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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(75) 411 final

Brussels, 10 september 1975.

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DECISION (ECSC) OF THE COMMISSION

regarding the Community system of measures
taken by Member States to assist the coal-
mining industry

(submitted to the Council by the Commission)

COM(75) 411 final

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MOTIVATIONI. History

The structural changes which occurred in the energy market at the end of 1950's led the Member States to sign on 21 April 1964 the Protocol of Agreement regarding Energy Policy.¹ Pursuant to item 11 of this Protocol and in virtue of the first and second paragraphs of Article 95 of the Treaty, the High Authority on 17 February 1965 issued Decision No. 3/65 regarding the Community system of measures taken by Member States to assist the coal-mining industry.² This Decision, which was extended by Decision No. 27/67 of the Commission,³ ceased to have effect on 31 December 1970.

The economic conditions governing the output and sale of Community coal in 1970 shew that - in spite of the large-scale efforts of rationalization already made - the pits in many of the Community coalfields would not be viable without aid. After consultation with the Consultative Committee and with the unanimous approval of the Council, the Commission therefore issued on 22 December 1970 Decision 3/71.⁴ This Decision ceases to have effect on 31 December 1975.

II. Consultation

After having examined the new energy supply situation in the Community arising from the oil crisis in autumn 1973, the Commission came to the conclusion that it would be useful to establish a new Community system of aids in favour of the coal-industry, with effect from January 1976.

¹ Journal officiel No. 69 of 30 April 1974, pp. 1099/64

² Journal officiel No. 31 of 23 February 1965, pp. 480/65

³ Journal officiel No. 261 of 28 October 1967, p. 1.

⁴ Journal officiel No. L 3 of 5 January 1971, p. 7.

Accordingly the Commission has prepared the attached draft decision (Doc. COM....). The text is hereby transmitted to the Council to initiate the procedure provided for by Art. 95 (1) of the ECSC-Treaty.

The following considerations are intended to place the proposed decision in context.

III. Aims of the energy and coal policy

The need for long-term security of energy supplies must encourage the Community - given the uncertainties surrounding oil supplies which became evident during the autumn of 1973 - to reduce its dependence on imported energy to a minimum.¹ Far-reaching measures must be taken to ensure greater security of supplies and to prevent abrupt price variations in the energy sector. In the light of this new situation, the following guidelines are applicable to the Community's coal-mining industry² :

- Community coal production should be maintained at about 250 million tce, taking into account the natural, technical and economic conditions in the individual fields.
- Efforts should be made to maintain or regain the coal-mining industry's competitiveness by increasing output, by rationalization and reducing costs.
- An active manpower policy should be pursued.
- Investments should be increased in order to expand or create new productive capacities in suitable coalfields.

¹ "Towards a new energy policy strategy for the Community"
(Doc COM(74) 550 final)

² Medium-term guidelines for coal 1975 to 1985
Official Journal No. C 22, 30 January 1975.

At the session of 17.12.1974¹, the Council stated, among other observations, that Community coal production should be maintained at its present level (about 250 million tce) under satisfactory economic conditions in order to reduce Community dependence on energy imports from third countries, placing particular emphasis on oil imports.

At its meeting on 13 February 1975 the Council supplemented² the foregoing resolutions in connection with the Community's coal-mining industry. It considered that

- Measures should be taken to finance the necessary investments and retain a suitable labour force.

- Stabilized and regular sales should be ensured under satisfactory economic conditions giving due regard to the interest of consumers.

IV. Justification of a new aid system

There have been great improvements in the coal-mining industry's economic return resulting from recent increases in coal prices; there are still unprofitable pits which will probably be closed down in years to come. Such closures must however be phased, so that economic and social problems are not created in the regions concerned.

On the other hand it is impossible to say whether or to what extent the present economic state of the coal-mining industry might change as a result of fluctuations in the prices of competing forms of energy. Furthermore, certain high-cost pits producing coal for specific markets will need to be kept in production for security of supply reasons. It may also be necessary to grant financial aid to maintain disposals during temporary periods of market weakness.

¹Resolution of the Council R/3649/74

²Resolution of the Council R/505/75

It is therefore not certain that the coal-mining industry will be able to comply with the above-mentioned guidelines without help.

The absence of aid in favour of the coal industry would among other things

- make it impossible to implement the basic objectives of the second paragraph of Article 2 of the ECSC-Treaty;
- affect the long-term supply of energy for the Community in ways which would be incompatible with Article 3(a) of the Treaty;
- involve the risk of causing serious economic and social disturbances in some mining regions in the Community.

It is therefore necessary to create a new Community system of aids for the coal-mining industry. This system would serve as a safety net to guarantee the attainment of the above mentioned objectives at all times. The Treaty does not provide the Commission with any specific means of establishing such a system. Since this case is not specifically provided for, recourse must be had to the provisions of the first paragraph of Article 95, in order to guarantee the achievement of the objectives set out in the opening article of the Treaty.

V. Principles of application

The attached draft decision embodies the principles and regulations which are necessary to facilitate the achievement of the above-mentioned general objectives of the energy policy of both the Commission and the Council. The following are the principles concerned :

- Aids may only be granted after approval by the Commission.

- The approval of the Commission for the measures envisaged by Governments must be based on precise and full knowledge of these measures, and must take due account of the interaction of all the economic and social factors which they involve.
- It is necessary, moreover, to establish criteria in order to guarantee that the aids provided correspond with the objectives in view.
- It must be made impossible to grant aids where their scale or details would run counter to the proper functioning of the common market particularly if the conditions governing production, sales, and exchange within the Community were thereby modified in a way contrary to the common interest.
- The various types of aid for which the Commission can give forward authorization must be defined; they are :
 - aids for investment in order to stabilize production;
 - aids for the training and maintenance of the labour force;
 - aids for the establishment and maintenance of pithead stocks in order to increase the flexibility of the Community's coal supply or to increase the security of energy supply;
 - aids for the sale of steam coal;
 - aids to cover the difference between costs and returns of the coal-mining industry.
- The proper implementation of this Decision must be ensured by means of provisions which enable the Commission to exercise effectively its power of approval.
- In the circumstances, and in view of the need to view the security of the Community's energy supplies and the necessary measures to be taken by the coal-mining industry as a long-term problem which must be solved, it seems advisable to restrict the validity of

this Decision to a period of ten years.

VI. Additional considerations

As stated in its Resolution of 17.12.1974, the Council agrees with the Commission that the Community's dependence on energy imports should be reduced as far as possible and that therefore, *int. al.*, the present level of the Community's coal production should be maintained under satisfactory economic conditions. Independently of the draft decision herewith submitted, the Commission is of the opinion that to achieve this objective the possibility of Community participation in financing aids for the coal industry must be created. This would represent an expression of solidarity required for the pursuit of common energy policy objectives. The Commission therefore reserves to itself the possibility of submitting to the Council in due course appropriate proposals based on the resolution of the Council of 13 February 1975.

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Decision No /ECSC of the Commission of
regarding the Community system of measures taken by Member States to
assist the coal-mining industry

SECTION IGeneral AimsArticle 1

The Commission is empowered, subject to the conditions hereinafter set out, to approve financial support by the Member States for the coal-mining industry of the Community, if - having regard to the objective for Community coal production laid down by the Council in its Resolution of 17 December 1974 - this support facilitates achievement of the following aims :

- 1) Concentration of production in those pits or coalfields which can best improve their productivity or create new productive capacities, and which appear - after due consideration of their location in relation to markets and of their reserves of qualities in demand - best able to supply the Community's long-term energy needs under acceptable economic conditions.
- 2) Further adaptation of the production of pits or coalfields having a low economic return to the conditions obtaining on the energy market, provided that this does not give rise to major disturbance in the economic and social circumstances in those regions where reemployment possibilities are still inadequate.

SECTION IIObligations of the Member StatesArticle 2

1. If a Member State intends to take measures in accordance with Article 1, it must give the Commission, at latest by 1 November of each year, and separately for each individual coalfield or undertaking, the following information :

- (1) All financial measures which the State in question proposes to take in the ensuing calendar year in order to give direct or indirect support to the coal-mining industry.
- (2) When the financial measures are in support of social security benefits in the coal-mining industry:
 - (a) the legal and administrative provisions applicable in each case or changes in existing provisions that have already been notified;
 - (b) the total amount of social security benefits, broken down by category, that has been paid during the preceding year to workers in the coal-mining industry, to past workers and to their dependants; the number of these recipients; and the corresponding information for the general system;
 - (c) the various sources from which the benefits referred to in (2) were financed, together with the total amounts.
- (3) Where the financial measures are designed to cover the "inherited" liabilities of the undertakings in the coal-mining industry:
 - (a) the type of "inherited" liability to be covered;
 - (b) the probable amount of the "inherited" liability in the year in which aid is granted;
 - (c) information as to whether or to what extent the undertakings have calculated "inherited" liabilities in the cost of current production or have built up special financial reserves to cover these liabilities themselves.
- (4) The reasons for and the scope of the individual measures, all further information for their assessment in accordance with the provisions of this Decision, and proof that the measures are not more extensive than is absolutely necessary to achieve the aims in view.

- (5) Forecasts of the probable trends in production, imports and sales of coal and coke, presented in the form of balance-sheets, showing:
 - (a) for the fifth year ahead:
 - an overall forecast of the availability and sales of coal.
 - (b) for the following year:
 - a forecast of the availability and sales of coal, separately for each of the following sectors: coking plants, power stations, other industrial consumers and domestic use;
 - a forecast of production and sales of coke, separately for each consumer group.
 - (6) Information for five years ahead on the probable development of existing productive capacities in the coalfields or undertakings and on plans and measures to sink new pits.
 - (7) Information for the following year on proposed closures of pits or parts thereof, and forecasts of the restructuring of the regions and redeployment of redundant workers in connection with regional development prospects and programmes.
2. For 1976, the information required in accordance with Paragraph 1 is to be provided by 30 June 1976.
 3. Should a Member State plan, in addition to the measures already notified under Paragraph 1, to take supplementary financial measures or to modify existing measures during the calendar year, the Commission must be notified in time for it to assess the proper measures and to pronounce upon them in accordance with the procedure hereinafter laid down.

SECTION III

Procedure for assessment and approval

Article 3

1. With regard to all measures proposed in favour of the coal industry by the Member States, the Commission shall assess the compatibility of such proposed measures with the proper functioning of the common market on the basis of the following criteria:
 - (1) Coherence of the quantitative forecasts established for the several coalfields or undertakings, within the figure for the overall supply of the Community with coal and coke;
 - (2) Consideration of intra-Community trade and the state of competition between the Community's coal producers;
 - (3) Appropriateness of the financial measures envisaged by the governments, in the light of the aims of this decision, the pricing of Community coal, in so far as affected by the level of aid, with due respect for the principle that the aid must be no higher than absolutely necessary and must not constitute indirect subsidization of the industrial consumers;
 - (4) Progress in the creation of new productive capacities and in the rationalization of those pits with the highest productivity, with due consideration of their situation in relation to the markets and of their reserves of the qualities of coal in demand.
 - (5) Need to forestall serious economic and social disturbances in regions where re-employment possibilities are still inadequate.

2. The Commission shall, in making its assessment on the basis of the criteria in Paragraph 1, examine not only those aids which can be granted under this Decision, but all other financial measures taken to assist the coal-mining industry of the Community. In so doing, the Commission shall ensure that these aids and financial measures do not contravene the principle of non-discrimination laid down in the Treaty.

Article 4

- (1) State contribution to the financing of social security benefits can be considered compatible with the common market, provided that, for undertakings in the coal-mining industry, they bring the ratio between the burden per miner in employment and the benefits per person in receipt of benefit into line with the corresponding ratio in the other sectors of industry.
- (2) The Governments of the Member States must submit to the Commission the necessary basic data and the details of how they calculated the ratios between the burdens and benefits referred to in the foregoing paragraph.

Article 5

1. State measures in favour of undertakings designed to cover the burden caused by closures in previous years or in the current year which are not related to current production and sale of coal, can be considered compatible with the common market, provided that they do not exceed these burdens ("inherited" liabilities). These aids may be used to cover:
 - (1) Expenditure exclusively incurred by undertakings which had to make closures, namely the following categories, which are exclusive:
 - (a) burdens due to the payment of social security benefits, in so far as these benefits are attributable to the pensioning of workers before they attain the legal minimum pensionable age;

- (b) other exceptional expenditure, in so far as it is due to the loss of employment resulting from closure;
 - (c) the grant of pension payments and compensation outside the statutory insurance scheme to workers leaving because of the closure, as well as those who were entitled thereto before the closure;
 - (d) the supply of concessionary coal to workers leaving because of the closure as well as to those who were entitled thereto before the closure;
 - (e) any remaining tax liabilities;
 - (f) additional safety work that has to be carried out underground as a result of the closure;
 - (g) future subsidence damage or similar damage connected with pits which were worked earlier;
 - (h) any remaining charges in the form of contribution to bodies dealing with water supply and disposal of waste water;
 - (i) other remaining charges in respect of water supply and disposal of waste water;
 - (j) sickness benefits still to be paid to former mineworkers
 - (k) exceptional material loss caused by the closure of pits where compensation for these losses is vital to the continued existence of the undertaking.
- (2) Expenditure incurred by several undertakings:
- (a) increases in the contributions needed to cover social charges outside the statutory systems, provided that these increases are attributable to a reduction - due to the closures - in the number of those liable to pay contributions;

- (b) expenditure caused by the closure, in respect of water supply and disposal of waste water;
 - (c) increases in the contributions to bodies dealing with water supply and disposal of waste water, provided that these increases are attributable to a reduction - due to closure - in the production of coal on which the levy must be paid.
2. The measure may consist of a lump sum, which shall not exceed the actual amount of the "inherited" liability".
 3. The Governments of the Member States shall submit to the Commission the necessary basic data and the details of how they calculated the ratio between the actual "inherited" liability of the undertaking and the envisaged measure.

Article 6

- (1) The Commission may, after consultation with the Council, approve the aids envisaged in Articles 7 to 12 below, provided that the Commission is satisfied that the aids meet the requirements of Article 3.
- (2) The Commission shall pronounce upon all other measures - in particular those indicated in Articles 4 and 5 - covered by the Treaties in accordance with the procedures and rules of the Treaties.
- (3) The Member States may not grant the aids referred to in Paragraph (1) above without the prior approval of the Commission.
- (4) Should the financial position of an undertaking make it essential that advance payments be made towards the financial measures envisaged before termination of the approval procedure, these shall be so designated and may be made only under the express reservation that they may have to be repaid.

SECTION IV

Aids by Member States

Article 7

1. Prior approval is necessary for State aids which help to create new productive capacities with a view to the long-term stabilization of Community coal production. The annual aid contribution shall not exceed the undertaking's actual capital expenditure in the year concerned. If preferential interest rates are granted the amount of the loan on which they are based shall not exceed the total costs of the investment project.
2. Approval is required for State aids which are intended, within the broader framework of further rationalization or adaptation of the undertaking to the conditions obtaining on the coal market, to improve the economic returns from or the safety of existing mines.
3. The aids under paragraphs 1 and 2 can be granted for individual investment projects, for investment programmes or to test new equipment under the following conditions :
 - (1) That the investment projects or programmes will help to improve the economic returns from or safety in the mines; the Governments must supply the requisite proof.
 - (2) That investment projects or programmes which improve the economic returns will primarily contribute to:
 - a) concentration of pits,
 - b) increased mechanization and automation of coal winning or of underground operations,
 - c) upgrading the coal produced
 - (3) Investments used for the testing of new equipment should speed up and facilitate the practical application of new technology in the coal-mining industry.

4. The undertakings in the coal-mining industry are required to enter the investment aid received in their books in such a way that the profit and loss account in the annual balance sheet is not modified.
5. Where the aid is for an investment programme, the Commission must be informed at least once a year, in respect of each individual project in the programme which it is decided to carry out, concerning the purpose of the project, the investment expenditure assigned to it and the amount of aid involved.
6. In cases where the aid applied for is to be spent on investments already benefitting from measures taken under Article 54 and 55 of the ECSC Treaty, the advantage that will accrue must be shown for each project separately.

Article 8

Furthermore, approval can be given to State aids intended to help finance such expenditure by the undertakings on the employment, training, adaptation and stabilization of the labour force as is absolutely necessary.

Article 9

- (1) Approval can be given to the building and holding of exceptional stocks, in order to make the supply of Community coal more flexible and to ensure its better adjustment to fluctuations in demand caused by changes in the business situation.
- (2) Exceptional stocks will qualify for aid only if they are stocks of marketable coal and coke belonging to the producers and if in aggregate they exceed one twenty-fourth of the annual production of a coalfield or undertaking. Possible security stocks envisaged under Article 10 shall not be considered as ordinary stocks.
- (3) The aid shall not exceed the cost of storing the quantities referred to in (2), inclusive of depreciation but exclusive of any downward adjustment of value.

- (4) The aid is to be calculated in each case for one year in advance, on the basis of a fixed amount per ton, separately for coking coal, other kinds of coal and coke; the method of calculation must be indicated.

Article 10

Prior approval must be given to the creation and maintenance of permanent security stocks by coal producers in order to increase security of coal supplies against interruptions in supply, provided that such stocks are maintained on instructions from the Government of the Member State concerned. The aid can be granted to cover the storage costs, depreciation and downward adjustment of value. The particular undertaking concerned may also receive reimbursement from public funds of the capital tied up in the security stocks, provided that the sum is repaid into public funds if the stocks are run down.

Article 11

1. Prior approval is required for special aids planned by Member States to guarantee long-term stabilization for the sale of Community steam coal for power stations.
2. Such measures must be of a nature such that they fit into the framework of all the other aids and do not impair the applicability of this Decision.

Article 12

1. In addition to the aids provided for in Articles 7 to 11, prior approval is requested for any additional aid in so far as it can be shown that :
 - (1) the adaptation of the level of production to the situation called for by the market would - in coalfields with pits having a low economic return give rise to major social and economic disturbances in a region where the possibilities of re-employment are still inadequate; or
 - (2) that in economically viable coalfields or in coalfields whose production is necessary for the supply of specific markets, the level of production necessary in the long term because of uncertainties about the Community's energy supply could not be achieved without this aid.

2. Aid under Paragraph 1 (1) shall be granted only,
 - (1) if pit closures and redundancies are likely;
 - (2) in so far as it covers - for the individual coalfields or undertakings - the difference between the foreseeable average costs of coal production and the average returns achievable in the next calendar year (coal trade year).
 - (3) if for each coalfield or undertaking, it is expressed as a uniform figure per ton produced.
 - (4) if it is - in as far as the total amount of aid is concerned - supported by details of the average production costs and receipts for the most recent period of time possible.
3. Aid under Paragraph 1 (2) shall be granted only where permanent maintenance of production which is vital to the security of Community supplies seems threatened by temporary difficulties; this aid is governed by the provisions of Paragraph 2 (2-4) in respect of the level of aid payable but with the proviso that the Commission can fix an upper ceiling if it finds the amount of the aid is based on developments in the undertakings of the coal-mining industry which are unacceptable under satisfactory economic conditions or which are not in keeping with the requirements of long-term security of energy supply.
4. The cost reductions resulting from the grant of aids in accordance with Articles 4 and 5 and 7 to 11 of this Decision must be allowed for in calculating the production costs or operating losses of pits.

The production costs may include depreciation for wear and tear and an appropriate level of interest on the capital required for general operations for these items.

5. In determining the level of aids payable, the aids granted under Decision 73/287/ECSC for coking coal and coke must be taken into account and shown.

6. Should the maintenance of a pit be indispensable for one of the reasons listed in Paragraph 1, but be threatened by the financial imbalance of the undertaking, it shall exceptionally be permissible to approve an aid which goes beyond that permitted under Paragraph 2 or 3, provided such aid is limited to covering a previously uncovered difference between the cost of and the returns on the coal produced during a period not exceeding the two preceding years. In this case, documentary evidence providing evidence in accordance with the provisions of the preceding paragraph must be submitted for the accounting period during which the losses were incurred. Information must also be supplied which shows how far such losses have meanwhile been reduced as a result of other State measures.

SECTION V

General and final provisions

Article 13

In deciding whether the financial measures envisaged by the Member States are compatible with the proper functioning of the common market, the Commission shall also give due consideration to any aids which may be granted under Decision No. 73/287/ECSC of 25 July 1973.

Article 14

1. In order to ensure that the aids approved by it are used exclusively for the purposes set out in Articles 7 to 12 of this Decision, the Commission may:

- (1) make its authorization subject to any appropriate conditions;
 - (2) limit the use which undertakings in receipt of aid may make of their right to align their quotations in accordance with Article 60 of the ECSC Treaty and require them to maintain minimum prices. Any infringement by an undertaking shall fall under the provisions of Article 64 of the ECSC Treaty.
2. The Commission may carry out any appropriate checks on the undertakings.
 3. The Commission shall revoke its approval of aids or shall modify its approval, should it find that the aids no longer fulfill the conditions imposed by Articles 7 to 12 of this Decision, or that the actual consequences of such aid or the use to which it is put are contrary to the conditions requisite for their approval. The Member State concerned shall, within the time-limit laid down by the Commission, comply with the Decision to revoke the approval or to modify its terms.

Article 15

Should the Commission - either at the request of a Member State or on its own initiative - find

- (1) that the application of this Decision threatens to cause grave disturbance in the common market for coal, or difficulties which could result in a worsening of general energy supplies or of the economic situation of a region, or
- (2) that perceptible changes occur in the conditions or the scale of intra-Community trade on the coal market, with consequent modifications in the economic circumstances which formed the basis for taking this Decision, the Commission may wholly or partly abrogate the application of this Decision, after consultation with those concerned. The Commission shall immediately inform the Council.

Article 16

The Commission shall at regular intervals report to the Council on the application of this Decision.

Article 17

After consultation with the Council, the Commission shall take all requisite measures in respect of the application of this Decision.

Article 18

This Decision shall enter into force on 1 January 1976. It shall cease to have effect on 31 December 1985.

Brussels,

For the Commission
The President