

COMMISSION

COMMISSION DECISION

of 15 October 2003

on the Walloon region's financial stake in Carsid SA

(notified under document number C(2003) 3527)

(Only the Dutch and French versions are authentic)

(Text with EEA relevance)

(2005/137/EC)

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

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽¹⁾,

Having called on interested parties to submit their comments⁽²⁾, and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 17 October 2001, Belgium notified the Commission of the Walloon region's plan to acquire a stake in the capital of a new steel company, Carsid SA. Further information was sent to the Commission by letters dated 20 November 2001 and 14 February 2002.

- (2) By letter dated 3 April 2002, the Commission informed Belgium that it had decided to initiate the procedure laid down in Article 6(5) of Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry⁽³⁾.

- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities*⁽⁴⁾. The Commission invited interested parties to submit their comments on the measure.

- (4) The Commission received comments from interested parties. It forwarded them to Belgium, which was given the opportunity to react; its comments were received by letters dated 17 June, 6 September, 22 October and 25 November 2002.

II. THE COMPANIES WITH A HOLDING IN CARSID

- (5) The Société wallonne de gestion et de participations (Sogepa) is a Walloon Region holding company which, amongst other things, took over the activities of the Société wallonne pour la sidérurgie (SWS). In the steel industry, its object, as part of Wallonia's general economic policy, is to promote the creation or expansion of companies and to promote public industrial initiatives. At the time of notification, Sogepa had a 25 % stake in the capital of the Belgian steel producer Cockerill Sambre. It also held 25 % of the capital of Dufenco Clabecq (see recital 9 of this Decision), Dufenco La Louvière (see recital 11) and Dufenco Belgium (see recital 12).

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

⁽²⁾ OJ C 95, 19.4.2002, p. 2.

⁽³⁾ OJ L 338, 28.12.1996, p. 42.

⁽⁴⁾ See footnote 2.

(6) Sogepa's holding in Cockerill Sambre was exchanged on 17 December 2001 for an 8 % holding in the capital of Usinor, which, in turn, became, at the beginning of 2002, a 4,25 % stakeholder in the capital of Arcelor (see recital 7). Sogepa's holding in Duferco Clabecq was reduced to 5,91 % following the operation to reduce capital through absorption of losses carried out on 8 August 2002 and the ensuing capital increase carried out by Duferco Investment. Similarly, Sogepa's direct holding in Duferco La Louvière virtually disappeared following the capital reduction through loss absorption carried out on 8 November 2001 and the ensuing capital increase carried out by Duferco Belgium.

(7) Usinor Belgium SA is a holding company of the Usinor group in Belgium. The French Usinor group was, until the end of 2001, one of the main European steel groups. Its turnover in 2001 amounted to EUR 14 523 million worldwide. At the time of the notification, Usinor held 75 % of Cockerill Sambre. At the beginning of 2002, the Usinor group merged with the Luxembourg group Arbed and the Spanish group Aceralia, creating the group Arcelor, the world's largest steel producer.

(8) Duferco Investment SA (Duferco Investment) is a holding company of the Duferco group. The Duferco is a private, Italian-Swiss group specialising in trading in steel products (including raw materials), but which also produces flat and long carbon steel products. In 2001, the group had a worldwide turnover of USD 3,2 billion. In Belgium, Duferco Investment controls two steel production companies, Duferco Clabecq and Duferco La Louvière. These two companies pay Duferco Investment, for the services provided by the group to the Belgian companies, an annual fee of [...] (*) of their turnover, this annual fee being broken down into an agency fee [...] and a management fee [...].

(9) Duferco Clabecq is the company set up by the Duferco group and the Walloon authorities (through the SWS) to take over the company Forges de Clabecq (5), which had

been insolvent since 3 January 1997. The SWS contributed to the capitalisation of Duferco Clabecq through a cash injection of some EUR 8,6 million and by providing a subordinated loan of some EUR 13,6 million (75 % guaranteed by the Duferco group). The Duferco group provided a capital injection of some EUR 25,9 million. By Decision of 25 November 1997 the Commission took the view that this measure taken by the SWS did not constitute State aid. In its Decision, the Commission noted that the company's business plan anticipated a positive operating margin as from the second year of operation and profitability as from the fifth year.

(10) The following table shows some financial indicators of Duferco Clabecq up to 30 September 2001:

(in million EUR)

	1998	1999	2000	2001
Capital + reserves	34,7	34,7	34,7	34,7
Turnover	229,7	171,3	309,7	292,7
Operating profit or loss	3,0	-7,0	-4,9	-6,0
Profit or loss before tax	1,3	-7,5	-6,7	-0,7
Total losses		-6,7	-14,3	-14,9

Source: Company annual accounts. Financial years running from 1.10 to 30.9.

(11) Duferco La Louvière is the company set up by Duferco Investment and the Walloon authorities (through the SWS) in order to acquire the company Hoogovens-Usines Gustave Boël (6), which had since October 1998 been operating under a court-approved arrangement with creditors. The SWS contributed to the capitalisation of Duferco La Louvière through a capital injection of some EUR 17,8 million and by providing a subordinated loan of some EUR 27,8 million (75 % guaranteed by the Duferco group). The Duferco group provided a capital injection of some EUR 53,5 million. By Decision of 1 July 1999, the Commission took the view that this assistance provided by the SWS did not constitute State aid. In its Decision, the Commission noted that the company's business plan anticipated profitability being achieved as from the year 2000.

(*) Business secret.

(5) At the beginning of 1996, the company found itself in a very difficult economic and financial situation which led the Walloon authorities, through the intermediary of the SWS, to take it over completely and to embark on a series of measures to save the company, including a BFR 1,5 billion capital increase. On 18 December 1996, the Commission adopted a negative final Decision against these measures and ordered the recovery of the aid already paid (Commission Decision 97/271/ECSC of 18 December 1996 — ECSC Steel — Forges de Clabecq (OJ L 106, 24.4.1997, p. 30)). Following this Decision, the competent Belgian court declared the company insolvent on 3 January 1997.

(6) The Hoogovens Staal group acquired control of the company, which was in difficulty, in April 1997. A recovery plan was drawn up, but its situation continued to deteriorate.

(12) In addition, so as to contribute to the financing of the additional investment to be carried out by Duferco La Louvière, Duferco Investment and Sogepa set up the holding company Duferco Belgium which was to take a stake in the capital of Duferco La Louvière. Sogepa would contribute to the capitalisation of Duferco Belgium through an injection of some EUR 15,6 million and a subordinated loan of some EUR 24,3 million (75 % guaranteed by the Duferco group). The Duferco group would contribute through an injection of some EUR 46,8 million. By 30 September 2001, 25 % of the capital had been paid up (EUR 15,6 million) and Sogepa had provided the loan in full. On 20 September 2001, Duferco Belgium had agreed to loans amounting to some EUR 36 million to finance the investments being carried out by Duferco La Louvière. In the financial year ending 30 September 2001, Duferco Belgium reported a loss of EUR 31 209.

(13) The following table shows a number of financial indicators for Duferco La Louvière up to 30 September 2001:

(in million EUR)

	1999	2000	2001
Capital + reserves	111,6	111,6	111,6
Turnover	216,7	487,7	476,1
Operating profit or loss	-49,4	-7,8	-43,1
Profit or loss before tax	46,2	-1,0	-41,7
Total losses	-35,9	-36,9	-79,1

Source: Company annual accounts. Financial years running from 1.10 to 30.9.

III. DETAILED DESCRIPTION OF THE MEASURE

(14) Following the announcement by the Chairman of the Usinor Sacilor group in February 2001 that he intended to close down Cockerill Sambre's hot-rolling line in Charleroi, talks were entered into between Usinor-Cockerill Sambre, the Duferco group and Sogepa primarily with a view to setting up a joint venture to produce slabs based on Cockerill Sambre's existing mill in Charleroi together with the plant owned by Duferco Clabecq (continuous casting)⁽⁷⁾. The talks culminated in a memorandum of understanding on the formation of Carsid, signed on 12 October 2001.

(15) The Walloon Region's intervention consists of a stake held by Sogepa in the new steel company, Carsid SA. It was originally intended that this stake should be worth EUR 20 million. However, by letter dated 14 May 2002, Belgium informed the Commission that, notwithstanding

its disagreement with the Commission's analysis as set out in its decision to initiate proceedings, with a view to overcoming the Commission's objections Sogepa's holding would be reduced to EUR 9 million, the other EUR 11 million originally planned being contributed (also in cash) by Duferco Investment.

(16) On 27 December 2001, while awaiting a favourable decision by the Commission, Cockerill Sambre made a contribution in kind, whose net value was set at EUR 35 million, and Duferco made a cash contribution amounting to EUR 25 million. Carsid's initial capital was consequently set at EUR 60 million.

(17) Cockerill Sambre's contribution in kind consisted of plant broadly corresponding to the integrated production line at the Charleroi site and the electric production line at the Marcinelle site. This plant was valued by an independent company in October 2001, which put its value in use at EUR [...] million. Cockerill also contributed stock valued at EUR [...] million and liabilities consisting of provisions (EUR [...] million), unpaid wages (EUR [...] million) and debts to suppliers (EUR [...] million).

(18) Duferco's cash contribution was used almost immediately for the purchase of the Clabecq wide-strip continuous casting plant. This plant was valued by an independent company in November 2001, which put its value in use at EUR 25 million.

(19) Immediately after the company was set up, Cockerill sold 40 % of its holding in Carsid to Usinor Belgium and 18,33 % to Duferco (at a price of EUR [...] million payable as from [...]). Consequently, Carsid's capital is currently divided between Usinor Belgium (40 %) and Duferco (60 %). Following the planned contributions by Sogepa and Duferco Investment, the final holding of Sogepa in Carsid will be 11,25 %, with the other shareholders holding 58,75 % (Duferco Investment) and 30 % (Usinor Belgium SA) of Carsid's capital.

IV. THE OPERATING PRINCIPLES OF CARSID

(20) Carsid will have two slab production plants: an integrated casting plant with an annual capacity of 1,8 million tonnes which will serve Duferco, and an electric plant whose output will be shared between Cockerill ([...]) and the Walloon companies belonging to Duferco ([...]). However, during a transitional period [...], most of Carsid's output will serve Cockerill Sambre.

⁽⁷⁾ Letter sent by the Belgian authorities on 31 May 2001 in case NN 121/2000 Duferco Belgium.

(21) As a result of the operation, the Clabecq blast furnace, with an annual steel production capacity of around 1,5 million tonnes, will be definitively closed down.

(22) Carsid will produce exclusively for the companies in the Duferco group and Arcelor and will not operate on the open market. Accordingly, Cockerill Sambre and the Duferco group have signed long-term supply contracts with Carsid covering the period up to the end of [...] (Cockerill Sambre) and [...] (Duferco). However, Cockerill Sambre has an initial opportunity to terminate the contract at the end of [...]. Furthermore, if Cockerill Sambre exercises its right to withdraw from the Carsid shareholders, both Cockerill Sambre and Duferco can terminate the contracts on [...].

(23) Apart from the production plants already mentioned (see recital 20), Carsid intends to acquire a new plant [...] to improve product quality and plans to carry out maintenance investments at other plants and environmental investment. The cost of transferring Duferco Clabecq's continuous casting to Charleroi is estimated at EUR [...] million. Usinor Belgium will contribute to Carsid's credit requirements with a loan of [...] and a credit line of the same amount, bearing interest at an annual rate of [...].

(24) The procurement of raw materials will be delegated to the relevant departments of Arcelor and the Duferco group, against remuneration. Thus, scrap purchases will be the responsibility of the [...] group and purchases of ore, coal and coke will be the responsibility of the [...] group.

(25) Carsid's shareholders agreed that the companies for which the production of slabs is intended will cover the production costs of the relevant plant. The slabs will moreover be supplied at production cost + 1%, thus ensuring that the company will not make a loss. As from the [...] year, the shareholders have also agreed to distribute [...] of profits as dividends.

(26) The fixed costs of the casting plant will be borne by Duferco, and the fixed costs of the electric plant will be borne by Cockerill Sambre up to a capacity of [...] tonnes. When the capacity of the electric plant reaches 1 million tonnes, only [...] will be borne by Cockerill, the rest being borne by Duferco. However, if one partner uses some or all of the capacity intended for the other party, it will bear the fixed costs in proportion to its use. Variable costs will be borne by each party in relation to the output which is allotted to it. It is established in the

contract that the workforce of the electric plant will essentially vary through use of layoffs and, where possible, through use of staff in the casting plant.

V. THE SITUATION ON THE STEEL MARKET IN 2001

(27) Following a very good year for the Community steel industry in 2000, with output reaching a record level of 163,2 million tonnes of steel, a downward trend in output became apparent as from the beginning of 2001 and became more marked subsequently. In a more general context, in addition to the slowdown in growth throughout the world, uncertainty as the economic situation was increased by the events of 11 September 2001 in the United States.

(28) As regards more particularly flat carbon steel products, which are the main products of Duferco Clabecq and Duferco La Louvière, the situation on the market in the Community in 2001 was very worrying as a result in particular of imports (see the figures for 2001 given in Commission Regulation (EC) No 560/2002 of 27 March 2002 imposing provisional safeguard measures against imports of certain steel products)⁽⁸⁾. At world level, the situation was hardly any better, as noted by all the participants at the high-level OECD meeting held on 17 to 18 September 2001. In addition, the investigations into steel initiated by the United States in January and July 2001 had added to the uncertainty as to the prospects for the development of international trade in steel products.

(29) Belgium is a net exporter of steel products. In 2001, more than 70% of its output was exported to the rest of the Community.

VI. DOUBTS EXPRESSED BY THE COMMISSION IN INITIATING THE PROCEDURE

(30) The Commission expressed doubts that Sogepa's behaviour, even analysed in the overall context of its past investments, was equivalent to that of a private investor, for two types of reason:

— a supposed private shareholder in Carsid would not be prepared to be alone in providing all the cash for the company's new needs since the risks for the private shareholders and the public shareholder of Carsid could not be considered equivalent. The contribution of the private partners served no more than to move the productive plant within companies belonging to the group. The State, on the other hand, was putting up fresh money, with a new risk,

⁽⁸⁾ OJ L 85, 28.3.2002, p. 1. Regulation as last amended by Regulation (EC) No 1287/2002 (OJ L 187, 16.7.2002, p. 25).

— the expected return on the capital invested by the State in Carsid could not be considered to match the expectations of a private investor, since the return on such investment depended, on the one hand, on the situation of the firms involved in the project and, on the other, on developments in the steel industry at world, European and regional level.

VII. COMMENTS FROM INTERESTED PARTIES

A. Corus

(31) The steel producer Corus believes that the Walloon region's investment in Carsid through Sogepa involves State aid. The company bases its opinion on the fact that a private investor seeking a return on an investment would not have acquired a stake in Carsid under the conditions accepted by Sogepa.

(32) In the first place, Corus takes the view that Carsid is not competitive and will not be competitive in the future. According to Corus, Carsid has, because of its geographical location, a number of competitive disadvantages in terms of input costs: labour, coal price, iron ore price, scrap price and electricity price. Furthermore, its scale of operation is too small to allow it to benefit it from economies of scale⁽⁹⁾. Carsid has no offsetting competitive advantage to counteract those penalties: it will sell commodity products into an over-supplied market, while other producers are better placed for exports. Production costs at Charleroi are currently 15% higher than an average competitor. Charleroi, with a cost of USD 219 per tonne, is the highest-cost producer in Europe (with the exception of the small Greek producer Halyvourgiki). It is placed at number 207 out of 300 producers analysed by World Steel Dynamics.

(33) If one adds to this the fact that Carsid will sell its slabs at a price equal to cost plus 1%, Duferco and Arcelor will be put at a competitive disadvantage in selling finished products manufactured from Carsid's slabs. A private investor considering taking an equity stake in Carsid would, as a consequence, be very concerned that the continuation of such an arrangement would lead either to a substantial reduction in the off-take of Duferco and Arcelor from Carsid, or to a re-negotiation of the transfer price. This concern would lead a private investor to increase the risk premium factored into his decision to invest, such that he would require a higher-than-normal rate of return.

⁽⁹⁾ In the case of Carsid, raw materials have to be transhipped from deep-sea vessels to barges, then barged up the river and canal systems before being off-loaded to the works. This means double handling and extra freight costs. Since the production of a tonne of slab requires some 550 kg of coal and 1 550 kg of iron ore, an extra EUR 5-10 per tonne on material costs adds between EUR 10 and EUR 20 per tonne to slab costs, i.e. 6% to 12%. On top of this, labour cost is higher in Belgium than in most parts of the EU, and labour productivity, in part due to the size of operation, is poor. This adds a further EUR 20 per tonne.

(34) In Corus' view, there is little prospect of Carsid achieving a viable level of profit. This was precisely the reason why Usinor announced publicly in February that the steel production in Charleroi had no future. Therefore, Sogepa's investment could not be regarded as the act of a normal investor. The other shareholders had other motivations — Usinor wished to exit Charleroi without re-negotiating the commitments it gave when purchasing Cockerill, and this operation provided a low or no-cost route to do so, while Duferco would probably more than recoup the losses incurred by relying on Carsid for slab supply to its Belgian operations through its profits on the trading of the end product. Duferco also saw this operation as a way to avoid the re-vamping of the Clabecq blast furnace, and to move the production to Charleroi, where it hoped to lose less money than at Clabecq. However, this would still not generate a profit. Sogepa could therefore only be investing in order to preserve jobs.

(35) Secondly, Corus considers that the expected rate of return on the investment is insufficient to warrant it. Corus calculated the net discounted value of the returns which Sogepa is likely to make on its investment. In Corus' view, on the most optimistic assumptions, Sogepa may expect a return of 4,9%. This clearly was vastly below the rate a private sector investor would require. On almost any other assumptions, the return was negative.

(36) Thirdly, Corus believes that the value of the equipment contributed is greatly overstated. For Cockerill, this transaction primarily allowed it to exit from the Charleroi site without paying closure costs. Since the equipment could not be expected to generate any profit in the given context, its true value was zero. In any event, if auctioned for sale, the equipment in question would not have generated more than scrap value. It was Corus' experience that, at the very best, this scrap value would cover the environmental costs associated with site clearance.

(37) Fourthly, Corus considers that, even if the value of the equipment had been estimated correctly, Sogepa would have assumed a higher economic risk, compared to the private shareholders of Carsid, by being the only shareholder injecting fresh capital in a more than uncertain venture. Given that the investment by the two private shareholders of Carsid was in kind, either directly or by use of their contribution for the purchase of plant from companies in the group, Corus doubted that a private shareholder would be prepared to be alone in providing all the cash for the company's new needs.

(38) Fifthly, Corus argues that, since the steel sector is characterised by structural over-capacity, State aid is presumed to be present where a public stake is acquired in a company operating in that sector.

- (39) Sixthly, according to Corus, the Carsid operation is feasible only because of the special pre-retirement programme for Charleroi and Clabecq. In Corus' view, a derogation from the legal minimum age for pre-retirement (58 years) would require a discretionary administrative decision, in the absence of which all the workers based in Charleroi would have to be taken over by Carsid, or their employer would have to carry the full burden of their pre-retirement. Corus therefore considers that the participation of the public authorities in the pre-retirement programme involves State aid.
- (40) Seventhly, Corus considers that the overall context does not justify Sogepa's investment. An historical analysis of previous support by Sogepa reinforced the view that no private investor would undertake any further investment. A private investor in the position of Sogepa would have severed all links with Duferco/Cockerill entities rather than investing fresh capital in Carsid.

B. The United Kingdom

- (41) In the United Kingdom's view, since the company, although independent, does not operate on the free market, it is unlikely that a private investor seeking a return on investment would have injected funds in Carsid under the conditions set for the stake.

VIII. COMMENTS FROM BELGIUM

- (42) The Belgian authorities begin by pointing out that the Walloon public authorities have, for decades, pursued a policy of investment in the steel industry in Wallonia and that, consequently, Sogepa cannot be considered to be an independent private investor since it has holdings in Duferco Clabecq, Duferco La Louvière and Arcelor. The Belgian authorities consider that Sogepa's behaviour is that of a private holding company or of a private group of companies pursuing a sectoral policy and guided by longer-term profitability prospects, since it is carrying out its investment as a shareholder in an industrial project of two groups in which it has stakes (indirect profit) and whose profitability is assured (direct profit).
- (43) The Belgian authorities contest the Commission's assertion that Sogepa is the only shareholder to contribute fresh cash since 27 December 2001, Duferco Investment having carried out an increase in Carsid's capital amounting to EUR 25 million. Although the sale of Duferco Clabecq's continuous casting was carried out as part of the contributions made by the two private partners of Carsid, that sale was justified by the fact that Carsid had to produce for the Duferco group slabs of a specific size which neces-

sitated the purchase of a continuous casting plant that met the criteria of the plant situated at Clabecq.

- (44) As regards the equivalence of the risks incurred by Sogepa, the Belgian authorities consider that Sogepa is incurring a risk in line with its contribution. All of Carsid's shareholders, whether they contribute equipment or fresh cash, are incurring the same risk under Belgian law. The Commission cannot oblige Sogepa to make a contribution in kind or the private partners to carry out a new capital increase in cash, notwithstanding the contributions they have already made amounting to EUR 60 million.
- (45) As regards the value of the equipment contributed, the Belgian authorities consider that they were valued by independent expert assessments. As regards more particularly the contribution of Cockerill Sambre, Article 444 of the Belgian Commercial Code requires the appointment of an auditor. As far as the value of the equipment purchased from Duferco Clabecq is concerned, apart from the fact that the value established in the expert assessment was accepted by Arcelor, a new continuous casting plant similar to that of Duferco Clabecq would currently cost EUR 60 million and its construction would take 18 to 24 months, whereas that of Duferco Clabecq can be transferred and set up in 12 months.
- (46) As regards Carsid's competitiveness, the Belgian authorities take the view that Carsid offers many advantages, including a reduction in costs⁽¹⁰⁾, flexibility in the transfer of production between the casting plant and the electric plant making it easier to adjust to demand, and the creation of a captive regional market for the rolling mills of Duferco and Arcelor. Notwithstanding the advantages of sites situated by the sea as outlined by Corus, Carsid, which is situated near its industrial partners, produces slabs at a price of EUR [...] per tonne, which is well below the figure of USD 219 cited by Corus.
- (47) As regards Carsid's production costs, according to a study by CRU International Limited, the costs at Marcinelle were USD 176,6 in 2000, which would mean that they were only 3% higher than the European average and that they were 4% below the world average. That study was based on output of 1 650 000 tonnes, whereas Carsid's current output is 1 800 000 tonnes. The increase in output and the improvement in productivity explained the reduction in the cost of producing slabs, which is at present some EUR [...] per tonne, i.e. well below the market price of slab, which in Europe is around EUR 225 per tonne (transport included).

⁽¹⁰⁾ A single maintenance team for the two production lines, a single stock of replacement parts, economies in research and developments, simplification of the development of processes and logistical synergies.

- (48) Thanks to the supply of slab, Duferco Clabecq and Duferco La Louvière produce coils and sheet at more competitive prices, equivalent to the European average. The use of slab produced by Carsid would result in an improvement in the gross margin of some EUR [...] million a year for Duferco la Louvière and some EUR [...] million a year for Duferco Clabecq.
- (49) According to the Belgian authorities, there is no reason to fear that the Carsid installations will not be fully used, since both Arcelor and Duferco have signed long-term supply contracts running until [...]. The contracts provide that any party not using its rights must bear the fixed costs associated with the plant serving them.
- (50) As regards the return on the investment, in their letter of 7 May 2002, the Belgian authorities estimated the return on the equity invested in Carsid for the period [...] at an average of [...] a year after tax ([...] a year before tax).
- (51) In response to the calculation carried out by Corus (see recital 35 of this Decision) of the net discounted value of the returns expected from Carsid, the Belgian authorities used the same methodology as Corus, but with a number of corrections as regards in particular the residual value of Carsid's installations and the hypothesis of continued operations. Carsid's internal rate of return would be [...] ⁽¹¹⁾, which, according to the Belgian authorities would be acceptable for a similar investment (applying a long-term interest rate of 5%, which must be increased by 3% to take account of the risk inherent in the steel industry). According to other calculations presented subsequently, Carsid's internal rate of return was put at [...] applying the normal hypothesis of the continuity of the plant beyond [...] ⁽¹²⁾, or [...] if one assumes liquidation of the company ⁽¹³⁾.
- (52) At all events, the Belgian authorities consider that profitability may be presumed to have been demonstrated where the public intervention is accompanied by concomitant and significant private backing and that the Commission cannot substitute itself for the judgment of the investor, but must establish with reasonable certainty that the programme financed by the State will be acceptable to a market economy investor.
- (53) As far as the situation in the steel industry is concerned, the Belgian authorities take the view that, though the industry went through a fairly serious cyclical crisis in 2001, this was part of the cycle peculiar to the steel industry, but that, following the measures adopted by the United States, there had been a considerable increase in prices in Europe and in Asia that seemed to be durable despite the economic situation and rather weak demand. Furthermore, the slab market was not a market suffering from structural over-capacity in Europe. On the contrary, Europe was a net importer of slab, and this situation was not expected to differ in the years ahead.
- (54) As regards the past performance of Duferco Clabecq and Duferco La Louvière, the Belgian authorities maintain that it was caused external to the Duferco group (raw materials market, exchange rates and product market) and the effects of the reduction in output and of the need for restructuring that affected their results to a significant extent and did not allow the companies to achieve the forecasts set out in the initial business plans.
- (55) As regards, finally, the pre-retirement programme, the Belgian authorities maintain that these arrangements do not involve any transfer of public resources to the employer and, in addition, that the Belgian authorities do not have any discretion as regards the inclusion of workers from a firm in the benefits of these arrangements, since, if the criteria stipulated by the law are met, the applicant company is recognised as being in difficulty or as undergoing restructuring and the workers are accordingly eligible for the scheme.
- (56) Although the procedure was initiated under the ECSC Treaty, since it was not possible in practice to adopt a final decision before 23 July 2002 (Belgium's reaction to the comments from interested parties arrived only on 17 June 2002, and additional information was provided subsequently, see recital 4 of this Decision), the Commission made it clear, in its notice on certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty ⁽¹⁴⁾, that it would in such cases adopt a final decision under Article 88(2) of the EC Treaty (point 43 of the notice).

IX. ASSESSMENT OF THE MEASURE

⁽¹¹⁾ The Belgian authorities used Carsid's forecast cash flows and considered at the end of the [...] a terminal value of EUR [...] million which is the result of a residual plant value of [...] of the initial accounting value, i.e. EUR [...] million, to which they have added the value of three months' worth of stock.

⁽¹²⁾ The company used part of Carsid's forecast cash flows and considered at the end of the [...] a terminal value of EUR [...] million which is arrived at by adding the capital subscribed, non-distributed profits, depreciations and provisions in excess of investment requirements and [...] of the initial accounting value of the installations.

⁽¹³⁾ The Belgian authorities subtracted the cost of dismissals from the terminal value as determined in footnote 12.

⁽¹⁴⁾ OJ C 152, 26.6.2002, p. 5.

- (57) At all events, the doubts expressed by the Commission when it initiated the procedure related to the description of the measure planned by Belgium as State aid. As has been made clear in Community case law, the clarifications made by the Community judicature to the concept of State aid referred to in Article 87 of the EC Treaty are relevant when applying the corresponding provisions of the ECSC Treaty, to the extent that they are not incompatible with that Treaty⁽¹⁵⁾.
- (58) Under Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

A. Existence of State aid

- (59) It is not disputed that the funds provided by Sogepa constitute State resources nor that, by virtue of its mission, Sogepa's actions are attributable to the Walloon Region.
- (60) As far as the existence of aid elements is concerned, it must be determined whether the public resources made available to Carsid may be considered to be a genuine contribution of risk capital in accordance with the normal practice of a market economy investor.
- (61) In its decision to initiate the procedure, in view of the fact that the investment carried out by the two private shareholders of Carsid is made in kind, either directly or through the direct use of their stake in the purchase of capital goods from group companies, the Commission expressed doubts that any hypothetical private shareholder in Carsid would be prepared to agree to be the only one to make all his contribution in cash in order to provide for the new requirements of the company.
- (62) The Commission notes firstly that, in accounting terms and within the meaning of the Belgian legislation, a capital contribution in the form of physical assets has a value equivalent to a capital contribution in the form of cash. However, this does not affect the analysis which it carried out in initiating the procedure, according to which Duferco Investment and Usinor were not incurring any new risks.
- (63) With regard firstly to the contribution of EUR 25 million by Duferco Investment, the Commission notes that the amount was immediately transferred to Duferco Clabecq for the purchase of the continuous casting plant (Carsid will still have to spend EUR [...] million for its transfer from Clabecq) and its associated installations. Even if, from the formal point of view, these are two separate companies with two different sets of shareholders, the Commission takes the view that, from the economic point of view, they form part of the Duferco group and that, accordingly, the group is not taking on any new risk. This is all the more so as, from 8 August 2002, Duferco Investment has held 94,09 % of Duferco Clabecq's capital (see recital 6).
- (64) As regards Usinor's contribution, the Commission notes that, in view notably of its declared decision to close down the installations contributed to Carsid, Usinor is not taking on any new risk. On the contrary, Usinor will receive EUR [...] million from Duferco Investment as the price for the sale of part of its holding (see recital 19). The terms of the agreement on the setting up of Carsid (see, in particular, recital 26) reduce the possibility of Usinor incurring losses, even if it decided not to use the electric plant.
- (65) However, in view of the reduction in the contribution of Sogepa and the increase in the contribution of Duferco Investment to maintain the EUR 20 million in cash initially planned (see recital 15), the Commission notes that one of the private partners is taking on a new risk.
- (66) As regards the expected return on the capital invested by Sogepa, in its decision to initiate the procedure, the Commission expressed doubts on whether that contribution was in line with the principle of a market economy investor, notably because of the situation on the steel market and the situation of the companies in the Duferco group and even Cockerill Sambre.
- (67) The Belgian authorities' argument that a return on the investment may be presumed to be demonstrated where the public intervention is accompanied by concomitant and significant private backing cannot be accepted. For the reasons set out in recital 64 of this Decision, it is clear that Usinor's decision to take a stake in Carsid is not directly linked to the profitability of Carsid (it could be concluded, on the contrary, that the installations contributed were not sufficiently profitable for Usinor). Through this operation, Usinor is also avoiding a costly social security plan.

⁽¹⁵⁾ Joined Cases T-129/95, T-2/96 and T-97/96 [1999] ECR II-17, paragraph 100.

- (68) On the other hand, the fact that the Duferco group is ready to take on a risk amounting to EUR 11 million is not a decisive factor either in assessing whether Sogepa is acting in the same way as a normal market economy investor, for the reasons set out below.
- (69) In the first place, Duferco will gain a direct benefit from Carsid which Sogepa will not gain, namely the fee on the purchases of raw materials used in the integrated plant. From this point of view, the direct profitability of the investment for Duferco is greater than for Sogepa.
- (70) Secondly, because of the agency and management fees which Duferco receives from Duferco Clabecq and Duferco La Louvière ([...] of turnover), the indirect return on the investment continues to be higher for Duferco than for Sogepa. Even if the fees were in line with market practices, as the Belgian authorities claim⁽¹⁶⁾, Duferco obtains a profit from those companies which Sogepa does not obtain.
- (71) As regards the return on the capital invested in Carsid, the Commission considers that it is not equivalent to that which an investor operating under normal market economy conditions would expect. According to the Commission's estimates on the basis of Carsid's forecast cash flow, under the most optimistic hypothesis and the most favourable one for Carsid (100% capacity utilisation, constant costs as from [...], continuous operation after [...]), the internal rate of return on the investment is [...], which is well below the minimum rate required in view of the risk and, at all events, below the rate indicated by the Belgian authorities for an investment in the steel industry [...]. Furthermore, in view of the sensitivity of Carsid's performance to the quantities produced, which in their turn depend on the market situation, this rate will be lower.
- (72) In point of fact the rate of [...] referred to in recital 71 is higher than that resulting from the calculation which had been carried out by the Belgian authorities in their letter of 7 May 2002 (see recital 50) using a different methodology. The Commission cannot accept the calculations subsequently carried out by the Belgian authorities (see recital 51) since they significantly over-estimate the terminal value of the investment. The terminal values used by the Belgian authorities resulting respectively in internal rates of return of [...] are obtained by applying
- double counting for the items depreciations, provisions, investment and residual asset values including stocks; these are already taken into account in the forecast cash flows. Furthermore, the Belgian authorities' calculation does not take account of the fact that, assuming liquidation of the company, the plant could not be realised to the tune of [...] of the initial accounting value, as the Belgian authorities estimate. In point of fact, the terminal value of the investment assuming continuity of operation is generally measured by the earning power of the company and consequently calculated by discounting, at the appropriate rate, the last forecast cash flow of the company in perpetuity.
- (73) As far as Sogepa's taking into account of Carsid's indirect profits for the companies which will use the slab produced there is concerned, the Commission considers that Sogepa's position as a minority shareholder in those companies does not justify the commitment of new capital.
- (74) In the first place, the Carsid production which Arcelor would use represents only a very small percentage of the overall output of the Arcelor group. Consequently, the setting up of Carsid could have only a negligible impact on Arcelor's competitiveness and hence on Sogepa's profits.
- (75) Secondly, as far as Duferco Clabecq and Duferco La Louvière are concerned, the figures put forward for the improvement in the gross margin of those companies (see recital 48) are far from certain. The figures are based on the assumption of maximum capacity utilisation both by Duferco Clabecq and Duferco La Louvière and by Carsid. However, on markets with structural over-capacity at world level such as the markets in flat products, maximum capacity utilisation occurs only exceptionally.
- (76) In addition, Sogepa holds only a minority stake in Duferco Clabecq and Duferco La Louvière, both of which had, when Carsid was set up, combined losses amounting to EUR 94 million and which, given the State of the steel market (see recital 28), could not hope, at least in the short term, for any significant improvement in their situation. The Commission notes moreover that Duferco Clabecq was described as a company in difficulty or undergoing restructuring for the purposes of Belgian legislation regarding early retirement⁽¹⁷⁾. In these circumstances, the Commission considers that a minority investor which had lost a large part of the value of its initial investment without having obtained any advantages similar to the other partners, against a background of a crisis situation on the market, would not be prepared to commit new funds.

⁽¹⁶⁾ According to the Belgian authorities, before the arrival of Duferco, the fees provided for in the agency contracts concluded both by Clabecq and by La Louvière were between [...]. As regards the management fees, the studies carried out at international level by consultants and reputable business banks show that management fees are between 2,5% and 5% of turnover for a period of five to ten years from the date on which the companies being restructured are taken over.

⁽¹⁷⁾ In this Decision, the Commission is not taking up any position on that scheme.

(77) In view of the above, the Commission considers that a minority investor operating under normal market conditions would not be prepared to contribute funds to an operation which can be expected to produce a proper return and where the other partners would be the main beneficiaries. The involvement of the Walloon Region in Carsid under the conditions described in this Decision would confer an advantage on Carsid. In view of the fact that the steel industry is subject to keen competition and that intra-Community trade in steel products is very substantial, the aid would be liable to distort competition and to affect intra-Community trade. It would thus constitute State aid within the meaning of Article 87 of the Treaty.

X. COMPATIBILITY WITH THE COMMON MARKET

(78) The aid is not compatible with the common market under the derogations provided for in Article 87(2) of the Treaty since it is not aid having a social character granted to individual consumers and is not intended to make good the damage caused by natural disasters or exceptional occurrences. Similarly, it cannot be considered compatible with the common market under the provisions of Article 87(3)(b) and (d). It is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, nor is it intended to promote culture and heritage conservation. Consequently, the Commission must examine the compatibility of the aid in the light of the derogation provided for in Article 87(3)(a) and (c).

(79) Carsid, Arcelor, Duferco Clabecq and Duferco La Louvière form part of the steel industry as defined in Annex B to the multisectoral framework on regional aid for large investment projects⁽¹⁸⁾. Under point 27 of the framework, regional aid for the steel industry is not compatible with the common market. Insofar as the Belgian authorities were to argue that the aid is restructuring aid, point 1 of the Commission communication on rescue and restructuring aid and closure aid for the steel sector⁽¹⁹⁾ makes it clear that rescue and restructuring aid for firms in difficulty in the steel industry is incompatible with the common market.

(80) The Commission notes that the expiry of the ECSC Treaty does not affect the assessment of the compatibility of the notified measure with the common market since the changes in substantive law that have taken place as a consequence of the expiry of the ECSC Treaty (see in particular point 19 of the notice referred to in recital 56) have not affected the ban on regional investment aid.

XI. CONCLUSION

(81) In conclusion, the Commission takes the view that Sogepa's stake in the capital of Carsid constitutes State aid that is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The financial holding of the Société wallonne de gestion et de participations (Sogepa) amounting to EUR 9 million in the company Carsid SA, as proposed by Belgium, constitutes State aid that is incompatible with the common market. The measure may accordingly not be implemented.

Article 2

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

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 15 October 2003.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁸⁾ OJ C 70, 19.3.2002, p. 8.

⁽¹⁹⁾ OJ C 70, 19.3.2002, p. 21.