

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 28 March 2001

on the State aid which Italy is planning to grant to Ferriere Nord SpA

(notified under document number C(2001) 1010)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/829/EC, ECSC)

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 Treaty establishing the European Coal and Steel Community, and in particular Article 4(c) thereof,

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry <sup>(1)</sup>, and in particular Article 6(5) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above <sup>(2)</sup> and having regard to their comments,

Whereas:

Regional Law No 2 of 2 January 1992 <sup>(3)</sup>, which had been approved by the Commission (letter SG(92)D 18803 of 22 December 1992). The notification concerned aid to investments in a continuous casting plant and a new rolling line for the production of electrowelded wire mesh.

- (2) By letter dated 3 June 1999, the Commission informed the Italian Government of its decision to initiate proceedings under Article 6(5) of Decision No 2496/96/ECSC in respect of the abovementioned aid and invited it to submit its comments. The decision was published in the *Official Journal of the European Communities* <sup>(4)</sup>. The Commission invited interested parties to submit their comments on the aid.

## I. PROCEDURE

- (1) By letter dated 19 February 1999, the Italian authorities notified the Commission in accordance with Article 6(1) of Commission Decision No 2496/96/ECSC that they intended to grant environmental aid to the ECSC steel company Ferriere Nord SpA under Section VI of Regional Law No 47 of 3 June 1978, as amended by

- (3) The Commission received comments from Ferriere Nord and from the European Independent Steelworks Association (EISA). It forwarded them to the Italian Govern-

<sup>(1)</sup> OJ L 338, 28.12.1996, p. 42.

<sup>(2)</sup> OJ C 288, 9.10.1999, p. 39, and OJ C 315, 4.11.2000, p. 4.

<sup>(3)</sup> Article 15(1) of the Law provides that the regional authorities may grant aid of up to 20 % gross grant equivalent of eligible costs to firms in operation for at least two years, that intend to introduce or modify production installations and processes aimed at reducing not only the quantity and danger of residuals, waste and emissions produced but also noise levels or securing a qualitative improvement of the working environment in line with new standards established by sectoral laws.

<sup>(4)</sup> OJ C 288, 9.10.1999, p. 39.

ment, which was given the opportunity to react; its comments were received by letter dated 24 December 1999.

- (4) By letter dated 21 July 2000, Ferriere Nord informed the Commission that it had decided to forgo the State aid for the part relating to ECSC investments. By letter dated 25 July 2000, the Italian authorities withdrew the part of the notification regarding aid for investments in the plant manufacturing ECSC products but maintained the part of the notification regarding aid for investments in the plant for producing electrowelded wire mesh.
- (5) By letter dated 14 August 2000, the Commission informed the Italian Government of its decision to initiate the procedure in Article 88(2) of the EC Treaty in respect of the aid to the plant for producing electrowelded mesh. The decision was published in the *Official Journal of the European Communities* <sup>(1)</sup>. The Commission invited interested parties to submit their comments on the aid.
- (6) The Commission received comments from Ferrière Nord and the United Kingdom Steel Association. The comments were forwarded to Italy, which responded by letter dated 15 January 2001.

## II. DETAILED DESCRIPTION OF THE AID

- (7) Following the partial withdrawal of the notification referred to in point 4, the aid concerned by this decision consists of a grant of 15 % towards some of the costs of investment in new plant for the production of electrowelded wire mesh, which, unlike the traditional plant, eliminates the cold-drawing phase. According to the application made by Ferriere Nord to the Italian authorities on 27 March 1996, the construction of the plant should be finished in March 1998. The eligible costs amount to ITL 11 billion (EUR 5,68 million) and the aid to ITL 1 650 million (EUR 852 154).
- (8) Ferriere Nord is owned by the Pittini Group and produces both ECSC products (wire rods and bars) and products covered by the EC Treaty (electrowelded wire mesh for walls and floors, lattice girders, etc.). Its turnover in 1999 was ITL 408,1 billion (210,8 million), of which 84 % was achieved in Italy, 11 % in the European Union and 5 % in the rest of the world. Ferriere Nord is

one of the main European producers of electrowelded wire mesh.

- (9) Electrowelded wire mesh is a prefabricated reinforcement product made from smooth or ribbed cold-drawn reinforcing steel wires joined together by right-angle spot welding to form a network. There is substantial trade in welded mesh between Member States <sup>(2)</sup>.
- (10) In its abovementioned decisions to initiate proceedings, the Commission took the view that the new rolling line was aimed chiefly at replacing or increasing Ferriere Nord's production capacity for electrowelded wire mesh and at reducing, in relation to the existing plant, the number of operations required to obtain the end product. It is a brand new line whose main objective is to produce welded steel mesh more competitively. The Commission accordingly concluded that the effects on working conditions or the environment were simply side effects of the investment. The Commission noted that the Italian authorities had not provided any evidence that the main objective of the new plant was environmental protection or an improvement in working conditions.

## III. COMMENTS FROM INTERESTED PARTIES

- (11) By letter dated 5 November 1999, Ferriere Nord submitted that the investment in the new rolling line should not be assessed under the ECSC rules since electrowelded mesh was covered by the EC Treaty rather than the ECSC Treaty. The rest of Ferriere Nord's arguments were basically the same as those advanced by the Italian authorities in their letter of 13 August 1999 (see recitals 18 to 20).
- (12) By letter dated 4 November 1999, the European Independent Steelworks Association (EISA) stated that the firm had already made huge investments in the production of high-ductility electrowelded wire mesh (a non-ECSC product), that demand for this product was increasing, that there was no overcapacity in the sector and that it was essential to the construction industry, particularly in high-risk seismic territory. EISA also considered that the investments would make a significant contribution to the protection of the environment.

<sup>(1)</sup> OJ C 315, 4.11.2000, p. 4.

<sup>(2)</sup> See Commission Decision 89/515/EEC of 2 August 1989 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.533 — Welded steel mesh) (OJ L 260, 6.9.1989, p. 1).

- (13) In its letter dated 10 November 2000, Ferriere Nord submitted that, from a physical <sup>(1)</sup>, industrial, manufacturing, technological and commercial viewpoint, there was a clear dividing line between the ECSC plant and the new plant for the manufacture of electrowelded wire mesh. It also pointed out that there was a clear financial and accounting separation between the ECSC and the EC investments. As to the compatibility of the aid with the Community guidelines, Ferriere Nord stated that the previous production plant for electrowelded mesh had been built in the 1970s and that, being based on the conventional stages of cold-wire drawing, straightening, cutting and electric welding, it had given rise to serious environmental pollution problems. The firm claimed that, as a radical solution to these environmental problems, it had designed and built an innovative pilot plant using an original production process, the only one of its kind in Europe.
- (14) The pollution caused by the new plant would remain below the limits imposed by Legislative Decree No 372 of 4 August 1999, which transposed into Italian law Directive 96/61/EC concerning integrated pollution prevention and control. The environmental improvements obtained using the new process are shown in the table below:

Environmental impact: old plant	Legal limit	Environmental impact: new plant
Smoke and dust in air: 14 mg/m <sup>3</sup> Dust of iron oxide mixed with stearate: 3 100 t/year	Dust: 10 mg/Nm <sup>3</sup>	Smoke and dust in air: none Waste dust of iron oxide mixed with stearate: none
Noise in the workplace: 97 dBA	Noise: 85 dBA	Noise in the workplace: 85 dBA
Noise at boundary of plant, in industrial area: 80 dBA	Noise: 70 dBA	Noise at boundary of plant, in industrial area: 70 dBA

- (15) According to Ferriere Nord, the Community guidelines on State aid for environmental protection (OJ C 72, 1994) prohibit only the authorisation of investment in new plant which does not lead to any environmental improvement. If a new investment does produce an environmental improvement, the aid becomes legitimate, in proportion of course to the expenditure for that purpose (paragraph 3.2.1, p. 6). The firm claims that the regional authorities have already stated that the costs of structural works and specific items of plant (ITL 9 billion) are ineligible, the remaining ITL 11 billion being the environmental part of the cost of building the plant.

purpose of the investment was clearly an economic one and that therefore the aid should not be allowed.

#### IV. COMMENTS FROM ITALY

- (16) As to the aid intensity, Ferriere Nord claims that the grant of ITL 1 650 million is equivalent to 15 % of the eligible costs, which is well below the maximum authorised for aid to encourage firms to improve on mandatory environmental standards or aid granted in the absence of mandatory standards.
- (17) By letter dated 4 December 2000, the United Kingdom Iron and Steel Association stated that the aid should be assessed under the ECSC rules since there was no adequate legal and accounting separation between the EC activities and the ECSC activities. It added that the
- (18) The Italian authorities noted in their letter of 3 August 1999 that the new rolling line manufactures electrowelded wire mesh, a product not covered by the ECSC Treaty, and that the investment in it is aimed not only at reducing noise levels but also and essentially at cutting the amount of waste in the form of iron oxide (about 3 000 tonnes/year).
- (19) The Italian authorities also argued that the reduction of noise levels for the workers is in line with one of the objectives of Community environmental policy as defined by Article 174 of the EC Treaty, namely, the protection of human health. They contended that, according to Table 12 of the European Community programme of policy and action in relation to the environment and sustainable development <sup>(2)</sup>, 'No person should be exposed to noise levels which endanger health and quality of life'. They also claimed that the fact that there is a Council Directive on the protection of workers from the risks related to exposure to noise at work <sup>(3)</sup> does not mean that measures to reduce the level of noise for workers are not environmental measures.
- (20) Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 February 1993, on a Community programme of policy and action in relation to the environment and sustainable development. A European Community programme of policy and action in relation to the environment and sustainable development (OJ C 138, 17.5.1993, p. 1).
- (21) Council Directive 86/188/EEC of 12 May 1986 on the protection of workers from the risks related to exposure to noise at work (OJ L 137, 24.5.1986, p. 28).

<sup>(1)</sup> The new plant is located in an industrial area of its own, with its own entrances for the incoming raw material (coiled steel rod) and the outgoing finished product (electrowelded wire mesh).

- (20) As to the compatibility of the aid with the Community rules, the Italian authorities considered that the aid is in line with paragraph 3.2.1 of the Community guidelines on State aid for environmental protection since the new plant is not intended to create or replace the production capacity of existing plant but solely to enable an innovative production process which considerably reduces noise and eliminates waste in the form of iron oxide; on the other hand, some of the expenses (structural and general equipment) have already been considered by the Region of Friuli-Venezia Giulia as not being eligible for aid.
- (21) Lastly, the Italian authorities argued in their letters of 17 November 1999 and 26 April 2000 that, under the scheme established by Regional Law No 47/78, which was approved by the Commission, aid aimed at a qualitative improvement in the working environment can be regarded as eligible.
- (22) The Italian authorities did not submit any comments on the decision initiating proceedings under Article 88 of the EC Treaty referred to in recital 5. By letter of 15 January 2001, they responded only to the comments made by the United Kingdom Iron and Steel Association, insisting that the aid should be assessed under the EC Treaty.
- (23) In the present case, the Commission notes that, although Ferriere Nord SpA is a single firm which does not keep separate accounts for its various activities <sup>(2)</sup>, the aided investment consists of specific plant which is clearly identified and physically separate from the other plant used for the production of ECSC products. The products manufactured by that unit are downstream of the ECSC products and belong to a clearly separate market (see recital 9).
- (24) Accordingly, in line with the abovementioned Decision 1999/720/ECSC (see recital 23), the Commission considers that there is no risk that the aid might benefit Ferriere Nord SpA's ECSC activities and that it should therefore be assessed in the light of the EC Treaty.
- (25) The non-repayable grant constitutes State aid within the meaning of Article 87(1) of the EC Treaty since it strengthens Ferrière Nord's position in relation to other competitors on the intra-Community market. As for its compatibility with the common market, the following considerations apply.
- (26) When it assesses new investments with environmental aspects, the Commission has to take a strict approach in order to prevent firms from receiving aid apparently intended for environmental expenditure but which in fact is used to finance investments which would have been carried out in any event. As recalled above (see recital 10), it was mainly the Commission's doubts as to the purpose of the investment that prompted it to initiate the proceedings.
- (27) Although Ferriere Nord is an undertaking within the meaning of Article 80 of the ECSC Treaty because it manufactures products listed in Annex I to the ECSC Treaty, the Commission acknowledged in Decision No 1999/720/ECSC of 8 July 1999 on State aid granted by Germany to Gröditzer Stahlwerke GmbH and its subsidiary Burg GmbH <sup>(1)</sup> that 'the EC Treaty may apply to aid to non-ECSC activities carried on by an ECSC undertaking, provided they are clearly separate from the same undertaking's ECSC activities'.
- (28) Electrowelded wire mesh is not covered by Annex I to the ECSC Treaty.

## V. ASSESSMENT OF THE AID

- (29) In this respect, although Ferriere Nord has stated that the old plant presented certain problems and that the new investment would improve on environmental or working conditions (see recital 13), simply claiming that environmental protection was the main aim of the investment is not enough to dispel the Commission's doubts, in particular as regards the fact that it is a brand new plant that will at least replace Ferriere Nord's production capacity, which dates back to the 1970s, and enhance its competitiveness (the new line, compared with the traditional electrowelding lines, eliminates the cold-drawing phase, increases automation, reduces the number of manipulations of products and eliminates the cost of dumping the waste).

<sup>(1)</sup> OJ L 292, 13.11.1999, p. 27, paragraph 33.

<sup>(2)</sup> The accounting separation referred to by the firm (see point 13) relates only to investments.

- (30) The Commission considers that, in the absence of mandatory standards <sup>(1)</sup>, the claim that environmental or human health grounds were taken into account when the decision to build the new line was adopted should be substantiated by the internal documents drawn up by Ferriere Nord when it designed the industrial-scale prototype that it built prior to the investment for which the aid is intended. The claim could also be substantiated by other evidence contemporary with the decision to carry out the investment for which the aid is intended. However, not a single piece of such evidence has been provided either by the Italian authorities or by Ferriere Nord, although the Commission had pointed out that no evidence had been provided on this matter. The Commission therefore concludes that the positive effects on working conditions or the environment are simply side effects of the investment which were not even taken into account when the investment decision was taken.
- (31) On this point, the current Community guidelines on State aid for environmental protection <sup>(2)</sup> define environmental protection as 'any action designed to remedy or prevent damage to our physical surroundings or natural resources' (point 6). Accordingly, they require that investments in buildings, plant and equipment be intended to reduce or eliminate pollution and nuisances (point 36) and that eligible costs be confined strictly to the extra investment costs necessary to meet the environmental objectives (point 37) <sup>(3)</sup>. As stated above, the Commission considers that Ferriere Nord's investment was driven only by economic considerations and that any environmental improvement is simply a necessary consequence of the firm's choice of production process. For the rest, it is normal for new plant to be more efficient environmentally than plant that is at least 25 years older.
- (32) In any case, if it was accepted that the protection of the environment was the main aim of the investment, the argument put forward by the Italian authorities that the aid is proportional to the improvement in the environment cannot be accepted because, with the exception of
- structural and general equipment, this would imply that the entire investment cost is eligible for aid. According to point 37 of the current Community guidelines on State aid for environmental protection, 'eligible costs must be confined strictly to the extra investment costs necessary to meet the environmental objectives'. Where the cost of investment in environmental protection cannot be easily identified in the total cost, as Ferriere Nord claims, the Commission should take into account 'the cost of a technically comparable investment that does not, though, provide the same degree of environmental protection'. It does not seem possible, however, to calculate that cost as the limited environmental benefits are intrinsic to this innovative and original plant and any other electrowelding plant that eliminates the cold-drawing phase would obtain the same environmental results. Nor has any deduction been made for the savings generated by the investment (not even the elimination of the costs of dumping the waste). The aid cannot therefore be regarded as complying with the current Community guidelines on State aid for environmental protection.
- (33) As regards the benefits to the health and safety of workers in the form of noise reduction, they cannot be regarded as inherent in environmental protection as they are mainly related to worker protection. In any event, although action taken within plants or other production units to improve safety or hygiene is important and may be eligible for certain types of aid <sup>(4)</sup>, in the present case the benefits for the health and safety of workers are only a marginal consequence of a productive investment which would have been carried out in any event and for which State aid does not therefore appear to be justified.
- (34) As regards the argument put forward by the Italian authorities that the scheme had been approved by it, the Commission notes that, under the approved scheme, aid can be granted in order to comply with new standards established by sectoral laws (see footnote 3). The Italian authorities acknowledged both in the notification and in their letter of 4 May 2000 that there are no mandatory environmental standards. The aid cannot therefore be regarded as an individual application of an approved scheme.
- <sup>(1)</sup> Contrary to the company's contentions in its letter of 10 November 2000 (see point 14), no specific legal limits exist for this kind of plant.
- <sup>(2)</sup> OJ C 37, 3.2.2001, p. 3. They are applicable to the present case by virtue of point 82.
- <sup>(3)</sup> These criteria do not differ from those in paragraph 3.2 of the Community guidelines on State aid for environmental protection in force when the Commission decided to initiate proceedings, which excluded from their scope aid ostensibly intended for environmental protection measures but which is in fact for general investment (OJ C 72, 10.3.1994).
- <sup>(4)</sup> Point 6 of the current Community guidelines on State aid for environmental products.

- (35) Lastly, the Commission notes that the area where the investment is carried out is not eligible for regional aid and the firm is not an SME. The measure therefore does not qualify for any of the exceptions in Article 87 of the EC Treaty.

#### VI. CONCLUSION

- (36) Accordingly, the State aid that Italy intends to grant to Ferriere Nord for investments in a new plant for electro-welded wire mesh is incompatible with the common market,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The State aid of ITL 1 650 million which Italy is planning to grant to Ferriere Nord for investments in new plant for the production of electrowelded wire mesh is incompatible with the common market.

The aid measure 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*

The procedure initiated under Article 6(5) of Decision No 2496/96/ECSC in respect of aid C 35/99 — Italy — Ferriere Nord is hereby terminated.

#### *Article 4*

This Decision is addressed to the Italian Republic.

Done at Brussels, 28 March 2001.

*For the Commission*

Mario MONTI

*Member of the Commission*