COMMISSION

COMMISSION RECOMMENDATION

of 13 May 1986

on the establishment of preferential treatment for debts in respect of levies on the production of coal and steel

(86/198/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 49 and 50 thereof,

Having consulted the Council (1),

Having regard to the opinion of the European Parliament (2),

Whereas the power to impose levies on the production of coal and steel and to determine the mode of assessment and collection, conferred on the High Authority by Articles 49 and 50 of the Treaty, involves the power to take all necessary steps to ensure collection of the levies, *inter alia* in cases where the person liable is insolvent;

Whereas the Court of Justice of the European Communities, in its judgment of 17 May 1983 in Case 168/82 (3), affirmed the importance of the fiscal nature of the power thus conferred on the High Authority to enable it to perform as effectively as possible the task entrusted to it by the Treaty;

Whereas in all the Member States, with the exception of Denmark, tax debts due to the State enjoy preferential treatment in enforcement proceedings involving competition between creditors; whereas to ensure the effective recovery of levies, which are the principal source of revenue of the ECSC, on a basis of parity with Member States' tax debts, debts due in respect of levies should be given the same preferential treatment;

Whereas the existence, in some Member States, of several ranks of tax preference means that it is necessary to choose, from among the various national taxes, that with which ECSC levies are to be equated; whereas a reference to a tax common to all the Member States is desirable in order that such reference may have the same meaning in all national laws; whereas value-added tax satisfies this condition;

Whereas it appears necessary that the preferential treatment of ECSC levies should be of sufficient duration and uniformity throughout the Community to enable the Community to exercise its preferential right with equal effectiveness in all Member States;

Whereas the surcharges for delay provided for in Article 50 (3) of the Treaty, and in Article 6 of High Authority Decision No 3/52 (4), as last amended by Decision No 3614/85/ECSC (5), form an integral part of the tax debt due to the ECSC;

Whereas the Community must be able to exercise its preferential right in proceedings involving competition between creditors still in progress at the date of actual implementation of this Recommendation, in order to ensure the most extensive possible recovery of debts arising from the application of levies in the years preceding the adoption of the Recommendation; whereas the Member States should consequently ensure, by means of appropriate transitional measures, adequate legal safeguards for the rights of other creditors of the undertaking liable to levies, particularly in respect of means of redress against the ranking of debts carried out following the implementation of this Recommendation;

Whereas by virtue of Article 50 (2) of the Treaty, the mode of assessment and collection of the levies is to be determined by a general decision of the High Authority taken after consulting the Council; whereas under the last paragraph of Article 14, where the High Authority is empowered to take a decision, it may confine itself to making a Recommendation; whereas that legal instrument appears the most appropriate in view of the chosen method of extending to ECSC levies the treatment accorded by the legal system of each Member State to the tax debts owed to that Member State,

(1) OJ No C 65, 20. 3. 1986, p. 5.
(2) OJ No C 229, 9. 9. 1985, p. 10.
(3) [1983] ECR 1681.
(4) OJ of the ECSC No 1, 30. 12. 1952, p. 4.
(5) OJ No L 344, 21. 12. 1985, p. 37.

HAS ADOPTED THIS RECOMMENDATION:

Article 1

Those Member States which confer on tax debts due to the State preferential treatment in respect of all or part of the debtor's assets shall, in all cases of competition between creditors provided for by their national laws, confer the same preferential treatment on debts arising from the application of the levies referred to in Articles 49 and 50 of the Treaty.

Article 2

Those Member States in which tax debts due to the State enjoy general or special preference of a different rank depending on the tax involved shall confer on debts arising from the application of ECSC levies general or special preference of the same rank as that conferred by the law of each of those States on debts in respect of value-added tax.

Article 3

The preferential treatment referred to in Articles 1 and 2 shall continue until the debts in respect of levies are time-barred.

The preferential treatment shall extend to the amount of levy owned plus the surcharges for delay provided for in Article 50 (3) of the Treaty and Article 6 of High Authority Decision No 3/52.

Article 4

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Recommendation not later than 1 January 1988. They shall forthwith inform the Commission thereof.

Member States shall provide that these laws, regulations and administrative provisions are to be applied to proceedings in progress on the date of actual implementation of this Recommendation and shall ensure, by means of appropriate transitional measures, adequate legal safeguards for the rights of other creditors of the debtor undertaking.

Article 5

This Recommendation is addressed to the Member States.

Done at Brussels, 13 May 1986.

For the Commission

The President

Jacques DELORS