II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 July 1973

concerning coal and coke for the iron and steel industry in the Community

(73/287/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 2 to 5 and 95 (1 and 2) thereof; following consultation with the Consultative Committee and with the unanimous endorsement of the Council;

I

Whereas changes in the structure of the energy market resulted in the adoption by the Member States, on 21 April 1964, of a Protocol of Agreement on energy problems; whereas, pursuant to Paragraph 11 of this Protocol and on the basis of Article 95 (1 and 2) of the Treaty, the Commission adopted, on 22 December 1970, Decision No 3/71/ECSC relating to a Community system of Member State contributions in support of the coalmining industry, subsequent to Decision No 3/65 of the High Authority dated 17 February 1965;

Whereas the special nature of the market in coking coal and cokes intended for the iron and steel industry resulted in the adoption by the High Authority (following the unanimous endorsement of the Council), on 21 February 1967, of Decision No 1/67 [1] relating to coking coal and cokes intended for the iron and steel industry;

Whereas this Decision, having been extended for a year [2], expired on 31 December 1969;

Whereas for the same reasons and following the same procedures the Commission adopted, on 19 December 1969, Decision No 70/1/ECSC [3] relating to coking coals and cokes and whereas the latter ceased to have effect as from 31 December 1972;

Whereas it transpired that upon expiry of Decision No 70/1 the great majority of coking coal producers and consumers had failed to take the necessary steps to ensure that the financing expenses incurred through supplying coke to the iron and steel industry would be offset in full by the latter;

Whereas the years to come will continue to witness economic difficulties in connection with the production and sale of coking coal and cokes intended for the iron and steel industry, on account of the fact that a large part of Community production is in deficit over both the medium and the long term; whereas heavy cutbacks in production capacity could yet prove necessary; whereas, at the same time, uncertainty exists as to what would be the situation with regard to the supply of coking coal to third countries, as a result of an excessively rapid or excessively heavy run-down of Community production capacity; whereas restrictions still exist in the sphere of commercial policy;

Whereas, moreover, the sudden abolition of a special system of aids for coking coal and cokes intended for the iron and steel industry would be to run the risk of revitalizing the very disruptive forces which Decisions Nos 1/67 and 70/1 had set out to neutralize;

Whereas, in particular, the danger would be created that a situation running counter to Community solidarity could develop both in terms of the quantities available for intra-Community trade and also in the field of price adjustments in respect of coking coal from third countries;

(1) OJ No 36, 28. 2. 1967, p. 562/67.
(2) Commission Decision No 2177/68/ECSC, 27. 12. 1968 (OJ No L 315, 31. 12. 1968, p. 1).
(3) OJ No L 2, 6. 1. 1970, p. 2.

Whereas any development of this nature would jeopardize the achievement of certain basic objectives for which the Community has assumed responsibility, and in particular the objectives set out in subparagraphs (a) and (d) of Article 3 of the Treaty ;

Whereas, in these circumstances, it appears necessary for the achievement of these Community objectives to set up a new special system of aids for the coal industries with a view to facilitating the necessary production of coking coal and cokes and also, through the expansion of the adjustment regulations, reducing the prices of coking coal and cokes intended for the iron and steel industry, while at the same time providing a Community financing system for intra-Community trade and other financial responsibilities arising out of the enlargement of the Community ;

Whereas the Treaty has not provided for the necessary powers to this end ; whereas, in the light of these unforeseen circumstances the provisions of Article 95 (1) have had to be invoked in order to ensure the realization of the aims in question ;

II

Whereas a new special system of aids for coking coal and cokes intended for the iron and steel industry should, during the period of its applicability, enable both the coal producers and the coal consumers gradually to introduce the necessary measures whereby this system would give way to a situation in which the iron and steel industry itself could bear in full the financial burden of supplying it with coke ;

— either by buying Community coal [1] at a price which would cover its production costs, allowances being made for a guarantee premium where appropriate,

— or by having recourse to the world market, which in the period covered by the system of aids could imply a basic change of policy as regards supplies to the undertakings ;

Whereas, accordingly, the new system should be subject to a definite time limit and should, moreover, be phased out gradually ;

Whereas, in the light of present circumstances, the best way of achieving the abovementioned aims would appear to be by facilitating the necessary production of coking coal through the granting of production aid at a variable rate in respect of each coalfield for a period of six years and, futher, by facilitating marketing procedures in respect of areas located far away from the production field and by facilitating deliveries undertaken in the framework of intra-Community trade through the granting of marketing aid at a rate which would vary according to the plant supply potential and which would be reduced for the last two years of the period of applicability of the Decision ;

Whereas, in order that the different economic conditions prevailing in the various coalfields may be taken more effectively into account, the Member States should be empowered, where appropriate, to fix production aid rates which reflect, above all, the difference between the average coalfield production costs and the prices obtainable through the main sales outlets and which also reflect the long-term marketing situation, even where this difference exceeds what would be strictly justified for reasons of security of supply ; whereas the fixing of these rates must be authorized by the Commission on the basis of the criteria stipulated above ;

Whereas, in order to ensure that the new system of aids is fully effective, contractual relations between the producers and consumers of coking coal and coke must be placed on a firm basis, whereby each side is on an equal footing ; whereas, accordingly, the granting of aid must be conditional on the existence of long-term contracts ;

Whereas, in respect of marketing aid, guarantees must be provided to the effect that such aid is passed on to the purchaser in the form of price reductions and that, in the event of production aid benefits also being passed on, this must be effected in such a way as to avoid any element of discrimination *vis-à-vis* the various long-term contracts ;

III

Whereas under Article 60 (2) (b), last subparagraph, alignment on the delivered prices of third country products is permitted only if the purchaser is in a position to accept such products ; whereas, for coking coal and coke, products of third countries do not effectively compete in all the regions of the common market ;

Whereas the objective of the Decision may only be reached if undertakings are able to grant, for deliveries made within the framework of long-term contracts, rebates on their index prices, even where there is no effective competition in the place of utilization ;

Whereas it is necessary to set up guarantees preventing increased alignment possibilities arising from this Decision from leading to underbidding in relation to prices for coking coal from third countries ; whereas it suffices for this purpose to provide the Commission with the power to set guide prices ;

[1] Apart from any support from public funds which might be justified by considerations specifically linked with the future of the coal industry.

Whereas it is necessary to prevent, in the event of delivery of blast furnace coke, the net coking cost from not being entirely covered; whereas for this purpose the Commission should be given the power to set standard values enabling a price for coke to be calculated on the basis of a price for coking coal;

Whereas correct application of the present Decision requires, furthermore, that the Commission be able to fix criteria for the evaluation of quality differences between coking coal and coke which are the subject of the deliveries referred to by the present Decision;

Whereas infringement of this Decision should result in the application of Article 64 of the Treaty;

IV

Whereas in paragraph 1 above the reasons why the granting of aids to coal industries to facilitate the production of coking coal and coke and the marketing of such products is likely to meet a number of the objectives defined in Article 3 of the Treaty; whereas, in this field, the size of intra-Community trade and the provisions of Article 59 of the Treaty in the event of a shortage justify Community financing of marketing aids relating to intra-Community trade;

Whereas the rules for financing aid should be adopted taking account of the interests of the Member States and of the blast furnace coke consumer industry;

Whereas about two-thirds of Community coal and coke production intended for blast furnaces are consumed in the coal-producing countries and it is therefore fair that aid to production should be borne by these countries;

Whereas the market situation justifies a marked increase in the rate of aid to marketing in relation to the previous Decision, which results in greater costs; whereas because of the impossibility of covering these costs entirely by national fiscal means, it is necessary to make provision for a Community contribution to the payment of aids to marketing relating to intra-Community deliveries;

Whereas because such a contribution is not included in the costs listed in Article 50, first subparagraph of the Treaty, the provisions of Article 95, first subparagraph should be referred to in such a case of non-provision;

Whereas the benefit conferred on blast furnace coke consumers by the established system is such that they should also contribute to Community financing of aids to marketing for intra-Community deliveries; whereas in respect of such financing, Article 53 of the Treaty provides for the making of any financial arrangements which are recognized to be necessary for the performance of the tasks set out in Article 3; but whereas such arrangements, which usually take the form of an equalization fund, generally imply the distribution of expenditure in favour of a limited number of undertakings or of transactions among all the undertakings in question; whereas in the case in question the consumption of Community coal definitely exceeds the consumption of imported coal, so much so that recourse to an equalization fund would prove inadequate; whereas reference should be made to the provisions of Article 95, first subparagraph, when there is no provision for such a case in the Treaty;

Whereas the contribution from the blast furnace coke consumers must be on the most neutral basis possible and at a level not likely to damage the conditions of competition;

Whereas the amount of the contributions provided by the iron and steel industries not taking part in intra-Community trade and covering a large part of their coking coal requirements of national origin can serve to reduce the burden to the producer countries concerned;

Whereas Community financing should be both simple and effective; whereas, to this end, it suffices to provide for the setting-up of a special fund operated by the Commission;

V

Whereas correct application of Decision No 3/71/ECSC of 22 December 1970 would not be guaranteed if the Commission did not take account of the aids provided for by the present Decision when considering whether the aids referred to in Articles 6 to 9 of Decision No 3/71 are likely to jeopardize the smooth running of the common market; whereas, furthermore, the Commission must ensure that the aids provided for by this Decision do not alter the conditions of competition between coal or coke producing undertakings or between iron and steel undertakings;

Whereas provision should be made, in respect of Community institutions, for the possibility of amending the financial arrangements, particularly with a view to adapting them to long-term supply trends and patterns in the enlarged Community, and the possibility of suspending this Decision if its application raises serious difficulties causing changes in a regional economic situation, and in cases of marked changes occurring in the conditions, volume or distri-

bution of intra-Community trade patterns, thus altering the economic conditions which led to the adoption of this Decision ; whereas the Commission must be able to limit the benefit of the granting of aids in cases where the performance of long-term contracts jeopardizes the objectives of this Decision ;

Whereas it could become necessary to define, by general decisions, the conditions for the application of the rules established by this Decision and whereas appropriate procedures should be laid down to this end ;

Whereas this Decision is intended to bring a temporary contribution to the solution of the problems raised by such non-substitutable products as coking coal and coke intended for the iron and steel industry ; whereas its period of validity should therefore be limited to six years ; whereas, in order to avoid a permanent solution, it appears advisable that the provisions of this Decision relating to aid, price rules and Community financing should enter into force on 1 January 1973 ;

HAS ADOPTED THIS DECISION :

SECTION I

Aids by Member States

Article 1

The Member States are authorized to grant to coal undertakings under their jurisdiction which supply coking coal and blast-furnace coke to the Community iron and steel industry aids to facilitate production, marketing in regions far away from the production areas and intra-Community trade, and the conclusion and implementation of long-term contracts for supply and collection. To this end the following aids may be granted :

(a) a production aid, for which the governments shall each year determine a rate per coalfield, while taking particular account of the average costs of production in that coalfield, the price of coking coal in its principal sales area and the long-term supply conditions ;

(b) a sales aid applying to deliveries to areas remote from the coalfield or effected by way of intra-Community trade. The rate of any such aid may not exceed 3 u.a. per metric ton of coking coal in the case of deliveries to installations which can be supplied direct via maritime transport and 1·60 u.a. per metric ton in all other cases. These rates shall be reduced to 2·60 and 1·40 u.a. respectively for the fifth year and 2 and 1 u.a. respectively for the sixth year of the term of the Decision. These levels are determined on the basis of the rates applicable for the first year of application, without prejudice to the provisions of Article 10. No scale adopted by a government shall introduce any element of discrimination into the aids relating to the deliveries made by the coal undertakings.

Article 2

1. Where a Member State makes use of its option under Article 1, the following rules shall apply :

(a) the aids shall be paid to the coking-coal producer undertakings in respect of their disposals of their own coal ;

(b) the aids may be paid only where the coal is used for coking and the coke in question is actually consumed in the blast furnaces of the Community iron and steel industry ;

(c) the aids may be paid only where deliveries of coking coal and blast-furnace coke are made under a long-term contract.

2. The production aids referred to in Article 1 (a) of this Decision may be paid only after the rates thereof have been authorized by the Commission. The authorization shall be given by the Commission with due regard to the criteria referred to in Article 1 (a). For this purpose Member States shall, by 30 September of each year, submit their applications for the following calendar year, together with supporting documents. The Commission shall give its ruling within two months after receipt of the application.

3. The sales aid referred to in Article 1 (b) may be granted only if it is passed on in the form of price rebate to the purchaser of coking coal or blast-furnace coke. When a coal undertaking passes the production aid on to his buyers, this shall not give rise to discrimination between the various long-term contracts to be performed by that undertaking.

SECTION II

Pricing rules

Article 3

1. Coal undetakings are authorized, where necessary, to grant rebates on their list prices, for disposals of coking coal and blast-furnace coke for the Community iron and steel industry under long-term contract, even where there is no actual competition from coal or coke from non-member countries at the point of consumption.

2. The rebates allowed under (1) above shall not cause the delivered prices of Community coal and coke to work out lower than those which would be charged for coking coal from non-member countries and coke made from non-member country coking coal.

3. All other provisions concerning the alignment provided for by Article 60 2 (b) last subparagraph of the Treaty, and decisions in implementation thereof, shall apply to the transactions referred to in (1) above, in particular those which allow the Commission, in the event of abuse, to abrogate or restrict the right of the undertakings concerned to grant such rebates.

Article 4

Should an undertaking infringe the rules laid down in Article 3, the provisions of Article 64 of the Treaty shall apply.

Article 5

1. The delivered prices of coking coal from non-member countries referred to in Article 3 (2) shall be calculated from the prices cif Community ports for comparable transactions. The Commission may fix guide cif prices.

2. The delivered prices of blast-furnace coke from non-member countries referred to in Article 3 (2) shall be calculated from the cif prices for coking coal referred to in (1) above in such a way as to cover in full the net coking costs of the supplying coking plants. Standard values therefor may be laid down by the Commission.

3. The Commission may lay down criteria for the assessment of differences in grade in coking coal and coke.

SECTION III

Community financing arrangements

Article 6

Community financing arrangements shall be set up for :

— sales aids paid in pursuance of Section I of this Decision in respect of intra-Community trade ;

— the amount of the contributions by the iron and steel industries of member countries not engaged in intra-Community trade, insofar as their production of coking coal covers at least 75 % of the requirements of their blast-furnaces.

A special fund administered by the Commission shall be instituted for this purpose.

Article 7

1. The Community financing arrangements shall cover a quantity of coking coal amounting to no more than 15 million metric tons per annum, and the amount of the contributions referred to in Article 6 above.

2. The special fund shall be financed as follows :

(a) The contribution of the European Coal and Steel Community shall be :

— for the first year, 0·266 u.a. per metric ton of coal, ie, not more than 4 million u.a. ;

— for the second year, 0·333 u.a. per metric ton of coal, ie, not more than 5 million u.a. ;

— for subsequent years, 0·400 u.a. per metric ton of coal, ie, not more than 6 million u.a. per annum.

(b) The Member States shall provide the following overall contributions, on the scale shown in paragraph 3 below :

— for the first year, 0·627 u.a. per metric ton of coal, ie, not more than 9·4 million u.a. ;

— for the second year, 0·560 u.a. per metric ton of coal, ie, not more than 8·4 million u.a. ;

— for the third and fourth years, 0·493 u.a. per metric ton of coal, ie, not more than 7·4 million u.a. per annum ;

— for the fifth year, 0·273 u.a. per metric ton of coal, ie, not more than 4·1 million u.a. ;

— for the sixth year, 0·207 u.a. per metric ton of coal, ie, not more than 3·1 million u.a. ;

(c) The overall contribution of the iron and steel industry not referred to in Article 6, second indent, shall be :

— for the first four years, 1·107 u.a. per metric ton of coal, ie, not more than 16·6 million u.a. per annum ;

— for the fifth year, 1·027 u.a. per metric ton of coal, ie, not more than 15·5 million u.a. ;

— for the sixth year, 0·593 u.a. per metric ton of coal, ie, not more than 8·8 million u.a.

The overall amount of the contribution shall be apportioned among the iron and steel undertakings on the basis of their consumption of blast-furnace coke.

The contribution of the iron and steel industries referred to in Article 6, second indent, is calculated on the basis of the rate per metric ton of consumption applicable to the other undertakings.

3. The contribution to be provided by the Member States shall be on the following scale :

Germany	31 %
Belgium	13 %
France	28 %
Italy	12 %
Luxembourg	10 %
Netherlands	6 %

Article 8

1. The supplier States may apply for reimbursement from the special fund of aids actually paid.

2. The Commission shall check the applications and determine the amounts to be reimbursed from the special fund to the Member States concerned. If the tonnages concerned exceed the limit fixed in Article 7 (1), the reimbursements shall be correspondingly reduced. The percentage of the reduction is the same for each of the supplier States.

3. The Commission shall fix the contributions to be paid into the special fund on the basis of these amounts and the contributions by the iron and steel industries referred to in Article 7 (1) above.

4. To speed up Community financing, the supplier countries shall notify the Commission of the deliveries of coking coal qualifying for aid made during the preceding quarter under Article 6. On the basis of these notifications, the Commission shall request the Member States to pay the corresponding amounts. The Commission shall forthwith apportion these amounts between the supplier States, at the same time as the corresponding contribution of the European Coal and Steel Community. The Commission shall call for contributions from the steelmaking undertakings and immediately apportion the payments among the States concerned.

5. The final accounts shall be settled at the beginning of each calendar year in respect of the preceding year.

SECTION IV

General and final provisions

Article 9

1. The Commission shall take into account the aids provided for in this Decision in assessing whether the aids referred to in Articles 6 to 9 of Decision No 3/71/ECSC of 22 December 1970 are liable to interfere with the proper functioning of the Common Market.

2. The Commission shall also ensure that the aids provided for in this Decision do not have the effect of distorting conditions of competition between coal, coke and iron or steel undertakings.

Article 10

1. In an emergency, and otherwise at the end of the first year of application of this Decision and then every two years, the Commission may, by decisions taken after consultation with the Consultative Committee and after the unanimous assent of the Council has been given, amend :

— the rate of the sales aids,

— the ceiling to intra-Community trade,

— the rules governing the financing of the special fund,

— the scale referred to in Article 7, paragraph 3.

These amendments shall take account of the long-term trend of supply conditions and the supply pattern within the enlarged Community.

2. If at the request of a Member State or on its own initiative the Commission finds that :

(a) the implementation of this Decision is liable to give rise to serious disturbances in the common market for coal and steel, or to difficulties which may result in a deterioration in the regional economy, or that

(b) appreciable changes are taking place in the conditions, volume or pattern of intra-Community trade, thus altering the economic conditions prompting the adoption of this Decision, it may suspend application of this Decision. It shall refer the matter to the Council forthwith.

3. If at the request of a Member State or acting on its own initiative the Commission finds that performance of the long-term contracts is jeopardizing the attainment of the objectives of this Decision, it may, in respect of the undertakings in question, limit the benefits deriving from the application of Article 1.

4. In an emergency, the Commission shall, on the request of a Member State, lay down without delay the necessary safeguarding measures, notify the other Member States accordingly and refer the matter to the Council forthwith.

Article 11

The Commission shall periodically report to the Council on the application of this Decision and on developments in the supply situation, in particular in connection with intra-Community trade.

Article 12

After consulting the Council and the Consultative Committee, the Commission shall take all measures necessary for the application of this Decision.

Article 13

This Decision shall enter into force on 1 August 1973. Sections I, II and III apply retrospectively from 1 January 1973 to deliveries of coking coal and coke effected since that date. The applications provided for in Article 2 (2) in respect of 1973 shall be submitted by 31 October 1973. For the year 1973 the provisions concerning the payment of aids (Article 2 (1) (c)), possible rebates in the absence of actual competition (Article 3 (1)), and Community financing (Article 7) shall apply notwithstanding the absence of a long-term contract.

This Decision ceases to be operative after 31 December 1978.

Done at Brussels, 25 July 1973.

For the Commission

The President

François-Xavier ORTOLI