

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 March 1989

ruling on a financial measure taken by the Federal Republic of Germany in respect of the coal industry during 1988 and a supplementary financial measure in respect of the coal industry during 1987

(Only the German text is authentic)

(89/296/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 2064/86/ECSC of 30 June 1986 establishing Community rules for State aid to the coal industry⁽¹⁾, and in particular Article 10 thereof,

Whereas :

I

In its letters of 2 March 1988 and 12 April 1988, the Government of the Federal Republic of Germany informed the Commission, pursuant to Article 9 (2) and (3) of Decision No 2064/86/ECSC, of the compensatory amounts financed through a compensation fund (Ausgleichsfonds) to be paid to electricity generators using Community coal for the year 1988 under the third Electricity-from-coal Law.

The Government of the Federal Republic of Germany also notified the Commission in these letters of the increase in the amount allocated for the year 1987 in implementation of this Law.

In its letters of 20 September 1988 and 1 February 1989, the Government of the Federal Republic of Germany provided the following additional information in response to the Commission's requests of 6 May and 18 November 1988.

⁽¹⁾ OJ No L 177, 1. 7. 1986, p. 1.

The sums in question, financed through the 'Kohlepfennig' levy system, amount to :

- DM 4 700 million for the year 1988, equivalent to a levy rate of 7,25 %,
- DM 684 million supplementing the sum already authorized for 1987 by Commission Decision 87/451/ECSC⁽²⁾.

II

The objective of the compensation fund pursuant to the third Electricity-from-coal Law is to compensate electricity generators in the Federal Republic of Germany using Community coal for part of the price difference between the latter and fuel oil or imported coal.

This compensation scheme is applied to an annual volume of about 33 million tonnes coal equivalent of Community coal.

It is a measure relating to sales of coal which, even if it is not financed directly from public funds, is nevertheless paid for through levies that are obligatory as a result of government action.

In addition, the scheme confers an economic advantage on coal undertakings. It therefore constitutes indirect aid to the coal industry within the meaning of Article 1 (1) of Decision No 2064/86/ECSC.

⁽²⁾ OJ No L 241, 25. 8. 1987, p. 10.

The Commission must therefore deliver an opinion on the scheme pursuant to Article 10 (2) of the Decision.

III

The amount of indirect aid to the coal industry since the entry into force of the third Electricity-from-coal Law totalled over 20 000 million German marks by 31 December 1986.

By Decision 87/451/ECSC the Commission authorized the sum of DM 3 109 million for the year 1987, corresponding to a 'Kohlepfennig' levy rate of 4,5 %. In granting its approval the Commission took account of the fact that the precipitate closure of uneconomic production units might create major social and regional problems.

Compared with the volume of aid approved by the Commission, the increase for 1987 brings the total granted under the abovementioned law to DM 3 793 million.

For 1988, the granting of DM 4 700 million from the compensation fund corresponds to an increase in aid of about 24 % compared with 1987.

IV

The trend observed over the last few years must be viewed in the context of the objectives of Decision No 2064/86/ECSC, in particular Article 2 (1) thereof.

It should be noted that the Federal Republic's third Electricity-from-coal Law specifies among its objectives the stabilization of production, but does not include the objectives stated in Article 2 (1) of Decision No 2064/86/ECSC, notably the improvement of the competitiveness of the industry or the creation of new, economically viable capacities.

The automatic granting of aid to the volumes of coal produced in accordance with the Law has the effect of stimulating investment to maintain capacities with no guarantee of economic viability in the long term.

Finally, the declared objectives of the Law in question do not include as a priority the solution of the social and regional problems related to developments in the coal industry.

The Commission has nevertheless in the past taken the view that such aid was likely to mitigate the social and regional problems of the industry. The German authorities have in the meantime substantially increased the amounts of aid, of which only a part has been notified, while omitting to demonstrate that all the aid

scheduled complied with the objectives and conditions defined in Article 2 of Decision No 2064/86/ECSC.

Consequently, it is appropriate to authorize only the amounts notified without, at this juncture, ruling on possible supplementary aid that could satisfy the requirements announced by the German authorities.

V

In view of the temporary nature of the above Decision which expires on 31 December 1993, and the need to aim for the long-term economic viability of the Community coal industry, Community aids must be scheduled on a declining scale and accompanied by restructuring, streamlining and modernization plans in keeping with the conditions of application of Decision No 2064/86/ECSC.

In order to enable the Commission to examine whether the conditions of application of Decision No 2064/86/ECSC are fulfilled, the authorities of the Federal Republic of Germany must be requested to submit, before 30 September 1989, a plan covering the period until 31 December 1993 for the reduction of the compensatory payments made under this scheme for of any other measure having equivalent effect.

This Decision shall not be taken to imply any prior appreciation of the compatibility with the provisions of the Treaties of the purchase contracts for German coal concluded by the electricity generating companies ('Jahrhundertvertrag'),

HAS ADOPTED THIS DECISION :

Article 1

The compensatory payments, to be made to electricity generators, notified in the letters of 2 March and 12 April 1988, shall be deemed Community aid to the coal industry and therefore compatible with the proper functioning of the common market in accordance with Article 2 (1) of Decision No 2064/86/ECSC, considering that :

- their immediate abolition would aggravate the social and regional problems related to developments in the coal industry, and
- they shall, in order to contribute to improving the competitiveness of this industry, be reduced in conjunction with a plan for the restructuring, modernization and streamlining of the coal industry.

Article 2

The Government of the Federal Republic of Germany shall submit to the Commission before 30 September 1989 a plan, running until 31 December 1993 at the latest, for the reduction of the compensatory payments

made under the compensation system, or of any other measure having equivalent effect.

Done at Brussels, 30 March 1989.

Article 3

This Decision is addressed to the Federal Republic of Germany.

For the Commission

António CARDOSO E CUNHA

Member of the Commission
