

COMMISSION DECISION

of 14 July 1998

on guarantees granted to Eisen- und Stahlwalzwerke Rötzel GmbH

(notified under document number C(1998) 2369)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/196/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular point (c) of Article 4 thereof,

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 thereof,

After giving notice to the parties concerned to submit their comments,

Whereas:

I

By letter dated 12 August 1997, the Commission informed the German Government of its decision to initiate the procedure under Article 6(5) of Decision No 2496/96/ECSC (hereinafter referred to as the 'Steel Aid Code') in respect of an 80 % deficiency guarantee granted by the *Land* of North Rhine-Westphalia to Eisen- und Stahlwalzwerke Rötzel GmbH ('Rötzel').

On 25 April 1995 the *Land* of North Rhine-Westphalia granted an 80 % deficiency guarantee to Rötzel to cover a bank credit amounting to DEM 15 million. The guarantee was granted on the basis of an approved guarantee scheme of the *Land* (N 155/88; letter of 9 June 1988, SG(88) D/6814). Approval was given only under the EC Treaty and not under the ECSC Treaty. It was also conditional in the sense that individual cases in sensitive sectors such as steel had to be notified individually. No notification of aid was made in this case.

The credit and the deficiency guarantee were designed to support the restructuring plan of the company. Rötzel manufactures hot-rolled strip, cold-rolled strip and some profiled/alloyed products as its plant in Nettetal. Its hot-rolling production capacity is 54 000 t/year. The company

produces some 50 000 t/year of steel products in total, of which 30 000 t are hot-rolled and 20 000 t cold-rolled products. Approximately half of its hot-rolled production is consumed internally. Rötzel employs 170 people, of whom 95 are engaged in the production of cold-rolled products and 35 in the production of hot-rolled products.

In the period 1950-1993 the company also operated a plant in Dinslaken with a hot-rolling capacity of 264 000 t/year. On account of market conditions the annual production of hot-rolled products decreased in the period 1976-1994, and Rötzel expanded its cold-rolling facilities in Nettetal, at an investment cost of some DEM 20 million. In the 1990s the situation worsened and Rötzel decided to close its plant in Dinslaken. The German Government puts the costs of closure at DEM 10,5 million. The production capacity of 264 000 t/year of hot-rolled products was dismantled. The closure of such a large part of the company prompted some restructuring that led to the reopening of hot-rolling mill No IV in Nettetal.

The restructuring costs of the company following the closure of Dinslaken necessitated the sale of real estate and required in its last phase the abovementioned bank credit of DEM 15 million. The credit was secured for an amount of DEM 5 million by the two shareholders and as to 80 % by the *Land* of North Rhine-Westphalia in the form of a deficiency guarantee. According to the German Government, the investments did not concern the hot-rolling facilities in Nettetal.

Rötzel's products are covered by two different Treaties, the EC Treaty and the ECSC Treaty. Its hot-rolled products fall under the ECSC Treaty. When initiating the procedure, the Commission argued that, since Rötzel is an undertaking engaged in production in the steel industry, it is caught by Article 80 of the ECSC Treaty and by the State aid rules set out in that Treaty. Although the aforementioned guarantee might have been granted only in

⁽¹⁾ OJ L 338, 28. 12. 1996, p. 42.

respect of a bank credit for investment in the cold-rolling production facilities, as is claimed by the German Government, the restructuring of Rötzel, of which the investment formed part, also entailed the reopening of hot-rolled production facilities. Furthermore, there is a risk that the effects of the guarantee may spill over to the ECSC steel-making sector since the degree of integration of the cold-rolling activities with the ECSC activities is significant as both activities are combined in a single company.

Since, the *Land* of North Rhine-Westphalia undertook a degree of risk in guaranteeing the bank credit without charging a risk premium, the Commission considered that it was not acting in accordance with the private-investor principle. Consequently, it regarded the guarantee as State aid.

Point (c) of Article 4 of the ECSC Treaty recognises as incompatible with the common market subsidies or aids granted by States in any form whatsoever. Exceptions to this rule are to be found in the Steel Aid Code, adopted on the basis of Article 95 of the ECSC Treaty.

When initiating the procedure, the Commission had serious doubts whether the State aid was compatible with the common market since none of the exemptions laid down in the Steel Aid Code seemed to apply. It took the view, therefore, that the guarantee was caught by the prohibition laid down in Article 4(c) of the ECSC Treaty.

Accordingly, the Commission decided to initiate the procedure provided for in Article 6(5) of the Steel Aid Code.

II

The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities*⁽¹⁾. It called on other Member States and interested parties to submit their comments on the matter.

The UK Steel Association submitted its comments on 18 November 1997, stating that, although it disagreed with the view that all State aid paid to a company involved in either ECSC or non-ECSC activities should automatically be subject to ECSC rules regardless of the use to which the aid was put, the fact that Rötzel's activities are fully integrated at a single site justifies the approach adopted by the Commission in this case. The Commission communicated the Association's comments to the German Government by letter dated 10 December 1997 so as to give it the opportunity to reply.

By letter dated 24 February 1998, the German Government gave its reaction to the opening of the procedure and to the comments made by the UK Steel Association. It confirmed that on 18 May 1995 a deficiency guarantee

had been granted to Rötzel for 80 % of a bank credit of DEM 15 million comprising:

- (a) a DEM 2,5 million redeemable loan for investment purposes
- (b) a DEM 4,5 million redeemable loan for operating purposes
- (c) a DEM 8 million credit line for operating purposes.

The guarantee has been taken up, since Rötzel has now gone into liquidation. The *Land* authorities have already managed to reduce some of their loss, although at this stage the future situation regarding the guarantee cannot be determined since the bankruptcy proceedings will be completed by the end of 1998 at the earliest.

III

Point (c) of Article 4 of the ECSC Treaty states that subsidies or aids granted by States are recognised as incompatible with the common market and must accordingly be abolished and prohibited within the Community. The only exemptions from this prohibition are spelt out in the Steel Aid Code. They are:

- (a) aid for research and development
- (b) aid for environmental protection
- (c) aid for closures.

Germany has not relied on any of these exemptions in this case.

Nor has Germany contested the argument rehearsed in the decision initiating the procedure, to the effect that the guarantee constitutes State aid since the *Land* authorities assumed a risk without charging a risk premium. The Commission takes the view that the State aid involved is equivalent to the full amount guaranteed. The closure of the Dinslaken plant and the continuing need to restructure the Nettetal facilities indicate that Rötzel was already encountering difficulties when the guarantee was granted. The DEM 15 million credit was necessary for the restructuring of Rötzel and, to that extent, was of vital importance to the company. Given the difficulties facing the company, it is extremely unlikely that the credit would have been granted without a State guarantee. Thus, the State aid involved amounts to DEM 12 million (80 % of DEM 15 million).

In addition, the Commission considers that, in view of the degree of integration between ECSC and non-ECSC activities, the guarantee must be assessed in accordance with the provisions of the ECSC Treaty and the Steel Aid Code. The German authorities have not provided any information that would permit a breakdown of the costs by sector of activity. The Commission possesses information indicating that the restructuring led to the reopening of a hot-rolling facility which falls within the scope of the

⁽¹⁾ OJ C 328, 30. 10. 1997, p. 11.

ECSC Treaty. It also notes that the bank credit in fact covers DEM 12,5 million for operating purposes and only DEM 2,5 million for investment purposes. Since it is impossible to distinguish clearly between the operating costs arising in the production sectors covered by the two Treaties, the Commission is obliged to examine the guarantee in the light of the ECSC Treaty. The UK Steel Association supports this view and the German authorities have not contested the approach in the course of the procedure.

The Commission, therefore, concludes that the guarantee constitutes State aid which falls under the ECSC Treaty and is in breach of point (c) of Article 4 of that Treaty. For the rest, none of the exemptions laid down in the Steel Aid Code is applicable in this case,

HAS ADOPTED THIS DECISION:

Article 1

The aid in the form of an 80 % guarantee granted by the *Land* of North Rhine-Westphalia in respect of a bank credit of DEM 15 million for Eisen- und Stahlwalzwerke Rötzel GmbH in Nettetal is unlawful since it was not notified in advance. Furthermore, it is incompatible with the common market for coal and steel under point (c) of Article 4 of the ECSC Treaty.

Article 2

Germany shall, in accordance with the provisions of German law relating to the recovery of amounts owed to the State, recover the DEM 12 million which is the full amount guaranteed in favour of Eisen- und Stahlwalzwerke Rötzel GmbH in Nettetal. In order to nullify the effects of the aid, interest shall be charged on that amount from the date on which the aid was granted to the date on which it is repaid. The rate of interest shall be that applied by the Commission in calculating the net grant equivalent of regional aid during the period in question.

Article 3

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

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission