

**COMMISSION DECISION No 3632/93/ECSC**  
**of 28 December 1993**  
**establishing Community rules for State aid to the coal industry**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

II

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 95 (1) thereof,

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

I

Whereas Article 4 (c) of the Treaty prohibits all State aid to the coal industry in any form whatsoever, whether specific or non-specific;

Whereas structural changes on the international and Community energy markets have been forcing the coal industry in the Community to make major modernization, rationalization and restructuring efforts since the early 1960s; whereas, added to the competition from crude oil and natural gas, there has been growing pressure from coal imported from outside the Community; whereas, as a result, many undertakings in the Community are in financial difficulties and require State aid;

Whereas since 1965 the High Authority/Commission has on a number of occasions laid down rules to reconcile State aid to the coal industry with the objectives of the Treaty; whereas each new set of aid rules has been tailored to developments in the economy in general, and in particular to developments in the energy market and the coal market in the Community;

Whereas all the Decisions in question laid down objectives and principles guaranteeing that State aid was in the common interest, was strictly necessary in terms of volume and duration, and in no way disturbed the functioning of the common market; whereas Member States also undertook to obtain prior authorization from the High Authority/Commission before granting aid;

Whereas although Commission Decision 2064/86/ECSC of 30 June 1986 establishing Community rules for State aid to the coal industry<sup>(1)</sup> has enabled varying degrees of further restructuring, modernization and rationalization to take place in the coal industry with a view to increasing competitiveness, most coal production in the Community remains uncompetitive *vis-à-vis* imports from outside the Community, despite a considerable increase in productivity and a major reduction in employee numbers in this sector;

Whereas the scope for rationalization in the coal industry in the Community is limited by unfavourable geological conditions; whereas, therefore, these rationalization measures must be backed up by restructuring measures in order to improve the competitive position of the Community coal industry;

Whereas, in order to attain this objective, more financial resources are needed than the undertakings themselves can provide; whereas the Community similarly does not have at its disposal the resources needed to finance this process; whereas continuation of a Community system of aid is proving indispensable;

Whereas the measures taken may, in accordance with the ECSC Treaty provisions, form part of a concept for the diversification of energy supply and suppliers, including national energy resources, in the context of existing energy concepts;

Whereas the world market in coal is stable with abundant supplies from a wide variety of geographical sources, with the result that even in the long term and with increased demand for coal the risk of persistent interruption of supply, although it cannot be ruled out totally, is nevertheless minimal;

Whereas most of the coal imported into the Community comes from the Community's partners in the International Energy Agency (IEA) or from States with which the Community and/or the Member States have signed trade agreements and which cannot be considered high-risk suppliers;

<sup>(1)</sup> OJ No L 177, 1. 7. 1986, p. 1.

Whereas, despite the inevitable restructuring and closures, care must be taken to minimize the social and regional impact of these changes, when continuing the Community's policy in this sector, which must take account of the precarious social situation of mining regions, in particular in the context of the principle of economic and social cohesion ;

Whereas the Community is therefore confronted with a situation for which no provision is made in the Treaty but on which action must nevertheless be taken ; whereas, under these circumstances, the first paragraph of Article 95 of the Treaty must be invoked in order to allow 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 aid to the coal industry ;

### III

Whereas the Community must progressively bring about conditions which will of themselves ensure the most rational distribution of coal production ;

Whereas, to this end, the Community must, *inter alia*, promote a policy of using natural resources rationally under conditions precluding all protection against competing industries ;

Whereas the Community must promote the growth of international trade ;

Whereas in order to perform its task the Community must ensure the establishment, maintenance and observance of normal competitive conditions ;

Whereas, in the light of the abovementioned provisions, State aid must cause no distortion of competition and must not discriminate between coal producers, purchasers or consumers in the Community ;

Whereas State aid must therefore be granted under transparent conditions to allow better evaluation of its impact on the conditions of competition ;

Whereas inclusion of the aid in the budget or in exactly equivalent mechanisms, simplification of such aid and proper indication of the amounts received in the undertakings' annual accounts are the best guarantees of transparency in the aid systems ;

Whereas, moreover, the upward trend in the amount of aid paid in recent years is incompatible with the excep-

tional, transitional nature of the Community aid arrangements ; whereas the principle of reducing the coal industry's production costs and capacity is therefore necessary in order to achieve degression of aids ;

Whereas, however, a policy of rational distribution of production requires reductions of costs and of capacity to be concentrated primarily on those areas of production receiving the highest level of aid ;

Whereas for undertakings or production units in the Community which have no hope of making progress towards greater economic viability in view of coal prices on the world markets, aid arrangements should make it possible to mitigate the social and regional consequences of closures ; whereas in the light of redevelopment experience in certain Community coal-producing regions it has been recognized that, in cases of early closure of installations with no prospect of future viability, aid should be granted, as deemed necessary by the Member State, for regional industrial redevelopment, to the extent compatible with the Treaties ;

Whereas steps must be taken not only to create the conditions for healthier competition but also to bring about a long-term improvement in the competitiveness of this industry throughout the Community in relation to the world market ;

Whereas Community coal industry undertakings must be able to count on a precise medium and long-term outlook to carry out structural changes ;

Whereas, as a result of the steady decline in coal production in the Community in recent decades, some undertakings may be confronted with abnormal or exceptionally high costs ; whereas State aid to offset all or part of such costs may be compatible with the common market provided that strict supervision of such aid by the Commission is guaranteed ; whereas these inherited costs are not matched by hidden revenue from the past ;

Whereas it is necessary to ensure equal access by the coal industry and other sectors to aid for research and development and to aid for environmental protection ; whereas it is therefore desirable to evaluate the compatibility of such aid with the Community guidelines established to this end ;

Whereas, in particular, the coal industry is characterized by ever-increasing recourse to advanced technology and therefore plays an important role in research, development and demonstration and the exploitation of the industrial potential of such technology ;

## IV

Whereas efforts to reduce production costs must form part of a restructuring, rationalization and modernization plan for the industry distinguishing between production units capable of contributing towards attainment of this objective and units which cannot attain it; whereas the latter will have to be the subject of an activity-reduction plan leading to the closure of installations when the present arrangements expire; whereas only exceptional social and regional reasons can justify any postponement of closure beyond the expiry date set;

Whereas the Commission's power of authorization must be implemented on the basis of precise and full knowledge of each measure planned by the governments and of their relationship to the objectives of this Decision; whereas, consequently, Member States should regularly provide the Commission with a consolidated report showing the full details of the direct or indirect aid which they plan to grant to the Community coal industry, specifying the reasons for and scope of the proposed aid and, where appropriate, its relationship with any modernization, rationalization and restructuring plan submitted;

Whereas it may be necessary, in view of the specific nature of certain existing aid arrangements, to allow a transitional period of three years so that such arrangements can be brought into line with the provisions of this Decision;

Whereas it is essential that no payment should be made, in whole or in part, before the Commission has given explicit authorization,

HAS ADOPTED THIS DECISION:

## SECTION I

**Framework and general objectives***Article 1*

1. All aid to the coal industry, whether specific or general, granted by Member States or through State resources in any form whatsoever may be considered Community aid and hence compatible with the proper

functioning of the common market only if it complies with Articles 2 to 9.

2. The term 'aid' covers any direct or indirect measure or support by public authorities linked to production, marketing and external trade which, even if it is not a burden on public budgets, gives an economic advantage to coal undertakings by reducing the costs which they would normally have to bear.

3. The term 'aid' also covers the allocation, for the direct or indirect benefit of the coal industry, of the charges rendered compulsory as a result of State intervention, without any distinction being drawn between aid granted by the State and aid granted by public or private bodies appointed by the State to administer such aid.

4. The term 'aid' also covers aid elements contained in financing measures taken by Member States in respect of coal undertakings which are not regarded as risk capital provided to a company under standard market-economy practice.

*Article 2*

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

- to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving degression of aids,
- to solve the social and regional problems created by total or partial reductions in the activity of production units,
- to help the coal industry adjust to environmental protection standards.

2. On expiry of a transitional period not exceeding three years starting at the entry into force of this Decision, with a view to increasing transparency, aid shall be authorized only if it is entered in Member States' national, regional or local public budgets or channelled through strictly equivalent mechanisms.

3. With effect from the first coal production year covered by this Decision, all aid received by undertakings shall be shown together with their profit-and-loss accounts as a separate item of revenue, distinct from turnover.

4. For the purposes of this Decision, 'production costs' means those costs, per tonne of coal equivalent, which are linked to current production.

5. All measures involving the granting of aid as referred to in Articles 3 to 7 shall also be appraised, without prejudice to the specific conditions defined for them by those Articles, so as to assess their compatibility with the objectives set out in paragraph 1 of this Article.

## SECTION II

### Aid granted by the Member States

#### *Article 3*

##### Operating aid

1. Operating aid to cover the difference between production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market may be considered compatible with the common market only if it satisfies all the following conditions:

- the aid notified per tonne shall not exceed for each undertaking or production unit the difference between production costs and foreseeable revenue in the following coal production year,
- the aid actually paid shall be subject to annual correction, based on the actual costs and revenue, at the latest by the end of the coal production year following the year for which the aid was granted. Where the aid is granted within the framework of a multiannual financing ceiling, the final correction shall be made at the end of the year following the aforesaid multiannual financing exercise,
- the amount of operating aid per tonne may not cause delivered prices for Community coal to be lower than those for coal of a similar quality from third countries,
- without prejudice to Articles 8 and 9, Member States shall supply the Commission firstly with all details relevant to the calculation of the foreseeable production costs and revenue per tonne and secondly with all details relevant to the calculation of the correction based on actual production costs and revenue,
- aid must entail no distortion of competition between coal users.

2. Member States which intend to grant operating aid as referred to in paragraph 1 in the course of the 1994 to 2002 coal production years to coal undertakings shall

submit to the Commission in advance a modernization, rationalization and restructuring plan designated to improve the economic viability of the undertakings concerned by reducing production costs.

The plan will provide for appropriate measures and sustained efforts to generate a trend towards a reduction in production costs at 1992 prices, during the period 1994 to 2002.

Implementation of this plan shall be monitored regularly and the situation reviewed by the Commission in 1997.

3. If some production units in an undertaking receive aid for the reduction of activity provided for by Article 4 while others in the same undertaking receive operating aid, the production costs of the units whose activity is reduced shall not be included in the calculation of the average production costs with a view to evaluating attainment by the undertaking of the objective set in paragraph 2 of this Article.

#### *Article 4*

##### Aid for the reduction of activity

Aid to cover the production costs of undertakings or production units which will be unable to attain the conditions laid down by Article 3 (2) may be considered compatible with the common market provided that it satisfies the conditions laid down in Article 3 (1) and is the subject of a closure plan with a deadline occurring before expiry of this Decision.

Should such closure come about after the expiry of this Decision, aid to cover production costs will be authorized only if it is justified on exceptional social and regional grounds and is the subject of a progressive and continuous activity-reduction plan entailing a significant reduction in capacity before the expiry of this Decision.

#### *Article 5*

##### Aid to cover exceptional costs

1. State aid to coal undertakings to cover the costs arising from or having arisen from the modernization, rationalization or restructuring of the coal industry which are not related to current production (inherited liabilities) may be considered compatible with the common market provided that the amount paid 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.

The categories of costs resulting from modernization, rationalization and restructuring of the coal industry are defined in the Annex to this Decision.

2. State aid to finance social-welfare schemes specifically for the coal industry may be considered compatible with the common market provided that it brings the ratio between the cost per mineworker in employment and the benefits per person in receipt of benefit for coal undertakings into line with the corresponding ratio in other industries. Without prejudice to Article 9, Member States' Governments shall submit to the Commission the necessary basic data and details of the calculation of the ratios between the burdens and benefits referred to above.

#### *Article 6*

##### Aid for research and development

Aid to cover expenditure by coal undertakings on research and development projects may be considered compatible with the common market provided that it complies with the rules laid down in the Community framework for State aid for research and development.

#### *Article 7*

##### Aid for environmental protection

Aid to facilitate the adjustment to new environmental protection standards of installations in operation at least two years before the entry into force of those standards may be considered compatible with the common market, provided that it complies with rules laid down in the Community framework for State aid for such purposes.

### SECTION III

#### Notification, appraisal and authorization procedures

#### *Article 8*

1. Member States which intend to grant operating aid as referred to in Article 3 (2) or aid for the reduction of

activity as referred to in Article 4 for the 1994 to 2002 coal production years shall submit to the Commission, by 31 March 1994 at the latest, a modernization, rationalization and restructuring plan for the industry in accordance with Article 3 (2) and/or an activity-reduction plan in accordance with Article 4.

2. The Commission shall consider whether the plan or plans are in conformity with the general objectives set by Article 2 (1) and with the specific objectives and criteria set by Articles 3 and 4.

3. Within three months of notification of the plans, the Commission shall give its opinion on whether they are in conformity with the general and specific objectives, without prejudging the ability of the measures planned to attain these objectives. If the information in the plans proves insufficient, the Commission may, within one month, request further information, in which case a new three-month period will start on the date of submission of such further information.

4. If a Member State decides to make amendments to the plan which alter its general tendency in respect of the objectives pursued by this Decision, it must inform the Commission so that the latter may rule on the amendments in accordance with the procedures set out in this Article.

#### *Article 9*

1. By 30 September each year (or three months before the measures enter into force) at the latest, Member States shall send notification of all the financial support which they intend to grant to the coal industry in the following year, specifying the nature of the support with reference to the general objectives and criteria set out in Article 2 and the various forms of aid provided for in Articles 3 to 7 and its relationship to the plans submitted to the Commission in accordance with Article 8.

2. By 30 September each year at the latest, Member States shall send notification of the amount of aid actually paid in the preceding coal production year and shall declare any corrections made to the amounts originally notified.

3. When notifying aid as referred to in Articles 3 and 4 and making the annual statement of aid actually paid, Member States shall supply all the information necessary for verification of the criteria set out in the relevant Articles.

4. Member States may not put into effect planned aid until it has been approved by the Commission on the basis, in particular, of the general criteria and objectives laid down in Article 2 and of the specific criteria established by Articles 3 to 7. If the Commission has taken no decision within three months of receipt of notification of the measures planned, the measures may be implemented 15 working days after transmission to the Commission of notice of intent to implement them. Any request made by the Commission for further information shall cause that three-month period to run afresh from the date on which the Commission receives the information.

5. In the event of refusal, any payment made in anticipation of authorization from the Commission shall be repaid in full by the undertaking that received it and shall invariably be considered an unfair advantage in the form of an unjustified cash advance and, as such, shall be liable to charges at the market rate payable by the recipient.

6. In its assessment of the measures notified, the Commission shall check whether the measures proposed are in conformity with the plans submitted in accordance with Article 8 and with the objectives set out in Article 2. It may request Member States to explain any deviation from the plans originally submitted and to propose the necessary corrective measures.

7. The arrangements existing at 31 December 1993, under which aid was granted in conformity with the provisions of Decision 2064/86/ECSC and which are linked to agreements between producers and consumers, exempted under Article 85 (3) of the EC Treaty and/or authorized under Article 65 of the ECSC Treaty, must be modified by 31 December 1996 to bring them into line with the provisions of this Decision.

The preceding subparagraph in no way affects either the application of Article 2 of this Decision or the Member

States' notification requirement in accordance with the procedures laid down in Articles 8 and 9 of this Decision. All changes made in the aforementioned arrangements must also be notified to the Commission.

#### SECTION IV

#### General and financial provisions

##### *Article 10*

1. The Commission shall report annually to the Council, the European Parliament and the Consultative Committee on the application of this Decision.
2. The Commission shall submit to the Council, by 30 June 1997 at the latest, a report on experience and problems in applying this Decision. It may propose any appropriate amendments in accordance with the procedure laid down in the first paragraph of Article 95 of the ECSC Treaty.

##### *Article 11*

After consulting the Community, the Commission shall take all the measures necessary to implement this Decision.

##### *Article 12*

This Decision shall enter into force on 1 January 1994 and shall expire on 23 July 2002.

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

Done at Brussels, 28 December 1993.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

## ANNEX

**DEFINITION OF THE COSTS REFERRED TO IN ARTICLE 5 (1) OF DECISION No 3632/93/  
ECSC****I. Costs incurred only by undertakings which are carrying out or have carried out restructuring and rationalization**

## Exclusively :

- (a) the cost of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age ;
- (b) other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalization ;
- (c) the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such payments before the restructuring ;
- (d) the supply of free coal to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such supply before the restructuring ;
- (e) residual costs resulting from administrative, legal or tax provisions ;
- (f) additional underground safety work resulting from restructuring ;
- (g) mining damage provided that it has been caused by pits previously in service ;
- (h) residual costs resulting from contributions to bodies responsible for water supplies and for the removal of waste water ;
- (i) other residual costs resulting from water supplies and the removal of waste water ;
- (j) residual costs to cover former miners' health insurance ;
- (k) exceptional intrinsic depreciation provided that it results from the restructuring of the industry (without taking account of any revaluation which has occurred since 1 January 1986 and which exceeds the rate of inflation) ;
- (l) costs in connection with maintaining access to coal reserves after mining has stopped.

**II. Costs incurred by several undertakings**

- (a) increase in the contributions, outside the statutory system, to cover social-security costs as a result of the drop, following restructuring, in the number of contributors ;
  - (b) expenditure, resulting from restructuring, on the supply of water and the removal of waste water ;
  - (c) increase in contributions to bodies responsible for supplying water and removing waste water, provided that this increase is the result of a reduction, following restructuring, in the coal production subject to levy.
-