

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(92) 2553 final

Brussels, 27 January 1993

COMMUNICATION FROM THE COMMISSION

Request for Council assent and consultation of the ECSC Committee,
pursuant to Article 95 of the ECSC Treaty concerning a draft
Commission Decision establishing Community rules
for State aid to the coal industry

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INTRODUCTION

On 30 June 1986 the Commission adopted, with the unanimous assent of the Council, Decision No 2064/86/ECSC establishing Community rules for State aid to the coal industry¹. This Decision entered into force on 1 July 1986 and expires on 31 December 1993.

Since Article 4(c) of the ECSC Treaty explicitly declares subsidies or aids granted by the Member States to be incompatible with the common market for coal and steel, any form of State aid to the coal industry would become illegal unless there is a new Decision by the time the current one expires.

Since the coal industry in the Community remains heavily dependent on State aid, despite decades of restructuring, modernization and rationalization, prohibition of any form of aid to current production would condemn a large proportion of the coal undertakings in the Community to closure in the short to medium term. Naturally, the social and regional consequences of such an eventuality would be extremely harsh. At the same time, in the context of realistic security of supply, the primary objective of any coal industry run on business-management principles must be economic profitability, rather than production targets governed by social or regional policy constraints of any kind.

It is therefore necessary to draft a new Decision, partly to encourage the industry to continue and step up its restructuring efforts, since production costs are still far too high for a substantial proportion of the coal mined in the Community, and partly to define economically acceptable production conditions.

In this context, it is essential that this new Decision takes account of trends and profitability in the industry in recent years, of the medium- to long-term prospects on the world market, of the objectives of the internal energy market and of the need to maintain economic and social cohesion in coalmining regions.

1 OJ No L 177, 1.7.1986, pp. 1 to 9.

Another vital factor is to capitalize fully on the experience gained from implementing the earlier Decisions and to move in the same direction as the Community's policies on State aid to other industries. Even though the coal industry cannot be fully equated with other branches of industry, because of the specific rules laid down in the ECSC Treaty, it must be borne in mind that if the proposal made in the Commission's communication on the future of the ECSC Treaty is accepted, the Treaty will expire on 23 July 2002.

Consequently, this new Decision must not only ensure the continuity of the Community's coal policy but also prepare for incorporation of the coal industry in the EEC Treaty, which will imply bringing the industry into line with other industrial sectors.

SECTION I: STATE AID TO THE COAL INDUSTRY IN THE PAST

Since 1964 the Community has been laying down rules intended to bring the aid which Member States grant to their coal industries into line with the rules on aid and subsidies contained in the ECSC Treaty.

Article 4(c) of the ECSC Treaty states that subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever, are to be abolished and prohibited.

In 1958, just seven years after the Treaty was signed, the Community coal industry started to find it difficult to sell its output. Increasing pressure from oil was compounded by the growing threat from coal imports from third countries. In the early 1960s the resulting closures and redundancies attained such a scale that social peace was threatened and political measures had to be taken².

Decision No 3/65/ECSC of 17 February 1965³ - the first Decision establishing Community rules for State aid to the coal industry - was therefore adopted to pursue two objectives:

2 Protocol of Agreement on Energy Problems of 21.4.1964, OJ No 69, 21.4.1964.

3 OJ No 31, 25.2.1965, p. 480.

- to adjust coal production to the market; and
- to grant aid for rationalization to cover social-security costs and to stagger mine closures, in order to ease the resulting social problems.

The competitive and financial position of Community coal undertakings had scarcely improved by the time the Decision expired in 1970, when a new Decision was adopted (Decision No 3/71), which made no fundamental changes but set more explicit 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 on-going 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.

The security of the Community's energy supplies was seriously affected by events on the world oil market in 1973/74: acting with the unanimous assent of the Council, the Commission therefore adopted Decision No 528/76/ECSC⁴ on 25 February 1976 with retroactive effect from 1 January 1976, thus making it possible to continue to grant aid to the coal industry.

The principles underlying this third Decision differed substantially from those underlying its two predecessors. The objectives were no longer confined to alleviating the social problems arising from the reduction in mining activity, but included stabilizing coal production under satisfactory economic conditions. Investment was needed to try to make coal production economic.

4 OJ No L 63, 11.3.1976, p. 1.

In 1986, when Decision No 528/76/ECSC expired, a new Decision establishing rules for aid was clearly needed, as the social unrest in the United Kingdom demonstrated. However, the objectives needed to be redirected, returning to the path followed by the first two Decisions, i.e. adapting the level of production in the context of restructuring of the mining sector in a socially acceptable fashion. Worldwide, the problem of safeguarding long-term supplies was steadily being overtaken by the need to absorb structural overcapacity.

It had to be recognized that an aid system intended to be transitional was continuing without really achieving its goals, i.e. production under satisfactory economic conditions and progressive rationalization where the development potential of the regions concerned was as yet insufficient. Between 1976 and 1986, total aid for current production increased fourfold while production fell by 6%.

It was against this background that the Council approved Decision No 2064/86/ECSC in June 1986. This Decision stresses in its recitals the need for further restructuring, modernization and rationalization of the coal industry under acceptable regional and social conditions in order to make the coal sector competitive again. However, it recognizes that, as a result of the often unfavourable geological conditions, the substantial investment and the closure of 120 pits between 1976 and 1986 achieved an annual improvement in productivity of no more than 1.5%. It is therefore "unlikely that the Community's coal industry will become fully competitive again in the years ahead"⁵.

Thus, since then any aid authorized by the Commission must help to achieve at least one of the following objectives:

- improvement of the competitiveness of the coal industry, thus helping to ensure greater security of supply,
- creating new capacities provided that they are economically viable,

⁵ OJ No L 177, 1.7.1986.

- solving the social and regional problems related to developments in the coal industry.

These objectives constitute a significant strengthening of Community policy, since the objective of stabilizing production is no longer considered sufficient justification for granting aid, and the creation of new capacities can be encouraged only if they are economically viable.

Thus successive aid systems over more than twenty-five years have led to the Commission authorizing more than ECU 75 billion in aid for current production in order to enable the Community coal industry to implement, under acceptable social and regional conditions, the restructuring necessitated by market developments. Sustained by arguments based on security of supply, State aid has grown inexorably year by year.

Paradoxically, under the effect of increasingly abundant and diversified supplies, the world coal market has meanwhile proved to be remarkably stable; for example, it stood up remarkably well to the 1990/91 Gulf crisis.

SECTION II: THE COAL INDUSTRY FROM 1986 TO 1991

A feature of the coal industry in the Community is its enormous diversity, not only in terms of pits and the structure of the undertakings in the Member States, but also as regards productivity levels and profitability. Sometimes the same diversity is found in different parts of the same Member State.

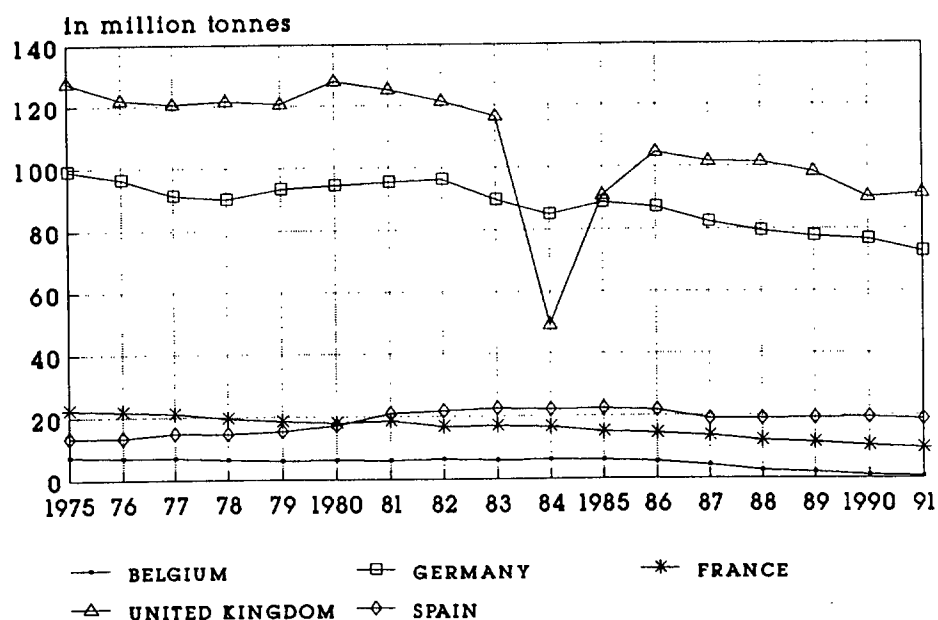
However, since many of the aid systems operate on a nationwide basis and there are so many undertakings active in this industry, only the aggregate totals for each Member State are set out in this section. It must, therefore, be borne in mind that these national averages can mask widely diverging figures for the individual undertakings or even production units.

A. Production

Over the last few decades production in the Community has fallen slowly but surely, from nearly 500 million tonnes per year at the end of the 1950s to no more than 235 million tonnes by 1986. This trend has continued since Decision No 2064/86/ECSC came into force, taking production down to 193 million tonnes in 1991.

This trend is the result of the continuing restructuring in every coal-producing Member State. However, the scale of this contraction in output depends on the energy options chosen by each Member State and on the pace of social and regional adjustment considered acceptable by the national authorities.

PRODUCTION TRENDS

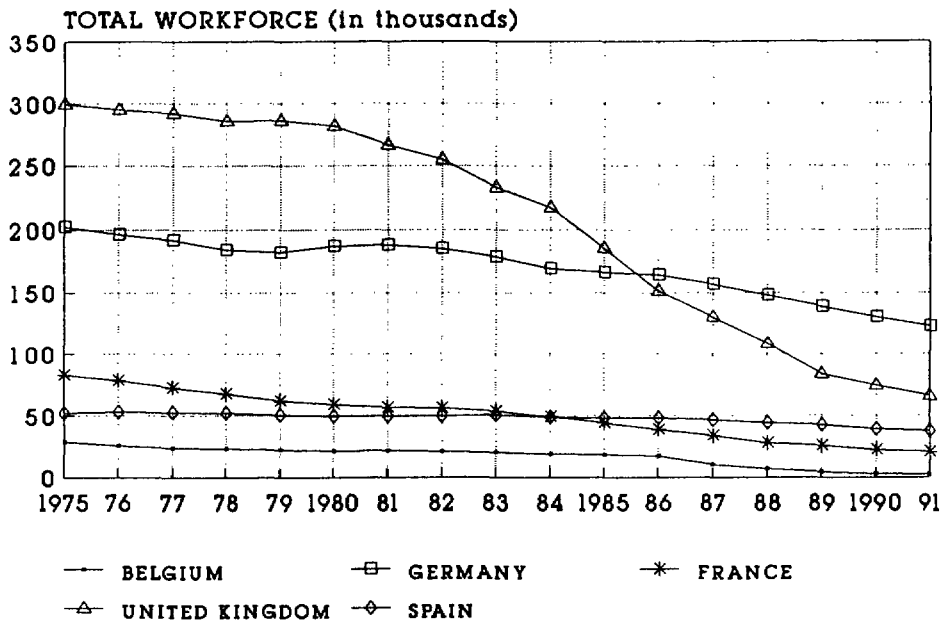


With consumption standing at around 320 million tonnes per year, the shortfall in production in the Community has steadily been filled by imports from outside the Community which have risen relentlessly to 129 million tonnes in 1991.

B. Employment

Naturally, the decline in coal production in the Community over the last thirty years has hit employment hard. In 1955 the coal industry employed 1.86 million workers (EUR 12). By 1991 only 260 000 jobs were left. The graph set out below clearly shows that over the last five years relative job losses have been highest in the United Kingdom, France and Belgium.

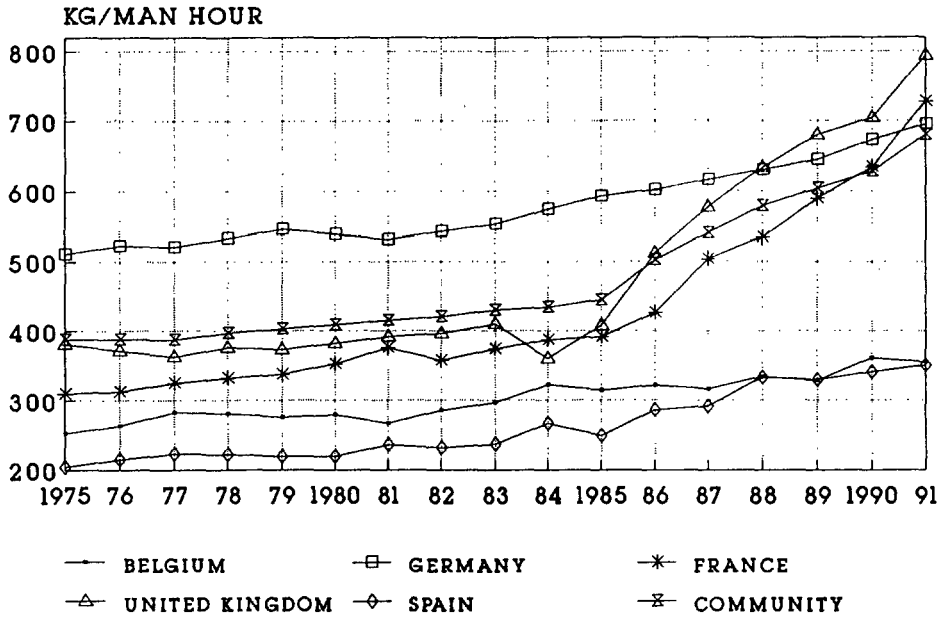
TREND OF TOTAL WORKFORCE



C. Productivity

Many years of rationalization have produced sometimes spectacular improvements in productivity, particularly in the United Kingdom in recent years. Generally, however the rationalization and modernization of production plant over the last few years has been on such a scale that it seems inconceivable that a similar performance can be repeated in the future without restructuring and partial closures.

TREND PER MAN UNDERGROUND



D. Production costs and profitability

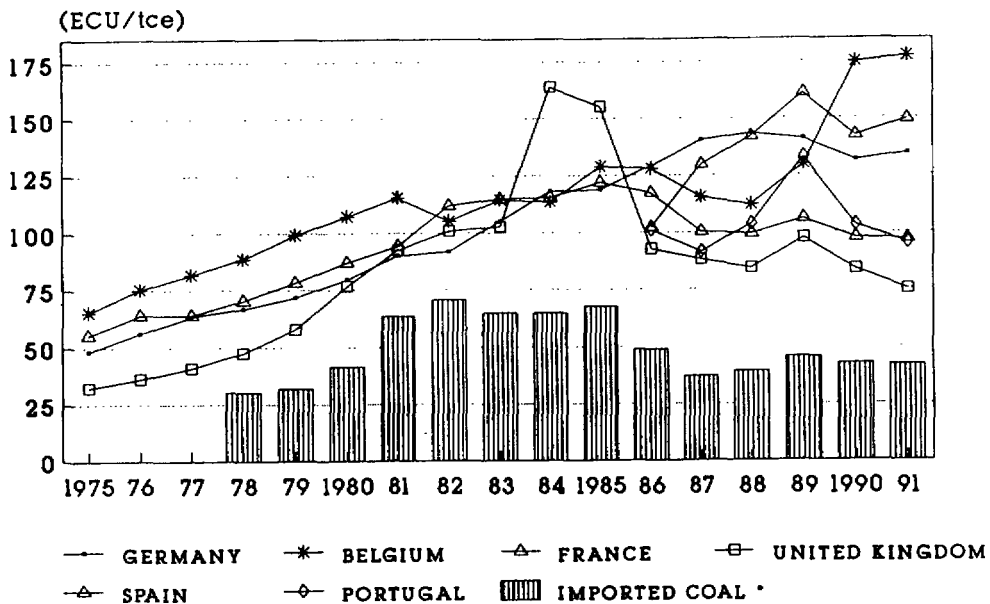
Comparison of production costs in the Community is a delicate exercise since the social, tax and accounting legislation in force in the different Member States undeniably affects cost formation to a certain degree.

However, on the whole these differences can be considered objective conditions of competition, with the exception of any aid component inherent in certain legislation or different rules on assessment of non-cash costs such as amortization or the return on capital. There seems no point therefore in artificially readjusting costs to take account of these differences when evaluating the relative competitiveness of Community undertakings.

The only information that should be taken into consideration are the quarterly production cost figures submitted to the Commission in accordance with the harmonized rules for the assessment of aid provided for by Decision No 2645/86/ECSC implementing Decision No 2064/86/ECSC⁶.

The graph set out below plotting the production cost trends (in ECU at current values) reported to the Commission by the Member States illustrates how far production costs and production cost trends in recent years differ from one coal-producing Member State to another. These differences are attributable not only to geological factors but also to diverging organizational structures and investment programmes often out of all proportion to the productivity improvements which they yield. Nevertheless, comparison of average national production costs with the average price of imported coal clearly reveals that uncompetitiveness remains a problem for the entire coal industry in the Community.

PRODUCTION COST TRENDS



* Average cif cost of Community imports of steam coal for power station

SECTION III: FINANCIAL AID TO THE COAL INDUSTRY BETWEEN 1986 AND 1991

The mid-term report on the application of Decision No 2064/86/ECSC⁷ has already analysed the different types of aid to the coal industry by classifying them on the basis of two main criteria: first, whether or not the aid was linked to current production and, second, whether it was direct or indirect. Annex 2 to the mid-term report describes in detail the rules on aid in each coal-producing Member State and the aid authorized between 1986 and 1990.

The table set out below summarizes the general trend in the amount of aid authorized between 1986 and 1991.

7 SEC(91) 1983.

Aid authorised by the Commission between 1986 et 1991

in million ECU at current value		Aid for				Aid not linked			TOTAL
		current production				to current production			
		direct	indirect	Total	ECU/ ton	social	nher. liab.	Total	
Belgium	1986	297.3	0.0	297.3	52.2	1003.9	0.0	1003.9	1301.2
	1987	362.5	0.0	362.5	83.2	791.9	0.0	791.9	1154.4
	1988	202.6	0.0	202.6	81.5	883.7	0.0	883.7	1086.3
	1989	159.4	0.0	159.4	85.9	905.4	0.0	905.4	1064.8
	1990	70.3	10.3	80.6	78.6	968.3	0.0	968.3	1048.9
	1991	53.4	7.8	61.2	96.7	698.7	1.2	699.9	761.1
Germany	1986	1446.0	1631.6	3077.6	35.3	3034.2	63.4	3097.6	6175.2
	1987	1899.6	1964.7	3864.3	46.9	3268.4	110.9	3379.3	7243.6
	1988	1975.3	2530.0	4505.3	56.8	3334.9	106.3	3441.2	7946.5
	1989	1945.5	2616.4	4561.9	58.8	3814.5	185.8	4000.3	8562.2
	1990	2037.0	2539.5	4576.5	59.5	4084.0	200.6	4284.6	8861.1
	1991	1934.0	2570.9	4504.9	61.9	4344.1	247.5	4591.6	9096.5
Spain	1986	259.7	2.5	262.2	12.0	490.9	0.0	490.9	753.1
	1987	374.8	86.6	461.4	24.3	527.1	0.0	527.1	988.5
	1988	369.6	79.9	449.5	23.7	574.1	0.0	574.1	1023.6
	1989	406.2	102.5	508.7	26.5	660.2	0.0	660.2	1168.9
	1990	397.4	101.8	499.2	26.4	758.2	0.0	758.2	1257.4
	1991 1)	83.5	48.5	132.0	7.3	821.0	49.3	870.3	1002.3
France	1986	523.1	0.0	523.1	36.3	1478.9	474.4	1953.3	2476.4
	1987	428.8	0.0	428.8	31.3	1415.6	547.2	1962.8	2391.6
	1988	249.8	0.0	249.8	20.6	1500.6	719.5	2220.1	2469.9
	1989	174.6	0.0	174.6	15.2	1781.0	774.2	2555.2	2729.8
	1990	166.2	0.0	166.2	15.4	1986.8	792.2	2779.0	2945.2
	1991	165.3	0.0	165.3	16.4	1946.6	783.2	2729.8	2895.1
Portugal	1986	4.5	0.0	4.5	21.2	0.0	0.0	0.0	4.5
	1987	1.8	0.0	1.8	6.8	0.0	0.7	0.7	2.5
	1988	1.7	0.0	1.7	7.2	0.0	0.0	0.0	1.7
	1989	4.6	0.0	4.6	20.4	0.0	0.0	0.0	4.6
	1990	4.6	0.0	4.6	20.2	0.0	0.0	0.0	4.6
	1991	4.5	0.0	4.5	19.4	0.0	0.0	0.0	4.5
Unit. Kingdom	1986	460.0	0.0	460.0	4.4	100.4	922.4	1022.8	1482.8
	1987	842.7	0.0	842.7	8.3	59.3	386.6	445.9	1288.6
	1988	315.2	0.0	315.2	3.1	60.1	221.9	282.0	597.2
	1989 2)	1538.0	0.0	1538.0	15.7	61.9	2940.9	3002.8	4540.8
	1990	0.0	0.0	0.0	0.0	0.0	103.5	103.5	103.5
	1991	0.0	0.0	0.0	0.0	0.0	229.6	229.6	229.6
Community	1986	2990.6	1634.1	4624.7	19.8	6108.3	1460.2	7568.5	12193.2
	1987	3910.2	2051.3	5961.5	26.9	6062.3	1045.4	7107.7	13069.2
	1988	3114.2	2609.9	5724.1	20.7	6353.4	1047.7	7401.1	13125.2
	1989 2)	4228.3	2718.9	6947.2	32.6	7223.0	3900.9	11123.9	18071.1
	1990	2675.5	2651.6	5327.1	26.7	7797.3	1096.3	8893.6	14220.7
	1991 1)	2240.7	2627.2	4867.9	25.1	7810.4	1310.8	9121.2	13989.1

1) Provisional, not including aid notified by Spain but not yet authorised by the Commission.

2) Not including ECU 5089.5 million reflecting the reduction in the value of the fixed assets of British Coal, aid to cover compensation for hearing loss and free supplies of coal to miners.

A. Amount of aid authorized

One important point to stress about the aid for current production is that the 1991 figures for Spain are not representative as they exclude aid notified but not yet authorized by the Commission.

In the Community as a whole, aid for current production rose by 7% between 1986 and 1990, while output in the Community fell by more than 16% over the same period, giving a net increase in aid per tonne of over 25%. At the same time indirect aid has been taking a growing share of the total, rising from 35% in 1986 to almost 51% in 1990.

In terms of aid per tonne mined, the trend varies from one coal-producing Member State to another. In the United Kingdom and France there was a substantial reduction in such aid between 1986 and 1990, whereas in Spain, Germany and Belgium the amount rose dangerously and in Portugal it held more or less steady. The increase in Belgium is attributable to the rapid contraction of production which culminated in the closure of the last remaining mine in production in the country in September 1992.

The aid not linked to current production takes the form either of aid for financing welfare benefits or of aid to cover inherited liabilities.

In the case of aid for welfare benefits, it must be remembered that the only effect has been to bring the ratio between the burden 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. Any aid going further than this criterion has been treated as indirect aid for current production. Consequently, the steady increase in the amount paid is attributable to the continual deterioration in the ratio between the number of persons in receipt of benefit and the number of mineworkers paying social security contributions.

Article 8 of Decision No 2064/86/ECSC authorizes financial aid to cover inherited liabilities. This covers costs arising from past closures of production capacity which cannot therefore be linked to current production. Annex 1 to the Decision lists the types of costs eligible for such aid.

B. Difficulties with applying Decision No 2064/86/ECSC

As made clear in the Commission's mid-term report to the Council, there have been three major difficulties with application of Decision No 2064/86/ECSC. The first concerns interpretation of the concept of aid, the second the evaluation of aid and the third the delays in notifying aid and the incompleteness of the data supplied by the Member States.

The definition of the very concept of aid and the classification of the aid into the various categories provided for by the Community legislation have given rise to diverging interpretations by the Commission and the Member States on a number of occasions. It is therefore important for the new rules to group types of aid together on the basis of criteria related to their economic purpose.

The aid evaluation problems can be analysed from two angles: evaluation of production costs (see Section II D above) and evaluation of revenue. On the revenue side, certain forms of indirect aid to the coal industry have created confusion by adding an aid component to revenue. To make the aid more transparent, the real costs and revenue and the amount of aid received under the various schemes should be shown separately in the undertakings' accounts.

Finally, Article 9 of Decision No 2064/86/ECSC requires Member States to notify the Commission of their plans to grant aid at least three months before the measures enter into force. This information must be provided on time but it must also enable the Commission to take a decision, and hence be

complete and clear. If the Commission has to request additional information, this lengthens the period of examination and makes it difficult to implement the principle of prior authorization of all aid payments.

C. Achievement of the objectives of the Decision

Two of the three general objectives have proved operational, since creation of new economically viable capacity has proved to be an extremely difficult objective to attain.

As regards the objective of improving the competitiveness of the coal industry and its corollary - phasing-out of aid - analysis of the amount of aid granted shows that Belgium, France and the United Kingdom have made very considerable progress in this direction but that Spain and Germany have been unable to reverse the upward trend both in aid and in production costs.

Similarly, although some of the measures taken to solve the social and regional problems related to developments in the coal industry have improved the competitiveness of the industry or made it possible to complete closure programmes under acceptable conditions from the social and regional policy points of view, the principles underlying other aid schemes have only deferred social and regional redevelopment, rather than solve the problem.

The Commission considers that Decision No 2064/86/ECSC has achieved its objectives satisfactorily in that it has played an essential role in the implementation of the restructuring, rationalization and modernization plans. Nevertheless it feels that any new rules should aim at ensuring that the aid systems are more transparent and are more rational in economic terms.

SECTION IV: PROSPECTS FOR COMMUNITY COAL

Where deliveries to power stations are concerned, the prospects for Community coal should be viewed in the general context of the internal market for energy and in particular for electricity.

In its working paper on security of supply, the internal energy market and energy policy⁸, for example, the Commission sets out possible lines of approach for improving the monitoring of aid to the energy industries, while recognizing the continuing need for national measures. To meet these national concerns, the Commission proposes to continue to authorize aid for a decreasing proportion of energy supplies.

Accordingly, in Article 13(5) of its proposal for a Council Directive on common rules for the internal market in electricity of 21 February 1992⁹, the Commission proposes that "a Member State may, for reasons of security of supply, direct that priority be given to the dispatch of generating installations using indigenous primary fuel sources, to an extent not exceeding in any calendar year 20% of the overall primary energy necessary to produce the electricity consumed in the Member State concerned. This figure shall be progressively reduced to 15% by 31 December 2000," and must be regarded as an absolute limit not to be exceeded.

Obviously, this security of supply must obey the laws of sound economics; in addition, it concerns the electricity sector which is dependent on various primary energy inputs, including coal, which is covered by the ECSC Treaty and should not be the subject of discrimination at Community level.

This concept of security of supply must take account of favourable factors making it possible to envisage this reduction from 20 to 15%.

Thus, where coal in particular is concerned, the arrival on the market of a large number of new prospective exporters combined with the considerable potential for expansion of production capacity under extremely favourable operating conditions make persistent supply problems on the world market extremely unlikely. Also the fiercer competition between these exporters and the long-term forecasts for their production costs suggest no spectacular and persistent price increases over the next decade.

From the point of view of security of supply, it is important to note that the coal imported into the Community comes mainly from our IEA partners and also from countries with which the Community has trade agreements.

8 SEC(90) 1248 final, 6.7.1990.

9 COM(91) 548 final - SYN 384.

Moreover, there are grounds for considering that maintaining limited security stocks represents an effective strategy. It can therefore be considered that maintaining security stocks of coal covering one year's needs, costing about \$10/tce, would be an appropriate response to possible short-term problems, and if, against all expectations, long-term problems were to persist, it would always be possible to regain access to coal reserves the working of which had ceased. It should be emphasized that, in technical and economic terms, the total closure of a pit does not mean that its reserves are nullified.

All this clearly indicates that a reduction in the security of supply is a perfectly valid possibility in terms of consumption of Community coal.

In this context, it is therefore very difficult to use the security of supply argument as a reason for continuing operations at units producing coal costing several times the price of imported coal.

SECTION V: COMMUNITY POLICY ON STATE AID

Although aid to industry has always been a major concern, the imminent completion of the single market and the optimum allocation of resources expected to accompany it have added particular urgency to the problem.

In this context, the Commission has conducted a systematic review of the aid schemes in force in every sector and of their compatibility with the Community legislation established under Articles 92 and 93 of the EEC Treaty and Article 4(c) of the ECSC Treaty.

In its "Second survey on State aid in the European Community in the manufacturing and certain other sectors", the Commission concluded that the efforts¹⁰ to increase transparency must be continued and that firm aid discipline is a prerequisite for the increased competition to be generated by completion of the internal market, without which very few of the projected gains from the internal market will be realized. However, it added that in order to maintain cohesion this policy must be targeted

10 Doc (...).

primarily against aid with no regional objective. It also said that by eliminating aid which distorts competition and is incompatible with the internal market and by reducing overall aid levels the Commission will underline its commitment to free international trade and the GATT.

In recent years, the Council has accepted the Commission's proposals for stricter discipline on State aid to the steel industry (Decision No 3855/91/ECSC)¹¹ and to shipbuilding (Directive 90/684/EEC)¹². The rules adopted for these two sectors have applied the twin principles of transparency and phasing-out of aid with considerable success.

Although the specific problems facing the coal industry in the Community certainly call for the establishment of more tailor-made arrangements, it nonetheless remains true that this industry cannot ignore these decisive changes in other sectors, particularly in view of the expiry of the ECSC Treaty in 2002.

SECTION VI: THE NEW COMMUNITY RULES FOR STATE AID TO THE COAL INDUSTRY

A. General lines of approach for the new rules

The coal industry in the Community remains dependent on State aid, whether direct or indirect and whether or not linked to current production. This state of affairs, combined with the ban imposed on State aid by Article 4(c) of the ECSC Treaty, puts the Community in a situation unforeseen by the Treaty and calling for action by the Commission under Article 5 since otherwise a large proportion of the coal industry would have to be closed down in the short term.

However, the incompatibility of the principle of aid to the coal industry both with completion of the common market in coal and with the spirit of the Treaty of Rome and of the internal energy market calls for strict discipline on aid. It is therefore vital to increase transparency and clarify the existing schemes.

11 OJ No L 362, 31.12.1991, p. 57.

12 OJ No L 380, 31.12.1990, p. 27.

Also, in view of the temporary nature of the successive rules, measures must be taken to prevent the perpetuation of the situation which led to their adoption.

Since the gap between average production costs in the Community and world market prices for coal has widened considerably in recent years, the restructuring, modernization and rationalization programmes should be stepped up in order to phase out the aid by cutting production costs, the sine qua non for improving the international competitiveness of the Community's coal industry.

However, although one of the objectives of any rules on aid must be to make Community coal production competitive with the main coal exporters on the world market, it could be necessary to allow a gradual approach, taking account of the specific social and regional problems and of the lead times needed to adapt energy structures to the demands of an economically viable security of supply concept.

In its working paper on security of supply, the internal energy market and energy policy¹³, the Commission proposes to promote the "ability to ensure that future essential energy needs can be met by means of adequate domestic resources worked under economically acceptable conditions or maintained as strategic reserves."

These considerations prompted the Commission to propose, in its mid-term report on Decision No 2064/86/ECSC, two main lines of approach for any new rules on State aid:

- phasing-out of the aid granted by defining a Community guide cost;
- greater transparency in the aid systems, particularly by inclusion of the aid in the public budgets.

13 SEC(90) 1248 final, 6.7.1990, p. 6 §12.

B. Structure of the new rules on aid

These new considerations imply tightening up the general objectives laid down by Decision No 2064/86/ECSC, clarifying the categories of aid which can be authorized under the new system, and specifying the extent to which the aid in question reflects the economic situation and prospects of individual undertakings.

The Commission therefore feels that in addition to the specific criteria applicable to each category of aid, in the future each measure planned should contribute towards attaining at least one of the following general objectives:

- to promote the economic viability of the Community coal industry;
- to solve the social and regional problems created by total or partial reductions of activity of production units;
- to help the coal industry to adapt to environmental protection standards.

Moreover, in order to make the existing aid schemes more transparent, the Commission feels that the cost of all direct and indirect aid measures should be gradually transferred to the public budgets.

It is also important that the aid received by the undertakings should be entered in the profit and loss accounts as a separate item of revenue, distinct from turnover.

In addition, in order to respect the relevant competition rules for the internal energy market, in the context of the EEC Treaty, the Commission recalls the policy that it applies which aims at leaving to Member States an allowance of 20% of the total primary energy necessary to produce the electricity consumed, in each Member State, to protect one or more sources of indigenous energy, including Community coal. This allowance will be reduced to 15% before the year 2000. The Commission will take its decisions on State aid to the Community coal industry within the limits of this global policy.

In the same context, the following types of aid should be authorized under the new rules:

- operating aid;
- aid for the reduction of activity;
- aid to cover exceptional costs;
- aid for research and development;
- aid for environmental protection.

All aid for current production by units and/or undertakings moving towards economic viability in the long term, in line with the objectives and criteria laid down in the Decision, will be classified in a single category ("operating aid").

Measures connected with the process of restructuring production units and/or undertakings which will have to be the subject of an activity reduction plan because they have no prospects of economic viability within the meaning of this Directive will be classified together as "aid for the reduction of activity".

C. Criteria for authorization of national aid under the new rules

1. **Operating aid**

Authorization of operating aid will be given on condition, in particular, that each undertaking keeps its production costs below the Community guide costs or, failing that, brings them closer into line with these guide costs.

The Commission would consider that there was no aid where coal is sold at a price approximating to the price of coal on the world market.

The objective is to encourage the phasing-out of aid over two four-year periods.

During the first phase, the principal objective will be, as with other Community systems, to steer the economic situation of the least competitive undertakings in the Community, while avoiding any deterioration in the results of the Community's most competitive undertakings.

This phase of gradual internal alignment is considered desirable not only because a large proportion of coal production in the Community would be unable to withstand the competition from imported coal now but also because setting a competitiveness target, based on reliable estimates of long-term trends on the world market, is a difficult exercise, not least because of the current geopolitical upheavals on the world scene.

Consequently, and taking into account the task assigned to it by the Treaty, in particular in Article 2(2), the Commission proposes that during the first phase, ending on 31 December 1997, the guide costs will be defined as the average production costs observed in the Community in 1992. In practice, for undertakings whose production costs, in 1992 prices, are lower than the guide costs, aid up to the average production costs in the Community will be authorized provided that from one year to another the production costs remain lower, in current value terms, than the guide costs and provided any increase reflects the trends observed on the world coal market, given that international competitiveness remains the ultimate objective.

For undertakings with costs exceeding the Community average, additional aid to cover this difference could be authorized temporarily on the basis of a modernization, rationalization and restructuring plan geared to the convergence of costs.

By the end of the first period, only production units or undertakings with production costs, in 1992 prices, which converge towards the guide costs in the Community will be eligible for operating aid proper. In practice, production aid for units or undertakings whose production costs, in 1992 prices, by then cannot converge towards the guide costs set for the first phase would be authorized, on social and regional grounds, only in order to enable an activity reduction plan to be implemented.

In the second phase, The Commission will propose a new guide cost on the basis of trends on the world coal market.

2. Aid for the reduction of activity

To obtain authorization, this type of aid must cover the social or technical costs arising from the reduction of activity. It could also cover the costs of keeping reserves accessible after production ceases.

Other measures authorized in this category would include aid allowing continuation of production, for social and regional reasons, at production units which are the subject of a continuous and progressive activity reduction plan entailing a significant reduction in capacity before this Decision expires.

Similarly, there is express provision for the possibility of authorizing the granting of lump sums for restructuring/conversion designed to provide an overall solution to the problems of regions affected by the decline of the coal industry, provided that these measures are compatible with the Treaties, and in particular with the competition rules. It is desirable that the measures proposed in this context should be anticipatory in nature.

3. Aid to cover exceptional costs

This type of aid would be intended to cover costs which in accordance with normal accounting practice must not be allowed to affect production costs (inherited liabilities and specific social welfare costs).

State aid for financing specific social welfare schemes could be authorized provided it is designed to bring the ratio between the burden 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.

4. Aid for research and development

The objective is to introduce a system comparable to the existing rules for sectors not covered by the ECSC Treaty in order to bring the rules into line in preparation for the expiry of the ECSC Treaty. Such aid will be granted subject to compliance with the criteria laid down in the Community framework for State aid for research and development¹⁴.

5. Aid for environmental protection

Here too the objective is to introduce a system comparable to the existing rules for sectors not covered by the ECSC Treaty in order to bring the rules into line in preparation for the expiry of the ECSC Treaty. This aid too will be granted subject to compliance with criteria identical to those laid down in the Community framework for State aid for investment in environmental protection (not yet published). However, since this text refers explicitly to the possibility of authorization of aid for environmental protection measures on the basis of Article 92(3)(c) of the EEC Treaty, it was considered preferable to make no direct reference to it. It will therefore be necessary to amend the criteria for granting such aid once a new framework has been adopted.

The sole objective of this aid is to make it easier for the undertakings to adjust to the new standards imposed by the environmental protection legislation for plants brought into service at least two years before the entry into force of the standards. It may not exceed 15% of the direct investment expenditure on the measure in question.

D. Monitoring and authorization by the Commission

By way of an administrative simplification, Member States which wish to grant operating aid only to undertakings with production costs below the guide costs will simply have to submit to the Commission an annual notification.

¹⁴ OJ No C 83, 11.4.1986.

Member States which wish to grant operating aid to undertakings whose production costs are above the guide costs will have to submit to the Commission a modernization, rationalization and restructuring plan for such undertakings.

These plans would be designed to ensure that by the end of each phase each undertaking's production costs will converge towards the guide costs. Where appropriate, the Commission could recognize the need to adapt the rate of capacity reductions needed, in the light of the social and regional context.

The new rules again provide for application of the principle of prior annual notification of all aid which Member States plan to grant to undertakings. They also stipulate that no payments may be made, in whole or in part, before the Commission has authorized the aid. Similarly, Member States must notify the Commission of any payments made to correct earlier aid payments based on estimates. Member States are also asked to certify the accuracy of the information sent to the Commission, particularly the data on production costs. The usual measures regarding the repayment of unlawfully granted aid are also included.

CONCLUSIONS

Pursuant to the first paragraph of Article 95 of the ECSC Treaty, the Commission requests the Council, after consulting the Consultative Committee, to give its assent to the attached proposal for a Decision establishing new Community rules for State aid to the coal industry. Although consultation of the European Parliament is not mandatory in this specific case, it would be desirable for it to be consulted before the Council examines the proposal.

Draft

COMMISSION DECISION

establishing Community rules for State aid
to the coal industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having consulted the Consultative Committee and 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 on the energy market and the coal market in the Community in particular;

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 since the ECSC Treaty expires on 23 July 2002 steps must be taken to arrange the gradual integration of the coal industry into the EEC Treaty; whereas this will entail, in particular, application of the provisions of the EEC Treaty concerning the customs union, commercial policy and aid granted by States;

II

Whereas although Commission Decision No 2064/86/ECSC of 30 June 1986 establishing Community rules for State aid to the coal industry¹ has enabled varying degrees of further restructuring, modernization and rationalization to take place in the coal industry with a view to making the industry competitive, a large proportion of coal production in the Community remains uncompetitive vis-à-vis imports from outside the Community;

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 the different degrees of restructuring, modernization and rationalization over the last few years in the different coal-producing Member States has maintained, or even widened, the gap between the production costs of the individual coal undertakings in the Community;

1 OJ No L 177, 1.7.1986, p. 1.

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 has proved indispensable;

Whereas the measures taken must form part of a plan ensuring security of supply for the Community, designed to guarantee that future essential energy needs can be met from adequate domestic resources worked under economically acceptable conditions or maintained as strategic reserves;

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 the risk of persistent interruption of supply, although it cannot be ruled out totally, is nevertheless minimal;

Whereas in view of the reserves available worldwide and of the emergence of new coal-exporting countries with the advantage of favourable geological conditions, the world market is capable, even in the long term, of satisfying the growing demand for coal from the Member States, without any major impact on prices;

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;

Whereas despite the inevitable restructuring and closures care must be taken, when continuing the Community's policy in this sector, to minimize the social and regional impact of these changes;

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 State aid to the coal industry;

III

Whereas, in accordance with Article 2 of the Treaty, 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, in accordance with Article 3(g) of the Treaty;

Whereas, in accordance with Article 3(f) of the Treaty, the Community must promote the growth of international trade;

Whereas, in accordance with Article 5 of the Treaty, in order to perform its task the Community must ensure the establishment, maintenance and observance of normal competitive conditions;

Whereas, in addition to completion of the common market in coal, completion of the internal energy market implies greater competition in and between all branches of the energy market, including the coal industry;

Whereas in the case of power-station coal the measures taken must fit in with the long-term energy objectives decided by the Council;

Whereas the measures must also take account of developments on the electricity market and of their repercussions on coal-producing undertakings;

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, 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, in order to ensure efficient allocation of resources, priority for such aid must be given to the most competitive undertakings in the Community, i.e. undertakings with production costs below the Community average (guide cost) and therefore best placed to contribute to the Community's long-term security of supply under economically satisfactory conditions;

Whereas, moreover, the upward trend in the amount of State aid paid in recent years is incompatible with the exceptional, transitional nature of the Community rules on State aid; whereas an objective criterion setting a limit to the production costs eligible for aid must therefore be introduced to reverse this trend;

Whereas, however, with a policy aiming at the most rational distribution of production, long-term support for undertakings with production costs appreciably higher than those of their immediate rivals will not be possible;

Whereas the aid systems should, therefore, enable undertakings whose production costs over a reference period are above the Community average to move towards the most competitive level in the Community;

Whereas for undertakings or production units in the Community which have no hope of attaining this guide cost, the aid systems should provide a means to soften the social and regional impact of the restructuring;

Whereas, in order to ensure progressive adaptation of the coal industry to the requirements of the EEC Treaty, steps must be taken not only to create the conditions for fairer competition within the Community but also to bring about long-term improvements in the competitiveness of this industry throughout the Community, in relation to the world market;

Whereas, in this context, two phases must be planned, the second ending when the ECSC Treaty expires; whereas the aim in the first phase will be to move the highest individual production costs towards the guide cost; whereas, in the second phase, it will be possible to define a new guide cost on the basis of developments in the industry in the Community and of world market trends;

Whereas, as a result of the steady decline in coal production in the Community in recent decades, some undertakings may be confronted with anomalous or exceptionally high burdens; whereas State aid to cover all or part of such burdens may be compatible with the common market provided that strict supervision of such aid by the Commission is guaranteed and that these inherited liabilities are not covered by latent 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;

IV

Whereas the efforts to ensure progress towards the guide cost 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, as they cannot contribute towards this objective for social and regional reasons, will have to be the subject of an activity-reduction plan entailing a significant reduction in capacity before this Decision expires;

Whereas the Commission's approval of proposed State aid must be based on precise and full knowledge of each measure planned by the governments and of their relation to the objectives of this Decision; whereas, consequently, Member States should regularly provide the Commission with a coherent

account showing the full details of the direct or indirect aid which they plan to grant to the coal industry, specifying the reasons for and scope of the proposed aid and, where appropriate, its relation with any modernization, rationalization and restructuring plan submitted;

Whereas it is essential that no payment should be made, in whole or in part, before the Commission has given explicit authorization; whereas, therefore, notifications containing all the information which the Commission requires in order to take a decision must be submitted at least three months before the scheduled date of payment,

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 satisfies the provisions of Articles 2 to 9.

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

3. The term "aid" also covers charges rendered compulsory by the fact of State intervention for the direct or indirect benefit of the coal industry, without any distinction between aid granted by the State or aid granted by public or private bodies appointed by the State to administer such aid.

4. The term "aid" also covers any aid elements contained in the financing measures taken by Member States in respect of the coal undertakings directly or indirectly controlled by them, which are not regarded as the provision of risk capital according to standard company practice in a market economy.

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 promote the economic viability of the Community coal industry;
- to solve the social and regional problems created by total or partial reductions of activity of production units;
- to help the coal industry to adjust itself to environmental protection standards.

2. At the end of a transitional period of a maximum of four years, starting on the entry into force of this Decision, only aid within the meaning of this Decision and entered in the public budgets of the Member States may be authorized.

3. With effect from the first coal production year covered by this Decision, all aid received by each undertaking shall be indicated in the profit-and-loss accounts as a separate item of revenue, distinct from turnover.

4. For the purposes of this Decision, "production cost" means those costs, per tonne of coal equivalent, which are linked to current production, and "average production cost in the Community" means the weighted average of production costs in the Community.

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

SECTION II

State aid

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 shall not exceed, for each tonne produced and for each undertaking, the difference between the foreseeable average production costs and the foreseeable average revenue in the following coal production year;
- the aid actually paid shall be subject to annual correction, based on the actual costs and revenue, by the end of the coal production year following the year for which the aid was granted, at the latest;
- the amount of operating aid per tonne must not exceed, for each undertaking, the difference between production costs and the price of imported coal;

- without prejudice to the provisions of 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 the actual production costs and revenue.

2. Member States which wish to grant operating aid in the course of the 1994 to 1997 coal production years and/or from 1998 to 2002 to coal undertakings having production costs for the 1992 and/or 1997 coal production year below the Community guide cost, defined as the average Community production cost observed for the 1992 coal production year during the first phase and to be defined for the second phase, shall be authorized to do so provided the production costs, in terms of 1992 and/or 1997 prices, of the undertakings concerned over this period remain below the Community guide cost and provided any increase in these costs is in line with the price trends for imported coal.

3. Member States which wish to grant operating aid in the course of the 1994 to 1997 coal-production years and/or from 1998 to 2002 to coal undertakings with production costs for the 1992 or 1997 coal production year above the Community guide cost as defined in paragraph 2 shall submit to the Community in advance a modernization, rationalization and restructuring plan for the undertakings concerned which:

- provides for measures to ensure that by the 1997 and/or 2002 coal production year at the latest the production costs of the undertakings concerned, in 1992 and/or 1997 prices, move towards the Community guide cost defined for each of those periods; and
- provides that the amount of operating aid granted per tonne to each undertaking for the 1997 and/or 2002 coal production years shall not exceed, in principle, the difference between the Community guide cost and the average price observed for coal imported into the Community for the 1997 coal production year and/or 2002.

4. In its interim report submitted to the Council in accordance with Article 10, the Commission will propose to the Council a new Community guide cost for the coal production years from 1998 to 2002 in the light of developments observed on the world coal market.

5. 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 average production costs of the units whose activity is reduced shall not be included in the calculation of the production costs with a view to evaluating attainment by the undertaking of the objectives set in paragraph 3 of this Article.

Article 4

Aid for the reduction of activity

1. Aid to cover the costs arising from the reduction of activity of production units in operation on 1 January 1994 may be considered compatible with the common market on condition that it results in a genuine and definitive reduction in capacity. This aid may cover the following costs in particular:

- aid to finance social support measures covered by Article 56(1)(c) and (2)(b) of the Treaty;
- the cost of technical assistance for workers made redundant or pensioned off before the statutory retirement age;
- costs incurred in maintaining access to coal reserves;
- in the event of total closure of a pit, the residual book value of the installations (excluding any revaluation since 1 January 1986 exceeding the inflation rate).

2. Aid to cover the costs arising from temporary continuation of production, for social and regional policy reasons, at undertakings or production units which will be unable to attain the objectives set by Article 3(3) may also, subject to the conditions of paragraph 1 of Article 3, be considered compatible with the common market provided that such production units are the subject of a progressive and continuous activity-reduction plan entailing a significant reduction in capacity before the expiry of this decision.

3. The granting of a lump sum as aid for closures, to be used for temporary continuation of a specific level of production as provided for in paragraph 2, or for investment in industrial conversion in the region concerned, with the aid of an early-closure programme, or for a combination of the two, may be considered compatible with the common market provided that the arrangements are compatible with the Treaties.

Article 5

Aid to cover exceptional costs

1. State aid to coal undertakings to cover the costs arising from the 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.

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 burden 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, the Governments of the Member States 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 it complies with the rules laid down in the Community framework for State aid for research and development².

Article 7

Aid for environmental protection

1. Aid to facilitate adjustment to new environmental protection standards on the part of installations in operation at least two years before the entry into force of those standards may be considered compatible with the common market.

2. The amount of aid granted under this Article may not exceed 15% of the direct investment expenditure on the environmental protection measure in question.

² OJ No C 83, 11.4.1986, p. 2.

SECTION III

Notification, appraisal and authorization procedures

Article 8

1. Member States which intend to grant the operating aid referred to in Article 3(3) or the aid for the reduction of activity referred to in Article 4(3) for the 1994 to 1997 and/or the 1998 to 2002 coal production years shall submit to the Commission, by 31 March 1994 or 31 March 1998, a modernization, rationalization and restructuring plan for the industry conforming to Article 3(3) of this Decision, and/or an activity-reduction plan in accordance with Article 4(2).

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

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 this further information.

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 of this Decision and, where appropriate, 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. At the time of notification of the operating aid referred to in Article 3 and of the annual statement of the aid actually paid, Member States shall supply all the information necessary for verification of the criteria under Article 3 regarding the movement of production costs towards the Community guide cost. In addition, they shall certify that the information submitted is correct and, in the specific case of the production costs of the undertakings granted aid, that the costs comply with the principles adopted for their calculation and that these principles continue to be applied.

4. Member States may not put into effect the aid planned until after approval 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.

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

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

SECTION IV

General and final 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, a report on the experience of, and problems in, applying this Decision and will propose a new guide cost for the coal production years from 1998 to 2002. It may propose any appropriate amendments, in accordance with the procedure laid down in the first paragraph of Article 95 of the Treaty.

Article 11

The Commission shall, after consulting the Council, 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,

For the Commission