.

Done at Brussels, 21 December 2000.

For the Commission

Mario MONTI

Member of the Commission