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(Acts whose publication is obligatory)

COMMISSION DECISION No 2064/86/ECSC

of 30 June 1986

establishing Community rules for State aid to the coal industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having consulted the Consultative Committee and the European Parliament and with the unanimous assent of the Council,

Whereas :

I

Structural changes on the international and community energy markets have been forcing the coal industry to make exceptional rationalization and restructuring efforts since the early 1960s. To the competition from crude oil and natural gas has been added the growing pressure from coal imported from outside the Community. As a result, many coal undertakings are in financial difficulties and require State aid.

Since 1964 the High Authority/Commission has on a number of occasions laid down rules (1) designed to reconcile State aid to the coal industry with the objectives of the ECSC Treaty. Each new set of aid rules has been designed to take account of developments in the economy in general, and developments on the energy market and the coal market in the Community in particular.

All the Decisions in question laid down objectives and principles guaranteeing that State aid was in the common interest, was limited to what was strictly necessary in terms of volume and duration, and did not disturb the functioning of the common market. They also obliged Member States to obtain prior authorization from the High Authority/Commission before granting aid.

(1) Decision No 3/65/ECSC (OJ No 31, 25. 2. 1965), Decision No 27/67/ECSC (OJ No 261, 28. 10. 1967), Decision No 3/71/ECSC (OJ No L 3, 5. 1. 1971) and Decision No 528/76/ECSC (OJ No L 63, 11. 3. 1976).

II

Both the economy in general and the particular conditions on the energy and coal markets in the Community have altered significantly since Decision No 528/76/ECSC was adopted.

Energy prices in general have risen following the steep rise in oil prices. On the energy supply side, this has given rise to adjustment measures resulting in new production capacity for all energy sources throughout the world. On the energy demand/consumption side, considerable efforts have been made to save energy. The efforts to find substitutes have been particularly effective in the power station sector where heating oil has been replaced by coal to some extent. The changes in the behaviour of energy users have changed the direction of the trend on the Community's coal market, since the constantly falling trend in coal consumption in the community in the years leading up to the first oil crisis has now levelled off, apart from a few short-term fluctuations, at a level of around 300 million tonnes (EUR 10).

The coal industry in the Community has scarcely benefited from this development. On the contrary, between 1975 and 1985 production in the Community dropped from 257 million tonnes to 201 million tonnes (partly as a result of the coalminers' strike in the United Kingdom), while coal imports from outside the Community more than doubled from 41 million tonnes to 86 million tonnes.

Although the competitive position of the Community's coal industry *vis-à-vis* oil and gas improved considerably as a result of the steep increase in oil prices, further

strong competition in the shape of coal imports from outside the Community with which it cannot compete fully has come on to the scene. The geological conditions for the production of coal are more favourable in the United States, Australia, Canada and South Africa etc, and so, despite the lengthy transport entailed, producers in those countries can enjoy competitive advantages which the Community's coal industry cannot offset unless further restructuring is undertaken.

The opportunities for rationalization in the coal industry in the Community are limited because of the unfavourable geological conditions. Despite considerable investment and the closure of 120 or so pits, productivity has only risen by 1,5 % on a year-to-year basis on average for the Community as a whole in the last 10 years. Even though the US dollar, the decisive currency where international coal prices are concerned, rose in value against other currencies until 1984, the competitive position of Community coal *vis-à-vis* imported coal did not improve. Moreover, the dollar exchange rate has dropped considerably since 1985. Consequently, the financial situation of Community coal undertakings has steadily deteriorated in the last 10 years. Their losses and the aid required has risen appreciably. In 1984 the aid granted to them totalled 4 000 million ECU and in 1985 it amounted to 3 000 million ECU.

As a result of the fall in oil prices since the end of 1985, falling world market prices for coal and the reduction in the rate of the dollar, it is unlikely that the Community's coal industry will become fully competitive again in the years ahead.

In view of this situation on the energy and coal markets, it is necessary to adapt to the foreseeable demand and to make this branch of industry competitive again by restructuring, modernizing and rationalizing it in an ordered and socially acceptable fashion. This will demand more financial resources than the undertakings themselves can provide. Nor does the ECSC have at its disposal the resources needed in order to bridge this gap. Nevertheless, the restructuring efforts must not be abandoned, as otherwise the attainment of the general objectives set out in the second paragraph of Article 2 of the ECSC Treaty and the specific objectives set out in Articles 3 (c), (d), (e) and (g) would be jeopardized. Moreover, this could result in serious disturbances affecting the mining areas in the Community concerned by the restructuring process.

The Community is therefore once again confronted with a situation for which no provision is made in the Treaty but concerning which action must nevertheless be taken. Consequently, recourse must be had to the first paragraph of Article 95 of the Treaty in order to enable the Community to continue to pursue the objectives set out in the opening Articles of the Treaty and, to this end, to establish new Community rules for State aid to the coal industry.

III

Such recourse to the first paragraph of Article 95 of the Treaty must fit into the general context of the Community's energy policy. On a proposal from the Commission, the Council is in the process of adopting new Community energy policy objectives for 1995 which envisage that the solid fuels producing industry (including the coal industry) in the Community should continue its restructuring efforts so as to become more competitive. In this context, it is considered desirable to maintain and, if possible, increase the market share of solid fuels. The creation of securer supply conditions, *inter alia* by developing domestic energy sources in the Member States of the Community under satisfactory economic conditions, is an essential element of Community energy policy. For this reason Community coal production offers the advantage of rather greater security of supply and a degree of protection against extreme price swings on the world market. However, as the Commission has already stated [1], in the long run these benefits as regards coal users and those employed in this branch of industry can only be achieved with a more competitive coal industry.

In addition, Community policy in this sector must take into account the fact that the restructuring measures will affect the employment situation, and the provisions of the ECSC Treaty must therefore be used.

On the basis of the coal policy guidelines set out in the preceding paragraphs, the Commission should examine State aid to the coal industry before it is granted, in order to ascertain whether it contributes to the achievement of the following aims :

— improvement of competitivity of the coal industry, which contributes to assure a better security of supply,

— creating new capacities provided that they are economically viable,

— solving the social and regional problems related to developments in the coal industry.

In pursuit of these aims, it is essential that aid should not exceed what is absolutely necessary, and should not depart from the rules of the Treaty except where that is unavoidable in order to solve problems encountered in the Community, and that in particular indirect subsidies to industrial coal users should be avoided.

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[1] COM(85) 245 final.

IV

The Commission's approval of proposed State aid must be based on precise and full knowledge of the aid in question, and must take due account of the economic and social context. Consequently, the Member States should be required to provide the Commission regularly with full information on the direct or indirect aid proposed to the coal industry relating to coal production and marketing and to external trade in coal, and also on the reasons for and the scope of the proposed aid. The Member States must, in good time for the period 1987 to 1993, provide the Commission with a statement of intentions and objectives for the coal industry giving a clear indication of medium-term policy with regard to coal production.

In assessing aid granted on the basis of this Decision, the Commission should also take into consideration all other financial aid to the coal industry.

V

Lastly, it is necessary to define the various forms of the aid for which advance approval can be given by the Commission, and to assign to them criteria corresponding to the aims of this Decision :

(a) In view of the weak competitive position of and the losses made by coal undertakings in the Community, it would be necessary to close down a large proportion of pits in the short term if these losses were not covered. In addition to supply problems, this would also give rise to considerable regional and employment problems. Consequently, aid to cover operating losses is admissible provided that it does not exceed the difference between the foreseeable average costs of coal production and the average returns achievable in the following calendar year. The financial imbalance of an undertaking may make it necessary to cover, in addition, losses which the undertaking actually incurred in the previous two year, provided that evidence is produced that failure to cover the losses would have consequences incompatible with the aims of this Decision.

(b) In order to guarantee sales of Community coal and coke to the steel industry special aid may be granted, provided that it does not exceed the extent necessary to keep such coal competitive.

As not all areas in the Community actually face competition from coal and coke from outside the Community, and hence certain coal producers are unable to align their prices for sales of coal and coke to the steel industry pursuant to Article 60 (2) (b) of the Treaty, the aims of this Decision can only be achieved if the undertakings in question are allowed to grant reductions on their listprices (fictitious alignment) even though there is no actual competition at the place of consumption, provided that long-term supply contracts are concluded.

(c) The coal industry can only become more competitive if existing capacity is rationalized and new economically viable capacity is created. This will require investment, and aid towards the financing of such investment is admissible provided that it does not exceed 10 % of the investment expenditure.

(d) In order to maintain the productivity of the coal industry, expenditure will be needed on the maintenance of a skilled underground workforce. In order to finance such expenditure, aid may be authorized provided that it is granted in the context of existing schemes.

(e) State aid to finance social security benefits by way of compensation for anomalous burdens on the coal industry resulting from the decline in coal production may be considered compatible with the common market provided that they bring the ratio between the burden per mineworker in employment and the benefits per person in receipt of benefit into line with the corresponding ratio in other industries.

(f) As a result of the decline in coal production in recent decades, the undertakings are confronted with various kinds of anomalous high burdens. State aid, to finance such burdens with a view to covering them in whole or in part, may be considered compatible with the common market provided that supervision of such aid by the Commission is guaranteed and the relevant categories of such inherited liabilities are defined.

VI

The proper implementation of this Decision must be ensured through provisions which enable the Commission to exercise its power of approval. The Commission may make its approval subject to any appropriate conditions, carry out all necessary checks subsequently, and withdraw its approval if it is no longer justified. The Commission must also be in a position to object to aid granted to undertakings which apply artificially low prices. Consequently, provision should also be made for the possibility of suspending this Decision in the event of serious supply and market disturbances or a change in the basic economic conditions which led to its adoption. The

Commission will report to the Council, the European Parliament and the Consultative Committee each year on the application of this Decision.

In view of the changes at present occurring in the conditions on the Community's coal and energy markets, it is appropriate that the period of validity of this Decision should be seven-and-a-half years,

HAS ADOPTED THIS DECISION :

SECTION I

FRAMEWORK AND GENERAL OBJECTIVES

Article 1

1. All aid to the coal industry, whether specific or general, financed by Member States or through State resources in any form whatsoever, may be considered Community aid and therefore compatible with the proper functioning of the common market only if it conforms to the general objectives and criteria set out in Articles 2 to 8. Such aid shall be put into effect only in accordance with the procedures established in this Decision.

2. The concept of aid includes aid granted by central, regional or local authorities and any aid elements contained in the financing measures taken by Member States in respect of the coal undertakings which they directly or indirectly control and which cannot be regarded as the provision of risk capital according to standard company practice in a market economy.

Article 2

1. Aid granted to the coal industry may be considered compatible with the proper functioning of the common market provided that it helps to achieve at least one of the following objectives :

— improvement of the competitivity of the coal industry, which contributes to assure a better security of supply,

— creating new capacities provided that they are economically viable,

— solving the social and regional problems related to developments in the coal industry.

2. Any measures concerning the grant of aid referred to in Articles 3 to 8 shall be without prejudice of the criteria which are specific to them and defined by the same Articles ; they shall also be appraised having regard to their suitability in relation to the objectives set out in paragraph 1 above.

SECTION II

MEMBER STATES' AID

Deficit grant aid

Article 3

1. Aid covering operating losses may be considered compatible with the common market provided that it does not exceed, for each tonne produced and for each individual coal region or undertaking, the difference between foreseeable average costs and the foreseeable average returns in the following financial year (coal production year).

Member States shall, without prejudice to the provisions of Article 9, submit to the Commission all details for the calculation of costs and returns per tonne.

2. In its examination of such aid, the Commission shall include, in its calculation of production costs per tonne, normal depreciation and effective interest charges on capital borrowed. If the Commission finds that the difference between the average costs of coal production and the average returns achievable is due to changes in the situation of coal undertakings which are out of keeping with satisfactory economic conditions, it may fix a maximum amount for aid covering losses.

3. The reductions in costs resulting from the grant of aid in accordance with Articles 4 to 8 must be allowed for in calculating the production costs or operating losses of pits.

4. In those exceptional cases where the financial balance of an undertaking is seriously threatened by past losses which have not been covered, aid which goes beyond that permitted in paragraph 1 may be considered compatible with the common market provided that it is limited to covering a previously uncovered difference between the production costs incurred and the returns on the coal produced during a period not exceeding the two preceding financial years. In such a case, Member States shall, without prejudice to the provisions of Article 9, supply the Commission with :

— documentary evidence covering the points referred to in paragraphs 2 and 3 for the period during which the losses were incurred,

— information regarding the extent to which such losses have in the meantime been reduced as a result of aid as defined in Article 1 (2).

Sales aid

Article 4

Aid for supplying coal and coke to the Community's iron and steel industry may be considered compatible with the common market provided that it does not exceed the rebates referred to in Article 12.

Investment aid

Article 5

1. Investment aid may be considered compatible with the common market provided that:

— it covers no more than 50 % of the costs of the investment,

— such investment has been notified to the Commission as required by High Authority Decision No 22/66 (1), as amended by Decision No 2237/73/ECSC (2) or by any subsequent decision,

— the Commission has delivered a favourable opinion on the project so notified.

2. The aid referred to in paragraph 1 may be granted for investment programmes or for individual investment projects.

3. In the case of investment programmes, Member States shall, without prejudice to Article 9, inform the Commission at least once a year, in respect of each individual project in the programme which it has been decided to carry out, of the amount of investment expenditure assigned to it and the amount of aid involved.

4. Where the proposed aid concerns investments which have already benefited from measures taken under Articles 54 and 55 of the ECSC Treaty, the amount of such benefits shall be shown separately for each project.

Aid for underground staff

Article 6

1. Aid granted under existing schemes to maintain the underground labour force in deep mines may be considered compatible with the common market.

2. The aid referred to in paragraph 1 must be of a specific character which enables it to be calculated separately in relation to aid granted under the provisions of Articles 3 to 5.

Financing of social grants in the coal industry

Article 7

1. State aid to finance social grant schemes specific to the coal industry may be considered compatible with the common market provided that, for coal undertakings, it brings the ratio between the burden per mineworker in employment and the benefits per person in receipt of benefit into line with the corresponding ratio in other industries.

2. The Governments of the Member States shall, without prejudice to Article 9, submit to the Commission the necessary basic data and details of the calculation of the ratios between the burdens and benefits referred to in paragraph 1.

Inherited liabilities

Article 8

1. State aid to coal undertakings to cover the costs arising from the restructuring of the coal industry which are not related to current production (inherited liabilities) may be considered compatible with the common market provided that it does not exceed such costs. Such aid may be used to cover:

— the costs incurred only by undertakings which are carrying out or have carried out restructuring,

— the costs incurred by several undertakings.

2. Categories of costs arising from the restructuring of the coal industry are defined in Annex 1 to this Decision.

3. The aid may be granted as a lump sum and shall not exceed the actual amount of the inherited liabilities.

4. Member States shall submit to the Commission the necessary basic data and the details of the calculation of the ratio between the actual total inherited liabilities of the undertakings and the proposed measure.

SECTION III

NOTIFICATION, APPRAISAL AND AUTHORIZATION PROCEDURES

Article 9

1. All Member States which intend to grant aid to coal undertakings in 1986, shall, by October 1986, provide the Commission with:

(i) a statement of intentions and objectives for the industry for the period 1987 to 1993;

(ii) the information specified in paragraph 2.

2. If, in any subsequent financial year, a Member State seeks authorization of measures in accordance with Article 10, it shall provide the Commission, at least three months before the measures enter into force and separately for each coalfield or coal undertaking, with information in all measures which the State in question proposes to take in the following year in order to give direct or

(1) OJ No 219, 29. 11. 1966, p. 3728/66.
(2) OJ No L 229, 17. 8. 1973, p. 28.

indirect support to the coal industry. The relevant detailed information to be supplied, which will be used in the analysis of the situation by the Commission, is specified in Annex 2 to this Decision.

3. If a Member State intends to take further financial measures in addition to measures already notified or to modify existing measures during the financial year, it must inform the Commission thereof so that the latter can express an opinion in accordance with the procedures defined in Article 10.

4. Member States shall notify the Commission not later than 30 June of each year of the amounts of aid actually paid in the preceding financial year.

Article 10

1. As regards the direct aid in respect of current production referred to in Articles 3 to 6, Member States shall put the proposed measures into effect only with the approval of the Commission, acting pursuant to the objectives set out in Article 2 and the criteria laid down in the abovementioned Articles, and subject to the conditions laid down by the Commission. The Commission shall inform the Member States concerned of its decision.

2. Insofar as they are governed by the Treaties, the Commission shall give its opinion on all other aid and measures that are also referred to in this Decision in accordance with the procedures and rules of the Treaties.

3. In its examination of the amount of planned aid, the Commission shall take account, to the extent to which that is compatible with the objectives of this Decision, of any other aid previously granted, regardless of its objectives.

4. In assessing the measures and programmes submitted to it as regards the closure of particularly unprofitable pits or the creating of new capacities in the light of the objective laid down in Article 2, the Commission shall take account of the special situation of individual coalfields or Member States.

5. If, from the date of receipt of the notification of the proposed measures pursuant to paragraphs 1 and 2 of this Article, a period of three months elapses without the Commission having taken a decision, the proposed measures may be implemented provided that the Member State has informed the Commission of its intention beforehand.

However, the above period shall be reduced to two months from the date of receipt of the notification of measures proposed pursuant to Article 9 (3).

SECTION IV

PRICING PROVISIONS

Article 11

1. The Commission shall ensure that aid does not lead to discrimination, within the meaning of the ECSC Treaty, as between Community buyers or users of coal or coke.

2. In order to ensure that direct aid in respect of current production which it authorizes is used exclusively for the purposes set out in Articles 3 to 6, the Commission may, in the case of undertakings in receipt of aid, limit or modify the right of alignment provided for in Article 60 of the ECSC Treaty and require such undertakings to comply with minimum prices. Any infringements shall be dealt with under Article 64 of the ECSC Treaty.

3. The Commission may carry out any appropriate checks on undertakings.

4. The Commission shall revoke approval of aid or shall amend the terms of approval if it finds that the aid no longer fulfils the conditions imposed by Articles 3 to 6 of this Decision or that the actual consequences of such aid or the use to which it is put are contrary to the conditions required for approving the grant thereof.

Article 12

1. (a) Where there is no actual competition from coal or coke from non-member countries at the point of consumption, coal undertakings shall be authorized, where necessary, to grant rebates on their list prices or production costs, for deliveries of coking coal, blast furnace coke and coal for injection into blast furnaces for the iron and steel industry of the Community under long-term contract.

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

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

3. The delivered prices of blast-furnace coke referred to in paragraph 1 (b) shall be calculated from the cif prices for coking coal from non-member countries referred to in paragraph 2 in such a way as to cover in full the net coking costs of the supplying coking plants.

SECTION V

GENERAL AND FINAL PROVISIONS

Article 13

In deciding whether the financial measures proposed by Member States are compatible with the common market, the Commission shall give due consideration to any aid which may be granted under Commission Decisions No 759/84/ECSC (1) and No 3612/85/ECSC (2).

Article 14

The Commission shall report annually to the Council, the European Parliament and the Consultative Committee on the application of this Decision.

Article 15

The Commission shall, after consulting with the Council, take all the measures necessary to implement this Decision.

Article 16

1. This Decision shall enter into force on 1 July 1986.

However, Articles 4 and 12 shall apply from 1 January 1987.

This Decision shall expire on 31 December 1993.

2. The Commission shall submit by the end of 1990 a report to the Council on the experiences and problems encountered in applying this Decision. It may propose in accordance with the procedure laid down in the first paragraph of Article 95 of the ECSC Treaty any modification which may be appropriate.

This Decision shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 June 1986.

For the Commission

Nicolas MOSAR

Member of the Commission

(1) OJ No L 80, 24. 3. 1984, p. 14.
(2) OJ No L 344, 27. 12. 1985, p. 33.

ANNEX 1

DEFINITION OF THE COSTS REFERRED TO IN ARTICLE 8 (2)

I. Costs arising only for undertakings which are carrying out or have carried out restructuring

limited to the following :

(a) costs of social grants incurred through pensioning of workers before they reach the legal retiring age ;

(b) other exceptional expenditure for workers made redundant because of restructuring ;

(c) the payment of pensions and allowances outside the statutory insurance scheme to workers made redundant because of restructuring, and to those who were entitled to such payments before the restructuring ;

(d) free coal deliveries to workers made redundant because of restructuring and to those who were entitled to such coal before the restructuring ;

(e) residual charges arising out of tax provisions ;

(f) additional safety work that has to be carried out underground as a result of restructuring ;

(g) subsidence or similar damage attributable to areas which were previously mined ;

(h) residual charges in respect of payments to bodies dealing with water supply and disposal of waste water ;

(i) other residual charges in respect of water supply and disposal of waste water ;

(j) residual costs in respect of sickness insurance scheme contributions on behalf of former mineworkers ;

(k) exceptional material loss caused by the restructuring of the industry where cover for these losses is vital to the continuing existence of the undertaking.

II. Costs arising from several undertakings

(a) increases in the contributions needed to cover social security obligations outside the statutory insurance scheme where such increases result from a reduction, due to restructuring, in the number of those liable to pay contributions ;

(b) expenditure caused by restructuring, in respect of water supply and disposal of waste water ;

(c) increases in payments to bodies dealing with water supply and disposal of waste water where these increases are attributable to a reduction, following restructuring, in the production of coal on which the levy must be paid.

ANNEX 2

INFORMATION TO BE SUPPLIED TO THE COMMISSION PURSUANT TO ARTICLE 9

This information will include details of:

(a) capital contributions, the cancellation of liabilities *vis-à-vis* public authorities and the granting of credit guarantees;

(b) any other measures linked to the production or marketing of, and external trade in, coal even if they do not directly impose a burden on public budgets, which give an economic advantage to coal undertakings;

(c) in the case of measures relating to social grants in the coal industry:

  (i) the legal and administrative provisions in force or changes in existing provisions which have already been notified;

  (ii) the total amount of social grants, broken down by category, paid during the preceding financial year to workers and former workers in the coal industry and to their dependants, the number of recipients of these grants and the corresponding information for the general system;

  (iii) the various resources drawn upon and the corresponding amounts allocated for the financing of the grants referred to in (c) (ii);

(d) in the case of measures designed to cover inherited liabilities of coal undertakings:

  (i) the type of liabilities to be covered;

  (ii) the probable amount of the liabilities for the year in which aid is granted;

  (iii) the extent to which undertakings have incorporated inherited liabilities into the costs of current production or have built up special financial reserves to cover such liabilities themselves;

(e) the reasons for, and the scope of, the various measures, together with all further information for their assessment in accordance with the Decision;

(f) available information on proposed closures of pits or parts thereof, the consequences for the workforce and for the regions concerned, and re-employment of redundant workers in connection, where applicable, with regional development programmes.