

COMMISSION DECISION No 2496/96/ECSC
of 18 December 1996
establishing Community rules for State aid to the steel industry
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

With the unanimous assent of the Council and having consulted the Consultative Committee,

Whereas:

I

Any aid in any form whatsoever and whether specific or non-specific which Member States might grant to their steel industries is prohibited pursuant to Article 4 (c) of the Treaty.

The rules authorizing the grant of aid to the steel industry in certain cases, currently found in Commission Decision No 3855/91/ECSC⁽¹⁾, cover aid, whether specific or non-specific, financed by Member States in any form whatsoever.

Their aim was firstly not to deprive the steel industry of aid for research and development and for environmental protection. The rules also authorize social aid to encourage the partial closure of plants or finance the definitive cessation of all ECSC activities by the least-competitive enterprises. There is an exemption regarding regional investment aid in certain Member States which has now been limited to Greece. All other aid is prohibited.

The strict regime thus established has ensured fair competition in this industry in recent years. It is consistent with the objective pursued through the completion of the internal market. It should therefore continue to be applied, albeit with a number of technical modifications.

Decision No 3855/91/ECSC will expire on 31 December 1996.

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

to enable the Community to pursue the objectives set out in Articles 2, 3 and 4 thereof.

II

In order to cover the period remaining until the expiry of the Treaty, this Decision should apply until 22 July 2002.

In order to ensure that the steel industry and other industries have equal access to aid for research and development and to aid for environmental protection, the compatibility of the aid with the common market should be assessed in the light of the existing Community framework for State aid for research and development⁽²⁾ and the Community guidelines on State aid for environmental protection⁽³⁾. The latter provides for a reduction of maximum aid intensities to adapt to new mandatory standards compared to the provisions of Decision No 3855/91/ECSC and allows for higher aid for investments that lead to a protection of the environment significantly exceeding the minimum standards. Furthermore, it opens some limited possibilities for operating aid, in particular for relief from environmental taxes in cases where it is necessary to prevent firms from being placed at a disadvantage compared with their competitors in countries that do not have such measures.

Where an undertaking ceases all ECSC activity, aid for closure may be paid without restriction as to the nature of its steel production. Since the rules concerning closure aid in Decision No 3855/91/ECSC were limited to cases in which the company closing its steel plants was not part of a group including other ECSC firms, the practical relevance of these provisions was rather limited. Therefore, in order to promote further capacity reductions in the steel sector, this Decision should also allow closure aid for companies that belong to a group with other steel firms, provided that it is effectively separated and that the group does not increase its remaining capacity throughout a period of five years.

To avoid discrimination due to the variety of forms which State aid may take, transfers of State resources to public or private steel firms, in the form of acquisitions of shareholdings or provisions of capital or similar financing, must be subject to the same procedures as aid so that the Commission can determine whether such operations

⁽¹⁾ OJ No L 362, 31. 12. 1991, p. 57.

⁽²⁾ OJ No C 45, 17. 2. 1996, p. 5.

⁽³⁾ OJ No C 72, 10. 3. 1994, p. 3.

involve an aid element. This will be the case where the financial transfer is not a genuine provision of risk capital according to usual investment practice in a market economy. The compatibility of any such aid element with the Treaty must be assessed by the Commission in the light of the criteria laid down in this Decision. For this purpose, all such financial transfers must be notified to the Commission and may not be implemented if, before the end of the standstill period laid down in Article 6 (6) the Commission determines that they contain aid elements and initiates the procedure provided for in Article 6 (5).

This Decision should be applied in accordance with international commitments of the Community concerning State aid to the steel industry.

In order to maintain transparency with regard to aid, the Commission should draw up an annual report on the implementation of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Principles

1. Aid to the steel industry, whether specific or non-specific, financed by Member States or their regional or local authorities or through State resources in any form whatsoever may be deemed Community aid and therefore compatible with the orderly functioning of the common market only if it satisfies the provisions of Articles 2 to 5.

2. The term 'aid' also covers the aid elements contained in transfers of State resources by Member States, regional or local authorities or other bodies to steel undertakings in the form of acquisitions of shareholdings or provisions of capital or similar financing (such as bonds convertible into shares, or loans on non-commercial conditions or the interest on or repayment of which is at least partly dependent on the undertaking's financial performance, including loan guarantees and real-estate transfers) which cannot be regarded as a genuine provision of risk capital according to usual investment practice in a market economy.

3. Aid falling within the terms of this Decision may be granted only after the procedures laid down in Article 6 have been followed and shall not be payable after 22 July 2002.

Article 2

Aid for research and development

Aid granted to defray expenditure by steel undertakings on research and development projects may be deemed

compatible with the common market if it is in compliance with the rules laid down in the Community framework for State aid for research and development, as set out in *Official Journal of the European Communities* No C 45 of 17 February 1996⁽¹⁾.

Article 3

Aid for environmental protection

Aid for environmental protection may be deemed compatible with the common market if it is in compliance with the rules laid down in the Community guidelines on State aid for environmental protection, as set out in *Official Journal of the European Communities* No C 72 of 10 March 1994, in conformity with the criteria for their application to the ECSC steel industry outlined in the Annex to this Decision.

Article 4

Aid for closures

1. Aid towards the costs of payments to workers of ECSC steel undertakings made redundant or accepting early retirement may be deemed compatible with the common market provided that:

- (a) the payments actually arise from the partial or total closure of steel plants that have been in regular production up to the time of notification of the aid and whose closure has not already been taken into account for the purposes of applying Commission Decisions No 257/80/ECSC⁽²⁾, No 2320/81/ECSC⁽³⁾, No 3484/85/ECSC⁽⁴⁾, No 218/89/ECSC⁽⁵⁾, No 322/89/ECSC⁽⁶⁾, No 3855/91/ECSC⁽⁷⁾, No 94/257/ECSC⁽⁸⁾, No 94/258/ECSC⁽⁹⁾, No 94/259/ECSC⁽¹⁰⁾, No 94/260/ECSC⁽¹¹⁾, 94/261/ECSC⁽¹²⁾, No 94/1075/ECSC⁽¹³⁾, 96/315/ECSC⁽¹⁴⁾, on aid to the steel industry or the Act of Accession of Spain and Portugal;

⁽¹⁾ The provisions of point 5.10.3 of the framework, applicable to a research project which is in accordance with the objectives of a specific project or programme undertaken as part of the current Community RTD framework programme, also apply to aid to a research project which is undertaken as part of an ECSC steel RTD project or programme.

⁽²⁾ OJ No L 29, 6. 2. 1980, p. 5.

⁽³⁾ OJ No L 228, 13. 8. 1981, p. 14.

⁽⁴⁾ OJ No L 340, 18. 12. 1985, p. 1.

⁽⁵⁾ OJ No L 86, 31. 3. 1989, p. 76.

⁽⁶⁾ OJ No L 38, 10. 2. 1989, p. 8.

⁽⁷⁾ OJ No L 362, 31. 12. 1991, p. 57.

⁽⁸⁾ OJ No L 112, 3. 5. 1994, p. 52.

⁽⁹⁾ OJ No L 112, 3. 5. 1994, p. 58.

⁽¹⁰⁾ OJ No L 112, 3. 5. 1994, p. 64.

⁽¹¹⁾ OJ No L 112, 3. 5. 1994, p. 71.

⁽¹²⁾ OJ No L 112, 3. 5. 1994, p. 77.

⁽¹³⁾ OJ No L 386, 31. 12. 1994, p. 18.

⁽¹⁴⁾ OJ No L 121, 21. 5. 1996, p. 16.

- (b) the payments do not exceed those customary, under the rules in force in the Member States on 1 January 1996; and
- (c) the aid does not exceed 50 % of that portion of such payments which is not defrayed directly pursuant to Article 56 (1) (c) or Article 56 (2) (b) of the Treaty by the Member State and/or by the Community according to the detailed rules laid down in the bilateral conventions but is payable by the undertaking concerned.

2. Aid to steel undertakings which permanently cease production of ECSC iron and steel products may be deemed compatible with the common market, provided that:

- (a) the undertakings became a legal entity before 1 January 1996;
- (b) they have been regularly producing ECSC iron and steel products up to the date of notification of the particular aid in accordance with Article 6;
- (c) they have not reorganized their production or plant structure since 1 January 1996;
- (d) they are not directly or indirectly controlled, within the meaning of Decision No 24/54 of the High Authority⁽¹⁾, and do not themselves directly or indirectly control an undertaking that is itself a steel undertaking or controls other steel undertakings;
- (e) they close and destroy the installations used for the production of ECSC iron and steel products within six months after the cessation of production or six months after the approval of the aid by the Commission, whichever is the later; and
- (f) the closure of their plants has not already been taken into account for the purposes of applying the Decisions referred to in paragraph 1 (a) or the Act of Accession of Spain and Portugal or granting a favourable opinion pursuant to Article 54 of the Treaty.

The amount of this aid may not exceed the higher of the following two values, as determined by an independent consultant's report:

- (a) the discounted value of the contribution to fixed costs obtainable from the plants over a three-year period, less any advantages the aided firm derives from their closure; or
- (b) the residual book value of the plants, ignoring that portion of any revaluations since 1 January 1996 which exceeds the national inflation rate.

3. Aid to steel undertakings which fulfil the conditions referred to in (a), (b), (c), (e) and (f) of the first subpara-

graph of paragraph 2 but which are directly or indirectly controlled by or themselves directly or indirectly control an undertaking that is itself a steel undertaking may be deemed compatible with the common market provided that:

- (a) the undertaking to be closed is effectively and legally separated from the corporate structure at least six months before the payment of the aid; and
- (b) the accounts of the undertaking to be closed have been independently certified to be a true and accurate account of the assets and liabilities attributable to that undertaking by an auditor accepted by the Commission;
- (c) there is a genuine and verifiable reduction in production capacity such as to produce an appreciable benefit over time for the industry as a whole in terms of a reduction in the production capacity of ECSC iron and steel products in which the closure took place throughout a period of five years following the date of the aided closure or the date of the last payment of aid approved under this Article, if later, leading to a significant overall improvement in the relationship of supply to demand in the market; and
- (d) the partial closure in question has not already been taken into account for the purposes of applying the Commission's decision of 19 October 1994⁽²⁾.

The amount of this aid may not exceed the average of the following two values, as determined by an independent consultant's report:

- (a) the discounted value of the contribution to fixed costs obtainable from the plants over a three-year period, less any advantages the aided firm derives from their closure; and
- (b) the residual book value of the plants, ignoring that portion of any revaluations since 1 January 1996 which exceeds the national inflation rate.

4. All aid approved pursuant to paragraphs 2 and 3 shall be subject to scrutiny by an independent auditor accepted by the Commission in order to ensure that the limits specified in the second subparagraph of paragraph 2 and the second subparagraph of paragraph 3 are not exceeded and that any excess aid is repaid.

Article 5

Special provisions

Aid granted to steel undertakings for investment under general regional aid schemes may until 31 December 2000 be deemed compatible with the common market,

⁽¹⁾ OJ of the ECSC No 9, 11. 5. 1954, p. 345/54.

⁽²⁾ OJ No C 390, 31. 12. 1994, p. 20.

provided that the aided undertaking is located in Greece, the total aid does not exceed ECU 50 million and the aided investment does not lead to an increase in production capacity.

Article 6

Procedure

1. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid of the types referred to in Article 2 to 5. It shall likewise be informed of plans to grant aid to the steel industry under schemes on which it has already taken a decision under the EC Treaty.

The notification of plans to grant aid under Article 4 in which the Member State paying the aid is not identical to that in whose territory the closure would take place shall be submitted to the Commission jointly by both Member States.

The notification of aid plans must be lodged with the Commission at the latest by 31 December 2001.

2. The Commission shall be informed, in sufficient time for it to submit its comments, and by 31 December 2001 at the latest, of any plans for transfers of State resources by Member States, regional or local authorities or other bodies to steel undertakings in the form of acquisition of shareholdings, provisions of capital, loan guarantees, indemnities or similar financing.

The Commission shall determine whether the financial transfers involve aid elements within the meaning of Article 1 (2) and, if so, shall examine whether they are compatible with the common market under the provisions of Articles 2 to 5.

3. The Commission shall seek the views of the Member States on plans for closure aid and on other major aid proposals notified to it before adopting a position on them. It shall inform the Member States of the decisions it has adopted on aid proposals, specifying the form and volume of the aid.

4. The planned measures falling within paragraphs 1 or 2 may be put into effect only with the approval of and subject to any conditions laid down by the Commission.

The Commission may, after giving the Member State concerned the opportunity to submit its comments, adopt a decision under the first paragraph of Article 88 of the Treaty requiring the Member State to suspend the disbursement of any financial means until approval is given by the Commission. Article 88 of the Treaty shall

continue to apply in the event of a Member State's failing to comply with that decision.

The Commission may, after giving the Member State concerned the opportunity to submit its comments, adopt a decision under the first paragraph of Article 88 of the Treaty requiring the Member State to recover provisionally any financial means disbursed in breach of the first subparagraph of this paragraph and Article 4 (c) of the Treaty. Repayment shall be made in accordance with the procedures and provisions of domestic law of the Member State concerned, together with interest at the rate used as reference rate in the assessment of regional aid schemes running from the date of disbursement. Article 88 of the Treaty shall continue to apply in the event of a Member State failing to comply with that decision.

5. If the Commission considers that a certain financial measure may represent State aid within the meaning of Article 1 or doubts whether a certain aid is compatible with the provisions of this Decision, it shall inform the Member State concerned and give notice to the interested parties and other Member States to submit their comments. If, after having received the comments and after having given the Member State concerned the opportunity to respond, the Commission finds that the measure in question is an aid incompatible with the provisions of this Decision, it shall take a decision not later than three months after receiving the information needed to assess the proposed measure. Article 88 of the Treaty shall apply in the event of a Member State's failing to comply with that decision.

6. If the Commission fails to initiate the procedure provided for in paragraph 5 or otherwise to make its position known within two months of receiving full notification of a proposal, the planned measures may be put into effect provided that the Member State first informs the Commission of its intention to do so. Where the Commission seeks the views of Member States under paragraph 3, the abovementioned period shall be three months.

Article 7

Reports of Member States

Member States shall twice a year supply the Commission with reports on the aid disbursed over the previous six months, the uses to which the aid was put and the results obtained over the same period. The reports shall include particulars of all financial operations carried out by the Member States or local or regional authorities in relation to publicly-owned steel undertakings. They must be supplied within two months following the end of each six-month period.

*Article 8***Reports of the Commission**

The Commission shall draw up annual reports on the implementation of this Decision for the Council and, for information, for the European Parliament and the Consultative Committee.

*Article 9***Term of validity**

This Decision shall enter into force on 1 January 1997. It shall apply until 22 July 2002.

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

Done at Brussels, 18 December 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

ANNEX

CRITERIA FOR THE APPLICATION OF COMMUNITY GUIDELINES ON STATE AID TO THE STEEL INDUSTRY FOR ENVIRONMENTAL PROTECTION

For all cases of State aid for environmental protection the Commission will, as appropriate, impose strict conditions and safeguards so as to avoid general investment aid for new plants or equipment being granted under cover of environmental protection. The Commission will make use of independent expertise in examining such cases and Member States will be consulted.

Aid to help firms adapt existing installations to new mandatory standards

- (a) In interpreting paragraph 3 (2) (A) of the Community guidelines on State aid for environmental protection, relating to aid for investment, the Commission will allow additional aid intensity only for small and medium-sized enterprises.
- (b) In relation to firms that, instead of adapting existing plant or equipment which is more than two years old, decide to replace such plant or equipment by new plant meeting the new standards, the following approach will be adopted:
 - (i) the cost of adapting existing plant or equipment (i.e. the basis of eligibility for aid) must be assessed not only by the investor but also, if appropriate, by independent experts;
 - (ii) the Commission will analyse the economic and environmental background of a decision to opt for the replacement of existing plant or equipment. In principle a decision to undertake new investment which would have been necessary in any event on economic grounds or due to the age of the existing plant or equipment will not be eligible for aid. The existing plant must have significant useful life left (at least 25 %) for the new investment to be eligible for aid.

Aid to encourage firms to contribute to significantly improved environmental protection

- (a) In the case of firms which decide to improve significantly on mandatory standards, in addition to complying with the criteria in point (b) (ii) above, the investor will have to demonstrate that a clear decision was taken to opt for higher standards which necessitated additional investment, that is, that a lower-cost solution existed which would meet the new environmental standards. In any event, the higher aid level will only apply to the additional environmental protection achieved. Any advantage in regard to lower production costs resulting from these significantly higher levels of environmental protection will be deducted;
- (b) in relation to firms which significantly improve on environmental protection, the criteria in point (b) (ii) above must be complied with and, in addition, any advantage in regard to lower costs of production from these significant improvements will be deducted;
- (c) in conjunction with the above criteria, investments undertaken solely for environmental protection will be examined on the basis of their compliance with the criteria set out in the Community guidelines on State aid for environmental protection⁽¹⁾.

⁽¹⁾ OJ No C 72, 10. 3. 1994, p. 3.