

COMMISSION DECISION No 2320/81/ECSC

of 7 August 1981

establishing Community rules for aids to the steel industry

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular to the first and second paragraphs of Article 95 thereof,

Having consulted the Consultative Committee and with the unanimous assent of the Council,

Whereas :

I

It was against the background of the prolonged crisis in the steel industry, which had weakened the financial position of most steel undertakings to a point where they were unable to carry out the restructuring which was needed in particular to adapt capacity to foreseeable demand, that the Commission adopted, on 1 February 1980, its Decision No 257/80/ECSC⁽¹⁾. The essential aim of the Decision was to establish a Community aid system under which specific aids could be accorded to the steel industry for certain defined purposes, provided that they promoted restructuring, were restricted in duration and intensity and did not provoke unacceptable distortions of competition. Aids granted to steel undertakings under regional or general aid schemes remained subject to the combined application of Article 67 of the ECSC Treaty and Articles 92 and 93 of the EEC Treaty.

Since then, the crisis confronting the steel industry has deepened. Demand for most products has fallen and the financial difficulties of the undertakings have worsened. The need for capacity reductions and a restoration of competitiveness has become all the more urgent, especially as Member States are increasingly subject to pressure to aid their industries, first and foremost to keep them in existence, and there is thus an even greater danger that aids may result in price reductions or the maintenance of uneconomic prices, at a time when the restoration of higher price levels is a key requirement for the recovery of the industry.

It has also become clear that if restructuring is to be accomplished in a coherent, equitable and socially acceptable manner, it is desirable to establish a comprehensive Community aid system to take

account both of changed circumstances and of experience acquired in the application of Decision No 257/80/ECSC. Such a system, while retaining the same broad objectives as before, should ensure, by the application of stricter rules designed to phase out aids within a fixed period, that restructuring, including capacity reductions, is carried through with the greater rapidity which the situation now demands. It should also ensure that all aids from which the steel industry may benefit are treated uniformly within a single procedural framework covering both specific aids, that is, those granted pursuant to schemes whose object or effect is principally to benefit steel undertakings, and non-specific aids, including in particular those granted under general or regional aid systems. In addition, it should limit distortions of competition to the minimum. A comprehensive Community aid system on these lines, and including time limits, is an indispensable element in the Community's overall policy for the recovery of the steel industry, together with the elements comprising market stabilization and social measures to alleviate the effects on the industry's workforce of the restructuring efforts.

The Community thus finds itself faced with a situation not specifically provided for in the ECSC Treaty and yet requiring action. In these circumstances, recourse must be had to the first paragraph of Article 95 of the Treaty, so as to enable the Community to pursue the objectives set out in the initial articles thereof.

II

In order to ensure that the essential restructuring of the industry is embarked on without delay and accomplished as quickly as possible, it is necessary to make provision for the progressive reduction and elimination of aids within fixed time limits. These time limits must apply not only to Member States' decisions to grant aid but also to the payment of the aid. It is appropriate also to differentiate between various forms of aid, with a view to placing greater time-constraints on those which are likely to have more damaging effects on competition and to be less effective in promoting restructuring. It is appropriate to incorporate a measure of flexibility in the matter of time limits, so that account may be taken of market developments and any unforeseen adverse effect arising from the application of time limits may be avoided.

⁽¹⁾ OJ No L 29, 6. 2. 1980, p. 5.

It is necessary to ensure that aids are applied solely for the purposes for which they were authorized and that the restructuring measures, including reduction of capacity to which they are linked, are carried through. Although aids are required to enable restructuring to take place, they nevertheless bring with them a danger of significant distortions of competition within the Community. Appropriate monitoring procedures must therefore be adopted, to make sure that aids are not so applied that they will inhibit the restoration of normal market conditions and, in particular, of price levels which will enable the industry to function economically without aid as soon as possible.

The steel industry must carry out the research and development programmes which are vital to its future competitiveness and technical progress. It is necessary to establish appropriate criteria for the assessment of aids for these activities.

When assessing aid no discrimination must be practised between undertakings, notably on account of their ownership, whether public or private. Accordingly, the rules established by this Decision must also apply to any aid elements contained in financing measures taken by Member States in respect of public-sector steel undertakings. These include the provision of equity capital, the setting-off of losses, the foregoing of dividends or of normal returns on public funds or the compensation of financial burdens imposed by public authorities. The Commission's scrutiny of such aid elements cannot result in control by it of the structure of the Member States' economic systems.

III

In view of the intensification of the crisis in the steel industry and the stricter rules which must be applied to deal with it, implementation of this Decision requires closer collaboration between the Commission and Member States, covering both aids whose compatibility with the Treaty raises no problem and those cases giving rise to dispute.

Without prejudice to any measures which may prove to be necessary in the light of future developments, the present economic and social situation in the Community in general and the situation of the steel industry in particular are such that, in order to ensure the orderly functioning of the common market, this Decision should be applied until 31 December 1985,

HAS ADOPTED THIS DECISION :

Article 1

1. All aids to the steel industry, whether specific or non-specific, financed by Member States or through

State resources in any form whatsoever may be considered Community aids and therefore compatible with the orderly functioning of the common market only if they respect the general rules set out in Article 2 and satisfy the provisions of Articles 3 to 7. Such aids shall only be put into effect in accordance with the procedures established in this Decision.

2. The concept of aid includes aid granted by regional or local authorities and any aid elements contained in the financing measures taken by Member States in respect of the steel undertakings which they directly or indirectly control and which do not count as the provision of risk capital according to standard company practice in a market economy.

Article 2

General rules

1. Aids granted to the steel industry may be considered compatible with the orderly functioning of the common market provided that :

- the recipient undertaking or group of undertakings is engaged in the implementation of a systematic and specific restructuring programme covering the different aspects of restructuring (modernization, reduction of capacity and, where necessary, financial restructuring), which programme is capable of restoring its competitiveness and of making it financially viable without aid under normal market conditions,
- the said restructuring programme results in an overall reduction in the production capacity of the recipient undertaking or group of undertakings and does not make provision for an increase in production capacity for the various categories of products for which there is not a growth market,
- the amount and intensity of the aids granted to steel undertakings are progressively reduced,
- the aids in question do not entail distortions of competition and do not affect trading conditions to an extent contrary to the common interest,
- they are approved not later than 1 July 1983 and do not lead to aid payments after 31 December 1985, other than by way of interest rebates or of payments to honour guarantees on loans disbursed before that date.

2. In its examination of the amount and intensity of planned aids the Commission may take account, to the extent to which this is compatible with the objectives of this Decision, of any other aids previously granted to the undertaking concerned and of any restructuring undertaken by it.

3. In taking decisions on applications for aid submitted to it pursuant to restructuring programmes, the Commission shall take account of the special situation of Member States having only one steel undertaking, whose effect on the Community market is minimal.

Article 3

Investment aid

1. Aids in support of investment in the steel industry may be considered compatible with the orderly functioning of the common market provided that:

- the Commission has received prior notification of the investment programme concerned where this is required by High Authority Decision No 22/66 of 16 November 1966 on information to be furnished by undertakings about their investments⁽¹⁾, as amended by Decision No 2237/73/ECSC⁽²⁾, or by any subsequent Decision,
- the amount and intensity of aid are justified by the extent of the restructuring effort involved, account being taken of the structural problems of the region where the investment is to be undertaken, and are limited to what is necessary for this purpose,
- the investment programme takes account of the general criteria for the restructuring of the steel industry defined in Article 2 and of the general objectives for steel, having regard to any reasoned opinion which the Commission may have issued on the investment programme concerned.

2. In its examination of such aids the Commission shall take account of the extent of the contribution of the investment programme concerned to other Community objectives, for instance innovation, energy saving and environmental protection, provided that the rules of Article 2 and of paragraph 1, above, are adhered to.

Article 4

Aid for closures

1. Aids to defray the normal costs resulting from the partial or total closure of steel plants may be

considered compatible with the orderly functioning of the common market.

2. The costs eligible for such aid shall be the following:

- payments to workers made redundant or retired before legal retirement age, where such payments are not covered by aids pursuant to Article 56 (1) (c) or (2) (b) of the Treaty,
- payments due to third parties in respect of the termination of contracts, in particular for the supply of raw materials,
- expenditure incurred for the redevelopment of the site, the buildings and/or infrastructures of closed steel plant for alternative industrial use.

3. Exceptionally and by way of derogation from Article 8 (1) and the fifth indent of Article 2 (1), aids for closures which could not be foreseen in programmes notified up to 30 September 1982 may be notified to the Commission after that date and be approved after 1 July 1983.

Article 5

Aid for continued operation

1. Aids to facilitate the continued operation of certain undertakings or plants may be considered compatible with the orderly functioning of the common market provided that:

- they form an integral part of a restructuring programme as defined in the first indent of Article 2 (1),
- their duration is limited to a maximum of two years, they are progressively reduced at least once each year and they do not lead to payments after 31 December 1984; however, in exceptional cases and on the basis of a duly reasoned request from the Member State concerned, the Commission may grant derogations from the two-year period, after having sought the opinion of the Member States within the Council,
- they are limited in intensity and amount to what is absolutely necessary in order to enable continued operation during the period of restructuring, and are justified by the significance of the restructuring measures implemented, account also being taken of any aid granted for investment.

⁽¹⁾ OJ No 219, 29. 11. 1966, p. 3728/66.

⁽²⁾ OJ No L 229, 17. 8. 1973, p. 28.

2. In its examination of such aids the Commission shall take account of the problems facing the production unit or units in question and the region or regions concerned, and of the secondary effects of the aid on competition on markets other than the steel market, for instance the transport market.

Article 6

Emergency aid

1. Emergency aids intended as a temporary solution for the rescue of an undertaking pending a restructuring programme or the closure of an undertaking may be considered compatible with the orderly functioning of the common market only in cases where and to the extent to which, having regard to their scope and nature, they are required in order to cope with acute social problems.

Such aids shall be of a maximum duration of six months and shall not affect trading conditions to an extent contrary to the common interest.

2. By way of derogation from the provisions of Article 1 (1), the provisions of Article 2 (1) shall not apply to emergency aids.

3. Emergency aids may not be approved after 31 December 1981.

Article 7

Aid for research and development

1. Aids to defray expenditure by steel undertakings on research and development projects may be considered compatible with the orderly functioning of the common market provided that the research and/or development project in question has one of the following objectives:

- a reduction in the costs of production (notably energy saving) or an improvement in productivity,
- an improvement in product quality,
- an improvement in the performance of iron and steel products or an increase in the range of uses of steel,
- an improvement in working conditions as regards health and safety.

2. The total amount of all aid granted for the above purposes may not exceed 50 % of the eligible costs of the project. The costs eligible for such aid shall be the costs directly associated with the project in question and shall exclude in particular all expenditure on investment related to production processes.

Article 8

1. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans

to grant or alter aids as referred to in Articles 3 to 7. Notification pursuant to this Article must be made to the Commission no later than 30 September 1982. The Member State concerned shall put its proposed measures into effect only with the approval of and subject to any conditions laid down by the Commission.

2. The Commission shall seek the views of the Member States on the more important aid plans notified to it before adopting a position on them. It shall inform all Member States of the position adopted by it on each aid plan.

3. If, after giving notice to the parties concerned to submit their comments, the Commission finds that an aid is incompatible with the provisions of this Decision, it shall inform the Member State concerned of its decision. The Commission shall take any such decision not later than three months after receiving the information needed to enable it to assess the aid in question. Article 88 of the Treaty shall apply in the event of failure by a Member State to comply with this Decision.

4. Where a period of two months following the date of receipt of the notification of the plan in question has elapsed without the Commission having initiated the procedure provided for in paragraph 3 above or otherwise having made its views known, the measures planned may be put into effect, provided that the Member State has given prior notice to the Commission of its intention to do so.

5. The Commission shall act as rapidly as possible having regard to the urgency of each case.

The Commission shall give a decision on aid schemes and shall request notification of actual instances of application only when this proves necessary to ensure that such aid is compatible with the provisions of this Decision.

Article 9

Member States shall supply the Commission twice a year with reports on aids disbursed in the course of the preceding six months, on the uses made of such aids and on the results achieved during the same period as regards restructuring. These reports must include details of all financial measures taken by Member States or by regional or local authorities in respect of public steel undertakings. They must be supplied within two months of the end of each six month period in a form to be determined by the Commission.

The first of these reports will concern aids disbursed during the second half of 1981.

Article 10

The Commission shall regularly prepare reports on the implementation of this Decision for the Council and for the information of the European Parliament.

Article 11

1. The Commission shall report to the Council, not later than two months before the final dates set for notification of planned aid measures and their payment, on the developments noted with respect to prices of iron and steel products covered by the ECSC Treaty.

2. The Commission may, with the unanimous assent of the Council and after consulting the Consultative Committee, amend this Decision in due course so as to take account in particular of changes in the other Community policies concerning the iron and steel industry.

*Article 12***1. Amendments to time limits**

If, in the light of the market trend and of the level of prices for iron and steel products, the Commission considers it necessary to amend the time limits laid down in Articles 2, 5, 6 and 8 (1), it shall seek the unanimous assent of the Council.

If the Council fails to take a unanimous decision within two months of the Commission's request, assent shall be given by qualified majority, as laid down in the fourth paragraph of Article 28 of the Treaty in relation to the application of Articles 78, 78b and 78d.

2. Individual cases of non-specific aid

The Commission may, in accordance with the procedure of paragraph 1, above, adopt provisions derogating from this Decision in order to ensure that after 1 July 1983 the implementation of this Decision in the case of non-specific aid systems, notably those relating to energy saving and environmental protection, does not entail for steel undertakings any consequences not intended by this Decision, it being understood that the principles contained in the first to the fourth indents of Article 2 (1) remain applicable.

Article 13

This Decision replaces Decision No 257/80/ECSC.

Nevertheless, the procedural rules of Decision No 257/80/ECSC shall remain applicable to notified aid proposals which, at the date of entry into force of this Decision, have already been the subject of a notice to interested parties.

This Decision shall apply until 31 December 1985.

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7 August 1981.

For the Commission

F. H. J. J. ANDRIESSEN

Member of the Commission