COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(92) 2438 final

Brussels, 23 December 1992

REPORT ON THE APPLICATION OF THE RULES ON STATE AID TO THE STEEL INDUSTRY

(presented by the Commission)

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1. Introduction

1.1 Article 8 of Decision No 322/89/ECSC[1] (the "old" steel aid code), which was in force until 31 December 1991 requires the Commission to draw up regular reports on the implementation of the above-mentioned decisions for the Council and, for information, for the Parliament and the ECSC Consultative Committee.

1.2 The period under review in this report is from 1 January 1991 to 31 December 1991 covered by Decision 322/89/ECSC.

1.3 Although aid was granted to the steel industry in relatively few cases during the period in question, which may mainly be due to the general prohibition of aids to the steel industry, with limited derogation as stipulated in Article 1 of the decision, a report continues to be desirable in order to meet Member States' wish to be better informed about Commission decisions on State aid, and within the general principle of increasing transparency of Commission policy.

2. Legal Framework

Provisions in force

2.1 **Decision No 322/89/ECSC**

Decision No 322/89/ECSC establishing Community rules for aid to the steel industry was in force until 31 December 1991. On 1 January 1992, the new Steel Aid Code **(Decision 3855/91/ECSC)**[2] came into force for a five years period expiring 31 December 1996. Both codes incorporate provisions for aids to the steel industry, and recognise as compatible with the common market only aid for research and development **(Article 2)**, aid for environmental protection **(Article 3)**, aid for closures **(Article 4)** and on the territory of just one Member State (Greece), aid for regional investment granted under general schemes and not leading to an increase in production capacity **(Article 5)**. (Said **Article** 5 has been substantially amended in Decision No 3855/91/ECSC (the "new" steel aid code), taking into account the adhesion of the five new German Länder following German unification, and providing for aid to certain small and medium sized undertakings in Portugal.)

(1) OJ No L 38, 10.2.89

(2) OJ No L 362, 31.12.91

2.2 **Consensus EC-US**

The agreement concluded between the European Community and the United States (Commission Decision No. 89/636/ECSC of December 1989) on a two and a half year extension of the voluntary restraint arrangements concerning exports of European steel to the United States, continued to be in force. By this agreement, the two parties had arrived at a consensus on a code of good conduct on State aid for the steel industry.

3. **Results of Commission monitoring of aid to the steel industry**

3.1 **Germany**

General

In Germany, the main concern was the adaptation of East German steel industry to competition and its integration into the common market. Consequently, investment plans mainly aim at modernisation, or even replacement of existing capacities. The Commission's duty is to watch that any investment aid granted is compatible with the provisions of the steel aid code, and in particular with Article 5.

Article 6, in conjunction with the Commission's formal decision on the activities of the Treuhandanstalt(3), obliges the German authorities to notify to the Commission any aid project proposed under general regional aid schemes. The Commission shall equally be informed about any privatisation of steel undertakings, in order to be able to determine whether aid elements are involved, and, if so, to examine whether the aid is compatible with the common market under the provision of Articles 2 to 5 of the Steel Aid Code.

Approval of general regional aid schemes

As concerns the application of general regional aid schemes in the former GDR, the Commission, as provided for by Article 5, gave its approval to the extension to the Steel sector of a regional aid programme, which provides for **State guarantees under the Budget Law 1990** in favour of private investment projects in the former GDR, which may attain up to 80% of the loans for the investment project in question. The Commission verified that the requirement of capacity reduction as provided for in Article 5 was satisfied. The German authorities have been obliged to submit regular reports and to inform the Commission about the evolution of production capacities for the different product categories.

(3) IP(91)836 of 18.9.1991

Decision in individual cases

In **July 1991**, a first decision on alleged operating aid to an East German steel producer was taken by the Commission. Following complaints about the pricing behaviour of the **Stahl- und Walzwerke Brandenburg GmbH**, the Commission investigated the matter. The Commission concluded that the guarantees granted by the Treuhandanstalt to the company and its sister company **Henningsdorfer Stahl GmbH** contained no aid element, taking into account the risk premium to be paid and the restructuring and privatisationn plans which already existed for both companies.

3.2 France

In **November 1991**, the Commission examined, under Article 6(2) of the Steel Aid Code, the capital injection of FF 2.5 billion by the publicly-owned French bank **Crédit Lyonnais**, into the equally public **Usinor-Sacilor S.A.**, an operation which had been notified to the Commission pursuant to Article 6 of the Steel Aid Code. The Commission found that the envisaged operation by Crédit Lyonnais was compatible with the behaviour of a private investor operating under normal market economy conditions, and can therefore not be considered to contain state aid.

In particular, the Commission verified that the valuations carried out on the two companies adequately reflect reality, found that an investment in Usinor-Sacilor is likely to produce a reasonable rate of return consistent with the behaviour of a private investor, and established that a private bank in a situation similar to Crédit Lyonnais could be expected to take a similar stake in a company like Usinor-Sacilor. These verifications and findings were confirmed by a study made for the Commission by an independent consultant. As a result, the Commission concluded that the operation was compatible with the Community's Steel Aid Code and its November 1989 bilateral agreement with the US on steel.

3.3 Italy

Aids for R & D

In **February 1991**, the Commission approved an R & D aid in favour of the steel undertaking **Acciaierie Valbruna SpA** under Article 2 of the Steel Aid Code. Though the aid project had not been notified to the Commission in advance, it established that the objectives of Article 2 were met and that the aid intensity was well below the maximum intensity allowed.

In **October 1991**, the Commission decided to consider as compatible with the provisions of Article 2 of the Steel Aid Code and the orderly functioning of the common market an aid project (low-interest loan of ECU 434,000) for R & D in favour of the steel company **Acciaieria e Ferriera di Crema SpA**, whose aid intensity remained well below the allowed ceiling.

Negative decision

In June 1991, the Commission took a negative decision on an aid of about ECU 1.7 million, which had been granted to the steel undertaking **Ferriere Acciaierie Sarde SpR** in 1987 without prior notification.

With this decision, the Commission did not put into question the objectives of the aid, namely selective disposal, recycling and reutilisation of scrap metal, but considered the aid as non-compatible with the common market, since the project did not correspond to the provisions of the Steel Aid Code for environmental protection. It concluded that this aid constituted an operating aid and not an aid financing the adaptation at new environmental standards, because the conditions of Article 3 of the steel aid code concerning aid for environmental protection were not fulfilled.

Individual case of operating aid

In **February 1991**, the Commission decided to open the procedure provided for in Article 6(4) of the steel aid code against a non-notified aid project in favour of the steel undertaking **Feralpi SpA**, because it seemed possible that the aid in the form of an interest-subsidised loan of about ECU 3.3 million (35% of the cost of a programme for technological innovation) may affect trade between Member States and be incompatible with the common market.

In this particular case, the innovation project aimed above all at modernising the operating installations and was deemed to be incompatible with the provision of the Steel Aid Code (Decision 322/89/ECSC), and in particular its Articles 2 and 3, in force at that time.

After the Italian Government withdrew the aid project in question, the Commission closed the procedure in July 1991.

3.4 Luxembourg

Aid to R & D

In **November 1991**, the Commission approved the application to Luxembourg's steel industry of schemes of aid towards the R & D programme for 1990. This programme covered projects carried out by **Arbed S.A.** and was similar to those for the previous years which have been approved by the Commission in 1989 and 1990 respectively.

The aid was based on eligible costs of (estimated) LFR 882 million (about ECU 21 million), and consisted of a non-repayable capital grant at a gross rate of 15% and financial assistance repayable in the event of the projects proving successful, at a gross rate of 10%. In addition to the direct assistance, loans totalling ECU 4 million have been granted under this programme to promote innovation. Converted into net grant equivalent, the total state aid amounted to 12.4%, and was considered to be equally compatible with the US EEC "consensus".

3.5 Greece

Investment aid

In **May 1991**, the Commission decided to approve an aid project in favour of an investment programme totalling 394 million DRA (approximately 1.77 million ECU) for the steel undertaking **Halyvourgia Thessalias S.A.** under Article 5 of the Steel Aid Code. The Commission found that the regional investment aid, which was based on the Greek Law 1262/82, did not increase production capacity of the undertaking, and that it was compatible with the common market, provisions that are required in Article 5 of the Steel Aid Code. The aid consisted of a subsidy of 130 million DRA and an interest-subsidy for the first 3 years on a loan amounting to 165.5 million DRA.