

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 November 2000

on the State aid which Italy is planning to grant to five ECSC steel undertakings

(notified under document number C(2000) 3933)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/323/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 the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof read in conjunction with Protocol 14,

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry (hereinafter referred to as the 'steel aid code' ⁽¹⁾),

Having called on interested parties to submit their comments pursuant to the provisions referred to above ⁽²⁾ and having regard to those comments,

Whereas:

I. Procedure

- (1) By letter dated 27 September 1999, Italy notified the Commission of five plans to grant aid to ECSC undertakings in respect of investments in energy conservation made by the latter in the period 1986 to 1994. By letter dated 23 November 1999, received by the Commission on 20 January 2000, Italy submitted further details.
- (2) By letter dated 13 March 2000, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 6(5) of the steel aid code in respect of the abovementioned aid.

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

- (4) The Commission received comments from the UK Steel Association and from the UK Permanent Representation to the European Union. It forwarded them to Italy for its reaction, a response being received by letter dated 6 September 2000.

II. Detailed description of the aid

- (5) The aid relates to investments made by five ECSC companies between 1986 and 1994. The investments in the five notified aid projects can be summarised as follows.

5.1. *Acciaierie e Ferriere Leali SpA*: The investments concern the replacement of an existing oil-fired reheating and normalising furnace with a new natural gas-fired furnace featuring a radiant-roof combustion chamber fitted with highly insulating refractors and heat recovery from the fumes for preheating the combustion air. The total cost amounts to ITL 1,44 billion (EUR 0,745 million) and the proposed aid to ITL 273 million (EUR 0,141 million). The aid intensity is 19 %. The investments were made in 1986 and the company applied for aid in 1992.

⁽¹⁾ OJ L 338, 28.12.1996, p. 42.

⁽²⁾ OJ C 148, 27.5.2000, p. 10.

⁽³⁾ See footnote 2.

5.2. *Acciaierie e Ferriere Beltrame, Vicenza SpA*: The investments relate to the installation of a new continuous casting line alongside and in parallel with the existing one, which remained in operation in order to produce semi-finished products for other plants belonging to the group. The new line is designed and built to allow direct charging of the semi-products into the reheating furnaces for the plant's rolling mills. It is also suitable for producing special sections for rolling wide-flanged beams with better yields than before the investment. The total cost amounts to ITL 10,23 billion (EUR 5,3 million) and the proposed aid to ITL 1,8 billion (EUR 0,93 million). The aid intensity is 18 %. The investments were made in 1991 and the company applied for aid in 1992.

5.3. *Acciaierie e Ferriere Beltrame, S. Giorgio Nogaro SpA*: The investments concern the replacement of a pusher-type oil-fired reheating furnace with a new natural gas-fired furnace with lateral discharging and heat recovery from the fumes for preheating the combustion air to 400 to 450°. They also include some new auxiliary equipment for the roughing mill, such as the fixed and vibrating front and back roller tables and a feed conveyor. The total cost amounts to ITL 2,3 billion (EUR 1,2 million) and the proposed aid to ITL 450 million (EUR 0,23 million). The aid intensity is 20 %. The investments were made in 1989 and the company applied for aid in 1992.

5.4. *Lucchini, Mura SpA*: The investments concern the replacement of two existing oil-fired reheating furnaces with a new natural gas-fired furnace featuring a combustion chamber with radiant burners, high automation and control, heat recovery from the fumes for preheating the combustion air to high temperatures, and refractory linings with ceramic fibres. The total cost amounts to ITL 5,5 billion (EUR 2,8 million) and the proposed aid to ITL 0,93 billion (EUR 0,48 million). The aid is 17 %. The investments were made in 1990 and the company applied for aid in 1991.

5.5. *Lucchini, Lovere SpA*: The investments relate to the conversion to natural gas of the oil-fired furnaces for reheating slabs for forging; the replacement of the control systems for the heat treatment furnaces; heat-insulating hoods for the transfer of hot slabs; modification of the circuit for tipping and slagging the electric furnace; automation of the injection of inert gases into the vacuum ladle; and a system for continuous slab measurement and control of final shearing. The total cost amounts to ITL 0,8 billion (EUR 0,41 million) and the proposed aid to ITL 0,1 billion (EUR 0,1 million). The aid intensity

is 23 %. The investments were made in 1994 and the company applied for aid in 1992.

- (6) The national legal basis for the aid is Italian Law No 10/1991 laying down rules for implementing the national energy plan in the field of the national use of energy.

III. Comments from interested parties

- (7) In their comments, the UK Steel Association and the UK Representation to the EU consider that the aid proposed by the Italian authorities is incompatible with the rules on environmental aid set out in the steel aid code. They point out that the investments appear to relate to 'new installations', which would constitute an infringement of Community legislation, and that the replacements were made for economic and not environmental reasons. The UK Steel Association further points out that the continuous casting line was installed by Beltrame alongside the existing casting line, and this would represent an increase in production capacity, which also goes against Community legislation on environmental aid.

IV. Comments from Italy

- (8) In its comments Italy contests the Commission's views in its decision to initiate the procedure. The Italian authorities' arguments may be summarised as follows.

8.1. Regarding the legal basis on which the Commission assesses the aid, the Italian authorities insist that the Commission should use not only the rules applicable, but also the interpretation of criteria, information and data in its possession at the time it takes its decision.

8.2. The investments and their specific characteristics, together with the reduction in energy consumption, make it possible to achieve, in comparison with the pre-existing situation, a significant reduction in pollutant emissions into the atmosphere (sulphur oxides, nitrogen oxides, dust) and a significant reduction in carbon dioxide emissions. The Italian authorities deny that they have failed to prove that the investments were not general investments and that the effect on the environment is not secondary to the economic objective. According to the Italian authorities, the primary environmental objective of the investments was confirmed by the Ministry of Industry's examination of the aid applications, carried out in conjunction with independent experts. Further evidence that the investments were not made as general investments pursuing economic objectives is the fact that, for each of the five projects, the ratio between the advantage in terms of annual production costs and the investment is lower than the interest rate in force at the time.

8.3. As regards the Commission's assessment that none of the companies could claim legitimate expectations of receiving aid, the Italian authorities point out that the steel aid code in force when they applied for aid (both the 1989 and the 1991 codes) allowed aid for environmental protection. The title of Italian Law No 10/1991 is 'Rules for implementing the national energy plan in the field of the rational use of energy' and Article 1 aims amongst other things at 'improving the environmental compatibility of energy use'. Because of this, the Italian authorities concluded that it was reasonable for the companies concerned to harbour, at the time, legitimate expectations of receiving the aid requested, on the basis of recognition of the environmental purpose of the investments. The fact that for each of the five projects, the ratio between the advantage in terms of annual production costs and the investment was lower than the interest rate at the time, besides proving the environmental purpose of the investment, would be a clear demonstration of the 'necessity for the aid'.

8.4. The companies submitted their applications for aid in respect of the investments (carried out between 1986 and 1994) in 1991 and 1992, in accordance with Article 21 of Law No 10/1991, approved by the Commission on 31 July 1991. Under that Article, applications for aid already submitted under previous laws are eligible provided that they have not yet been granted or rejected. The aid was notified only in 1991 as a result of complexities in the implementing rules and subsequent legislative developments.

8.5. As regards the Commission's concern that the aid could be misused if it were approved and paid, the Italian authorities claim that the companies planned the investments concerned at the time on the assumption that they would receive the requested aid within a reasonable time. Since that has not yet happened, the financial accounts for the individual investments are still in deficit in respect of the amounts in question and the deficits will be extinguished only if the aid is paid. Thus the aid will be used for the purpose for which it is approved.

8.6. Regarding the position taken by the Commission that, if the aid were to be assessed in the light of the steel aid code, its compatibility with the rules would be highly questionable, the Italian authorities made the following additional comments.

8.6.1. As regards the inclusion of the depreciation costs of the investments in calculating the advantage in terms of production costs, they referred again to the standard accountancy practice for calculating production costs. As depreciation costs are a normal element of production costs, they consider that they must be taken into account.

8.6.2. As regards the period during which the cost advantage is calculated, the Italian authorities stated that they used annual amortisation, which was calculated in accordance with the relevant Italian rules. For the five investment projects in question the coefficients provided for in the Law yielded the corresponding periods of time during which the advantages in terms of production costs are deducted, namely, for four of the projects $100/15 = 6,67$ years and for one project $100/17,5 = 5,71$ years.

(9) In reply to the comments made by third parties, the Italian authorities made the point that the five projects involved the replacement or installation of components for the production of bars and sections designed to save energy (thereby improving the environment) and not new installations. Such replacements or installations were necessary to avoid keeping production lines idle for long periods (which would have increased fixed costs) so as to modify existing components to save energy. As regards the comments on extra capacity installed in Beltrame, Italy contests that there was an increase in the production capacity of the company because this depends on the three rolling mills, which have not been changed and constitute the system bottleneck.

V. Assessment of the aid

Legal basis

(10) The steel aid code is the legal basis to assess any aid to steel undertakings notified to the Commission between January 1997 and December 2001. Article 3 of the code provides for the possibility of steel companies receiving aid for environmental investments. The conditions for such aid to be considered compatible are set out in the Annex to the steel aid code and in the Community guidelines on State aid for environmental protection⁽⁴⁾ (hereinafter referred to as the 'environmental guidelines').

⁽⁴⁾ OJ C 72, 10.3.1994, p. 3.

- (11) Both the steel aid code and the environmental guidelines stress the fact that aid may be considered compatible only if it is necessary to attain the objective of increased environmental protection. In this context, investment aid to a company must serve as an incentive for that company to carry out environmental-related investments. Two types of circumstances are provided for: one is when a company would not carry out such investments because it is not legally required to do so (improvement on standards), but in view of the financial support it may receive it decides to do so. The other is when such investments become necessary because of new legal standards, in which case the aid acts as an incentive for the company to carry out such investments without delay. Indeed, in the latter circumstance, the environmental guidelines specify that 'the aid may be granted only for a limited period' ⁽⁵⁾.
- (12) According to the environmental guidelines, aid ostensibly intended for environmental protection measures but which in fact is aid for general investment is not covered by the guidelines. The eligible costs must be strictly confined to the extra investment costs necessary to meet environmental objectives.
- (13) According to the Annex to the steel aid code, in the case of aid to encourage firms to contribute to significantly improved environmental protection, the investors 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 legal standards. Any advantage with regard to lower production costs will be deducted.

Assessment of the comments from the Italian authorities

- (14) As shown above, for aid to fall under Article 3 of the steel aid code, on one hand, it has to act as an incentive for the investments to be made and, on the other hand, the investments must have been made for environmental purposes.
- (15) In the present case, the investments were made and aid applied for under the 1985, 1989 and 1991 steel aid codes ⁽⁶⁾, which stated that only investments made in order to comply with new mandatory environmental standards were compatible. Italy never claimed that this was why the companies carried out the investments.

Although the firms were aware that they did not qualify for aid under the law that applied to them, they still carried out the said investments. The eventual possibility of receiving the aid was therefore not a decisive factor in their decisions.

- (16) Italy considered, however, that the companies were justified in having legitimate expectations of receiving the aid requested because the steel aid code at the time allowed for environmental aid and so did Italian Law No 10/1991. However, expectations cannot be legitimately founded on the general principle of a law that allows for environmental aid, when the specific rules applicable clearly state the only conditions under which aid may be granted and make no provision for the investments in question.
- (17) The Italian authorities then endeavoured to justify the legitimate expectation of aid on the part of the companies on the grounds of both the delay with which they applied for the aid and the delay with which the authorities notified the aid to the Commission. It is difficult to understand how such delays could justify expectations that could not exist if the delays had not taken place. The companies cannot claim that they decided to carry out investments in the period 1986 to 1994 because they legitimately expected to receive aid not under the existing rules but under rules that would come into force 5 to 13 years later. The only reason for verifying the justification for such delays would be if the old rules could be applied to the current notifications. However, as also agreed by the Italian authorities, the aid notified in 1999 can be assessed only under the current State aid code.

- (18) Italy also stated that the five companies opened financial accounts for the individual investments, which are still in deficit in respect of the amounts in question and will be closed only when a decision on the aid is made. According to the Italian authorities, that proves that if the aid were paid now, it would be used for the purpose for which it was approved. The purpose of environmental aid is to give an incentive to steel companies to improve on environmental standards or to apply new standards more rapidly. The fact that the companies have accounts left open since the period 1986 to 1994, in relation to the aid they requested, is not evidence of such an incentive effect, but is merely an accountancy operation.

⁽⁵⁾ Community guidelines on State aid for environmental protection, point 3.2.3.A, first paragraph.

⁽⁶⁾ OJ L 340, 18.12.1985, p. 1; OJ L 38, 10.2.1989, p. 8; OJ L 362, 31.12.1991, p. 57.

- (19) As demonstrated above, the aid was not necessary for the companies to carry out the investments and does not have an incentive effect. Accordingly, the aid is not covered by the steel aid code. Another requirement for the aid to be covered by the steel aid code is that the investments must be aimed at significantly improving on environmental standards. Italy did not demonstrate that a clear decision was taken by the investors to opt for environmental standards higher than the legal ones then in force. No information is given on the statutory level of pollution that the investments would have reduced and how far those standards were exceeded as a result of the investment. The only declared aim of the investments is a reduction in energy consumption, which incidentally resulted in lower levels of pollution.
- (20) The Italian authorities also reaffirmed that the investments were made for environmental reasons and that the aid was necessary because the ratio between the advantage in terms of annual production costs and the investment cost was lower than the interest rate at the time. Regardless of the accuracy of the calculation of the ratio, which the Commission challenges, the question of whether or not an investment pays for itself during the tax depreciation period is not a valid criterion for determining the reasons for the investment or for determining whether the aid was to provide an incentive effect.
- (21) Italy also challenges the Commission's view, set out in the opening of procedure, that the aid does not satisfy the requirements of the steel aid code for approval of environmental aid. However, the arguments put forward by the Italian authorities cannot be accepted; even if the investments had been made for environmental purposes and the aid was proven to be necessary, the measures would still not be compatible under the Community rules.
- 21.1. The Italian authorities reiterate that the calculation of the cost advantage obtained from the investment is made according to the standard accountancy rules on production cost elements. The Commission, however, is not challenging the calculation of the standard elements of production costs of an undertaking. What it cannot accept is that the depreciation costs of an investment are included in the calculation of the advantage enjoyed by an undertaking from that investment. As indicated in the decision opening the procedure, this corresponds in practice to counting the same investment cost twice and would ensure that the investment was always eligible for aid because it forms part of the costs. The objective is, on the contrary, to ensure that the company will not use for its own advantage subsidised investments in environmental protection.
- 21.2. Italy also insists on the period used to deduct the cost savings obtained by the company. The Commission does not, however, agree that the tax depreciation period used by the Italian authorities in the present case ensures that all the economic advantages are excluded. Italy makes no such claims but only justifies the length of its depreciation period as being in accordance with the law. The steel aid code requires that all advantages be deducted. The Commission considers that this can be ensured only if the economic life of the equipment is taken into account and, in the present case, the tax depreciation period certainly cannot be used as a substitute for the life of the equipment. If that were the case, most of the equipment would by now be obsolete.
- (22) As regards the response of the Italian authorities to the comments of other interested parties and, in particular, to the comments from the UK Steel Association regarding the increase in capacity, the Commission notes that Italy does not deny that the new installation brings about an increase in production capacity. It considers, however, that only the overall production capacity of the undertaking counts, the latter being restricted by the rolling mills capacity, which remains unchanged. The environmental guidelines and the steel aid code do not, however, refer to the overall production capacity of the undertaking, but to the plant to be replaced or adapted. The investment cost eligible for aid should relate only to the equipment's initial capacity where the new equipment has a higher production capacity.
- Compatibility of the notified aid*
- (23) As stated above, Italy did not provide any new information in the course of the procedure that would allow the Commission to change its assessment of the notified aid as set out in its decision opening the procedure. The aid is not covered by the provisions of the steel aid code.
- (24) As regards the possibility of assessing the aid under the steel aid code, if hypothetically the investments were to be considered eligible, Italy has also failed to demonstrate that the requirements of the code, in particular those of the Annex, have been fulfilled, as stated above.

(25) The notified aid which Italy plans to grant to the five steel companies is accordingly incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid totalling ITL 3,6 billion (EUR 1,9 million) that Italy plans to grant to the steel companies Acciaierie e Ferriere Leali SpA, Acciaierie e Ferriere Beltrame Vicenza SpA, Acciaierie e Ferriere Beltrame S. Giorgio Nogaro SpA, Lucchini Mura SpA and Lucchini Lovere SpA in respect of investments they made between 1989 and 1994 for energy savings is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply herewith.

Article 3

This Decision is addressed to the Republic of Italy.

Done at Brussels, 29 November 2000.

For the Commission

Mario MONTI

Member of the Commission
