

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 November 2001

on the State aid which Germany is planning to implement for EKO Stahl GmbH

(notified under document number C(2001) 3732)

(Only the German version is authentic)

(Text with EEA relevance)

(2002/213/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

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 ⁽¹⁾, and in particular Article 6(5),

Having called on interested parties to submit their comments pursuant to the abovementioned Decision ⁽²⁾ and having regard to those comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 5 October 2000, Germany notified the Commission of its intention to grant aid to EKO Stahl GmbH (hereinafter EKO Stahl) to help finance an R&D project.
- (2) By letter dated 2 March 2001, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 6(5) of Commission Decision No 2496/96/ECSC (hereinafter the steel aid code) in respect of the aid.
- (3) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communi-*

ties ⁽³⁾. The Commission invited interested parties to submit their comments on the aid.

- (4) Germany presented its comments on the Commission Decision by letter dated 27 April 2001. The Commission received comments from the United Kingdom by letter dated 5 July 2001 and forwarded them to Germany by letter dated 1 August 2001. Germany gave its response by letter dated 23 August 2001.

II. DETAILED DESCRIPTION OF THE AID

- (5) The aid notified for EKO Stahl was to be used to finance the company's participation in the project 'Methods and instruments to create, stabilise and evaluate permanent adaptability: personnel and know-how'. This is a joint project carried out with eight other partners, mainly active in the field of human resources and information technology. The costs for EKO Stahl amount to EUR 665 007 and the notified aid to EUR 399 004. The proposed aid intensity is thus 60 %, corresponding to 50 % for industrial research plus a regional bonus of ten percentage points because EKO Stahl is located in an Article 87(3)(a) region. The costs comprise personnel, travelling and administrative expenses. The project is to run from July 2000 to March 2003.
- (6) The overall project is described as a sociological research project designed to develop methods and instruments for stabilising the long-term adaptability of workers. One element of this project is 'personnel and know-how', the area where EKO Stahl would be more directly involved and where methods and instruments are to be developed that enable staff and management to achieve a given level of adaptability and to build on it as new developments occur.

⁽¹⁾ OJ L 338, 28.12.1996, p. 42.

⁽²⁾ OJ C 166, 9.6.2001, p. 2.

⁽³⁾ See footnote 2.

(7) The German authorities also informed the Commission that the EKO Stahl project would be carried out in three stages based on the timetable for the overall joint project. The first stage would be a planning stage for devising methods for assessing permanent adaptability. The second stage would be a development stage during which instruments would be adapted, developed further and tested. The third stage would be a so-called control stage for disseminating and implementing the findings.

(8) The German authorities also informed the Commission that the incentive effect of the aid resides in the fact that EKO Stahl has no direct interest in the project and therefore would not participate in it without aid.

(9) When initiating the procedure, the Commission raised doubts as to whether the notified participation of EKO Stahl in the overall project constituted research within the meaning of the R&D framework⁽⁴⁾. It indeed doubted that EKO Stahl would carry out any research within the context of the project as its participation seemed to correspond solely to acting as a 'testing ground' for the research of the other participants.

(10) The Commission also raised doubts as to the compatibility of the aid if the EKO Stahl project were to be assessed under the R&D framework. No clear definition of the tasks that would have to be performed by its workers was given that would justify the level of aid at the different research stages. The reason put forward for the incentive effect was also called into question as it can be taken to mean that, as the Commission originally suspected, EKO Stahl is not itself actually carrying out any research.

III. COMMENTS FROM INTERESTED PARTIES

(11) The United Kingdom sent in comments on the proposed project and shared the view expressed by the Commission in its decision to initiate the procedure, namely that such a project clearly cannot rank as R&D within the meaning of the R&D framework.

IV. COMMENTS FROM GERMANY

(12) In its own comments and in its reply to the comments by the United Kingdom, Germany reaffirms its initial position that EKO Stahl's participation in the project constitutes research within the meaning of the R&D framework. It also confirms that, in its view, the entire project constitutes industrial research and that the proposed level of aid is accordingly justified. It further

states that the project meets the criteria for eligibility under European Parliament and Council Decision No 182/1999/EC concerning the fifth framework programme of the European Community for research, technological development and demonstration activities (1998-2002)⁽⁵⁾, hereinafter the 'Fifth Community R&D Programme'.

V. ASSESSMENT OF THE AID

(13) EKO Stahl GmbH is an undertaking within the meaning of Article 80 of the ECSC Treaty. Aid to it is therefore subject to the steel aid code, which provides for the possibility of aid to steel undertakings for R&D activities. Aid projects must be notified individually and their compatibility should be assessed under the R&D framework.

(14) Annex I to the R&D framework gives a definition of R&D in its different stages. It also states that the framework is intended to cover R&D aid linked directly to the subsequent production and marketing of new products, processes or services. In Section 5, the R&D framework sets the aid intensities for the different stages of the research, which generally vary from 50 % for industrial research to 25 % for pre-competitive development activities. In Section 6, it requires that the aid should serve as an incentive for firms to undertake R&D activities in addition to their normal day-to-day activities and states that particular attention must be exercised in the case of large firms.

(15) Germany claims that the EKO Stahl project meets the criteria laid down for a Community R&D project. There is indeed a project under the Fifth Community R&D Framework Programme which has similarities with the overall project in which EKO Stahl would participate and for which a call for tenders was recently launched. Participation by an industrial company in this Community project, whilst not excluded, will be assessed on the basis of the merits of the R&D activities to be carried out by that company, as it would be for all applicants, whether institutes or universities. Similarly, in the present case, the aid to EKO Stahl is assessed on the basis of its own research contribution, just as it would be if the company were to carry out this or any other project alone. The fact that the company has stated that it is participating in an overall research project with other partners does not dispense with the need to demonstrate that its contribution constitutes research.

⁽⁴⁾ OJ C 45, 17.2.1996, p. 5.

⁽⁵⁾ OJ L 26, 1.2.1999, p. 1.

- (16) Germany reiterates its position that the EKO Stahl project constitutes industrial research within the meaning of the R&D framework. However, it does not explain what this research activity is. Apart from merely claiming that the company will engage in significant research activities in the area of methodologies and instruments for shaping, stabilising and evaluating adaptability, there is no concrete information on the active role which the company itself will play in the research. No definition or description of the tasks to be performed by the company is given. The doubt raised by the Commission on initiating the procedure that EKO Stahl will serve merely as a 'testing ground' for the other participants in the project is therefore maintained.

VI. CONCLUSION

- (17) Accordingly, the Commission concludes that EKO Stahl's activities, for which aid was notified, do not constitute research within the meaning of the R&D framework. The project is not therefore eligible for aid under that framework. The other points raised during the procedure, such as the stage of research and the corresponding aid intensity as well as the incentive effect of the aid, do not therefore need to be examined. The aid notified by Germany for EKO Stahl is therefore incompatible with the steel aid code, with the common market and with the functioning of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany is planning to implement for EKO Stahl GmbH, amounting to EUR 399 004, is incompatible with the common market and with the functioning of the EEA Agreement.

The aid may accordingly not be implemented.

Article 2

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 28 November 2001.

For the Commission

Mario MONTI

Member of the Commission