COMMISSION DECISION

of 30 January 2002

on the State aid granted by Spain to a number of steel undertakings in the Basque Country

(notified under document number C(2002) 309)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2002/822/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], 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 letter dated 31 July 2000 the Commission requested the Spanish authorities to provide information on the aid which the Basque regional government granted in 1999 to ECSC undertakings for research and development and which had not been notified in accordance with the procedure laid down in Article 6(1) of Commission Decision No 2496/96/ECSC (hereinafter the Steel Aid Code). By letter dated 4 October 2000 the Spanish authorities provided some information. By letter dated 20 November 2000 the Commission requested additional information. By letter dated 16 January 2001 the Spanish authorities provided the additional information requested.

(2) By letter dated 28 March 2001 the Commission informed Spain that it had decided to initiate proceedings under Article 6(5) of the Steel Aid Code in respect of the aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities*. The Commission invited interested parties to submit their comments on the aid.

(4) The Commission received comments from the United Kingdom authorities and from the United Kingdom Steel Association. It forwarded them to Spain, which was given the opportunity to react; its comments were received by letter dated 19 October 2001.

II. DETAILED DESCRIPTION OF THE AID

(5) The aid consists of grants awarded under the scheme introduced by Decree 185/1997 of 29 July 1997 establishing support measures for research, development and technological innovation in the Autonomous Community of the Basque Country [3], which was authorised by the Commission under the EC Treaty [4].

(6) The beneficiary ECSC undertakings, the details of the R&D projects and the amounts of aid are as follows:

A. Acería de Álava SA. Project: development of a new production line: finishing of stainless steel bars

(7) The project consists in the installation of a new production line in order to increase the company's range of products and improve the steelworks' production

[1] OJ L 338, 28.12.1996, p. 42.
[2] OJ C 185, 30.6.2001, p. 41.
[3] BOPV (Official Gazette of the Basque Country) No 1997147, 4.8.1997, p. 13174.
[4] Letter SG (97) D/6942 of 12 August 1997.

capacity. Following the results of a market study commissioned by the company, which concluded that there was increasing demand for large stainless steel bars, Acería de Álava decided to install a new production line for these products. Neither the application form nor the documentation provided afterwards describe any research activity; they mention only the steps followed for bringing the installations into service.

(8) The costs included in the application form refer to personnel (EUR 283 077), external services (EUR 841 017), current expenditure (EUR 12 020), equipment (EUR 39 065) and depreciation of installations (EUR 744 043). They total EUR 1 919 063. The entity charged by the Basque authorities with assessing the project noted that no description was provided of the activities of the external agent. The Basque Country granted EUR 101 407 to cover the costs of the company and EUR 27 464 to cover the costs of the external agent.

(9) The project was classed as precompetitive development by the Basque Country.

(10) The company's R&D expenditure declined from an average of EUR 267 000 in 1996 to 1998 to EUR 227 000 in 1999. As a percentage of turnover, it fell from 0,39 % in 1996 to 1998 to 0,33 % in 1999.

B. **Acería Compacta de Bizcaia SA and Aceralia Corporación Siderúrgica SA. Project: development of carbon and micro-alloyed steels through thin slab casting**

(11) The activities involved in the project include studying the influence of chemical composition (contents of nitrogen, residual and microalloying elements) in the hot-rolled product (mechanical properties, cleanliness) and their influence on the cold-rolled and galvanised final product. Through simulation in the laboratory, the project will examine the possibility of defining simplified conditions for industrial production as well as the influence of solidification speeds on the properties of the steel produced.

(12) The project is being carried out in cooperation with the CEIT (Guipúzcoa Research Centre), a member of the Basque technology network.

(13) The activities were classed by the Spanish authorities as precompetitive development.

(14) The costs considered eligible by the Spanish authorities amount to EUR 527 388 and relate to personnel, instruments and equipment and external services. The aid amounts to EUR 210 955.

(15) R&D expenditure by Aceralia Corporación Siderúrgica rose from an average of EUR 4 362 146 in 1996 to 1998 to 5 409 109 in 1999. The personnel assigned to R&D activities grew from an average of 37 in 1996 to 1998 to 43 in 1999.

(16) R&D expenditure by Acería Compacta de Bizcaia rose from an average of EUR 348 376 in 1997 to 1998 to 515 710 in 1999. As a percentage of turnover, it increased from 0,15 % in 1997 to 1998 to 0,22 % in 1999.

C. **Aceros Inoxidables Olarra SA. Project: optimisation of the hot-forming of austenitic steels through thermomechanical simulation**

(17) The project involves defining the composition of continuous cast duplex steels and their microstructural characterisation with continuous cast structure, after hot-forming and heat treatment.

(18) The project is being carried out in cooperation with the CEIT.

(19) The costs considered eligible by the Spanish authorities amount to EUR 77 062 and relate to personnel, instruments and equipment and external services. The aid amounts to EUR 30 177.

(20) The company's R&D expenditure over the period 1996 to 1998 represented on average 0,14 % of turnover. In 1999 it rose to 0,19 %.

D. **Grupo Siderúrgico Vasco 'GSB Acero' SA. Project: optimisation of metallurgical parameters in the direct forging of micro-alloyed steels**

(21) The project is aimed at obtaining vanadium micro-alloyed steels with the necessary microstructure to be directly forged (without intermediate treatment).

(22) The costs considered eligible by the Spanish authorities amount to EUR 117 696 and relate to personnel, instruments and equipment and external services. The aid amounts to EUR 47 077.

(23) Expenditure on R&D over the period 1996 to 1998 amounted to an average of EUR 582 000. In 1999, it rose to EUR 692 000. The personnel assigned to R&D activities was increased from 11 (average 1996 to 1998) to 14.

E. **Nervacero SA. Project: recycling of dusts from the steel shop through briquetting and use in the furnace**

(24) Dust from steel shops is normally treated through two different processes: the so-called Waelz process, which involves burning the dust mixed with coke and sand at high temperatures and whose main disadvantage is the production of very low value slag and the emission of high quantities of combustion gases; and the chemical stabilisation/solidification process, which, by mixing the dusts with other elements, allows the resulting waste to be dumped in controlled sites since it can be classed as non-toxic and non-dangerous. The project is aimed at developing a self-reducing briquette which incorporates not only the dust and the agglomerating elements but also the coke necessary for the reduction process. The project would also reduce the treatment time in the furnace in comparison with the Waelz process.

(25) The leader in this project is Oñeder SA, a company dedicated to the recycling of industrial waste. Nervacero's contribution relates to personnel costs (one researcher) as well as costs of materials and some of the costs of external agents.

(26) The project is being carried out in cooperation with the Inasmet Foundation (Inasmet), a member of the Basque technology network.

(27) The costs considered eligible by the Spanish authorities amount to EUR 50 034 and relate to personnel, instruments and equipment and external services. The aid amounts to EUR 20 014.

(28) With this project, the company will be involved for the first time in R&D activities.

F. **Siderúrgica Aristrain Olaberría SL. Project: development of beam blanks technology for obtaining carbon and micro-alloyed structural steels**

(29) In order to overcome the problems identified in the use of traditional continuous casting for the production of beams, Siderúrgica Aristrain Olaberría SL decided to adopt beam blanks technology. With this process, the shape of the semi-finished products obtained is closer to that of the finished products, which reduces the further deformation needed to reach the final product and improves the quality of the steel.

(30) The project is being carried out in cooperation with the CEIT.

(31) The costs considered eligible by the Spanish authorities amount to EUR 390 708 and relate to personnel, materials and equipment and external services. The aid amounts to EUR 23 526.

(32) The company's R&D expenditure over the period 1996 to 1998 represented on average 0,38 % of total turnover. In 1999 it represented 0,42 %.

G. **Esteban Orbegozo SA. Project: optimisation of the melting of steel scrap in an electric arc furnace through continuous control of the slag**

(33) The project is aimed at incorporating into the control of the melting process a new variable, control of the slag, through an on-line analyser of slag and optimisation of the combustion processes for energy sources other than electricity.

(34) The project is being carried out in cooperation with Inasmet.

(35) The costs considered eligible by the Spanish authorities amount to EUR 168 283 and relate to personnel, instruments and equipment, depreciation and external services. The aid amounts to EUR 1 030.

(36) No data have been provided as to R&D expenditure or personnel assigned to R&D activities.

H. **Esteban Orbegozo SA. Project: process control for the reduction of defects in the hot rolling of billets**

(37) The activities involved include the collection in real time of details about defects, dimensional control and other variables that affect the quality of the product; the analysis of data and the establishment of a correlation between the defects and the rolling parameters; and optimisation of the rolling parameters.

(38) The project is being carried out in cooperation with the CEIT.

(39) The costs considered eligible by the Spanish authorities amount to EUR 317 839 and relate to personnel, instruments and equipment, depreciation and external services. The aid amounts to EUR 23 145.

(40) No data have been provided as to R&D expenditure or personnel assigned to R&D activities.

I. **Marcial Ucín Siderúrgica SL. Project: improvement of the fatigue behaviour of corrugated steels with anti-seismic proprieties**

(41) Following the new draft standard PNE 36065 EX/98 establishing new values for resistance to low-cycle fatigue, the company aims with this project to develop all the infrastructure necessary for carrying out the appropriate tests.

(42) The project is being carried out in cooperation with Inasmet.

(43) The costs considered eligible by the Spanish authorities amount to EUR 220 789 and relate to personnel, instruments and equipment, depreciation and external services. The aid amounts to EUR 13 951.

(44) No data have been provided as to R&D expenditure or personnel assigned to R&D activities.

J. **Tubos Reunidos SA. Project: Optimisation and improvement of productivity in the steelworks**

(45) The project focuses on improving refining control in the furnace and the ladle as well as installing new ingot moulds and agitators in the continuous caster.

(46) The entity charged by the Basque authorities with assessing the project acknowledges that it is not a concrete R&D project and that the bulk of the expenditure corresponds to investment.

(47) The costs considered eligible by the Spanish authorities amount to EUR 531 012 and relate to personnel, instruments and equipment, depreciation and external services. The aid amounts to EUR 26 338. The report on implementation of the project reports the following costs: personnel, EUR 368 718; current expenditure, EUR 146 076; depreciation, EUR 125 461; external services, EUR 214 536.

(48) No data have been provided as to R&D expenditure or personnel assigned to R&D activities.

III. **GROUNDS FOR INITIATING PROCEEDINGS**

(49) In the decision-initiating proceedings, the Commission expressed doubts as to the incentive effect of the aid since it took the view that the indicators which the Basque regional government had when it notified the scheme undertaken to consider for the purpose of examining the incentive effect of the aid for large undertakings (evolution of R&D spending, evolution of the number of people assigned to R&D activities, evolution of R&D spending as a proportion of total turnover) had not been taken into account and would be relevant for the purpose of assessing the incentive effect in the present case.

(50) The Commission also expressed its doubts as to the fulfilment of the other requirements established in the R&D framework since it lacked detailed information about the projects.

(51) In these circumstances, the Commission requested Spain to provide all the information necessary for assessing the aid. If such information was not forthcoming, the Commission would have to adopt a decision on the basis of the information in its possession.

IV. COMMENTS FROM INTERESTED PARTIES

(52) The United Kingdom authorities agreed with the Commission's reasoning for initiating proceedings. They also stressed the need for the Member States to establish the incentive effect of the aid.

(53) The United Kingdom Steel Association considered that none of the undertakings could be regarded as SMEs; they also submitted that, on the basis of the limited information published, some of the projects could be seen as applying existing technologies.

(54) The information transmitted by the Spanish authorities included the comments that some of the companies had made further to the initiation of proceedings. These comments stressed the incentive effect of the aid along the same lines as the comments made by Spain (see recital 56 below).

V. COMMENTS FROM SPAIN

(55) By letter dated 8 June 2001, the Spanish authorities transmitted a copy of their entire documentation concerning these aid measures.

(56) As to the incentive effect of the aid, although the Commission had already indicated that quantifiable factors would be relevant (see recital 49 above) the Spanish authorities did not mention ([5]) them and maintained in that letter that:

(a) the aid was a decisive factor in carrying out the research because the risk involved in R&D activities was high;

(b) the technical assistance provided in the process of assessing the aid was important for the undertakings;

(c) the participation of external agents contributed to the improvement of research methods;

(d) the mere fact of applying for aid required the companies to examine more closely the different options and the most effective solutions;

(e) the implementation of an R&D project contributed to an improvement in internal coordination within the company.

VI. ASSESSMENT OF THE AID

(57) The abovementioned companies manufacture products included in Annex I to the ECSC Treaty. They are therefore undertakings within the meaning of Article 80 of the ECSC Treaty and are therefore subject to that Treaty and to the Steel Aid Code.

(58) Pursuant to Article 2 of the Steel Aid Code, aid granted to defray expenditure by steel undertakings on research and development projects may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community framework for State aid for research and development ([6]) (hereinafter 'the R&D framework').

(59) In accordance with the R&D framework, in order to assess whether aid is compatible with the common market the Commission must verify the nature of the activities, the stage of the research, the aid intensity and the eligible costs and make sure that the aid has an incentive effect.

(60) As to the nature of the activities, the Commission considers that all the projects except two (the projects referred to in recitals 7 to 10 and 45 to 48 above) consist of R&D.

(61) The Acería de Álava project in fact involves the installation of a new production line. Even the entity charged by the Basque authorities with assessing the project acknowledges this fact. This is also confirmed by the type of personnel involved (maintenance, assembly) and the third parties' contribution (engineering companies supplying equipment). The aid for this project therefore does not comply with the R&D framework.

(62) The Tubos Reunidos project relates to the improvement of processes with a view to increasing productivity. This constitutes a routine activity that every company is

([5]) It can be seen from the documentation transmitted that the application form requires the companies to provide, among other things, the following information for the period 1996 to 1999: turnover; personnel assigned to R&D; total R&D expenditure. This is therefore in line with the commitment of the Basque regional government to take these factors into account in determining the incentive effect.

([6]) As published in OJ C 45, 17.2.1996, p. 5.

bound to undertake on a regular basis in order to maintain its competitiveness and does not constitute R&D. Even the entity charged by the Basque authorities with assessing the project acknowledges that it is not a concrete R&D project and that the bulk of the expenditure corresponds to investment. The aid for this project therefore does not comply with the R&D framework.

(63) As to the stage of research, except for the abovementioned two projects, all the others constitute at least precompetitive development.

(64) As to the eligible costs, except for the abovementioned two projects, all the others comply with the definitions given in the R&D framework (personnel, instruments and equipment, materials, external services).

(65) As regards the intensity of the aid, according to point 5.5 of the R&D framework the permissible gross aid intensity is 25 % of the eligible costs for precompetitive activities. This intensity can be increased by 15 percentage points where the research project is in accordance with the objectives of a specific project or programme undertaken as part of the Community framework programme for R&D ([7]) and by 5 percentage points where the research project is carried out in an Article 87(3)(c) region (point 5.10.2 of the framework).

(66) The Commission notes that for the projects where the 25 % intensity is exceeded, the abovementioned bonuses apply.

(67) As for the incentive effect of the aid, the Commission took the view in the decision initiating proceedings (see recital 49 above) that the quantifiable factors which the Basque regional government had undertaken to consider when the Commission approved the scheme were also relevant in this case (in addition to being the quantifiable factors included in the R&D framework). The Basque government did not, however, take them into account. It did take into account other factors (see recital 56 above) that relate to some beneficial effects of R&D activities in general but do not in any way address the issue of the incentive effect of the aid on a specific company, i.e. whether the planned aid would induce that firm to pursue research that it would not otherwise have pursued. In these circumstances, since quantifiable data of the type mentioned above had been included in some of the applications for aid filed by the companies with the Spanish authorities, the Commission is entitled to take them into account for the purpose of assessing the incentive effect of the aid.

(68) On the basis of the evolution of R&D spending, of the number of people assigned to R&D activities and of R&D spending as a proportion of total turnover, the incentive effect can be considered to be demonstrated for the companies involved in the projects referred to in recitals 11 to 32 above.

(69) As for the other companies, the Commission considers that the incentive effect has not been demonstrated on the basis of those indicators and that no other relevant factor for this purpose has been indicated by the Member State or by the companies. Consequently the aid for these projects is not in compliance with the R&D framework.

VII. **CONCLUSION**

(70) The Commission finds that Spain has unlawfully granted the aid in question in breach of Article 6(4) of the Steel Aid Code.

(71) The Commission concludes, however, that the aid granted in respect of the projects referred to in recitals 11 to 32 above is compatible with the common market.

(72) The Commission concludes that aid for the projects referred to in recitals 7 to 10 and 33 to 48 above is incompatible with the common market.

(73) Where the Commission finds that State aid incompatible with the common market has been illegally granted, it must require the Member State to take all the necessary measures to recover the aid from the beneficiary. The

([7]) In the present case the 'Medium-term guidelines of the ECSC steel R&D programme for research and pilot/demonstration projects, improved materials and production technology in the steel field' undertaken as part of the Community's fifth framework programme.

aid to be recovered shall include interest at the reference rate used in the assessment of regional aid schemes. Interest shall be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Spain has granted to Acería Compacta de Bizcaia SA and Aceralia Corporación Siderúrgica SA (EUR 210 955), Aceros Inoxidables Olarra SA (EUR 30 177), Grupo Siderúrgico Vasco 'GSB Acero' SA (EUR 47 077), Nervacero SA (EUR 20 014) and Siderúrgica Aristrain Olabería SL (EUR 23 526) is compatible with the common market.

Article 2

The State aid which Spain has granted to Acería de Álava SA (EUR 128 871), Esteban Orbegozo SA (EUR 34 175), Marcial Ucín Siderúrgica SL (EUR 13 951) and Tubos Reunidos SA (EUR 26 338) is incompatible with the common market.

Article 3

1. Spain shall take all necessary measures to recover from the beneficiaries the aid referred to in Article 2 and unlawfully made available to the beneficiaries.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aid.

Article 4

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

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 30 January 2002.

For the Commission

Mario MONTI

Member of the Commission