II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 12 April 1994

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

(Only the Germany text is authentic)

(94/256/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

The Community steel industry is currently experiencing its most difficult period since the first half of the 1980s. This is due to the general slowdown in the economy, which has had significant effect on industrial activities in general, and on the steel industry in particular, leading to a serious imbalance between supply and demand, accompanied by a collapse in prices. In addition, the international market generally has been weak : there is pressure from imports and there has been a trade dispute with the United States of America affecting substantial Community exports to that market. All of these factors have combined to aggravate the financial situation of almost all steel companies in the Community.

II

In November 1993, Company notified the Commission of a plan to restructure and partly privatize the steel company EKO Stahl AG, Eisenhüttenstadt.

This company, situated in the *Land* of Brandenburg, in the territory of the former German Democratic Republic (hereinafter referred to as 'the former GDR'), 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 only shareholder is the Treunhandanstalt (hereinafter referred to as 'the THA'), a public entity acting as a holding company for the former State-held companies of the former GDR.

The restructuring plan submitted on 4 November 1993 and revised on 12 November 1993 provides for a change of corporate form of EKO Stahl from a public company into a private limited company (Gesellschaft mit beschränkter Haftung) and the purchase of 60 % of the shares by the Italian Riva group. The purchaser will be under contractual obligation to take over the remaining shares on the basis of the earning capacity value in April to June 1999 on demand of the THA.

The decision to sell the majority of shares to Riva was taken after a general and unconditional bidding procedure which has been closed in October 1993. After an in-depth examination of the three bids received, the THA concluded that the Riva group had made the best offer. Germany submitted the comparison ofthe offers prepared by the THA and some additional information concerning the evaluation of the different proposals.

The restructuring concept envisages the modernization of the existing pig iron, crude steel, cold-rolling and re-treatment facilities without changing their current capacities and the installation of a new hot-wide-strip mill with a capacity of 900 kt/y tgo close the existing technological gap in the production flow which has been covered so far by expensive hire-rolling elsewhere. The existing installation for cutting hot wide coils into narrow strips will be closed.

The investments intended amount to DM 280 million for the pig iron facilities, DM 150 million for the crude steel facilities, DM 400 million for the hot-rolling facilities. Riva would cover DM 450 million of the total investment, the THA would cover DM 350 million and DM 300 million would be covered by investment aid under general regional aid schemes.

The THA would contribute DM 163 million to cover losses until privatization. To cover future losses until the completion of the restructuring, the THA accepted a negative purchase price of DM 180 million, which will be paid to Riva and immediately injected into the equity of the new private limited company, and a capital injection of DM 120 million. Riva would contribute DM 30 million to cover losses during the restructuring phase.

The plan envisages employment reductions of some 1 600 persons from 3 500 in 1993 to 1 900 in 1996, i.e. a reduction of 45,7 %. The total employment reduction since end of 1989 (11 510 workers) amounts to 9 610 workers, i.e. a reduction of 83,5 %.

In addition, Germany notified the Commission of the intention of the Riva group to close down of its hot-rolling facilities in the territory of the former GDR, a medium-section mill with a capacity of 320 kt/y belonging to HES Hennigsdorfer Elektrostahlwerke GmbH (Hennigsdorf/Brandenburg).

The Commission, in its assessment of the restructuring concept identified total aid of DM 813 million involved that is incompatible with the ECSC Treaty and Commission Decision No 3855/91/ECSC [1] (Steel Aid Code, hereinafter referred to as 'the SAC'). DM 300 million of aid may be deemed compatible with the orderly functioning of the common market under the third indent of Article 5 of the SAC, which allows investment aid under general regional aid schemes to be granted to steel undertakings in the territory of the former GDR, provided the aid is accompanied by a reduction in the overall capacity in that territory. This aid will be dealt with separately.

III

The restructuring concept drafted by the purchaser and the THA is designed to achieve viability of EKO Stahl by the end of 1997. In addition, the present plan is based on the willingness of a private investor, experienced in the steel sector, to risk a considerable amount of private capital. An independent consultant, charged by the Commission in cooperation with Germany to evaluate the prospects of EKO Stahl, has clearly stated, that the company could reach long-term viability only by the creation of 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 concept.

IV

The extremely difficult Community steel market situation has endangered the sector in several Member States, including Germany. The aim providing EKO Stahl 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 the initial Articles thereof.

At the same time, however, is 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 made to the structural adjustment required in the sector.

(1) OJ No L 362, 31. 12. 1991, p. 57.

V

The proposed restructuring plan provides for the creation of a new hot-wide-strip mill with a capacity of 900 kt/y while no reduction of hot-rolled finished products at EKO Stahl 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, it should be taken into account 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.

Considering both that, compared to the steel industry in both the Community of 10 and that of Spain and Portugal, the steel sector in the former GDR was, due to the structural shortcomings of the planned economy system at its entry into the Community, in a particularly uncompetitive situation and the first-time-character of the restructuring of the steel industry in the five new German *Länder*, it is equitable to allow for a similar accounting of global territorial capacity reduction in this case.

Including the increase in hot-rolling capacity of 900 kg/y in Eisenhüttenstadt as part of the proposed restructuring plan, the committed capacity reduction to be carried out in Henningsdorf and taking into account the overall capacity reductions in the former GDR necessary to balance regional aid under Article 5 of the SAC for steel undertakings in the territory of the former GDR and aid in favour of Sächsische Edelstahlwerke GmbH, Freital/Sachsen, the remaining capacity reduction available to balance aid in favour of EKO Stahl on the basis of the aforementioned considerations amounts to 462 kt/y.

This net global capacity reduction in hot-rolled finished products constitutes a reasonable contributing to reduce the distortive effect of the aid involved. However, in order to ensure than 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 capacity of 900 kt/y only after three years, starting in 1994. 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 closuree, or, if this will be later, the last payment of investment aid under the present plan. It shall be limited significantly below two m t/y for a further 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 199, 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 appropriate to require that the company or its legal successor is not allowed to claim or be granted tax reduction or relief on past 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 real individual investments costs necessary 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 lowered accordingly.

VII

The implementation of this Decision requires strict monitoring by the Commission during the whole restructuring period and up until the end of 1998.

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 those hot-rolling capacity in Hennigsdorf,

— compliance with the obligations concerning the capacity limitations of the new hot-rolling facilities of EKO Stahl and the use of the products produced at these installations,

— progress towards 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 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 under Article 60 of the ECSC Treaty in particular.

Furthermore, should the Commission, on the basis of the information provided, find that the conditions laid down in its decision pursuant to Article 95 had 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 such decision, Article 88 of the ECSC Treaty shall apply.

The Commission may decide that all reports should be on a quarterly basis. It may also decide to mandate an independent consultant, selected 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 under Article 95 of the ECSC Treaty to authorize State aid is extraordinary in character given the provisions of Article 4 (c). In view of all the above, the Commission can exceptionally authorize the aid proposed in this case subject to observance of the conditions and requirements it lays down. However, the aid involved, 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 under Article 95 for the company,

HAS ADOPTED THIS DECISION:

Article 1

1. The following maximum amounts of aid which Germany plants to grant to EKO Stahl AG/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 of losses accumulated since 1 July 1990 until the privatization of the company of DM 163 million,

— compensation of future losses during the restructuring phase until the end of 1996 of DM 300 million,

— investment aid of DM 350 million.

2. Germany shall ensure that the total aid granted under Article 95 of the ECSC Treaty and Decision No 3855/91/ECSC for the total EKO Stahl restructuring plan under no circumstances exceed an overall intensity of 70 % and that the investment aid is being closely allocated to the individual investment costs.

3. The new owner of EKO Stahl shall not receive any supplementary aid support (but social aid under Decision No 3855/91/ECSC in connection with the related closure of its production facilities at Hennigsdorf.

4. The aid has been calculated 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 under Article 95 of the ECSC Treaty for this company.

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

6. Without prejudice to the aid measures referred to in this Article under the restructuring plan, 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.

Article 2

1. The new hot-wide-strip mill that is to be purchased by the new company shall be of a production capacity as close as possible to the maximum capacity of 900 000 t/y hot-wide-strip.

Germany shall demonstrate to the Commission, before the new mill is acquired, that the new company has fulfilled the aforementioned condition after due consideration is given to the availability on the market of such installations, second has as well as new.

If the mill agreed by the Commission were to have a technological capacity exceeding 900 000 t/y, a technological bottleneck shall be imposed on the new hot-wide-strip mill to limit its capacity to 900 000 t/y.

2. The production at the new hot-wide-strip mill is to be built up to reach its capacity of 900 kt/y only after three years, starting in 1994.

The capacity limitation will be retained throughout a period of five years following the date of the last closure, or the last payment of aid to investment under the present plan, whichever is the later.

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 shall be limited significantly below two 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 will be utilized by the present and future owners exclusively for further processing in EKO Stahl's cold-rolling facilities.

3. Germany shall ensure that the aid approved under this Decision is not used to increase the present steel production capacity of EKO Stahl beyond the planned installation of a 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 the last payment of aid to investment under the present concept, whichever is the later.

Article 3

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

— the medium-section-strip mill No 450 of HES Hennigsdorfer Elektrostahlwerke GmbH, Hennigsdorf/Brandenburg, with a capacity of 320 kg/y shall be closed down by 30 June 1994 at the latest. The closure must be definitive and irreversible,

— the definitive and irreversable reduction in hot-rolling capacity in the former German Democratic Republic between 1 July 1990 and 31 December 1996, including the capacity closure in Hennigsdorf, shall amount to 2 057 kt/y, including closures needed to balance derogations under Article 5 of Decision No 3855/91/ECSC and aid approved for Sächsische Edelstahlwerke GmbH, Freital/Sachsen under Article 95 of the ECSC Treaty, not taking into account the new capacity provided for under the restructuring plan for EKO Stahl.

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 aid as outlined in Article 1 is in addition subject to the following conditions:

1. the level of net financial charges of the new EKO Stahl GmbH will be set at least at 3,5 % of annual turnover, at the date of its privatization;

2. the company or its legal successor will 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 enclosed Annex, on the beneficiary company and its restructuring. The first report should reach the Commission by 15 March 1994 and the last report by 15 September 1998, unless the Commission decides otherwise;

(b) the reports shall contain full information necessary for the Commission to monitor the restructuring process, the creation and use of capacity and show sufficient financial data to allow the Commission to asses whether its conditions and requirements 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 as confidential.

2. The Commission shall, on the basis of the reports, draw up half-yearly reports which shall 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 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 givenin the reports referred to in 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 will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

3. In assessing the reports referred to in Article 5 (1), the Commission will ensure that the requirements of Article 1 (6), 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 require the suspension of payments of aid or the recovery of aid already paid if, on the basis of the information received, at any time it were to find that the conditions laid down in this Decision had not been met. If Germany were to fail to fulfil its obligations under any such decision, Article 88 of the ECSC Treaty shall apply.

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

Article 8

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 12 April 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

ANNEX

The Commission's information requirements

(a) **Capacity reductions**

— date (or expected date) of cessation of production,

— date (or expected date) of dismantling [1] of the installation concerned,

— where installation is sold, date (or expected date) of sale, identity and country of purchaser,

— sale price ;

(b) **investments**

— details of investments realized,

— date of completion,

— the costs of the investment, the sources of finance and the sum of any related aid involved,

— the date of aid payment ;

(c) **workforce reductions**

— number and timing of job losses,

— the total costs,

— a breakdown of how the costs are being financed ;

(d) **production and market effects**

— monthly production of crude steel and finished products per category,

— products sold, including volumes, prices and markets ;

(e) **financial performance**

— evolution of selected key financial ratios to ensure progress is being made towards viability (the financial results and ratios must be provided in a way allowing comparisons with the company's financial restructuring plan),

— level of financial charges,

— details and timing of aids received and costs covered,

— terms and conditions of any new loans (irrespective of source) ;

(f) **Privatization**

— selling price and treatment of existing liabilities,

— disposal of proceeds of sale,

— date of sale,

— financial position of company at time of sale ;

(g) **creation of a new company or new plants incorporating capacity extensions**

— identity of each private and public sector participant,

— sources of their financing for the creation of the new company or new plants,

— terms and conditions of the private and the public shareholders' participation,

— management structure of a new company.

[1] As defined in Commission Decision No 3010/91/ECSC (OJ No L 286, 16. 10. 1991, p. 20).