

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 5 June 1991

concerning aid granted by the Autonomous Region of Sardinia to Ferriere Acciaierie Sarde

(Only the Italian text is authentic)

(91/547/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 Commission Decision No 3484/85/ECSC of 27 November 1985 establishing Community rules for aid to the steel industry <sup>(1)</sup>,

Having regard to Commission Decision No 322/89/ECSC of 1 February 1989 establishing Community rules for aid to the steel industry <sup>(2)</sup>,

Having given the interested parties notice to submit their observations and having regard to those observations,

Whereas:

## I

In 1987 the authorities of the Autonomous Region of Sardinia granted Ferriere Acciaierie Sarde (FAS) aid

totalling Lit 1,796 billion (about ECU 1,17 million) under regional Law No 41/87 of 14 September 1987 aimed at protecting the island's environment by granting aid for the selective disposal, recycling and reutilization of waste. The Italian authorities informed the Commission of the grant by letter dated 26 January 1989 and also notified the aid scheme set up by Law No 41/87, which the Commission approved on 28 November 1990.

Having obtained details of Law No 41/87 by letter of 5 July 1989, the Commission informed the Italian authorities that the provisions of Article 4 (c) of the ECSC Treaty and Decision No 3484/85/ECSC did not allow ECSC steel undertakings to benefit from the aid establishing by the regional Law in question.

By letters dated 14 December 1989 and 26 February 1990 the Commission reminded the Italian authorities that the aid arrangements established by Law No 41/87 were incompatible with the ECSC Treaty-based rules on aid and called for the repayment of the aid granted to FAS. In the meantime, an alternative solution had been devised: a company would be set up in order to collect and resell scrap, an activity not covered by the ECSC Treaty and therefore coming under the EEC Treaty, making it eligible for aid under Law No 41/87. The Commission accepted this solution on condition it did not lead to indirect aid being granted to an ECSC undertaking in the form of scrap sales at lower prices than those charged on the market in mainland Italy.

<sup>(1)</sup> OJ No L 340, 18. 12. 1985, p. 1.

<sup>(2)</sup> OJ No L 38, 10. 2. 1989, p. 8.

By letter dated 24 April 1990 the Italian authorities undertook not to grant such aid to the ECSC steel industry, and by letter dated 8 June 1990 received by the Commission on 20 July 1990, they agreed to recover the aid granted to FAS in 1987, indicating that the terms for the repayment were being examined.

The Commission therefore gave the company and the regional authorities time to work out the best method of repayment.

No further news having been received, it sent a telex to the Italian authorities on 23 October 1990. The latter replied on 26 November 1990 that the repayment was still being negotiated with the company.

## II

The disputed aid had been paid without being notified in advance to the Commission, in breach of Article 6 (1) of Decision No 3484/85/ECSC.

The provisions of that Decision and in particular Article 3 relating to aid for environmental protection together with those of Decision No 322/89/ECSC, in force from 1 January 1989, and the ban on all aid contained in Article 4 (c) of the ECSC Treaty do not allow the aid in question to be considered compatible with the common market.

For these reasons and in view of the fact that after nearly five months of discussion no repayment plan has been agreed between the Region and the company, the Commission initiated the procedure provided for in Article 6 (4) of Decision No 322/89/ECSC and gave the Italian authorities notice to submit their observations by letter of 19 December 1990. At the same time, it made it clear that the aid scheme established by Law No 41/87 was compatible with the EEC Treaty and approved it provided that the aid was not granted to an ECSC firm.

Under that procedure, the Italian authorities submitted their observations by letter of 28 January 1991 received by the Commission on 4 April 1991.

Their first argument was that, as the aid was intended to improve public health and had been granted pursuant to the aid scheme established by Law No 41/87 approved by the Commission in November 1990, it was perfectly legal.

Secondly, they asked the Commission to take account in its assessment of Sardinia's special situation, from both the geographical and the socio-economic standpoint.

In the course of the procedure, comments were received from one trade association and not from any Member State. These were transmitted to the Member State in question, which did not make any particular observations.

## III

FAS manufactures concrete-reinforcing bars. These are listed in Annex I to the ECSC Treaty under Code No 4400 and are therefore covered by the rules laid down in that Treaty and not those of the EEC Treaty, particularly where State aid is concerned. FAS is an ECSC undertaking in accordance with Article 80 of the ECSC Treaty.

Consequently, the fact that the Commission did not object under Article 92 and 93 of the EEC Treaty to the aid scheme established by Law No 41/87 does not render legal the grant of such aid to an ECSC undertaking. The Commission in fact expressly made it a condition of its approval that the aid must not be granted to ECSC steel firms.

Article 4 (c) of the ECSC Treaty provided that subsidies or aid granted by States, or special charges imposed by States, in any form whatsoever, are recognized as incompatible with the common market for coal and steel and are accordingly to be abolished and prohibited within the Community, as provided in the Treaty. This ban applies both to individual grants specifically intended for the steel industry and to the application of general or regional schemes to this industry. Unlike Article 91 (1) of the EEC Treaty, the ban is absolute in that it does not take account of the effects of the aid on intra-Community competition.

The only exemptions from the above general ban which could or can be granted were or are spelt out exhaustively in the various steel aid codes, notably Decision No 3484/85/ECSC in force from 1 January 1986 to 31 December 1988 followed by Decision No 322/89/ECSC applicable since 1 January 1989.

The aid concerned is research and development aid, environmental protection aid, certain forms of closure aid and, in cases where the recipient firm is located in the former German Democratic Republic or a Member State where no aid has been granted pursuant to Commission Decisions No 80/257/ECSC<sup>(1)</sup> or No 2320/81/ECSC<sup>(2)</sup>, as last amended by Decision No 1018/85/ECSC<sup>(3)</sup>, and which became a member of the Community during the period of validity of those Decisions (i.e. Greece), certain regional investment aids.

(1) OJ No L 62, 7. 3. 1980, p. 28.

(2) OJ No L 228, 13. 8. 1981, p. 14.

(3) OJ No L 110, 23. 4. 1985, p. 5.

Since that last clause does not apply to Italy, no regional aid may be paid to a steel firm located within its territory. The fact that Sardinia may have special geographic or socio-economic features does not justify granting such aid to one of its steel firms.

Article 3 of Decision No 3484/85/ECSC only authorizes environmental protection aid for bringing into line with new statutory environmental standards plants which entered into service at least two years before the introduction of those standards. Any other forms of environmental aid are excluded from the exemption in this Article and may not therefore legally be granted to an ECSC steel undertaking.

The aid objected to involved the granting to FAS in 1987 of Lit 100 (ECU 0,06) per kilogram of scrap collected in the island and reutilized by it. FAS, however, was already producing steel from scrap in an electric furnace, 'scrap steelmaking' competing with 'pig-iron steelmaking' and not resulting in any particular environmental improvement. The aid in fact encouraged FAS to obtain its raw material in the island rather than import it. It meant a substantial reduction in its operating costs in relation to the average price of 'heavy' scrap on the Italian market (Lit 112 to 130 per kilogram in 1987 and Lit 141,5 per kilogram in early 1991). Lastly, it was not reflected in expenditure aimed at bringing the company's plant into line with new environmental protection standards. It does not therefore satisfy the tests of the abovementioned Article 3 and does not qualify for exemption.

In addition, it does not qualify for any of the other exemptions provided for in Decision No 3484/85/ECSC and incorporated again in Decision No 322/89/ECSC and is consequently caught by the ban in Article 4 (c) of the ECSC Treaty.

#### IV

The exemptions from the basic prohibition of aid to the steel industry laid down in Article 4 (c) of the ECSC Treaty are in no way designed to relax the discipline imposed by the Community on such aid and intended to prevent the serious distortions of competition which might be caused by aid that was incompatible with the common market in an industry which, despite recent restructuring, remains sensitive. Strict compliance with this Community discipline must therefore be ensured, and this means that aid to a steel firm may be authorized only after the Commission has been able to check that the conditions spelt out in

exhaustive fashion in the aid code have effectively been met.

It is clear from the foregoing that these conditions have not been met since part of the aid was granted without being notified in advance to the Commission contrary to Article 6 (1) of Decision No 3484/85/ECSC and since the aid does not qualify for any of the exemptions available under that Decision. In view of the fact that the arguments advanced by the Italian authorities have not included the Commission to change the assessment it made when it initiated the procedure, the aid in question must be considered incompatible with the common market,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The aid of Lit 1,796 billion (approximately ECU 1,17 million) granted in 1987 by the Autonomous Region of Sardinia to Ferriere Acciaierie Sarde pursuant to Regional Law No 41 of 14 September 1987 is illegal State aid as it was granted without prior authorization from the Commission and is also incompatible with the common market.

The aid in question shall be withdrawn through recovery.

#### *Article 2*

The Italian authorities shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply herewith.

#### *Article 3*

This Decision is addressed to the Italian Republic.

Done at Brussels, 5 June 1991.

*For the Commission*

Leon BRITTAN

*Vice-President*