COMMISSION DECISION

of 29 June 1983

concerning the aids that the Luxembourg Government proposes to grant to the steel industry

(Only the French text is authentic)

(83/397/EEC, ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 93 (2) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 257/80/ECSC of 1 February 1980 establishing Community rules for specific aids to the steel industry (1), and in particular Article 6 (2) thereof,

Having regard to Commission Decision No 2320/81/ECSC of 7 August 1981 establishing Community rules for aids to the steel industry (2), and in particular Article 8 (3) thereof,

Having given notice, in accordance with Article 93 (2) of the EEC Treaty, Article 6 (2) of Decision No 257/80/ECSC and Article 8 (3) of Decision No 2320/81/ECSC, to the parties concerned to submit their comments (3), and having regard to those comments,

Whereas:

I

By letter dated 28 January 1981, the Luxembourg Government notified the Commission of its intention to grant aids to its steel industry. After an initial scrutiny of the aids for compatibility with the criteria laid down in Articles 2, 3 and 4 of Decision No 257/80/ECSC, on the basis of the information supplied to it, the Commission concluded that the capacity reductions proposed were insufficient and that some plants were not certain to regain competitiveness. It therefore initiated in respect of the specific and non-specific aids in question the procedure provided for in Article 93 (2) of the EEC Treaty and Article 6 (2) of Decision No 257/80/ECSC and on 21 April 1981 sent a letter constituting formal notice to the Luxembourg Government to submit its comments.

The Luxembourg Government subsequently modified its restructuring plan to include a much bigger capacity reduction for hot-rolled products (490 000 tonnes) than that originally proposed. On the basis of the capacity reduction offered under the revised plan, the Commission, by letter dated 30 July 1982, authorized the grant of part of the aids proposed, subject to certain conditions. These included the requirement that the increase in the capacity of the Esch-Schifflange rod mill should be compensated by closures of capacity sufficient to justify the capacity increase. The Luxembourg Government gave its agreement to the conditions by letter dated 11 August 1982.

By two letters dated 27 September 1982, the Luxembourg Government notified the Commission of additional aid to its steel industry without major changes in the restructuring plan. After an initial scrutiny of the notification in the light of Articles 2, 3 and 5 of Decision No 2320/81/ECSC, the Commission concluded that the revised plan did not incorporate new measures to justify additional aid, an impression compounded by doubts as to the compatibility of certain investment projects with the restructuring criteria. The Commission therefore initiated in respect of the new proposals the procedure provided for in Article 8 (3) of Decision No 2320/81/ECSC, and on 29 November 1982 sent a letter constituting formal notice to the Luxembourg Government to submit its comments.

II

In reply to the Commission's letters referred to above and in other correspondence and contacts with it, the Luxembourg Government submitted *inter alia* that:

— the Luxembourg steel industry had begun restructuring, largely without aid, before 1980 and that the Commission must take this into account in

(1) OJ No L 29, 6. 2. 1980, p. 5.
(2) OJ No L 228, 13. 8. 1981, p. 14.
(3) OJ No C 117, 20. 5. 1981, p. 2 and OJ No C 52, 24. 2. 1983, p. 3.

accordance with Article 2 (2) of Decision No 2320/81/ECSC,

— Article 2 (3) of the Decision should also be applied to Luxembourg,

— the steel industry was of crucial importance for the Luxembourg economy, both in terms of volume of output and exports and in terms of the number of jobs that directly or indirectly depended on it.

In their replies, three other Member States, two federations of undertakings of the sector and one individual firm were in general agreement with the conclusions of the Commission.

By letter dated 31 March 1983, the Luxembourg Government made certain adjustments to its notification of 27 September 1982.

III

The aids that are still subject to the procedure are as follows:

— investment aid:

  — grants and repayable grants, possibly converted into interest subsidies, covering a total of 25 % of investment expenditure over the period 1980 to 1985 (excepting aid authorized in the first tranche),

  — government guarantees on ECSC loans,

  — a subsidized loan of Lfrs 28 million to Métallurgique Minière de Rodange-Athus (MMRA),

  — a 15 % grant towards building of a coking plant;

— aid for continued operation:

  — government guarantees for repayment of principal on medium-term loans of up to Lfrs 6 800 million,

  — contribution of increases of capital of Lfrs 2 700 million,

  — interest subsidies of Lfrs 3 330 million.

To justify the aids, the Luxembourg Government proposes a further net reduction of 60 000 tonnes of capacity for hot-rolled products.

IV

The second indent of Article 2 (1) of Decision No 2320/81/ECSC provides that the restructuring programmes of aided undertakings should not make provision for an increase in production capacity for categories of products for which there is not a growth market. The Luxembourg plan provides for the removal of a bottleneck in the Esch-Schifflange rod mill, which would lead to an increase in the capacity of this mill in 1983 of 78 000 tonnes over the 1980 level. The wire-rod market does not appear to be one that has growth potential.

The provisions of Article 2 (3) of the Decision are not applicable to Luxembourg since its industry has much more than a minimal effect on the Community market.

The second indent of Article 3 (1) and the third indent of Article 5 (1) of Decision No 2320/81/ECSC provide that the amount and intensity of investment aid and aid for continued operation must be justified by the extent of the restructuring associated with them. In line with the General Objectives for Steel an overall reduction Community-wide of 30 to 35 million tonnes of capacity for hot-rolled products is necessary to restore a level of capacity utilization which is considered the minimum required to secure the viability of the Community steel industry under normal market conditions. It is necessary to ensure that this overall capacity reduction is distributed fairly. On this basis, after taking into consideration the restructuring effort to date and the aid granted prior to 1980, an extra restructuring effort must be accepted by the Luxembourg steel industry. Accordingly, the Luxembourg steel industry must reduce its capacity for hot-rolled products by 410 000 tonnes in addition to the reduction of 60 000 tonnes proposed. It is necessary to set a deadline by which the additional closures required must be identified.

V

The Commission must supervise the grant of aids authorized and compliance with the conditions imposed by it.

The capacity reductions must be obtained by the complete closure of plant producing hot-rolled products and the Commission must be able to verify that such closure is definitive. The net capacity reductions take into account any capacity increases that may result from approved investment programmes. To achieve the objective of bringing capacity into line with demand, the creation of new capacity must be compensated by additional closures.

The first indent of Article 2 (1) of Decision No 2320/81/ECSC provides that aided undertakings must be engaged in the implementation of a restructuring programme which is capable of restoring their competitiveness and of making them financially viable without aid under normal market conditions. The Commission must therefore be assured that the aids contribute to restoring viability.

The Commission can only authorize aid for undertakings which have fulfilled all their obligations resulting from the application of the ECSC Treaty.

The authorization of the aids under consideration cannot prejudice any decisions that the Commission may have to take under Articles 65 and 66 of the ECSC Treaty.

There exists a system of quotas under Article 58 of the ECSC Treaty [1] and its extension is considered necessary.

VI

In view of all the above, the Commission can authorize the aids proposed, subject to observance of the conditions and requirements laid down by it,

HAS ADOPTED THIS DECISION:

Article 1

The following aids which the Luxembourg Government plans to grant to the steel undertakings Arbed and Métallurgique et Minière de Rodange-Athus (MMRA) are compatible with the orderly functioning of the common market to the extent that the conditions and requirements set out in this Decision are satisfied:

— investment aid:

  — grants and repayable grants possibly converted into interest subsidies, equivalent to a total of 25 % of investment expenditure over the period 1980 to 1985 (excepting those authorized in the first tranche totalling Lfrs 2 860 million),

  — government guarantees on ECSC loans,

  — a subsidized loan of Lfrs 28 million to MMRA,

  — a 15 % grant towards the building of a coking plant;

— aid for continued operation:

  — government guarantees for repayment of principal on medium-term loans of up to Lfrs 6 800 million,

  — contribution of increases of capital of Lfrs 2 700 million,

  — interest subsidies of Lfrs 3 330 million.

Article 2

1. The undertakings to which it is planned to grant the aids referred to in Article 1 shall, as justification for the aids, carry out further net reductions in their production capacity for hot-rolled products of at least 410 000 tonnes, in addition to the reduction of 60 000 tonnes that has been proposed to justify the aids and to the reductions already accepted as justification for aid authorized by the Commission. The requisite capacity reductions may also be contributed by other undertakings.

2. A list of the plants to be closed, giving the closure dates, and a report of increases in capacity resulting from investment shall be sent to the Commission by 31 January 1984 so that it can satisfy itself that the net reductions specified in the first paragraph will be achieved; the closures shall be implemented by 31 December 1985.

Article 3

None of the proposed aid shall be paid unless the Commission is satisfied that the undertaking concerned can return to financial viability by the end of 1985.

Article 4

1. The aids may be paid only if the Commission is satisfied, on the basis of an application submitted by the Luxembourg Government specifying the amount, form and purpose of the aid and the undertaking concerned, that the conditions set out in Articles 2 and 3, or a sufficient part thereof, are met and that the undertaking in question fulfils its obligations in respect of the ECSC Treaty rules, in particular those governing production quotas.

2. However, aid that is absolutely necessary for the continued operation of an undertaking until 31 January 1984, may be paid, provided that the undertaking fulfils its obligations in respect of ECSC Treaty rules, in particular those governing production quotas, if the Commission is satisfied, on the basis of an application by

(1) OJ No L 191, 1. 7. 1982, p. 1.

the Luxembourg Government specifying the amount, form and purpose of the aid, that the conditions set out in Article 2, or a sufficient part thereof, are fulfilled.

Article 5

1. The aid for investment may be granted only if the Commission, on the basis of the notification of the investment programmes, where this is required under Commission Decision No 3302/81/ECSC (1), has delivered a favourable opinion on the programmes pursuant to Article 54 of the ECSC Treaty.

2. Such aid shall be disbursed as and when the undertaking incurs expenditure in connection with the investment.

Article 6

1. For the purposes of monitoring aid payments for compliance with the conditions and requirements laid down in this Decision, the Commission may require that the six-monthly report supplied to it under Article 9 of Decision No 2320/81/ECSC contain details of the progress the aided undertakings have made towards achieving financial viability.

2. To enable it to check that investment aid is disbursed in accordance with the provisions of Article 5 (2) of this Decision, the Commission shall be informed at the beginning of each quarter of:

— the expenditure to be incurred by the undertakings during the quarter concerned both in respect of work already done and as payments on account in respect of future work,

— the investment aid to be disbursed during the same period.

3. The Commission may also carry out on-the-spot inspections to verify that the reductions in capacity referred to in Article 2 (1) have been implemented.

Article 7

1. Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may order the suspension of aid payments if at any time it should find that:

— aid has been paid in disregard of the conditions attached to its authorization in this Decision,

— the six-monthly reports supplied to it give reason to doubt that the undertaking concerned will return to financial viability by the end of 1985; in such a case the Commission may impose additional conditions relating to the restructuring of the undertaking,

— that the aided undertaking has breached its obligations under the provision of the ECSC Treaty, in particular those governing the system of production quotas established under Article 58 and the rules on pricing.

2. The aid payments may not be resumed until the Commission has decided whether and to what extent the infringements committed call for a reduction in the amount of the aid still outstanding.

Article 8

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels, 29 June 1983.

For the Commission

Frans ANDRIESSEN

Member of the Commission

(1) OJ No L 333, 20. 11. 1981, p. 35.