

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 March 1996

on State aid that Bavaria granted to the ECSC steel undertaking Neue Maxhütte Stahlwerke GmbH, Sulzbach-Rosenberg

(Only the German text is authentic)

(Text with EEA relevance)

(96/484/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 Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry⁽¹⁾,

Having given notice, in accordance with Article 6 (4) of that Decision, to the other Member States and the parties concerned to submit their comments,

Having regard to the comments received,

Whereas:

I

On 19 July 1995 the Commission decided to initiate the procedure provided for in Article 6 (4) of Decision No 3855/91/ECSC (Steel Aids Code, hereinafter referred to as 'the SAC') with respect to a series of loans totalling DM 24,1125 million (ECU 12,82 million) which Freistaat Bayern (Bavaria) granted between July 1994 and March 1995 to Neue Maxhütte Stahlwerke GmbH (hereinafter referred to as 'NMH'). The Commission concluded, on the basis of the information provided by the German Government, that the loans granted to the company were possibly not to be regarded as a genuine provision of risk

capital according to usual investment practice in a market economy and might therefore represent State aid that would be incompatible with the provisions of the SAC and the Treaty establishing the European Coal and Steel Community (hereinafter referred to as 'the ECSC Treaty').

The Commission informed the German Government, by letter dated 25 September 1995, of its decision to initiate the procedure and requested its comments and additional information it might consider relevant to the case. The reply of the German authorities dated 20 October 1995 contained some additional information concerning the Bavarian Government's reasons for granting the loans and referred to its communications dated 13 January 1995 and 15 May 1995, submitted in the framework of the procedure initiated on 30 November 1994⁽²⁾, in which it further referred to its communications of 15 July 1994, 14 September 1994 and 9 December 1994, submitted in the procedure concerning the intended financial measures in favour of NMH and Lech-Stahlwerke GmbH (hereinafter referred to as 'LSW') in relation to the privatization plan of Bavaria; it stressed that the loans should only ever be viewed in relation to this plan (for a full description of the German Government's position see section III).

The Commission decided on 4 April 1995⁽³⁾, that the intended loss compensation of DM 125,7 million (ECU 67,81 million) and the contribution for investment of DM

⁽¹⁾ OJ No L 362, 31. 12. 1991, p. 57.

⁽²⁾ OJ No C 173, 8. 7. 1995, p. 3.

⁽³⁾ OJ No L 253, 21. 10. 1995, p. 22.

56 million (ECU 29,78 million) in favour of NMH, together with the intended loss compensation of DM 20 million (ECU 10,63 million) for LSW, would represent State aid incompatible with the Steel Aids Code and that Bavaria should consequently not grant the aids. The measures were foreseen in connection with the intended privatization of the 45 % share of Bavaria in NMH and its 19,734 % share in LSW to the Aicher group. The German Government filed an application for annulment of the decision with the European Court of Justice⁽¹⁾. NMH filed an application for annulment of the decision with the European Court of First Instance⁽²⁾.

On 18 October 1995, the Commission decided that loans totalling DM 49,825 million (ECU 26,5 million) which Bavaria had granted between March 1993 and August 1994 to Neue Maxhütte Stahlwerke GmbH represented State aid incompatible with the provisions of the SAC and the ECSC Treaty and should therefore be recovered⁽³⁾. The German Government filed an application for annulment of that decision with the European Court of Justice⁽⁴⁾ and submitted an application under Article 39 (2) of the ECSC Treaty. NMH filed an application for annulment of the decision with the European Court of First Instance⁽⁵⁾.

The letter by which the Commission informed the German authorities of its decision to initiate the current procedure was published in the *Official Journal of the European Communities*⁽⁶⁾, inviting the other Member States and interested third parties to submit their comments.

In the framework of the present procedure the Commission received the following comment:

A national Steel Producers Association referred to its comments submitted in the framework of the procedure initiated on 30 November 1994, in which it pointed out that it is a basic tenet of Community case-law on State aid that in the case of enterprises with mixed State and private ownership, such as NMH, the action of the private investor is a key indicator of whether the State's involvement can be construed as normal market practice in a market economy. It further stressed that Bavaria, holding only 45 % of the shares of the company, was the only shareholder to grant loans during the period from July 1994 until March 1995 while the other shareholders had not participated in the financing of the company. It therefore endorsed the Commission's initial conclusion that the loans might represent State aid.

The comment was communicated to the German Government by letter dated 18 January 1996, requesting its reaction. By letter dated 13 February 1996, the German authorities submitted their remarks as requested. They repeated their opinion that the loans should be seen exclusively in connection to the privatization plan of the Bavarian Government. The loans were granted, according to the German Government, to maintain the company in operation until the privatization plan of the Bavarian Government could finally be implemented. Since the Commission had decided in April 1995 that the financial measures of the State necessary for the privatization constituted illegal State aid, the privatization plan could only be implemented after the expected annulment of that decision by the Court of Justice.

The German authorities pointed out that the State of Bavaria could expect a repayment of the loans should it keep its shares and should the financial performance of NMH improve.

II

On the basis of the information received, the relevant facts appear to be as follows:

On 16 April 1987, formal bankruptcy proceedings concerning Eisenwerk-Gesellschaft Maximilianshütte mbH ('Maxhütte') were initiated. The administrator in bankruptcy decided to continue operations in order to prepare a restructuring plan. In mid-1990, two newly created companies, Neue Maxhütte Stahlwerke GmbH (NMH), covering the ECSC products range of Maxhütte, and Rohrwerke Neue Maxhütte GmbH (RNM), covering tube production, took over the activities of the former Maxhütte. NMH is 85 % shareholder of RNM, the remaining 15 % being held by Kühnlein, Nuremberg, the main sales agency for the tubes produced.

The initial shareholders of NMH were Bavaria (45 %), Thyssen Edelstahlwerke AG (5,5 %), Thyssen Stahl AG (5,5 %), Lech-Stahlwerke GmbH (11 %), Krupp Stahl AG (11 %), Klöckner Stahl GmbH (11 %) and Mannesmann Röhrenwerke AG (11 %)⁽⁷⁾. In order to enable LSW to participate in NMH, Bavaria took over a 19,734 % share in LSW in 1988. By Decision dated 26 July 1988, the Commission concluded that the participation of the State in both companies did not contain State aid elements⁽⁸⁾.

In August 1992, the German authorities notified the Commission of the intention of the Bavarian Government to grant a loan totalling DM 4,5 million (ECU 2,4

⁽¹⁾ Case C/158/95, OJ No C 208, 12. 8. 1995, p. 8.

⁽²⁾ Case T/129/95, OJ No C 229, 2. 9. 1995, p. 21.

⁽³⁾ OJ No L 53, 2. 3. 1996, p. 41.

⁽⁴⁾ Case C/399/95, OJ No C 77, 16. 3. 1996, p. 5.

⁽⁵⁾ Case T/2/96, OJ No C 64, 2. 3. 1996, p. 23.

⁽⁶⁾ OJ No C 312, 23. 11. 1995, p. 19.

⁽⁷⁾ See Commission Decision of 27 June 1989, 19th Report on Competition Policy (1990), point 75, p. 86; *Bulletin EC* 6-1989, point 2. 1. 74.

⁽⁸⁾ See 18th Report on Competition Policy (1989), point 198, p. 163.

million) to NMH. The Commission decided that the loan would not constitute State aid because all private shareholders were prepared to grant similar loans under the same conditions in line with their participation. The State thus acted similarly to the private shareholders of the company. The German authorities were informed about this decision and its reasoning by letter dated 2 February 1993 (1).

By agreement dated 7 December 1992 and 3 March 1993, Klöckner Stahl GmbH transferred its shares in NMH to Annahütte Max Aicher GmbH & Co KG, Hammerau (hereinafter referred to as 'Annahütte'), for a purchase price of 1,00 DM (ECU 0,53). On 14 June 1993, Krupp Stahl AG, Thyssen Stahl AG and Thyssen Edelstahlwerke AG transferred their shares in NMH to LSW for a purchase price totalling DM 200 000 (ECU 106 382). The transfer of the shares of those four shareholders to the two companies of the Aicher group became valid on 21 March 1994 when the Bavarian Government had given its assent, which was necessary according to the partnership agreement.

The present shareholding situation therefore is as follows:

Bavaria	45 %
LSW	33 %
Annahütte	11 %
Mannesmann Röhrenwerke AG	11 %

LSW and Annahütte are controlled by the entrepreneur Mr Aicher.

NMH is producing some 299 kilotons per year (kt/y) crude steel (capacity: 444 kt/y), 81 kt/y semi-finished products and some 85 kt/y p.a. light and heavy sections (capacity: 258 kt/y). Its subsidiary RNM produces approximately 70 kt/y tubes (capacity: 136 kt/y). NMH employs about 870 persons (as at 31 October 1995); RNM employs 560 persons. NMH has never made profits since its establishment in mid-1990. The total losses until the end of 1994 were established at DM 156,4 million (ECU 83,19 million). In 1993, the company suffered losses of approximately DM 88 million (ECU 46,8 million) and had a turnover of DM 216 million (ECU 114,9 million). 25 % of the losses were related to the agreement of transfer of profits and losses with RNM. In 1994, NMH suffered losses of around DM 44 million (ECU 23,4 million) and had a turnover of DM 284 million (ECU 151 million). Around one-third of these losses were related to the agreement of transfer of profits and losses with RNM.

As from March 1992, when Thyssen, Krupp and Klöckner informed their fellow shareholders that they had decided to withdraw from their participation, Bavaria was looking for a viable privatization and restructuring

plan. The Bavarian entrepreneur Max Aicher, participating in NMH through LSW, proposed a restructuring of the company based on traditional blast furnace technology using the synergy advantages of a grouping of the Bavarian steel companies NMH, Annahütte and LSW. The costs of this plan to Bavaria were estimated at about DM 200 million (ECU 106,4 million). Manfred Kühnlein, the Nuremberg tube trader holding 15 % in RNM, proposed a plan called M.A.R.S., in which a group of 14 partners would have implemented a new technology designed by Voest Alpine AG and Mercedes Benz AG for the recycling of car frames. The costs of this plan to Bavaria were finally estimated at about DM 280 million (ECU 148,9 million). Later in 1993, the US recycling specialist WMX Technologies Inc. with its German subsidiary Waste Management GmbH started feasibility studies concerning the car recycling plan. In early 1994, Waste concluded that the recycling plan would not become viable. The Bavarian authorities decided in March 1994 the honour the proposal of Aicher. In May 1994, the German Government notified the Commission of Bavaria's intended financial measures in connection with the Aicher plan.

Bavaria and Max Aicher GmbH & Co. agreed by contract dated 27 January 1995 that the State would sell its 45 % share in NMH to Max Aicher GmbH & Co. for DM 3,00 (ECU 1,59). They further agreed that Bavaria would pay 80,357 % of the losses of NMH accumulated until the end of 1994. The losses were finally fixed at DM 156,4 million (ECU 83,19 million), so that the payment of Bavaria under the contract would amount to DM 125,7 million (ECU 67,81 million). The shareholders' loans granted by Bavaria could, according to the contract, be offset against the intended contribution once the contract entered into force. The parties to the said contract further agreed that Bavaria should pay up to DM 56 million (ECU 29,78 million) to cover costs of investments. The Bavarian State and Mr Aicher agreed in a second contract dated 27 January 1995 that the State would sell its 19,734 % share in LSW to Mr Aicher for DM 1,00 (ECU 0,53) and that the State should pay a 'countervailing payment' of DM 20 million (ECU 10,63 million) to LSW.

The German Government notified the Commission of the intended financial measures as described above. The Commission decided on 4 April 1995 that these measures would represent State aid and should therefore not be granted. The contracts consequently did not enter into force because they were concluded under the condition of the assent of the Commission.

By letters dated 13 January 1995 and 15 May 1995 the German Government informed the Commission that the Bavarian Government had granted the following loans to NMH, in addition to those subject to the decision of 18 October 1995, to allow the company to continue its operations.

(1) Commission Decision of 23 December 1992, see *Bulletin EC* 12-1992, point 1. 3. 78.

July 1994	DM 4,7 million (ECU 2,47 million)
September 1994	DM 10,0 million (ECU 5,26 million)
October 1994	DM 4,3125 million (ECU 2,27 million)
March 1995	DM 5,1 million (ECU 2,68 million)
DM 24,1125 million (ECU 12,68 million)	

The loans were granted for ten years at an interest rate of 7,5 % p.a. NMH was supposed to make annual repayments, but only if it achieved profits during the preceding year.

The other shareholders of NMH (Mannesmann Röhrenwerke AG (11 %), LSW (33 %) and Annahütte (11 %)) did not participate in the financing of the company after December 1993.

III

The German Government submitted its comments on the Commission's decision to initiate the procedure and replied to the comments received. The German Government is of the opinion that the loans in question should be seen exclusively in connection with the privatization and restructuring plan and should not be regarded as aid.

The German authorities explained that Bavaria had decided in 1992 to terminate its participation in NMH and to find an industrial solution for the future of the company. The Bavarian authorities conducted difficult negotiations with several potential industrial partners throughout the year 1993 and until March 1994. In May 1994, they notified the Commission of the intended financial measures related to the Aicher plan, which adopted its final decision as regards these measures on 4 April 1995.

The loss-making NMH would not have survived the period up to the final decision of the Commission concerning the intended financial measure to allow privatization without the liquidity being provided by its shareholder, Bavaria. The loans of Bavaria were granted to hedge the intended privatization of its shares. Since Bavaria was the major shareholder (45 %) in NMH, the German authorities consider the financing of NMH to be in line with the normal behaviour of a solvent partner in a social market economy, even in a situation in which the other shareholders, holding the majority of shares, are not prepared to participate in the financing.

The German authorities referred to their communications during the procedure covering the intended financial

measures in connection with the privatization and restructuring plan in which they reported some cases which they consider to support their opinion that private investors would behave in a comparable way. They referred in particular to the example of the private Schörghuber group in the case of Heilit & Woerner Bau AG (¹).

As regards the behaviour of the other shareholders of NMH during the period July 1994 until March 1995, the German authorities are of the opinion that it should not be taken as an indicator for normal market investors' behaviour. The shareholders Annahütte and LSW, part of the Aicher group, terminated their participation in the financing of NMH by August and December 1993 respectively because, according to the German authorities, of the uncertainty regarding the possibility of implementing their plans for the future of the company. Mannesmann was, according to the German Government, only interested in RNM and therefore was not prepared to participate in the financing of NMH. The German authorities are of the opinion that in such a situation the financing of NMH by its major shareholder Bavaria was in line with the normal behaviour of any private investor who has sufficient financial means to provide the company with liquidity to continue its operations.

In addition, the German Government stressed that any assessment of the financing of NMH should take into account the low share of the company in the European steel market, which is reported by the German authorities to be at around 0,2 %.

IV

Neue Maxhütte Stahlwerke GmbH is a company falling under Article 80 of the ECSC Treaty because it produces products listed in Annex I to the ECSC Treaty, so that the provisions of the ECSC Treaty and the Steel Aids Code are applicable.

State aid within the meaning of Article 4 (c) of the ECSC Treaty is any transfer of State resources to public or private steel firms, in the form of acquisitions of share-

(¹) For a detailed description of this case, see Commission Decision of 4 April 1995, OJ No L 253, 21. 10. 1995, p. 22.

holdings or provision of capital or similar financing if the financial transfer is not a genuine provision of risk capital according to usual investment practice in a market economy, allowing for a prospect of future return on investment or other revenue⁽¹⁾.

Bavaria's loans totalling DM 24,1125 million (ECU 12,82 million) to NMH constituted a transfer of State resources to a steel firm. It is to be established whether this transfer of State resources may be considered a genuine provision of risk capital according to usual investment practice in a market economy allowing for a prospect of future repayment or other revenue.

The Commission has always focussed on the behaviour of private investors that are in exactly the same situation as the State when establishing whether a certain public provision of capital would correspond to normal market practice. The private shareholders of the relevant company would only consider the particular economic situation of the company when assessing whether a provision of financial means would be economically reasonable.

A private shareholder would not be prepared to provide financing for a company in difficulties if its fellow shareholders were not prepared to contribute in line with their participation in the equity. German law provides for the treatment of shareholders' loans which have been granted or not redeemed when the company was in a financial situation calling for liquidation or the additional provision of risk capital by its shareholders, to be treated similarly to the injection of risk capital in the event of later bankruptcy ('eigenkapitalersetzende Darlehen', see §§ 32a, 32b Gesetz betreffend die Gesellschaften mit beschränkter Haftung, hereinafter referred to as 'the GmbHG'). Owing to this legal situation, shareholders' loans granted to avoid illiquidity and subsequent bankruptcy of a company are in general considered to be comparable to the injection of risk capital. The GmbHG refers to the general principle that shareholders would only provide additional risk capital if the fellow shareholders would also provide new risk capital in line with the percentage of their share in

the company in its § 26 (2). A shareholder, however, is in principle not liable to effect further contributions to the equity of a private limited company (§ 707 of the Civil Code) even if it would otherwise become insolvent.

Between July 1994 and March 1995, Bavaria, the 45 % shareholder of NMH, provided 100 % of the liquidity made available by shareholders to keep the loss-making NMH in operation. The companies of the Aicher group had terminated their participation in the financing of NMH by the beginning of 1994, immediately before the Bavarian Government finally decided to implement the Aicher plan, and did not take up its provision of liquidity after having been chosen to become the future majority shareholder of NMH, relying on the State's readiness to retain NMH in operation, to await the Commission's approval for the injection of further public finance by Bavaria.

Mannesmann Röhrenwerke AG, as a shareholder of NMH, was not prepared to make any financial contribution to allow the restructuring of NMH. The motivation concerning the industrial leadership in RNM may be an explanation for the fact that it did not behave in the same way as Krupp, Thyssen and Klöckner but may not prove that the behaviour of the State is in line with normal investors' behaviour in an market economy. If shareholders' loans to NMH would have been economically reasonable and profitable, the private company Mannesmann would have made them.

Therefore, it must be concluded that the behaviour of the other, private, shareholders of NMH, holding the remaining 55 % of the shares of the company, indicates that a private investor in a comparable situation would not have provided the financing that the State of Bavaria paid.

It must further be concluded that Bavaria could never have expected to receive any repayment on the loans. In the event of the bankruptcy of NMH, the loans would have been treated similarly to an injection of risk capital, in line with the legislation (§§ 32a, 32b GmbHG) explained above, so that the State would only have received any repayment after the paying-off of all other creditors, a highly unlikely prospect.

At the time when the loans in question were granted Bavaria was, furthermore, prepared to waive the claims based on these loans to allow the privatization of its shares in NMH and thereby to safeguard the jobs in the disadvantaged region of Oberpfalz. It had decided already in March 1994 to honour the Aicher plan that included

⁽¹⁾ See Court of Justice, C 40/85, *Belgium v. Commission*, [1986] ECR 2321, p. 2345; C 303/84, *Italy v. Commission*, [1991] ECR I-1433, p. 1476; Commission Decision No 3855/91/ECSC, OJ No L 362, 31. 12. 1991, p. 57, fifth paragraph under II and Communication of the Commission to the Member States concerning public undertakings, OJ No C 307, 13. 11. 1993, p. 3, paragraphs 10-21.

the waiver of repayment of the loans. In May 1995 it notified the Commission of its plan to cover about 80 % of the losses accumulated until 1994, which were finally calculated at DM 125,7 million (ECU 67,81 million). The shareholders' loans granted by Bavaria up to the entry into force of the privatization agreement could, according to the plan notified, be offset against the intended contribution.

A private investor in a market economy would always expect to have at least a long-term prospect of a return on its lendings or other financings. In this context it shall be recalled that the Court of Justice held in its judgment of 21 March 1991 (1) that '... when injections of capital by a public investor disregard any prospect of profitability, even in the long term, such provision of capital must be regarded as aid.'

The behaviour of Bavaria in making the loans in question is therefore not the normal behaviour of a private investor in a market economy. The examples of private companies referred to by the German authorities do not indicate the contrary. The Commission explained in detail in its Decision of 4 April 1995 that these examples are not such as to show that a private investor would be ready to provide liquidity without having at least a reasonable chance to receive an economic advantage in return.

Even the particular example of the private Bavarian Schörghuber group, in transferring its shares in Heilit & Woerner Bau AG to Walter Bau AG after a final loss compensation, does not indicate that private investors would be prepared to keep a loss-making company in operation only to comply with alleged altruistic obligations in a social market economy. It is true that private companies, as well as private natural persons, may from time to time choose to dispose of their finances in a benevolent, charitable or public-spirited way. Such behaviour, however, is very different from the behaviour of investors in a private market economy and therefore cannot be relevant to the comparison of the behaviour of the State with the typical behaviour of a private investor in a market economy.

The behaviour of the State in the current case may be motivated by the wish of its Government to avoid social difficulties in a disadvantaged region, to avoid being held responsible by public opinion for the bankruptcy of a company, and to allow an ailing company to recover its viability. Such motivations are the typical reasons why

States grant subsidies. They do not prove that the financial support made available as a result of such motivation does not represent aid in the sense of Article 4 (c) of the ECSC Treaty and Article 1 of the SAC.

It must consequently be concluded that the shareholders' loans totalling DM 24,1125 million (ECU 12,82 million), granted by Bavaria to Neue Maxhütte Stahlwerke GmbH between July 1994 and March 1995 constituted State aid.

The aid element of these loans is not inherent in any preferential treatment as regards the level of interest but in the capital itself. The loans are to be regarded as comparable to a direct injection of risk capital because the lender, Bavaria, would only have received redemption, to be paid annually, if the company had made profits during the preceding year. This is the normal result of the injection of risk capital. The loans would be treated similarly to the injection of risk capital in case of later bankruptcy ('eigenkapitalersetzende Darlehen', see §§ 32a, 32b GmbHG). Bavaria has no reasonable chance of ever receiving any repayment on the capital-replacing loans. It follows that the loans themselves are comparable to injected risk capital made available by a shareholder of an ailing private limited company.

Any State aid to steel companies is prohibited under Article 4 (c) of the ECSC Treaty. The Steel Aids Code, adopted with the unanimous assent of the Council under Article 95 of the ECSC Treaty, provides that certain categories of aid may be deemed compatible with the common market, such as aid for research and development (Article 2), environmental protection (Article 3), closures (Article 4) and aid under general regional investment aid schemes in certain territories of the Community (Article 5). The aid granted to NMH does not fall into any of these categories.

V

The Commission therefore concludes that an amount of DM 24,1125 million (ECU 12,82 million), granted as loans by Bavaria to the ECSC steel undertaking Neue Maxhütte Stahlwerke GmbH between July 1994 and March 1995 constituted State aid incompatible with the ECSC Treaty and the Steel Aids Code.

Any State aid granted unlawfully is, in principle, to be recovered from the recipient firm. Repayment is to be made in accordance with the procedures and provisions of German law with interest, based on the interest rate used as reference rate in the assessment of regional aid schemes, starting to run on the date of which the aid was granted.

(1) *Italy v. Commission* (ENI Lanerossi), [1991] ECR I-1433, p. 1476 at paragraphs 21 and 22.

The fact that NMH has only a small share in the European steel market is not relevant to the question whether unlawful aid shall be reimbursed or not. Any State aid to companies in the ECSC sector that has not been authorized by the Commission under the provisions of the ECSC Treaty or the Steel Aids Code is unlawful regardless of whether or not the distortive effect of the aid may be relatively small owing to the size of the company concerned.

There is no legal basis for suspension of the order to recover aid that has been granted unlawfully without awaiting the prior decision of the Commission as to whether the aid would be compatible with the common market or not. The provisions of the ECSC Treaty and the Steel Aids Code apply equally to all European ECSC steel undertakings and no undertaking should benefit from the readiness of the State to transfer public resources to such undertaking in breach of its obligation under Article 6 (2) of the SAC.

There is no reason to suspend the order to recover the aid that has been granted unlawfully in the present case until after the decision of the Court of Justice and the European Court of First Instance in Cases C-158/95 and T-129/95. An action against a Commission decision that certain intended financial measures in favour of a steel company would represent aid and should therefore not be granted brought before the Court do not have suspensory effect.

A company which is intended to be the beneficiary of such financial measures may not receive State aid to allow the continuation of its operations until the final decision of the Courts. The fact that the Commission and a Member State disagree as to whether intended financial measures would constitute aid or not does not render the company concerned eligible for operating aid that is in all other cases prohibited for companies in the ECSC steel sector,

HAS ADOPTED THIS DECISION:

Article 1

The amount of DM 24,1125 million granted as loans by Bavaria in four tranches between July 1994 and March 1995 to the ECSC steel undertaking Neue Maxhütte Stahlwerke GmbH, Sulzbach-Rosenberg, constitutes State aid incompatible with the common market and prohibited under the provisions of the ECSC Treaty and Commission Decision No 3855/91/ECSC.

Article 2

Germany shall recover the aid from the recipient company. Repayment shall be made in accordance with the procedures and provisions of German law with interest, based on the interest rate used as reference rate in the assessment of regional aid schemes, running from the date on which the aid was granted.

Article 3

The German Government shall inform the Commission, within two months after being notified of this Decision, about the measures taken to comply with this Decision.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 13 March 1996.

For the Commission

Karel VAN MIERT

Member of the Commission