

## DECISION No 3/71/ECSC OF THE COMMISSION

of 22 December 1970

on Community rules for interventions by Member States for the benefit of the coal industry

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, 46, 47, 67 and 68, and the first and second paragraphs of Article 95 thereof;

After consulting the Committee and having obtained the unanimous assent of the Council;

## I

Whereas structural changes in the energy market led the Member States to adopt, on 21 April 1964, a Protocol of Agreement on Energy Problems<sup>1</sup>; whereas, taking account of paragraph 11 of that Protocol and acting on the basis of the first and second paragraphs of Article 95 of the Treaty, the High Authority adopted on 17 February 1965 Decision No 3/65 on Community rules for interventions by Member States for the benefit of the coal industry<sup>2</sup>; whereas that Decision, having been extended by Commission Decision No 27/67,<sup>3</sup> expires on 31 December 1970;

Whereas a detailed study of the economic conditions under which Community coal is produced and marketed shows that in many coalfields, despite all that has been done, the collieries would not be viable without aid;

Whereas there is no prospect of the energy market developing in such a way as would allow the Community coal industry as a whole to achieve financial equilibrium, and whereas, therefore, the efforts already undertaken to rationalise and concentrate the industry should continue;

Whereas, however, if Member States were to withdraw all financial aid from their coal industries, pits working at a loss would inevitably have to close in the near future; whereas such development would:

- jeopardise the attainment of the basic objective laid down in the second paragraph of Article 2 of the Treaty, and would in particular interfere with the efforts, undertaken in the common interest and with due regard for the objectives of Article 3 (c), (d), (e) and (g) of the Treaty, to rationalise the coal industry;
- carry with it, moreover, the risk of serious disturbances in economic and social conditions in certain mining regions in the Community;
- and, lastly, have results as regards the supply of energy to the Community which would be contrary to Article 3 (a) of the Treaty;

Whereas the Treaty permits Member States to alter arrangements for the financing of welfare benefits while at the same time giving the Commission the means to intervene should it find that the changes made by Member States are such as would distort conditions of competition in the common market; whereas contribution from public funds to the financing of welfare benefits for the purpose of offsetting the abnormal charges borne by the coal industry owing to its contraction may be considered compatible with the common market; whereas such is the case, in particular, with regard to the use of public funds to bring the ratio between the charge per actively employed mineworker and the benefit per recipient down to the ratio obtaining in other industries; whereas it is enough, in the present circumstances, to provide for the co-ordination of measures taken for this purpose; whereas the Treaty does not afford the necessary powers for action to be taken in this respect; whereas, this being a case not provided for, action may be taken under the provisions of the first paragraph of Article 95 of the Treaty;

<sup>1</sup> OJ No 69, 30.4.1964, p. 1099/64.

<sup>2</sup> OJ No 31, 25.2.1965, p. 480/65.

<sup>3</sup> OJ No 261, 28.10.1967, p. 1.

Whereas, however, the economic analysis set out above will still apply even after Member States have made legitimate use of their power to intervene in the financing of welfare benefits; and whereas, therefore, failure to furnish temporary support from public funds for the coal industry's efforts to rationalise is liable to jeopardise the attainment of the basic objectives mentioned above;

Whereas, in these circumstances, it is clearly necessary, in order to attain these Community objectives, to institute new Community rules for aids to coalmining undertakings; whereas the Treaty gives the Commission no specific powers to establish such rules; and whereas, this being a case not provided for, action should be taken under the provisions of the first paragraph of Article 95 in order to ensure that the objectives set out in the opening Articles of the Treaty are pursued;

## II

Whereas such action under the first paragraph of Article 95 must form part of the general attempt by the Community to frame a common energy policy, such policy being already outlined in the Protocol of Agreement on Energy Problems<sup>1</sup> of 21 April 1964 and subsequently dealt with in more detail in the First Guidelines for a Common Energy Policy,<sup>2</sup> the basic principles of which were approved by the Council at its meeting on 13 November 1969;

Whereas these First Guidelines stress in particular, with regard to coal, the need:

- to compare, with a view to adjusting production to sales potential, the medium-term forecasts of production tonnages by coalfield prepared by the countries concerned;
- to consider the Community's energy supply not as a single entity from the point of view of security or prices, but broken down according to types of consumption and taking into account the possibilities of substitution as between the different forms of energy;

Whereas the measures to be taken should, moreover, be limited to those which are strictly necessary and should depart from the normal rules of the Treaty only to the extent genuinely essential to deal with the problems confronting the Community; in particular they must not involve indirect aid to industrial consumers of coal;

Whereas, in view of the foregoing, the Commission should be empowered to authorise financial interventions by Member States for the benefit of the coal industry prior to their coming into operation but only in so far as such interventions will facilitate:

- the concentration of production on the pits best able to improve their productivity and thus help to keep the Community supplied under favourable conditions;
- the adjustment of coal production to the state of the energy market while avoiding serious disturbances in economic and social conditions in regions where the development potential is as yet insufficient.

## III

Whereas, the Commission's power of authorisation must be exercised on the basis of full and accurate knowledge of the measures which Governments intend to take as well as of the economic, regional and social context of such measures; whereas Member States should consequently be required, under Article 47 of the Treaty, to furnish the Commission regularly with full particulars concerning proposed interventions, whether direct or indirect, for the benefit of the coal industry, together with details of the reasons for and scope of such interventions, in the light in particular of their forecasts of coal production, imports and sales, and taking into account the prospects for regional development;

Whereas it is moreover necessary to establish criteria such as will ensure that the aids to be granted duly fulfil this purpose; whereas to this end care must be taken to make it impossible for aids to be granted in amounts or by procedures liable to impair the proper functioning of the common market, in particular by interfering with the conditions of production, marketing and trade to an extent contrary to the common interest; whereas it must therefore be ensured that financial interventions by Member States:

- are consistent with the tonnage forecasts drawn up for each coalfield or undertaking;
- take account of the objectives of this Decision, of the pricing of Community coal and of the need to avoid indirectly aiding industrial consumers of Community coal;
- contribute to the necessary progress of rationalisation and of the concentration of production on pits where productivity is highest;
- prevent serious disturbances in economic and social conditions in regions where there are not as yet sufficient employment opportunities;

<sup>1</sup> OJ No 69, 30.4.1964, p. 1099/64.

<sup>2</sup> Supplement to the monthly Bulletin of the Commission, 12-68.

Whereas the Commission, in assessing such aids, must be able to take into account not only aids granted in pursuance of this Decision but also all other financial measures for the benefit of the Community coal industry; whereas, furthermore, should the state of undertakings' finances so require, it must be possible for them to receive advances, even before the authorisation procedure is completed;

#### IV

Whereas the categories of aid qualifying for prior authorisation from the Commission should be specified;

Whereas the total or partial closure of pits entails certain exceptional extra expenditure; whereas it must be possible to authorise aids to offset this in full or in part;

Whereas the continuing process of adjustment by undertakings to the state of the coal market requires in addition expenditure on capital investment and on the training and stabilisation of personnel; whereas it must be possible to authorise aids for such expenditure;

Whereas it is desirable that undertakings should be enabled where necessary to build up and maintain exceptional stocks in order to increase the elasticity of supply of Community coal; whereas it must be possible to authorise aids for this purpose;

Whereas the possibility cannot be ignored that the categories of aid referred to above may not be sufficient to prevent serious disturbances in economic and social conditions in regions where sufficient opportunities for re-employment do not yet exist, or to prevent the reduction of production to a level below that considered justified in view of the temporary uncertainties concerning Community energy supply;

Whereas, for these reasons, it is necessary to permit the granting of additional aids up to a maximum of an amount covering the difference between the foreseeable average cost of coal production and the average revenue obtainable during the following calendar year; whereas, where the state of undertakings' finances so requires, there is no objection to their real losses over the two preceding years also being offset, provided it can be shown that failure to offset such losses would be contrary to the objectives and criteria of this Decision;

#### V

Whereas the present prospects of the coal industry suggest that as regards financial interventions the

various categories of aid here provided for constitute an effective means of meeting the economic and social demands posed by the objectives set out in the opening Articles of the Treaty;

Whereas proper implementation of this Decision must be ensured by provisions enabling the Commission to exercise its power of authorisation effectively, to attach to its authorisation such conditions as may be appropriate, to effect the necessary checks thereafter, and to withdraw any authorisation as soon as it is no longer justified; whereas the Commission must also be in a position to prevent undertakings in receipt of aids from fixing, either in their price lists or by alignment, artificially low prices liable to interfere with the proper functioning of the common market; whereas, moreover, it is necessary to make provision for the suspension of this Decision in the event of serious difficulties or of a fundamental change in the economic conditions on the basis of which it was adopted;

Whereas this Decision is intended to remedy the unforeseen situation which has arisen as a result of the radical changes which continue to take place in the energy market; whereas, in these circumstances, and taking into account the necessarily cautious progress of the measures of adjustment possible in this sector, the period of validity of this Decision should be limited to five years:

HAS DECIDED:

#### SECTION I

##### *Article 1.*

The Commission is empowered, subject to the provisions hereinafter set out, to authorise such financial interventions by Member States for the benefit of the Community's coal industry as will facilitate the achievement of the following objectives:

- (1) concentration of production on the pits best able to improve their productivity and best fitted to supply the Community with energy, having regard in particular to their location in relation to markets and to their reserves of the grades of coal in demand;
- (2) the continued adjustment of production to the state of the energy market, in so far as this does not lead to serious disturbances in economic and social conditions in regions where the development potential is as yet insufficient.

## SECTION II

## Obligations of Member States

## Article 2

1. A Member State intending to grant any aid under Article 1 shall furnish the Commission, by not later than 1 November in any year, with particulars, broken down by coalfield or by undertaking, as to the following:

- (1) all financial interventions, direct or indirect, proposed for the benefit of the coal industry during the following calendar year;
- (2) where the financial interventions referred to in subparagraph (1) are for the purpose of financing welfare benefits in the coal industry:
  - (a) the laws and regulations in force and/or amendments to existing laws and regulations already notified;
  - (b) the amount, broken down by category, paid out in welfare benefits during the preceding year to employees and former employees in the coal industry and their dependants and other persons entitled, and the number of recipients concerned, together with the corresponding particulars for the system obtaining generally;
  - (c) the different funds drawn on, and the amounts allocated from each, to finance the benefits referred to in (b);
- (3) the grounds for and scope of the various interventions, any further particulars relevant to their assessment under Article 3, and proof that they are no larger in scale than is absolutely necessary to attain the objectives in view;
- (4) forecasts as provided below for production, imports and sales of coal and coke, presented in the form of balance sheets:
  - (a) for the fifth year ahead:
    - an overall forecast of coal availabilities and sales;
  - (b) for the third year ahead:
    - a forecast of coal availabilities and sales in each of the following sectors: coking, power stations, other industries, private households;
    - a forecast of coke production and sales in each of these sectors;

(c) for the year immediately ahead:

— forecasts by sector of coal and coke availabilities and sales;

- (5) particulars for one year ahead of proposed closures and partial closures of pits, and forecasts as to the restructuring and redeployment of the redundant work force in the light of prospects and programmes for regional development.

2. For 1971 the particulars specified in paragraph 1 must be furnished not later than 31 January.

3. If, during any calendar year, a Member State plans to undertake financial interventions additional to those already notified under paragraph 1, or to make changes in existing arrangements, it must notify the Commission in good time for the latter to be able to study the measures proposed and rule thereon in accordance with the procedures below.

## SECTION III

## Examination and authorisation procedures

## Article 3

1. The Commission shall examine, on the basis of the particulars provided for in Article 2, whether the measures notified are compatible with the proper functioning of the market. In so doing it shall apply the following criteria:

- (1) consistency with the tonnage forecasts drawn up for each coalfield or undertaking, having regard to the Community's overall supply position in respect of coke and coal, and taking account of intra-Community trade;
- (2) suitability of the financial measures proposed by the Governments, having regard to the objectives of this Decision, the pricing of Community coal, in so far as this may affect the level of aid, and the principle that the amount of any aid must not exceed that which is absolutely necessary, or lead to indirect aiding of industrial consumers;
- (3) progress of rationalisation and of concentration of production on pits where productivity is highest, having regard to their location in relation to markets and to their reserves of the grades of coal in demand;
- (4) prevention of serious disturbances in economic and social conditions in any region where there are not as yet sufficient employment opportunities;

2. In conducting its examination in accordance with the criteria set out in paragraph 1, the

Commission shall take account not only of aids provided for in this Decision, but also of all other financial measures for the benefit of the Community coal industry, and shall see to it that such aids and financial measures do not conflict with the principle of non-discrimination laid down in the Treaty.

#### *Article 4*

1. State interventions in the financing of welfare benefits shall be considered compatible with the common market where their effect is to bring the ratio between the charge per actively employed mineworker and the benefit per recipient down to the level of the ratio obtaining in other industries.

2. The Governments of the Member States shall submit to the Commission the necessary facts, together with detailed calculations of the ratios of charges to benefits referred to in paragraph 1.

#### *Article 5*

1. The Commission may, after consulting the Council, authorise the aids provided for in Articles 6 to 9 to the extent that it finds that these are in accordance with the provisions of Article 3.

2. With regard to all other aid and financial interventions coming within the scope of the Treaties, the Commission shall reach its decisions in accordance with the rules and procedures laid down in the Treaties.

3. Member States may not implement the measures referred to in paragraph 1 without prior authorisation from the Commission.

4. Should the state of undertakings' finances make it essential for them to receive advances on the financial measures envisaged before the authorisation procedure is completed, such advances shall be designated as such and be made only on the express condition that they may have to be refunded.

### SECTION IV

#### **Aid by Member States**

#### *Article 6*

1. Authorisation may be given under Article 3 in respect of State aids intended to enable undertakings to adjust their production to the state of the coal market by means of a total or partial closure of pits; such aid may be only for the purpose of covering

expenditure not directly connected with the mining and marketing of coal. The following items may be so covered:

- (1) Expenditure borne only by undertakings effecting closures, and in particular:
  - (a) an exceptional burden of payments in respect of welfare benefits by reason of the retirement of workers in advance of the statutory retiring age;
  - (b) other exceptional expenditure in respect of workers deprived of their employment following closure;
  - (c) payment of extra-statutory retirement pensions to workers deprived of their employment following closure and to workers entitled to such pensions prior to closure;
  - (d) free coal deliveries to workers deprived of their employment following closure and workers entitled to such deliveries prior to closure;
  - (e) residual tax charges;
  - (f) additional underground safety operations occasioned by closure;
  - (g) subsequent subsidence damage;
  - (h) residual charges in connection with the payment of water and sewerage rates;
  - (i) other residual charges in connection with water supply and sewerage.

- (2) Expenditure borne by undertakings referred to in (1) and by other coalmining undertakings:
  - (a) increase in contributions in respect of extra-statutory welfare benefits in consequence of the reduction in the number of contributors due to closures;
  - (b) expenditure occasioned by closures in respect of water supply and sewerage;
  - (c) increase in water and sewerage rates, where this is due to a reduction in the number of rate-paying undertakings following closures.

2. The aid may take the form of a lump sum payment, which shall not exceed the amount of the expenditure incurred in respect of closure.

#### *Article 7*

1. Authorisation may be given under Article 3 in respect of state aids intended, as part of the process of adjustment by undertakings to the state of the coal

market, to increase profitability or to improve mine safety.

2. Such aids may be granted either for individual investment projects or for investment programmes, subject to the following conditions:

- (1) The investment project or programme must contribute towards increasing profitability or improving mine safety and Governments must furnish proof to that effect;
- (2) Investment projects or programmes aimed at increasing profitability must be primarily directed to:
  - (a) the concentration of pits;
  - (b) the further mechanisation and automation of coal winning and underground operations;
  - (c) coal valorisation;
- (3) In the case of an investment programme, the Commission shall also be informed at least once a year of the purpose of, amounts of capital investment involved by, and amount of aid allocated to, those of its various component projects which it has been decided to implement;
- (4) Should the aids applied for concern investment in respect of which loans or guarantees have already been provided under Article 54 of the ECSC Treaty, the amounts so loaned or guaranteed shall be shown in respect of each project;

3. Authorisation may also be given under Article 3 in respect of state aids to help with the financing of essential recruitment, training, adaptation and stabilisation of personnel.

#### *Article 8*

1. Authorisation may be given under Article 3 in respect of aids for the building and holding of exceptional stocks for the purpose of increasing the elasticity of supply of Community coal and improving adaptability to short-term market fluctuations.

2. Aids for exceptional stocks shall be payable only in respect of tonnages of saleable coal and coke in excess of one-twelfth of the annual coal production of the coalfield or undertaking in question.

3. Such aids may at most cover stock-holding costs for the tonnages referred to in paragraph 2, no allowance being made for depreciation or value loss.

4. Separate rates of aid per metric ton shall be fixed one year in advance for coking coals, other coals and coke respectively; the mode of calculating of such rates must be communicated.

#### *Article 9*

1. Aid additional to the aids provided for in Articles 6, 7 and 8 may be authorised where it can be shown that the adjustment of production to the level demanded by the state of the market

- (1) would cause serious disturbances in economic and social conditions in any region where sufficient opportunities for re-employment do not yet exist;
- (2) would prevent production warranted by the temporary uncertainties in the Community's energy supply.

2. Any aid thus granted to a coalfield or to an undertaking may at most cover the difference between the foreseeable average cost of coal production and the average revenue obtainable during the following calendar year. The aid must be expressed as an amount per metric ton produced per coalfield or undertaking.

As evidence in support of the amount of such aid, Governments shall furnish the Commission with the necessary particulars, including details of average production costs and revenues for the period most recently ended.

Production costs may include allowances for normal depreciation and for an adequate return on working capital. The Commission may lay down standard values for these items.

3. The reduction of costs as a result of the granting of aids under Articles 7 and 8 of this Decision must be allowed for when calculating production costs.

4. In fixing the rate of aid account must be taken of any aids granted under Decision No 70/1/ECSC on coking coal and coke. Such aids must be shown in the calculation.

5. Exceptionally, where production has to be maintained by reason of one of the situations envisaged in paragraph 1 of this Article, but such an operation is jeopardised by a lack of balance in the state of undertakings' finances, aid additional to that permitted under paragraph 2 may be granted, but shall be limited to an amount covering any difference not already covered between the costs of and revenues from coal production in the course of an immediately preceding period not exceeding two years. In this case, supporting evidence covering the

items referred to in the preceding paragraphs must be furnished, and for this purpose particulars shall be given concerning the period in question during which the losses were incurred. In addition, the extent to which such losses have meanwhile been reduced by other State measures shall be specified.

## SECTION V

### General and final provisions

#### *Article 10*

In determining whether any aid granted under Articles 6 to 9 of this Decision is compatible with the proper functioning of the common market, the Commission shall take account of any aid granted under Decision No 70/1/ECSC of 19 December 1969.

#### *Article 11*

1. In order to ensure that aids authorised by it are employed solely for the purposes set out in Articles 6 to 9, the Commission may:

- (1) attach to its authorisation such conditions as may be appropriate;
- (2) restrict the exercise by undertakings in receipt of aid of the right of alignment provided for in Article 60 of the Treaty establishing the ECSC and require them to abide by minimum prices. Should any undertaking fail to comply, the provisions of Article 64 of the Treaty establishing the ECSC shall apply.
2. The Commission may effect the necessary checks upon undertakings.
3. The Commission shall revoke its authorisation of aids or amend the terms thereof if it finds that such aids no longer satisfy the provisions of Articles

6 to 9 of this Decision or that the practical results of any such aid or of the use made of it are contrary to the requirements laid down for its authorisation. The Member State concerned shall comply with any decision revoking or amending an authorisation within such period as the Commission shall fix.

#### *Article 12*

If, upon application by a Member State or on its own initiative, the Commission finds that:

- (1) the operation of this Decision threatens to provoke serious disturbances in the common market for coal, or to give rise to difficulties which could cause deterioration in the state of a regional economy, or that
- (2) marked changes are taking place in the pattern or the scale of intra-Community trade in coal, thus altering the economic conditions on the basis of which the Decision was adopted, the Commission may, after hearing the parties concerned, suspend its operation in whole or in part. The matter shall be referred immediately to the Council.

#### *Article 13*

The Commission shall report regularly to the Council regarding the operation of this Decision.

#### *Article 14*

The Commission shall, after consulting the Council, take any measures required to implement this Decision.

#### *Article 15*

This Decision shall enter into force on 1 January 1971 and shall cease to apply on 31 December 1975.

Done at Brussels, 22 December 1970.

*For the Commission*

*The President*

Franco M. MALFATTI