

COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION BY THE COMMISSION TO THE COUNCIL

RULES ON AID AND FINANCIAL TRANSFERS TO THE COMMUNITY STEEL INDUSTRY AFTER 1985

(Communication by the Commission to the Council)

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STEEL INDUSTRY AFTER 1985

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1. The Commission gave a preview of its policy on aid to the steel industry after 1985 in its memorandum of 19 July 1985 (COM(85)376 final).
2. As noted in that memorandum, by the end of this year the objectives which the Community adopted in 1980-81 for bringing supply into line with demand, and which were further specified at the meeting of Industry Ministers at Elsinore in late 1982, will have been achieved. Supply and demand will have been brought back into the degree of balance the Community was then aiming for. However, as this was partly determined by the limits of technical, social and regional feasibility, it still, as expected, leaves overcapacity in the industry, for some product categories more than for others.

As well as this adjustment of production capacity, the end of 1985 will also find Community steel firms, after a restructuring process that has required almost unprecedented levels of public financial support and social and regional sacrifices, in a technical and financial shape such that they will have a prospect of being viable in normal circumstances, provided they continue to adjust their businesses and respond to the pressures towards such adjustment exerted by the market as controls are gradually lifted.

3. Now that there is a better balance between supply and demand and firms' competitiveness has improved, the special circumstances which justified the Commission's taking powers under Article 95 ECSC, by Decision No 2320/81/ECSC, to authorize a wide range of aid no longer obtain.

From now on, firms will, in general, have to rely on their own financial performance to sustain their operations and to generate the funds to pay for the further structural adjustments that will continue to be necessary, without the relative chances of the firms that are still vulnerable being substantially distorted by aid.

The Council, the Commission and the various Member States have all on many occasions separately expressed their support for such a policy and agreed that all aid authorized under the 1981 aids code must be paid by the end of 1985.

4. To implement this policy, the Commission needs to take a decision under Article 95 ECSC laying down substantive and procedural rules for aid after 1 January 1986, so that government subsidies do not undo the results of the coordinated restructuring exercise that has just been concluded or delay or even prevent the additional adjustments that are still necessary to bring supply and demand into balance.

As the Community steel industry, though in a much healthier state than before, will remain vulnerable for some time, the decision must provide for comprehensive Community rules on aid, both "specific" aid directed mainly at the steel industry and "non-specific" aid available under general and regional schemes. All government aid that has similar economic effects should be treated alike, regardless of differences in the national legal framework.

Here the Commission would point out that without a Community aid scheme based on Article 95 ECSC it would in future feel obliged to interpret Article 4(c) ECSC as rendering all State aid incompatible with the common steel market.

5. This is the background against which the Commission intends to seek the Council's assent, and the opinion of the Consultative Committee, for rules on the following lines, as provided in the attached draft decision:

5.1 Aid to cover operating losses and aid for investment, even under regional aid schemes and even where the aid would not help to expand capacity, will no longer be permitted.

With regard to investment aid, it should be noted that in assessing the viability prospects of aided firms and in determining the amount of aid it could authorize for them the Commission has allowed for their ability to provide for normal depreciation of plant.

5.2 The enforcement of strict rules on aid properly so-called also requires scrupulous monitoring by the Commission of Member States' acquisitions of shareholdings or provisions of capital or similar financing to steel firms.

In view of the vulnerable condition of the industry and of many individual firms in it, the Commission needs to be informed sufficiently in advance of such financial transfers to be able to determine whether the operation involves an aid element and, if so, to apply to it the rules for aid (Article 5 of the draft).

The criteria it will apply in determining whether an aid element is involved will be those set out in the statement on "Public authorities' holdings in company capital," which it sent to the Member States by letter of 17 September 1984 (SG(84) D/11389).

Application of the provisions of Directive No 80/723/EEC of 26 June 1980 on the transparency of financial relations between Member States and public undertakings would be insufficient for this purpose because the Directive applies only to state-owned firms outside the ECSC sector and secondly only provides for ex post monitoring of Member States' financial relations with such firms.

- 5.3. With regard to aid for research and development and environmental protection, all the Member States are agreed that it would be an unjustified discrimination to deny steel firms the same types of aid as are available to firms in other industries, and which are in the public interest.

The rules for such aid (Articles 2 and 3 of the draft) follow those established in the guidelines which the Commission plans to issue or has already issued respectively for the same types of aid to EEC industries. The monitoring procedures will also be the same.

- 5.4. The Commission still believes that the considerable overcapacity that will persist in a number of product categories after 1985 justifies the authorization of aid to accelerate the closure of inefficient plants which, if kept in service, even only temporarily, could depress the market to the detriment of the whole Community industry.

It is true that simple market forces would sooner or later normally cause such plants to close. The fact remains, however, that firms may be tempted to keep them in service temporarily, either because with their overall business again viable they do not feel the same urgency to continue their restructuring beyond the stage which they have just completed of closing their most obsolete plants, because closure of the remaining inefficient plants would upset their balance sheet where the plants are down as assets, or finally because they are cushioned against the full pressure of market forces by the market controls which it will be necessary to maintain for a transitional period.

The measures the Commission proposes (Article 4 of the draft) to deal with this problem are as follows:

- a continuation of the provisions of Article 4 of Decision No 2320/81/ECSC which allow aid to cover the normal costs occasioned by the closure of steel plants;
- the payment to firms closing rolling mills of compensation not exceeding their value as determined by an independent valuer, subject to a maximum of either the discounted net contribution to fixed costs obtainable from the mill over three years or the residual depreciation costs of the mill ignoring that portion of any asset revaluations since 1980 which exceeded the national inflation rate.

This double ceiling is intended to cover two possible situations: (a) mills which are fully depreciated but still make a contribution towards fixed costs⁽¹⁾ and (b) more modern mills which still have depreciation costs to cover but are operating at a loss.

It is emphasized that such closure aid will not be payable after 31 December 1988, that the Commission will monitor it to ensure that it is not diverted from its purpose to help finance investment elsewhere that expands production capacity or price discounting, and that there will be full consultations with the Member States before any such aid is authorized.

6. Conclusion

6.1. All the above provisions which the Commission wishes to introduce are in line with the policy which has received the support of the Council, the Commission and each individual Member State that from 1986 the rules on aid should oblige steel firms to finance their operations and complete their restructuring from their own resources.

Just as the market controls must now be progressively - though relatively rapidly - removed, in the same way the scope for aid must be extremely limited and after three years - the same period as is proposed for the maintenance of certain market controls - must give way to a complete prohibition of such aid, except for aid for research and development and environmental protection.

(1) I.e., the value of their output more than covers variable costs.

6.2. On the basis of the foregoing, the Commission requests the Consultative Committee to deliver its opinion and the Council to give its assent by such a date that the Commission can adopt its decision in time for the new aid rules to come into effect on 1 January 1986, with an expiry date of 31 December 1990.

DRAFT

COMMISSION DECISION N° /85/ECSC

of 1985

establishing Community rules for aid to the steel industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having consulted the Consultative Committee and with the unanimous assent of the Council,

HAS ADOPTED THIS DECISION :

Article 1

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 4. The procedures laid down in Article 5 shall be followed before granting such aid.
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 the interest on which is at least partly dependent on the undertaking's financial performance) which cannot be regarded as a genuine provision of risk capital according to usual investment practice in a market economy.

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Article 2

Aid for research and development

1. Aid to defray expenditure by steel undertakings on research and development projects may be deemed compatible with the orderly functioning of the common market provided that the research and/or development project has one of the following objectives:
 - reductions in production costs, in particular through energy conservation or improvements in productivity,
 - improvements in the quality of products,
 - improvements in the performance of iron and steel products or extensions of the range of applications of steel,
 - improvements in working conditions (higher health and safety standards):
2. The total amount of aid granted for this purpose may not exceed 25. % of the eligible costs of the project. The eligible costs shall be the costs directly associated with the project, excluding, in particular, industrial applications or commercial exploitation of the results.
3. Aid authorized under this Article shall not be payable after 31 December 1990.

Article 3

Aid for environmental protection

1. Aid to support investment by steel undertakings to bring their plants which entered into service before 1 January 1984 into line with statutory environmental standards introduced after 1 January 1986 may be deemed

compatible with the orderly functioning of the common market.

2. The total amount of aid granted for this purpose may not exceed 15 % of the cost of the aided investment. Where the investment is associated with an increase in the capacity of the plant, the eligible cost shall be proportionate to the initial capacity of the plant.
3. Aid authorized under this Article shall not be payable after 31 December 1990.

Article 4

Aid for closures

1. Aid to cover normal costs actually arising 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 was not taken into account for the purposes of applying Decision No 257/80/ECSC of 1 February 1980, No 2320/81/ECSC of 7 August 1981 or No 1018/85/ECSC of 19 April 1985 or for authorizations under Article 54 of the ECSC Treaty, may be deemed compatible with the orderly functioning of the common market.

The costs eligible for such aid shall be the following:

- payments to workers made redundant or accepting early retirement, where such payments are not covered by aid pursuant to Article 56(1)(c) or (2)(b) of the ECSC Treaty,
- compensation to third parties for the termination of contracts, in particular those covering the supply of raw materials,

- expenditure on redevelopment of the site, the buildings and/or the infrastructure of the closed plant for alternative industrial use.
2. Aid for the complete and permanent closure of hot-rolling mills which have been in regular production up to the date of notification of the aid, and whose closure was not taken into account for the purposes of applying Decisions No 257/80/ECSC of 1 February 1980, No 2320/81/ECSC of 7 August 1981 or No 1018/85/ECSC of 19 April 1985 or for authorizations under Article 54 of the ECSC Treaty, may also be deemed compatible with the orderly functioning of the common market, provided that the aid does not exceed the higher of the following two values, as determined by an independent valuer:
- the discounted value of the contribution towards fixed costs obtainable from the mill over a three-year period, less any other advantages the aided firm derives from the closure (in particular, by transferring the mill's output to other mills), or
 - the residual book value of the plant (ignoring that portion of any revaluations since 1 January 1980 which exceeded the national inflation rate).
3. For five years after receiving closure aid, the aided undertaking may not carry out any investment that would result in an increase in its production capacity without authorization from the Commission under Article 54 of the ECSC Treaty. Where such investment would partly offset capacity reductions carried out elsewhere for the same category of products, aid shall be payable under this Article only in consideration of the net capacity reduction thereby obtained.

4. The Commission may at any time order the suspension of aid payments or the reimbursement of aid already paid if the aided undertaking breaches its obligations under paragraph 3 or the Community rules on pricing.
5. Aid authorized under this Article shall not be payable after 31 December 1988.

Article 5

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 Articles 2 to 4. 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 EEC Treaty. Notifications pursuant to this Article must be lodged with the Commission by 30 June 1988 at the latest for the types of aid referred to in Article 4 and by 30 June 1990 at the latest for the types of aid referred to in Articles 2 and 3. The planned measures may be put into effect only with the approval of and subject to any conditions laid down by the Commission.
2. The Commission shall be informed, in sufficient time for it to submit its comments, and by 30 June 1990 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 acquisitions of shareholdings or provisions of capital or similar financing. It shall determine in accordance with the criteria stated in Article 1(2) whether the financial transfers involve aid elements and, if so, shall examine whether such aid is compatible with the common market under the provisions of Articles 2 to 4.
3. The Commission shall seek the views of the Member States on plans for closure aid and other major aid proposals notified to it before taking any decision on them. It shall inform all the Member States of its decision on each aid proposal.

4. Where, after inviting interested parties to submit their comments, the Commission finds that aid in a given case is incompatible with the provisions of this Decision, it shall inform the Member State concerned of its decision. The Commission shall take such a decision not later than three months after receiving the information needed to assess the proposed aid. Article 88 of the ECSC Treaty shall apply in the event of a Member State's failing to comply with that decision.
5. If the Commission fails to initiate the procedure provided for in paragraph 4 or otherwise to make its views known within two months of receiving 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.
6. All individual awards of the types of aid referred to in Article 4 shall be notified to the Commission in accordance with the procedure provided for in paragraph 1. The Commission also reserves the right to require that some or all individual awards of aid of the types referred to in Articles 2 and 3 be notified in accordance with paragraph 1.

Article 6

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

Article 7

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

Article 8

This Decision shall not apply to aid governed by the Treaties of Accession of Spain and Portugal.

Article 9

This Decision replaces Decision No 2320/81/ECSC. It shall apply until 31 December 1990.

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

Done at Brussels,

For the Commission