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COMMUNICATION FROM THE COMMISSION

TO THE COUNCIL AND TO THE EUROPEAN PARLIAMENT

FUTURE OF THE ECSC TREATY

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Subject: FUTURE OF THE ECSC TREATY

I. Reasons for current reflections on the future of the ECSC Treaty

The ECSC Treaty expires in the year 2002, as provided for in Article 97. Although it still has twelve years to run, it is not too early to discuss its future, for the following reasons:

- completion of the single market and moves towards economic and monetary union place the continuation of sectoral policies, including those for the coal and steel industries, in a new context based on considerations of overall economic policy. It should be borne in mind that the objectives and measures contained in the ECSC Treaty were formulated at the beginning of the 1950s, in other words against an entirely different background.

- The steel and coal industries are highly capital intensive sectors. Any change therefore requires adequate preparation.

- Moreover, questions have been raised both at political level (European Parliament and Court of Auditors) and by certain representatives of the steel industry about the future of the Treaty, particularly the future of the instruments and financial role of the ECSC (levies, reserves and ECSC loans) and of certain steel policy measures (forward programmes, general objectives, pricing policy, etc.).

II. Possible political options

The future of the ECSC Treaty can be approached according to numerous different scenarios which can, however, be grouped into the three basic options following:

1. Maintaining special rules for the coal and steel industries after 2002, by extending the ECSC Treaty, as it stands or with amendments.

2. Early termination of the ECSC treaty before 2002 and using the provisions and measures in the EEC Treaty to cover the coal and steel industries.

3. Expiry of the ECSC Treaty in 2002, with the understanding that by that time, the Commission will examine which of the provisions of the ECSC Treaty could be incorporated in the EEC Treaty.

   A number of variants could be added to this option. Whilst these would assume the expiry of the ECSC Treaty as such as scheduled, they would offer at the same time the possibility of repealing or modifying, before scheduled, some of its obsolete provisions and/or incorporating into the EEC Treaty others deemed useful or necessary for the whole range of economic activity.

III. Comparative analysis of the main provisions of the ECSC Treaty and of the EEC Treaty

* The Commission's services have studied in detail the main chapters of the ECSC Treaty, in order to assess the different above-mentioned options. The analysis has attempted to answer the following four questions.

(a) What is the current assessment of the objectives and measures provided for in the ECSC Treaty?

(b) Could the EEC Treaty be used to achieve the policy measures provided for in the ECSC Treaty?

(c) Would it be worth incorporating certain specific provisions of the ECSC Treaty into the EEC Treaty?

(d) Is it necessary to revise the implementation and/or interpretation of the ECSC Treaty for a transitional period from now until its expiry date?

*The main results of the analysis can be summarized as follows.

1. The aim of the levy (Article 49) is twofold. First, it is designed to finance certain priority measures in the sector (non-repayable redeployment aid, promoting

research, industrial redevelopment of areas in decline, etc.). Second, it is intended to form the basis for independent ECSC financial activities as provided for in the Treaty, without the need to call on public funds. The levy, which is the sole example of a genuine Community tax, entails direct and indirect advantages arising out of the financial activities made possible by the use of the resulting funds, which relate to the market and to public intervention. Within the margin authorized by the Treaty, the Commission has exclusive powers to fix the amount of the levy. Theoretically, it would be possible to reduce the levy to zero, but this would mean a corresponding reduction in the capacity of the ECSC to generate profits. Nonetheless, the very fact that the Commission possesses this power of taxation provides important guarantees. In practice, the amount of the levy should continue to be fixed, between now and the year 2002, on the basis of actual requirements, and with an eye to the other ECSC resources available.

2. After the year 2002, it would be desirable, where budgets and finance are concerned, to retain the following features of the ECSC system for all economic sectors:

   - Articles 54 and 56: if necessary, increased financial capacity in terms of loans and interest-rate subsidies in order to enable the Commission to mobilize funds for regional and sectoral activities.

     This matter could be examined beforehand in the context of the work on economic and monetary union. In SEC(90) 1659 final on economic and monetary union, the Commission points to the need to adjust the Communty lending instruments to meet the requirements of economic union, while examining the the role of the EIB.

   - Article 55: direct management, as it already exists, of major technical and social research programmes.

   - Article 56: joint responsibility as regards social assistance, reflected in the current redeployment agreements and in continued scope for sectoral assistance in this field.

3. Current ECSC reserves are essential to ensure that the ECSC is in a position between now and 2002 to mobilize capital at the most advantageous rates and thus continue to play its role in the Community[1].The

(1) See information report on ECSC reserves (SEC(86) 1532 final).

only alternative is for all ECSC loans to be covered, retroactively if necessary, by the EEC budget. After 2002, the question of guaranteeing structural loans granted by the Commission would have to be reexamined.

4. The guidelines on production (forward programmes and general objectives) and capacity (Articles 46 and 54) have lost much of the impact that they had when the common market in coal and steel was first set up. The articles referred to may be so interpreted that the Commission may decide on the content and frequency of these guidelines. It would seem that implementation of binding interventionist measures (Article 58) will have to be ruled out because of the improvement in the competitiveness of undertakings and the results, partially negative, of the production quota system.

5. The price rules - particularly price transparency and non-discrimination - proved impracticable from the beginning. Moreover, these rules apparently conflict with the rules on pricing in other sectors laid down by the EEC Treaty. In the light of the unforeseen difficulties encountered in practice in the application of Article 60 of the ECSC Treaty and the profound changes in the economic and technical conditions which directly affect the common market for coal and steel, the Commission might in the future envisage adapting the rules concerning prices and the exercise of the Commission's powers in this area. Proposals for suitable modifications, which could be based in part on Article 86 of the EEC Treaty should be studied. These proposals would also cover the rules for transport tariffs.

6. The ECSC competition rules cover agreements (Article 65) and concentrations (Article 66). In the interest of coherence and given the existence of two distinct treaties, the Commission could consider aligning, as far as possible, the treatment of ECSC and EEC products.

The application of Article 65 of the ECSC Treaty on agreements between undertakings could draw on the practices developed under Article 85 of the EEC Treaty, in respect of both the material law and the procedural rules. This would not, however, exclude certain particularities of Article 65 ECSC, notably the possibility it offers to authorise specialisation agreement, joint buying or selling agreements or strictly analogous agreements. On the other hand in contrast to Article 85 EEC, an effect on trade between member states is not a precondition for the application of Article 66 ECSC.

In cases where at least one of the undertakings concerned is an ECSC undertaking in the sense of Article 80 ECSC concentrations are dealt with under Article 66 ECSC and General Decisions concerning its application. Since 21 September 1990 when Regulation 4064/89/EEC on the control of concentrations came into operation the Commission, as far as is possible, applies the competition rules of the two Treaties in a similar way, particularly when the transaction involves both EEC and ECSC products. This harmonisation can also be achieved by an improvement in the procedures for notifying ECSC concentrations and by the Commission taking its decision on the concentration in question more rapidly.

However, the provisions of the ECSC Treaty governing competition between undertakings differ from the corresponding provisions of the EEC Treaty on one basic point, in that they apply exclusively. In other words, when it comes to dealing with restrictive practices and concentrations as referred to in the ECSC Treaty, only the provisions of that Treaty apply, to the exclusion of the provisions of national law. Under the terms of the EEC Treaty, on the other hand, undertakings are subject to the cumulative application of Community and national law.

7. Control of State aids is more restrictive in the ECSC Treaty than in the EEC Treaty, in that the former spells out the derogations which are permitted. Article 4(c) of the ECSC Treaty prohibits State aids in principle. Nevertheless, Article 95 has been used on several occasions to grant derogations from this express ban, relating to coal[1] and steel[2]. These codes broadly reflect the rules applicable to the sectors covered by Articles 92 and 93 of the EEC Treaty. Moreover, it is clear that the EEC Treaty contains no equivalent to the abovementioned Article 4(c).

A further binding legal framework is provided by the bilateral consensus on steel concluded with the United States, which covers both ECSC and certain EEC steel products (OJ L 368, 18.12.1989), and applies until 31 March 1992.

Discussions have started between the main steel producing countries, most of which have signed bi-

(1) Commission Decision 2064/86/ECSC of 30 June 1986 (OJ L 177, 1.7.1986), applicable until 31 December 1993.
(2) Commission Decision 322/89/ECSC of 1 February 1989 (OJ L 38, 10.2.1989), applicable until 31 December 1991.

lateral agreements with the USA, to study the possibility of reaching a multi-lateral agreement to replace and continue the existing bi-lateral agreements.

8. As regards social measures, the ECSC has acquired invaluable experience which has proved its worth on numerous occasions in the coal and steel sectors. The sharing of responsibility for financing these measures between undertakings and the Member States, in the form of the levy, also represents a form of solidarity between the public and private sectors which is unique in the Community context, although not unknown at national level. It means that the cost of financing these measures is shared on an equitable basis between the various beneficiaries which, from an economic viewpoint, represent the entire sector and the entire economy. It also helps ensure that the measures are applied with an eye to efficiency and economy.

These features could be useful as social flanking measures for the Community's sectoral policies and possibly also for the policies to strengthen economic and social cohesion. However, this approach would require amendments to the EEC Treaty.

9. The rules on commercial policy contained in the ECSC Treaty do not allow a genuine common policy. At the time, competence for this area was vested in the Member States. It is true that in practice attempts have been made to assimilate steel and coal commercial policy to general commercial policy, necessitating two different procedures. As a result, common rules are needed, which means that the rules in the Treaty of Rome have to be applied to ECSC products in order to do away with the cumbersome intergovernmental procedure which applies to ECSC products.

10. As regards institutional aspects, the ECSC Treaty gives the Commission much greater rule-making powers than the Treaty of Rome, together with full executive powers. In the EEC Treaty, on the other hand, the institutional rules are confined in the most part to establishing the guiding principles according to which Commmunity action must be taken, without laying down specific rules, which can only be enacted by the Council on a proposal from the Commission. Applying the institutional rules in the EEC Treaty to future Community action in the coal and steel sectors should not pose any major problems, and would even, in some cases, be more coherent with the principle of subsidiarity. At the same time, it would mean relinquishing a significant part of the Community's institutional structure. In particular, it would mean a significant weakening of the powers to penalize Member States and undertakings which fail to fulfil their obligations.

- As regards Member States which fail to fulfil their obligations, the Commission has the power to suspend payment of the sums for which it would normally be liable in respect of the Member State in question. This power goes well beyond the system under Article 169 of the EEC Treaty, and consideration has already been given to incorporating it into the EEC Treaty.

- Where undertakings which fail to fulfil their obligations are concerned, several provisions of the ECSC Treaty authorize the Commission to impose fines on undertakings which violate the decisions it takes pursuant to the Treaty. In addition, Article 91 of the Treaty states that if an undertaking does not pay a sum due to the Commission, the latter shall be entitled to suspend payment of sums due to that undertaking, up to the amount of the outstanding payment.

Finally, from a legal standpoint, the ECSC Treaty in some respects provides for a greater level of Community activity than the EEC Treaty. It created a legislative and administrative Community whose principal institution, the High Authority, enjoyed wide-ranging management powers in the sectors concerned. However, even in the areas governed by the EEC Treaty, there is a trend towards a gradual increase in the Commission's administrative management tasks.

In view of this trend, a fundamental question arises as to whether the Commission, given the arguments in favour of maintaining the Community's institutional structures, should relinquish the management powers conferred on it under primary legislation.

IV. Assessment of the various options

This assessment results from the examination of the legal and political consequences of the different options.

1. * Option 1 - maintaining rules specific to coal and steel after 2002 - may have a number of advantages, including:

   - continued recognition of the special nature of the two industries and the special relationships their representatives enjoy with the Commission;

   - more favourable social provisions for workers than in the sectors covered by the EEC Treaty;

   - in the case of the steel industry, stricter rules on State aid and the possibility of direct Commission intervention in the event of a serious economic crisis;

In addition to these arguments put forward by the representatives of the two industries, the Commission has greater powers under the ECSC Treaty, as has been recalled in point III.10 above, and enjoys financial autonomy in respect of borrowing and lending which it does not have directly under the EEC Treaty.

*On the other hand, there are some arguments against Option 1.

- The coal and steel industries are no longer special cases in the way that they were in the post-war years. Other sectors of the economy are similar in many respects and operate on an equally large scale in the Community, particularly seen in the context of the single market and the work in progress to achieve economic and monetary union.

- The comparative study of the ECSC and EEC Treaties summarized in point III above shows that most of the provisions and measures deriving from the ECSC Treaty can be carried out on the basis of the EEC Treaty, in particular by invoking Article 235, the equivalent of Article 95 of the ECSC Treaty, which has already been used for derogations from its excessively stringent provisions, e.g. those on State aids. However, using the EEC Treaty as a legal base presupposes unanimity within the Council, and could prove a drawback for the pursuit of certain policies, such as providing the Community with autonomous financial powers.

- This option would require politically complex procedures necessitating Council unanimity and ratification by the twelve Parliaments (see Article 96 of the ECSC Treaty and Article 236 of the EEC Treaty).

2. * Early termination of the ECSC Treaty - Option 2 - has a number of advantages.

- It would put an end to the special treatment still being requested by representatives of the two industries, for which there is no longer any justification. Coal and steel are no longer key industries, nor are they now the only industries susceptible to cyclical change. As a result, there will no longer be any grounds for making special arrangements for these industries once the single market has been completed.

- It would be a way of no longer having to apply some of the obsolete provisions of the ECSC Treaty, particularly those on the organization of production (Article 58) and pricing policy (Article 60).

- It would make it possible to speed up application of the common commercial policy provided for in the EEC Treaty.

*There is, however, an important obstacle to this option as it is not at all certain that it would be possible to obtain unanimous acceptance by the Council and ratification by the twelve Parliaments, which, according to Article 96 of the ECSC Treaty, would be required to implement this option, if it were rejected by the representatives of the socio-economic categories concerned.

3. *Expiry of the ECSC Treaty in 2002 as scheduled - Option 3 - has the following advantages :

- From an economic point of view, this option would reaffirm the legal framework for the coal and steel industries until 2002, while at the same time allowing a sufficiently long transitional period to prepare for inclusion in the EEC Treaty after 2002.

- It should be borne in mind that there will be a widespread need for industrial redevelopment in the coal-mining areas in the years ahead, as the application of the RECHAR programme shows, and given the planned closure of numerous coal mines. Moreover, it would be premature to state at this stage that the problems of all the steel-producing regions have been overcome once and for all. In addition, account will have to be taken of the problems of the coal and steel industry in the new German Länder. These factors are further arguments for maintaining the budgetary and financial instruments specific to the ECSC to cover social and regional action up to 2002, bearing in mind that necessary action after that date would be covered by EEC Treaty instruments and appropriate financial means will have to be provided.

- This transitional period would also enable the Commission gradually to modify interpretation and implementation of the provisions of the ECSC Treaty, and, where necessary, of certain provisions of the EEC Treaty with a view to including the two sectors in the EEC Treaty after 2002. These gradual changes have already begun in several areas, e.g. the content of the forward programmes for steel, steel commercial policy and rules on State aids in the two sectors.

* It would be desirable for a number of variants to be added to option 3:

a. the replacement of certain obsolete provisions of the ECSC Treaty by those in the EEC Treaty covering the same fields. This applies in particular to the price rules (Article 60) and the provisions relating to commercial policy (Articles 71-75) in the ECSC Treaty;

b. the incorporation into the EEC Treaty, between now and 2002, of certain provisions of the ECSC Treaty deemed useful or necessary for the whole range of economic activity;

c. in line with the considerations set out in its communication on Economic and Monetary Union (SEC(90) 1659 final), the Commission will carry out a parallel study on the evolution of the Community's financial instruments from the point of view of meeting the needs of Economic and Monetary Union. This increased financial role is necessary in view of reinforcing economic convergence, including economic and social cohesion, and, in general terms, the balanced evolution of european integration.

As each of these variants implies a revision of the Treaty, the application of the parliamentary ratification procedure in the 12 Member States would of course be necessary.

V. Conclusion

In view of the foregoing, the Commission has decided to:

1. Adopt, as its political position, the general option which provides for the ECSC Treaty to expire as scheduled in 2002, taking advantage of the flexibility which that Treaty provides in order to modify its application, as far as possible, to the two industries so that they are gradually taken over by the EEC Treaty in 2002;

2. between now and 2002, add, when appropriate, to this option the incorporation into the EEC Treaty of certain provisions of the ECSC Treaty, including the maintenance of such financial instruments and social provisions as may be deemed useful or necessary;

3. in case of the ECSC Treaty being amended before the period preceding its expiry, and independently of points 1 and 2 above, to rescind the provisions relative to the price rules (Article 60) and to commercial policy (Articles 71-75), on the understanding that these subjects will then be covered automatically by the EEC Treaty;

4. in parallel, to rapidly complete the study of the evolution of the Community's financial instruments from the point of view of contributing to the setting up of Economic and Monetary Union.