COMMISSION

COMMISSION DECISION
of 3 July 2001
on the State aid which Italy is planning to implement for Ilva Lamiere e Tubi Srl

(notified under document number C(2001) 1848)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2002/117/EC, ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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], and in particular Article 6(5) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

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

Whereas:

I. PROCEDURE

(1) By letters dated 20 November 1997, 3 March 1998 and 12 June 1998, the Italian authorities notified the Commission, in accordance with Article 6(1) of Commission Decision No 2496/96/ECSC (hereinafter referred to as 'the Steel Aid Code'), that they intended to grant environmental aid to two steel companies: Ilva Lamiere e Tubi Srl (hereinafter 'ILT') (aid registered as N 126/98) and Siderumbra SpA (aid registered as N 341/98). They also notified, under Article 88(3) of the EC Treaty, aid for investment (registered as N 125/98) in ILT's tube-making facilities under Law No 488/92 of 19 December 1992 [3]. The Italian authorities subsequently supplied further information which the Commission had requested in order to be able to establish that all the projects notified complied with the requirements for state aid to the steel industry laid down in the Steel Aid Code.

(2) By letter dated 26 March 1999, the Commission informed the Italian Government of its decision to initiate proceedings under Article 6(5) of the Steel Aid Code (aid C 19/99) in cases ex N 125/98, ex N 126/98 (ILT) and ex N 341/98 (Siderumbra SpA) and invited it to submit its comments. This decision was published in the *Official Journal of the European Communities* [4]. The Commission invited interested parties to submit their comments on the aid.

(3) The Commission received comments from the United Kingdom. It forwarded them to Italy, which was given the opportunity to react; its comments were received by letter dated 14 January 2000, in which the Italian authorities informed the Commission that they were withdrawing the notifications relating to aid measures ex N 126/98 (ILT) and 341/98 (Siderumbra SpA) and that, accordingly, those measures were not going to be implemented.

(4) By letter dated 17 August 2000, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of aid measure ex N 125/1998 in favour of ILT. This decision was published in the *Official Journal of the European Communities* [5]. The Commission invited interested parties to submit their comments on the aid.

[1] OJ L 338, 28.12.1996, p. 42.
[2] OJ C 332, 20.11.1999, p. 9, and OJ C 315, 4.11.2000, p. 7.
[3] The law contained the 'organic framework for extraordinary aid to the Mezzogiorno and standards for subsidising production activities'.
[4] OJ C 332, 20.11.1999, p. 9.
[5] OJ C 315, 4.11.2000, p. 7.

(5) The Commission received comments from the German Association of Steel Tube Producers (Wirtschaftsvereinigung Stahlrohre) and from the United Kingdom Steel Association. It forwarded them to Italy, which was given the opportunity to react; its comments were received by letter dated 15 January 2001.

II. **DETAILED DESCRIPTION OF THE AID**

(6) ILT is based in Taranto and belongs to the Riva group, which is one of the main steel producers in the European Union. On the same site it manufactures both steel products covered by the ECSC Treaty, primarily hot-rolled plate or sheet, and Community steel products, primarily tubes. ILT has four hot-rolling installations for tube-making (two installations for longitudinal-welded large-diameter welded tubes (TUL/1 and TUL/2), one installation for electric-welded small-diameter tubes (ERW), one installation for spiral-welded large welded tubes (TUE)) and six coating installations for tubes.

(7) Following the partial withdrawal of the notification referred to in recital 3, the aid subject to assessment in the present decision consists of a subsidy of ITL 7 707 million (EUR 3,98 million) towards investment of ITL 14 105 million (EUR 7,28 million) by ILT for the modernisation of its welded tube production facilities. It will be granted by the Ministry of Industry under Law No 488/92 for aid in depressed areas. The aid represents 37,46 % net grant equivalent (nge) of the eligible costs. The investments cover a number of measures involving all the tube makers and the tube-coating plant at Taranto and are aimed at improving the environmental conditions in the production process and modernising the plant so as to improve productivity (see annex for details).

(8) Welded steel tubes are made from steel coils or plates (ECSC products) that are bent then welded. Intra-Community trade in steel tubes is intense.

(9) In its decision to initiate proceedings under the EC Treaty, the Commission expressed doubts as to the effects of the investments on ILT's production capacities since the Italian authorities had not provided either details of ILT's existing capacities or details regarding the investments.

III. **COMMENTS FROM INTERESTED PARTIES**

(10) By letter dated 4 December 2000, the United Kingdom Steel Association stated that the aid would have to be assessed under the rules of the ECSC Treaty and thus prohibited, as they do not permit the granting of regional aid. It also pointed out that, if the Commission were to assess the aid under the terms of the EC Treaty, it should allow for the fact that the large welded steel tube sector suffers from structural overcapacity and that such aid would therefore distort competition within the Community.

(11) By letter dated 15 November 2000, Wirtschaftsvereinigung Stahlrohre noted that there was a huge structural overcapacity in the market for welded tubes which gave rise to fierce competition: the capacity utilisation rate for medium and small welded steel tubes remained at about 59 % in the period 1992-2000 while the capacity utilisation rate for large welded tubes was around 44 % during the same period. Under these circumstances, the aid should not be allowed.

IV. **COMMENTS FROM ITALY**

(12) The Italian authorities stated in their letter of 12 October 2000 that the risk of the aid being diverted to ILT's ECSC activities was non-existent, firstly because of the extremely rigorous statutory controls, checks and verifications before aid can be granted and, secondly, because, once the investment programme is complete, the Ministry of Industry checks individual invoices and accounts as well as the consistency of the programme and the identification particulars of plant, machinery and equipment.

(13) As for the Commission's argument based on the overall improvement of ILT's financial situation as a result of the aid, the Italian authorities submit that it is entirely independent of the keeping of separate accounts and that ILT's situation is no different in this respect from that of another firm, Gröditzer Stahlwerke (see recital 17). Moreover, the commitment made by ILT that, if the aid is granted, it will allocate capital and reserves to a special capital and reserves provision (fondo del patrimonio netto) for the entire duration of the programme means that the available funds deriving from the management of the company for ECSC activities remain unchanged.

(14) As for the Commission's doubts as to the effects of the investments on production capacities for large welded steel tubes, the Italian authorities insist that they will remain unchanged at 800 000 tonnes/year (250 000 tonnes for TUL/1 tubes and 550 000 tonnes for TUL/2 tubes) since none of the investments has an influence on the essential part of ILT's production process for tubes (the forming press for large longitudinal-welded tubes and the bending machine for small-diameter ERW tubes). The Italian authorities provided a detailed description of the investments, insisting that those more directly linked to the production process primarily concern automation and mechanisation.

(15) Finally, the Italian authorities recall that the firm is located in a region (Apulia) covered by Article 87(3)(a) of the EC Treaty, with a maximum of 40 % nge for regional aid. The aided investment will bring economic and social benefits to the region by preserving jobs and potentially helping the local economy through the development of related activities.

(16) As to the comments made by third parties, the Italian authorities pointed out in their letter of 27 February 2001 that the market for large welded tubes was a world market linked closely to international economic developments and, most importantly, to the price of oil. The extreme uncertainty of the oil market means that, at times, established production capacity is insufficient to cope with the demand stemming from investment projects in plant for gas and other pipelines, while at other times of market crisis, when oil prices are particularly low, this type of investment is drastically reduced, resulting in overcapacity. The Italian authorities consider that the capacity figures provided by the Wirtschaftsvereinigung Stahlrohre are purely abstract and theoretical and do not take account of the modification of production cycles required to produce tubes with the specific technical and qualitative characteristics appropriate to their final use. Italy submits here that the average utilisation rate given by the German authorities (40 %) would be completely incompatible with the sound financial management of a firm in a western economy.

V. **ASSESSMENT OF THE AID**

(17) Although ILT is an 'undertaking' within the meaning of Article 80 of the ECSC Treaty because it manufactures products referred to in Annex I to that Treaty, the Commission has accepted that the EC Treaty may apply to aid to non-ECSC activities carried on by an ECSC undertaking, provided that they are clearly distinct from the same undertaking's ECSC activities ([6]). In this connection, the Court of First Instance has ruled that the application of the ECSC Treaty to aid for investments relating to the non-ECSC activities of an ECSC company could not be justified unless in the absence of sufficient guarantees to ensure that the aid would not be misappropriated to benefit production activities covered by the ECSC Treaty ([7]).

(18) Steel tubes are products which fall outside the scope of Annex I to the ECSC Treaty.

(19) In the present case, the Commission notes that, although ILT is a single company which does not keep separate accounts for its various activities, the aided investments relate to specific installations which are clearly identified and physically distinct from the rest of the installations dedicated to the production of ECSC products. The products manufactured in these installations are downstream of the ECSC products and belong to clearly separate product markets.

(20) Under these circumstances, in line with the decisions already adopted by it (see recital 17) ([8]), the Commission considers that there is no risk that the aid will benefit ILT's ECSC activities. The EC Treaty thus applies in the case in point.

(21) The non-repayable grant at issue constitutes State aid within the meaning of Article 88(1) of the EC Treaty since it strengthens ILT's position compared to other undertakings competing in intra-Community trade. As for its compatibility with the common market, the following considerations apply.

(22) The aid is granted under a scheme approved by the Commission ([9]) and, with one exception (feasibility study for the reinforcement of the O-press (TUL/2), see recital 25), complies with it as regards the purpose of the investments (modernisation) ([10]), the eligibility of costs (land, buildings, machinery and installations) and the aid intensity (40 % nge).

(23) However, since part of the investment relates to the large welded steel tubes subsector, the framework for certain sectors not covered by the ECSC Treaty ([11]) requires prior notification. As stated in the decision initiating proceedings under the EC Treaty in the present case, the Commission, in assessing individual cases notified to it under that framework, takes into account the market situation in the subsector in which the undertaking is active, in particular whether or not there is structural overcapacity. After identifying the situation of the market where the company is active, the Commission assesses any effect the aided investment may have on that situation or on competition.

([6]) Commission Decision 1999/720/EC, ECSC of 8 July 1999 on State aid granted by Germany to Gröditzer Stahlwerke GmbH and its subsidiary Burg GmbH (OJ L 292, 13.11.1999, p. 27, recital 33) and Commission Decision of 28 March 2001 on the State aid which Italy is planning to implement for Ferriere Nord SpA (notified under number C(2001) 1010, not yet published).

([7]) Unofficial translation: Judgment of 5 June 2001 in Case T-6/99 ESF Elbe — Stahlwerke Feralpi GmbH v Commission, point 125 (not yet published in the ECR).

([8]) See footnote 6.

([9]) Letter of 30 June 1997 (ref. SG(97) D/4949) relating to State aid N 27/A/97.

([10]) Modernisation is defined in Law No 488/92 as an initiative aimed at bringing innovation to the firm in order to achieve an increase in productivity and/or an improvement in the environmental conditions connected with the production processes.

([11]) OJ C 320, 13.12.1988, point 4.1(a).

(24) The Commission notes that continued production overcapacity has existed in the steel tube sector since the mid-80s. It also acknowledges that authorising aid for companies operating in sectors characterised by structural overcapacity poses particular risks of distortion of competition and so, where the aided investment entails an expansion in capacity, it will require a reduction in the intensity of the aid in order to offset its negative effects on competition (see, for instance, the multisectoral framework on regional aid for large investment projects) ([12]). Having examined the information provided by the Italian authorities in their letter of 27 February 2001, the Commission notes that the investments benefiting from the aid do not entail increases in capacities. On the other hand, it notes that ILT is located in a region covered by Article 87(3)(a) of the Treaty and that the aid is granted under an approved scheme. Accordingly, the Commission considers that the negative effects on competition of the aid in question are offset by the benefits to the region.

(25) As regards the aid of ITL 54 640 000 (EUR 28 219) towards the study for the reinforcement of the O-press, Italy claims that the feasibility studies are considered by it to be eligible costs under Circular 38522 of 15 December 1995, issued in accordance with Law No 488/1992, which was approved by the Commission (see recital 22).

(26) The Commission notes, however, that this Circular considers economic feasibility and environmental impact studies to be eligible, to the extent of 3 % of the total eligible investment. In the present case, since reinforcement of the O-press has not been considered eligible, the feasibility study cannot be considered eligible either. Therefore, aid towards these costs has to be considered as ad hoc aid which, however, cannot be approved under the Commission communication on regional aid systems ([13]) because a study does not on its own constitute investment in fixed assets within the meaning of that communication.

(27) Notwithstanding recital 26, in view of the small amount of the aid, it is covered by Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid ([14]). It does not therefore constitute State aid within the meaning of Article 87(1) of the EC Treaty provided that, for a three-year period, the total *de minimis* aid, including the aid in question, to be granted to the undertaking does not exceed EUR 100 000.

VI. **CONCLUSION**

(28) Accordingly, the State aid amounting to ITL 7 652 360 000 that Italy intends to grant to ILT under Law No 448/92 is compatible with the common market. The aid amounting to ITL 54 640 000 that Italy intends to grant to ILT for carrying out a feasibility study for the reinforcement of the O-press can be considered *de minimis* aid if it meets the conditions laid down in Commission Regulation (EC) No 69/2001,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy is planning to implement for Ilva Lamiere e Tubi Srl amounting to ITL 7 652 360 000 is compatible with the common market under Article 87(3)(a) of the EC Treaty.

Article 2

The State aid which Italy is planning to implement for Ilva Lamiere e Tubi Srl towards the feasibility study for the reinforcement of the O-press amounting to ITL 54 640 000 does not constitute State aid within the meaning of Article 87(1) of the EC Treaty provided that it meets the conditions laid down in Regulation (EC) No 69/2001.

Italy shall ensure that the abovementioned conditions are met.

Article 3

The proceedings initiated on 26 March 1999 under Article 6(5) of Commission Decision No 2496/96/ECSC concerning aid C 19/99 are hereby terminated.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 3 July 2001.

For the Commission

Mario MONTI

Member of the Commission

([12]) OJ C 107, 7.4.1998, p. 7.
([13]) OJ C 31, 3.2.1979, p. 9.
([14]) OJ L 10, 13.1.2001, p. 30.

ANNEX

List of investments benefiting from the aid

	ITL (milion)	ITL (milion)
Improvement of the dust recovery system, coating line No 3	129	66 623
Elimination of vibrations due to grinding operations	134	69 205
Fireproofing systems in the painting area, coating line No 3	850	438 988
Hydraulic stainless piping (TUL/2)	1 300	671 394
Replacement of hydraulic handling by electro-mechanical handling	850	438 988
Construction of 11 fume collection openings (TUL/2)	1 000	516 457
Renewal of information system (TUL/2)	2 073	1 070 615
Automation of the weighing machine and end-facer	400	206 583
Washing and cleaning of tubes (TUL/1)	500	258 228
Study for the reinforcement of the O-press (TUL/2)	100	51 646
Automation of tube handling and sorting (TUL/1 and TUL/2)	600	309 874
Preliminary internal examination with TV camera	592	305 742
Improvement of information system (ERW tube maker and coating line)	200	103 291
10 kW power source for ERW coating line	800	413 166
Automation of the external sandblasting area, coating line No 3	300	154 937
Tube-handling facilities	700	361 520
Welding heads (TUL/1)	97	50 096
Cutting of strips (TUL/2)	416	214 846
Adjustment of helicoidal tube maker operation	256	132 213
Installation for the regeneration of polyethylene	150	77 469
Adjustment of coating installation No 2 for FBE coating	1 808	933 754
Relocation of edging machine for coils (ERW coating line)	500	258 228
Coil head/end shearing (ERW coating line)	100	51 646
Optimisation cut-off (ERW coating line)	50	25 823
Replacement of the cut-off system (ERW coating line)	200	103 291
Total	14 105	7 284 625