

COMMISSION DECISION

of 21 December 1994

concerning aid to be granted by Germany to the steel company EKO Stahl GmbH,
Eisenhüttenstadt

(Only the German text is authentic)

(Text with EEA relevance)

(94/1075/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

After consulting the Consultative Committee and with the unanimous assent of the Council,

Whereas:

I

In April 1994, the Commission authorized aid of up to DM 813 million pursuant to Article 95 of the ECSC Treaty, notified by Germany in November 1993, to support the restructuring and privatization of EKO Stahl AG under a plan designed in cooperation with the Italian Riva group. In May 1994 the Riva group withdrew from the privatization contract.

II

In October 1994, Germany notified the Commission of a new plan to restructure and partly privatize EKO Stahl GmbH.

The company, situated in the Land of Brandenburg, in the territory of the former German Democratic Republic, had been founded after the Second World War as a 'Kombinat' under the socialist economic system then prevailing in that territory. After German unification in 1990 it became a public company (Aktiengesellschaft). The corporate form of EKO Stahl Aktiengesellschaft was changed into Gesellschaft mit beschränkter Haftung (GmbH, private limited company) in June 1994. The only shareholder is the Treuhandanstalt (hereinafter referred to as 'the THA'), a public entity acting as a holding company for the former State-held companies of the former German Democratic Republic.

The notification of the aid linked to the restructuring plan, submitted on 10 October 1994 and revised on 13, 19 and 20 October 1994, provides for the purchase of 60 % of the shares by the Belgian steel company Cockerill Sambre SA, through a holding created for this

purpose, by 1 January 1995. The purchaser may buy the remaining 40 % of the shares at any time and will be under contractual obligation to take over the remaining shares after 31 December 1999 on demand from the THA. The purchase price will be established by an independent expert on the basis of the earning capacity value but will not exceed DM 40 million.

The decision to sell the majority of shares to Cockerill Sambre SA was taken after a general and unconditional bidding procedure which was closed in September 1994. After an in-depth examination of the six bids received, the THA concluded that Cockerill Sambre SA had made the best offer. Germany submitted the comparison of the offers prepared by the THA and some additional information concerning the evaluation of the different proposals.

The restructuring concept envisages the installation of a new blast furnace with a capacity of 1,5 million t/y, the modernization of the sintering and cold-rolling facilities and the power station without changing their current capacities, some repairs in the sintering and crude steel facilities and the installation of a new hot-wide-strip mill with a capacity of 1,5 million t/y to close the existing technological gap in the production flow which has been covered so far by expensive hiring of hot-rolling capacity elsewhere. The capacity of this mill will be limited to 900 kt/y during a period of five years after the last closure or the last payment of aid to investment under the restructuring plan. Some of the existing blast furnaces will be dismantled after the new furnace becomes fully operational. The pig iron capacity will thereby be limited to 1,9 million t/y.

The proposed investments, totalling DM 1 300 million, amount to DM 282 million for the new blast furnace, DM 27 million for the sintering facilities, DM 671 million for the hot-wide-strip mill, DM 308 million for the cold-rolling mill and DM 12 million for the power station. The investment of DM 1 100 million will have to be carried out after 1 January 1995. DM 200 million had already been spent by the end of 1994 for the modernization of the cold-rolling facilities.

The THA will cover DM 275 million of the investments and the expenses of DM 39 million for repairs. It will

further grant a guarantee to cover a DM 60 million investment loan from a consortium of banks. EKO Stahl GmbH/Cockerill Sambre SA will have to cover DM 440 million of the total investments to be carried out after 1 January 1995. It will have to pay back the DM 60 million investment loan covered by a guarantee of the THA and an investment loan of DM 140 million granted by a consortium of banks without such State guarantees. These loans have been used for the modernization of the cold-rolling facilities carried out before privatization. DM 385 million of the investments would be covered by investment aid under general regional investment aid schemes.

The THA would write off shareholders' loans of DM 362,6 million to cover partly the losses accumulated until privatization. Remaining loans amounting to DM 90 million will be granted as shareholders' loans of the THA on the basis of a new contract on market terms. To cover future losses until the completion of the restructuring, the THA would contribute a maximum of DM 220 million. This amount will be made available to the company at the date of privatization and may be used to cover annual losses of up to DM 100 million but not more than DM 220 million in total during the period 1995 to the end of 1997. Losses connected with the payment of the purchase price for the hot-rolling mill in Hennigsdorf (see below) will not be taken into account for the limitation of the annual losses. Interest received before using the down payment in line with the contractual provisions must be paid to the THA.

The plan envisages employment reductions of some 650 persons from 2 850 in September 1994 to 2 200 in 1999, i. e. a reduction of 22,8 %. The total employment reduction since end of 1989 (11 510 workers) amounts to 9 310 workers, i. e. a reduction of 80,8 %.

Germany notified the Commission of the intention of EKO Stahl GmbH to purchase, for a purchase price of DM 20 million, a medium section mill with a capacity of 320 kt/y belonging to HES Hennigsdorfer Elektrostahlwerke GmbH (Hennigsdorf/Brandenburg) and to close it down before the end of 1994. Furthermore, Germany informed the Commission that Walzwerk Burg GmbH (Burg/Sachsen-Anhalt) will close down a special steel plate mill with a capacity of 41 kt/y before the end of 1994. This additional capacity reduction is offered to reduce the distortive effect of the aid linked to the restructuring plan for EKO Stahl GmbH.

The Commission, in its assessment of the restructuring plan, identified total aid of DM 900,62 million involved

that is incompatible with the ECSC Treaty and Commission Decision No 3855/91/ECSC ⁽¹⁾ (Steel Aids Code, hereinafter referred to as 'the SAC'). DM 385 million of aid may be deemed compatible with the orderly functioning of the common market pursuant to the third indent of Article 5 of the SAC, which allows investment aid under general regional aid schemes to be granted to the steel undertakings in the territory of the former German Democratic Republic, provided that the aid is accompanied by a reduction in the overall capacity in that territory. This aid will be dealt with separately.

III

The restructuring plan drafted by the purchaser and the THA is designed to secure the viability of EKO Stahl GmbH by the end of 1997. The present plan is based on the preparedness of an investor, experienced in the steel sector, to risk a considerable amount of own capital. An independent consultant, charged by the Commission and Germany to evaluate the prospects of EKO Stahl GmbH, has clearly stated that the company could reach long-term viability only by the creation of its own hot-rolling capacities. The investor, chosen after an open and unconditional bidding procedure, has demonstrated his willingness to assume the risk for the company's future viability without further aid than that covered by the restructuring plan.

IV

The extremely difficult Community steel market situation has endangered the sector in several Member States, including Germany. The aim of providing EKO Stahl GmbH with a sound and economically viable structure contributes towards the achievement of the objectives of the ECSC Treaty, in particular Articles 2 and 3. The Commission considers that the public financial assistance measures proposed by Germany are necessary to achieve these aims. The Commission therefore finds itself faced with a situation not specifically provided for in the Treaty. In these exceptional circumstances recourse must be had to the first paragraph of Article 95 of the Treaty, so as to enable the Community to pursue the objectives set out in Articles 2 and 3 thereof.

At the same time, however, it is essential to ensure that the aid approved is limited to what is absolutely necessary and that it does not adversely affect trading conditions within the Community to an extent contrary to the common interest, particularly given the current difficulties on the Community steel market. It is therefore important that there should be adequate counterpart measures, commensurate with the amount of aid being exceptionally approved, so that a major contribution is

⁽¹⁾ OJ No L 362, 31. 12. 1991, p. 57.

made to the structural adjustment required in the sector.

V

The restructuring plan provides for the creation of a new hot-wide-strip mill with a capacity of 1,5 million t/y, limited to a capacity of 900 kt/y during a period of five years, while no reduction of hot-rolled finished products at EKO Stahl GmbH itself is possible. The new hot-rolling facilities are considered to be necessary for the long-term viability of the company, because the existing gap in the production flow causes an uneconomic competitive disadvantage.

However, account should be taken of the fact that the conditions applied during the steel restructuring round in the Community during the first half of the 1980s and in favour of the Spanish and Portuguese steel industry after the accession of those countries to the Community did allow for global territorial capacity reductions as counterpart for the aid proposed.

Compared to the steel industry in both the Community of 10 and in Spain and Portugal, the steel sector in the former German Democratic Republic, which at the time of entry was grouped in one single State holding, was, due to the structural shortcomings of the planned economy system at its entry into the Community, in a particularly uncompetitive situation. In view of the first-time character of the restructuring of the steel industry in the five new German Länder, it is only fair to allow for a similar accounting of global territorial capacity reduction in this case.

Including the initial increase in hot-rolling capacity of 900 kt/y in Eisenhüttenstadt as part of the proposed restructuring plan, the committed capacity reduction to be carried out in Hennigsdorf and Burg and taking into account the minimum overall capacity reductions in the former German Democratic Republic necessary to balance regional aid pursuant to Article 5 of the SAC for East German steel undertakings in general and aid in favour of Sächsische Edelstahlwerke GmbH Freital, the remaining capacity reduction available to balance aid in favour of EKO Stahl on the basis of the aforementioned considerations would be in the order of 503 kt/y.

This net global capacity reduction in hot-rolled finished products constitutes a reasonable contribution to reduce the distortive effect of the aid involved. However, in order to ensure that the capacity creation would have the minimum possible impact on the depressed steel market in the Community, it is necessary to impose a number of conditions. The production of the new mill is to be built up to reach its initial capacity of 900 kt/y only after three years starting at the beginning of 1995. The capacity of

the new mill shall be retained at 900 kt/y for a period of at least five years following the date of the last closure, or, if later, following the last payment of investment aid under the present plan. It shall be limited at 1,5 million t/y for another five-year period. During the first five-year period the hot-rolled coils produced by the new mill shall be used exclusively for further processing in the company's cold-rolling facilities.

It is essential that the global closure offered by Germany is definitive and irreversible so that the capacity concerned no longer depresses the Community steel market. The closed installations must therefore be scrapped or sold for use outside Europe.

VI

It is not only necessary to ensure during the whole restructuring period that the aid approved enables the company to return to viability by the end of 1997, the aid must also be kept to the amount strictly necessary. In that context, it must also be ensured that the company does not, as a result of the financial restructuring measures, obtain an unfair advantage over other companies in the sector by being provided at the outset with net financial charges below 3,5 % of annual turnover, which is the current average for Community steel companies. It is also necessary to require that the company is not allowed to claim or be granted tax reduction or relief on past or future losses covered by aid. Furthermore, any additional loans must be on normal commercial conditions and no preferential treatment accorded to any fresh public debts incurred. Investment aid shall be granted only up to the actual individual investment costs necessary to carry out the restructuring plan as it has been submitted to the Commission. If the investment to carry out the restructuring plan as it has been submitted to the Commission. If the investment costs are lower than initially estimated, the investment aid must be reduced accordingly.

VII

The implementation of this Decision requires strict monitoring by the Commission during the whole restructuring period and up to the end of 1999.

In order to carry out this monitoring effectively, the Commission will require the full and close collaboration of Germany, on whom clear and strict reporting obligations will be imposed.

In particular the following elements will require close attention:

- compliance with the obligation to close hot-rolling capacity in Hennigsdorf and Burg,

- compliance with the obligations concerning the capacity limitation of the new hot-rolling facilities of EKO Stahl and the use of the products produced at those installations,
- progress towards economic viability,
- the granting of aid under the present restructuring plan and the source, terms and conditions of any further financing,
- the investments carried out,
- reductions in the workforce,
- production and the effects on the market,
- financial performance.

The Commission will submit six-monthly reports to the Council to keep it informed of developments.

It is also necessary to ensure that the aid is not used for the purpose of unfair competition practices. In addition, the Commission may require on-the-spot checks made in accordance with the Article 47 of the ECSC Treaty, in order to verify the information provided and in particular compliance with the conditions attached to the authorization of the aid. In that context, should a Member State make a complaint to the Commission that State aid is enabling the company to underprice, the Commission will initiate an investigation, in particular pursuant to Article 60 of the ECSC Treaty.

Furthermore, should the Commission, on the basis of the information provided, find that the conditions laid down in its decisions pursuant to Article 95 have not been met, it may require the suspension of payments of aid or the recovery of aid already paid. In the event of a Member State's failing to comply with that decision Article 88 of the ECSC Treaty will apply.

The Commission may, if necessary, decide that all reports should be on a quarterly basis. It may also decide to mandate an independent consultant, with the agreement of Germany, to assist it in its monitoring task.

The Commission will, by exercising all its powers, ensure that the aided company fulfils the conditions of this Decision, including the necessary progress towards viability and its other obligations resulting from the application of the ECSC Treaty. Should the monitoring reports indicate substantial deviations from the financial data on which the viability assessment has been made, the Commission may require appropriate measures to be taken to reinforce the restructuring measures.

VIII

A decision pursuant to Article 95 of the ECSC Treaty to authorize State aid is extraordinary in character given the

provisions of point (c) of Article 4. In view of all the above, the Commission can exceptionally authorize the aid proposed in this case subject to compliance with the conditions and requirements it lays down. However, the aid approved, which is intended to restore the company to viability by the end of 1997, should be regarded as final. Should a return to viability not be achieved by that date, Germany shall not request any further derogation pursuant to Article 95 for the company,

HAS ADOPTED THIS DECISION:

Article 1

1. The following maximum amounts of aid which Germany plans to grant to EKO Stahl GmbH may be regarded as compatible with the orderly functioning of the common market provided that the conditions and requirements of Articles 2 to 6 are met:

- compensation for losses accumulated since 1 July 1990 until the privatization of the company of DM 362,6 million,
- compensation for future losses during the restructuring phase until the end of 1997 of DM 220 million,
- investment aid (beyond that which may already be deemed compatible with the common market according to the third indent of Article 5 of Decision No 3855/91/ECSC) of DM 275 million,
- contribution to cover the cost of repairs of DM 39 million,
- a guarantee granted by the Treuhandanstalt covering a DM 60 million investment loan granted by a consortium of private and public banks, representing an aid element of DM 4,02 million.

2. The compensation for future losses shall be limited to DM 100 million per year and shall not exceed DM 220 million for the period between 1995 and 1997. The purchase price to be paid by EKO Stahl GmbH for the purchase of the hot-rolling mill in Hennigsdorf shall not be taken into account for the limitation of the annual losses to be covered.

3. The guarantee of the Treuhandanstalt covering a DM 60 million investment loan, granted by a consortium of banks on market terms, shall be limited to three years and subject to the payment of a six-monthly premium of 0,25 %.

4. Germany shall ensure that the total aid granted pursuant to Article 95 of the ECSC Treaty and Decision

No 3855/91/ECSC for the total EKO Stahl GmbH restructuring plan under no circumstances exceeds an overall intensity of 70 % and that the investment aid is being allocated precisely to the individual investment costs.

5. The aid has been calculated so as to enable the company to return to viability by the end of 1997. In the case that such viability is not attained by that date, Germany shall not request any further derogation pursuant to Article 95 of the ECSC Treaty for this company.

6. The aid shall not be used for the purpose of unfair competition practices.

7. Without prejudice to the aid measures under the restructuring plan referred to in paragraphs 1 to 6, any loans to the company must be on normal commercial terms, and the beneficiary company must not receive debt holidays or friendly treatment of debts to the State. Liabilities in the form of loans which have been provided or guaranteed by the Treuhandanstalt, shall remain an integral element of the cost of EKO Stahl GmbH for its new owner and shall not be reduced or eliminated other than in accordance with German laws or regulations generally applicable to privately-owned companies situated in Germany.

Article 2

Production at the new hot-wide-strip mill is to be built up to reach a capacity of 900 kt/y only after three years starting at the beginning of 1995.

The capacity limitation at 900 kt/y shall be retained throughout a period of five years following the date of the last closure, or, if later, following the last payment of aid to investment under the current restructuring plan.

Upon the expiry of the aforementioned five-year period another five-year period will start to run, during which the production capacity for hot-wide-strip at EKO Stahl GmbH shall be limited to 1,5 million t/y.

During the first five-year period of capacity limitation Germany shall ensure that the hot-rolled steel capacity to be established at EKO Stahl GmbH will be utilized by the present and future owners exclusively for further processing in EKO Stahl's cold-rolling facilities.

Germany shall ensure that the aid approved pursuant to this Decision is not used to increase the present steel production capacities of EKO Stahl GmbH beyond the planned installation of hot-wide-strip mill bottlenecked at 900 kt/y. There shall be no increase in capacity remaining under the aided restructuring plan, other than resulting from productivity improvements, for a period of five years starting from the date of the last closure, or of the last payment of investment aid under the current restructuring plan, whichever is the later.

Article 3

1. The following definitive closures of production facilities shall be carried out:

- the medium section strip mill No 450 at HES Hennigsdorfer Elektrostahlwerke GmbH, Hennigsdorf/Brandenburg, with a capacity of 320 kt/y shall be closed down by 31 January 1995 at the latest. The closure must be definitive and irreversible,
- the special steel plates mill at Walzwerk Burg GmbH, Burg/Sachsen-Anhalt, with a capacity of 41 kt/y shall be closed down by 31 January 1995 at the latest. The closure must be definitive and irreversible,
- the definitive and irreversible reduction in hot-rolling capacity in the former German Democratic Republic between 1 July 1990 and 31 December 1996, excluding the capacity closures in Hennigsdorf and Burg, excluding the closures needed to reduce the distortive effect of aid approved for Sächsische Edelstahlwerke GmbH, Freital/Sachsen pursuant to Article 95 of the ECSC Treaty and taking into account the new capacity provided for under the restructuring plan for EKO Stahl GmbH, shall amount to at least 10 % of the initial capacity in hot-rolled finished products in the territory of the former German Democratic Republic on 1 July 1990, needed to balance derogations pursuant to Article 5 of Decision No 3855/91/ECSC.

2. The finality of the closures shall be ensured either by the demolition of the installations concerned or by their disposal by sale outside Europe.

Article 4

The approval of the aid set out in Article 1 is, in addition, subject to the following conditions:

1. the level of net financial charges of EKO Stahl GmbH shall be at least 3,5 % of annual turnover, at the date of its 60 % privatization;
2. the company or its legal successor shall not claim or be granted tax reduction or relief on the basis of past losses accumulated until privatization and of future losses when these are being covered by State aid;
3. the beneficiary company shall carry out all the restructuring measures laid down in the restructuring

plan as it has been submitted to the Commission, in accordance with the timetable contained therein.

Article 5

1. Germany shall cooperate fully with the following arrangements for monitoring this Decision:

- (a) Germany shall supply the Commission twice a year, and not later than 15 March and 15 September respectively, with reports containing full information in accordance with the Annex, on the beneficiary company and its restructuring. The first report shall reach the Commission by 15 March 1995 and the last report by 15 September 2000 unless the Commission decides otherwise;
- (b) the reports shall contain full information to enable the Commission to monitor the restructuring process and the creation and use of capacity and show sufficient financial data to allow the Commission to assess whether its conditions are fulfilled. The reports shall at least contain full information in accordance with the Annex, which the Commission reserves the right to modify in line with its experiences during the monitoring process. It is up to Germany to oblige the beneficiary company to disclose all relevant data which may, under other circumstances, be considered confidential.

2. The Commission shall, on the basis of these reports, draw up half-yearly reports which are to be submitted to the Council not later than 1 May and 1 November respectively, in order to allow discussion in the Council if appropriate. If the beneficiary company envisages investments creating or extending capacity the Commission shall inform the Council on the basis of a report presenting the financing arrangements and demonstrating the absence of State aid.

Article 6

1. The Commission may at any time decide that the reports referred to in point (a) of Article 5 (1) shall be on a quarterly basis if it deems such necessary to fulfil its monitoring tasks. The Commission may, at any time, decide to mandate an independent consultant, selected with the agreement of Germany, to evaluate the monitoring results, to undertake any research necessary and to report to the Council.

2. The Commission may have any necessary checks made in the aided company in accordance with Article 47 of the ECSC Treaty in order to verify the accuracy of the

information given in the reports referred to in point (a) of Article 5 (1) and in particular compliance with the conditions laid down in this Decision. In the case that a Member State makes a complaint that State aid is enabling the aided company to under-price, the Commission shall initiate an investigation, in particular pursuant to Article 60 of the ECSC Treaty.

3. In assessing the reports referred to in point (a) of Article 5 (1), the Commission shall ensure that the requirements of Article 1 (7), in particular, are being respected.

Article 7

1. Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may, at any time, require the suspension of payments of aid or the recovery of aid already paid if, on the basis of the information received, it finds that the conditions laid down in this Decision are not being met. If Germany were to fail to fulfil its obligations under any such decision, Article 88 of the ECSC Treaty shall apply.

2. If the Commission establishes, on the basis of the reports referred to in point (a) of Article 5 (1), that substantial deviations from the financial data, on which the viability assessment has been made, have occurred, it may require Germany to take appropriate measures to reinforce the restructuring measures of the aided company.

Article 8

Commission Decision No 94/256/ECSC ⁽¹⁾ is rescinded.

Article 9

This decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 December 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽¹⁾ OJ No L 112, 3. 5. 1994, p. 45.