COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(92) 992 final

Brussels, 22 May 1992

Commission communication to the Council
Amendment to Commission Decision No 3855/91/ECSC
of 27 November 1991 establishing Community rules for
aid to the steel industry[1]

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I. Introduction of new CO_2/energy taxes.

1. In October 1991, the Commission sent the Council a Communication on "a Community strategy to limit carbon dioxide emissions and to improve energy efficiency".[2] The proposed measures included in particular the introduction of a new specific tax based on the energy content of fuels and on their carbon dioxide content, the broad features of which would be defined at Community level.

2. The Council meeting of Ministers for Energy and the Environment held on 13 December 1991 recognized the need to pursue a Community level strategy designed to stabilize CO_2 emissions that was based on both Community and national initiatives. The Council asked the Commission to present it with formal proposals for specific measures to stabilize CO_2 emissions, measures which could include a tax applicable at Community level, despite the difficulties which such a tax was liable to pose for the competitiveness of Community firms. The Council meeting of Ministers for Economic and Financial Affairs held on 16 December 1991 took note of these conclusions and those of its ad hoc working party. On 13 May 1992, the Commission decided to propose to the Council a Directive introducing a tax on energy and carbon dioxide.

3. Without waiting for Community guidelines to be laid down, two Member States, Denmark and the Netherlands, took steps in December 1991 and January 1992 to introduce a new tax of this type and have notified the Commission of the details of the tax measures which they propose to implement (Annex 2).

4. The Commission examined the proposed measures at its meetings on 8 April 1992 in the case of Denmark and 29 April 1992 in the case of the Netherlands. It took the view that the arrangements on the refund of part of the tax paid and on the lowering of the rate of the tax in the case of firms which are large energy consumers could constitute aid, but that such aid was compatible with the common market, except if applied to the steel industry, since Decision No 3855/91/ECSC did not allow such aid to be authorized. The tax reliefs do not take away from the positive contribution which the CO_2/energy tax makes to improving the environment, but are the price to be paid for being amongst the first in the world to introduce such a tax.

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1 OJ No L 362, 31.12.1991, p. 57.
2 SEC(91) 1744 final, 14 October 1991.

II. The necessary amendment of the aid code

1. Payment of an additional national CO_2/energy tax will impose extra costs on firms liable to it. These extra costs will apply to firms in industries which are heavy energy consumers even if, overall, the national tax burden is not increased. Member States introducing the tax will thus impose a competitive disadvantage on the firms concerned as compared with their competitors, since very few countries in the world have so far introduced such a tax. Accordingly in its above-mentioned communication to the Council (paragraph 22, p. 8), the Commission stated that specific treatment needed to be envisaged for such firms, until such time as the Community's main competitors take analogous measures. In its above-mentioned Decision of 13 May 1992, the Commission proposes that the tax should not enter into force until the OECD countries have adopted similar measures.

2. The steel industry is amongst the sectors which use highly energy-intensive production processes. It is also a sector which is very open to trade with countries outside the Community, the Community being both an exporter and an importer of steel (most of the various forms of quantitative restrictions applying to non-Community countries ended at the beginning of 1992). Any change, however marginal, in its cost price is liable to affect the international competitiveness of the Community steel industry on a market which is currently characterized by difficulties of a cyclical nature.

   Furthermore, the steel industry is also in competition on certain markets with products from other major energy-consuming sectors such as aluminium. The competitiveness of the steel industry will be all the more seriously affected if, although placed in a comparable situation to such sectors in terms of its liability to an additional CO_2/energy tax, it is not eligible for the same relief from the costs imposed by such a tax.

3. During the discussions prior to approval of the current code on aid to the steel industry, the Commission and the Council expressed their determination that the steel industry should be treated in the same way as other industries as regards both aid for research and development and aid for environmental protection.[3]

   There can be no doubt that the introduction within certain Member States of an additional tax to reduce carbon dioxide emissions, even if accompanied by tax reliefs, pursues an environmental protection objective. All the tax measures to be adopted for its introduction should therefore be allowed to apply to the steel industry.

4. Article 3 of Decision No 3855/91/ECSC restricts the aid that may be granted for environmental protection to aid for bringing existing plants into line with new statutory environmental standards. The Decision does not therefore allow aid to be granted to reduce a

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3 Council statement annexed to the minutes of the 1 536th meeting of the Council (industry) on 18 November 1991.

competitive disadvantage stemming from the fact that very few steel-producing countries impose an additional CO_2/energy tax on their firms. However, if the aid code is not amended, steel firms in the Netherlands will in 1992, and steel firms in Denmark as from 1 January 1993, have to pay the tax at the full rate and not at the reduced rate paid by firms in other energy-consuming sectors and will thus suffer a loss of competitiveness compared with their competitors inside and outside the Community.

III. Content of the amendment

1. While the stabilization of carbon dioxide emissions pursues an environmental protection objective, it is also closely correlated to a policy of energy-saving that would limit the harmful effects of the tax on the competitiveness of the Community steel industry.

The view has always been taken as far as the steel industry is concerned that energy saving brought immediate and sufficient reward in the form of cost reductions and should not therefore be aided in any other way than through aid for R&D designed to achieve this objective. During the discussions on the current aid code, the Commission and virtually all the Member States decided to maintain this approach.

So as to avoid opening up a breach in the aid code, the amendment must be restricted to authorizing aid that is directly linked to the charging of additional taxes based on the carbon dioxide and energy content of fuels so as to limit the harmful effects of the tax on the competitiveness of Community steel firms.

2. The aid must not apply exclusively to the steel industry alone, but must be instituted on the basis of general criteria allowing other industries to be eligible for it.

If the aid was reserved solely for the steel industry, its nature would be changed, since it would then confer a positive advantage on the steel industry, which would run counter to the Community's objectives in this sphere.

Furthermore, if the aid is granted on the basis of objective criteria, it will in principle not be covered by the rules laid down in international agreements which, like the draft multilateral steel consensus and the GATT subsidy code, limit their scope to "specific" aid.

3. The aid must be consistent with the Community's objectives of stabilizing carbon dioxide emissions by the year 2000 at their 1990 level and of improving energy efficiency.

4. Lastly, if in future the Council, acting on a proposal from the Commission, approves a Directive establishing a Community tax on carbon dioxide and energy consumption, existing national taxes will of course have to be brought into line with the Directive as will any measures providing for relief from such taxes.

IV. CONCLUSION

In view of the above and pursuant to Article 95 of the ECSC Treaty, the Council is requested to give its unanimous assent to the attached draft amendment to the rules on aid to the steel industry (Annex No 1) as soon as possible.

ANNEX No 1

Commission Decision No ......
amending Decision No 3855/91/ECSC establishing
Community rules for aid to the steel industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Whereas: ...

HAS ADOPTED THIS DECISION:

Article 1

Decision No 3855/91/ECSC is hereby amended as follows: the following Article 3a shall be added:

"Aid intended to reduce the increase in the tax burden on steel undertakings resulting from the introduction at national level of a new specific tax in line with the Community's objectives of generally reducing carbon dioxide emissions and improving energy efficiency and eligibility for which is not reserved exclusively to the steel industry may be deemed compatible with the common market."

Article 2

This Decision shall enter into force on the day of its publication in the Official Journal of the European Communities.

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

ANNEX No 2

DENMARK

1. Tax on the CO_2 content of fuels, except natural gas, applicable to all domestic or industrial consumers. However, the rate of the tax will be reduced by half in the case of industrial use.

The tax will partly replace excise duties which are currently refunded in full in the case of industrial use with the exception of consumption in the use of vehicles.

This will result in an increase in the tax burden on firms.

2. Aid measures linked to the tax

2.1 Refund of part of the tax paid on the basis of the ratio between the amount of the tax and value added (VA)

If the tax represents less than 1% of VA, no refund.
If the tax represents between 1 and 2% of VA, 50% refund.
If the tax represents between 2 and 3% of VA, 75% refund.
If the tax represents more than 3% of VA, 90% refund.

2.2 Subsidy

Where the tax represents more than 3% of value added, the firm may, in addition to the 90% refund of the tax, receive aid in the form of a subsidy representing the amount of the tax still payable, with the exception of DKR 10 000 (ECU 1 260). Payment of the aid is subject to the carrying-out of an energy expert's report and on the implementation of the energy-saving measures recommended in the report.

NETHERLANDS

1. Additional tax based 50% on the energy content of fossil fuels and 50% on their carbon dioxide content.

   The new tax means an increase in the tax burden. It will, for example, mean an increase of more than 7% in the energy consumption costs of Dutch steel undertakings.

2. Adjustments have been provided for:

   - the reutilization of waste gases in the production process is taxed only in respect of the CO_2 part of the tax;

   - the consumption of natural gas is taxed at different rates depending on the level of consumption:

     - up to 10 million m^3, the rate applied to consumption is HFL 0.02416/m^3 (ECU 0.0105/m^3);

     - above 10 million m^3, consumption is taxed at a reduced rate of HFL 0.01820/m^3 (ECU 0.0079/m^3).

   Most of the firms likely to be eligible for this reduced rate have moreover given undertakings, through sectoral agreements signed with the Dutch Government under the national programme for the environment, that they will take measures and carry out investment that will help to protect the environment and save energy.