II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 February 1990

concerning a financial measure taken by the Federal Republic of Germany in respect of the coal industry in 1989 and a supplementary financial measure in respect of the coal industry in 1988

(Only the German text is authentic)

(90/632/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Commission Decision No 2064/86/ECSC of 30 June 1986 establishing Community rules for State aid to the coal industry [1], and in particular Article 2 (1) and 10 thereof,

Whereas :

I

In its letter of 25 July 1989 the Government of the Federal Republic of Germany informed the Commission, pursuant to Article 9 (2) of Decision No 2064/86/ECSC, of the compensatory amount to be paid in respect of 1989 to electricity generators using Community coal. This compensatory amount is financed through a compensation fund *(Ausgleichsfonds)* set up under the third Electricity-from-coal Law.

The Commission has also been informed that, for 1988 and 1989, the final accounts for the availabilities of the compensation fund based on revenue collected by applying the rate of 7,25 % for 1988 and 8,5 % for 1989 show they will exceed the amounts authorized by Commission Decision 89/296/ECSC [2] for 1988 and those notified on 25 July 1989 for 1989.

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

— DM 5 600 million for the year 1989, of which DM 5 200 million are accounted for by current expenditure in 1989,

— DM 200 million supplementing the sum already authorized for 1988, bringing the total amount accounted for by current expenditure in 1988 to DM 4 900 million.

II

The objective of the compensation fund pursuant to the third Electricity-from-coal Law is partially to offset the price difference, in respect of 11,5 million tce (tonnes of coal equivalent) between Community coal and imported coal and, in respect of 23 million tce, between Community coal and fuel oil.

This compensation system is applied to an annual volume of the order of 34,5 million tce of Community coal.

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

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

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

[1] OJ No L 177, 1. 7. 1986, p. 1.
[2] OJ No L 116, 28. 4. 1989, p. 52.

III

The amount of indirect aid to the coal industry since the entry into force of the third Electricity-from-coal Law totalled nearly DM 30 000 million by 31 December 1988.

By Decision 89/296/ECSC the Commission authorized an amount of DM 4 700 million for 1988. According to the latest information, the amount paid out was increased by DM 200 million when the resources of the fund turned out to be greater than originally estimated.

The indirect aid planned for 1989 shows an increase of about 14 % over the preceding year.

IV

The trend observed over recent years must be seen in the light of the objectives of Decision No 2064/86/ECSC, in particular those set out in Article 2 (1) thereof,

It should be noted that the Federal Republic's third Electricity-from-coal Law specifies among its objectives for coal only the stabilization of production, but does not include the objectives stated in Article 2 (1), and notably those of improving competitiveness or creating new capacities that are economically viable.

Automatically granting aid to coal produced in the quantities stipulated by the Law has the effect of stimulating investments to maintain capacities that offer no guarantee of achieving economic viability.

Finally, the declared objectives of the Law do not include as a priority the solution of the social and regional problems stemming from the changes in the coal industry.

The Commission nevertheless considered in the past that such aid should mitigate the social and regional problems of the industry and that its abrupt abolition would merely exacerbate them.

V

As the Decision is a temporary measure expiring on 31 December 1993 and as it is essential to secure an economically viable future for the Community's coal industry, it must be remembered that for 1988 the Commission authorized, under Article 1 of Decision 89/296/ECSC, the compensatory amounts to be paid to the electricity producers, for the following reasons :

— their immediate abolition would aggravate the social and regional problems stemming from changes in the industry,

and

— so that they can help to improve competitiveness in the industry, they ought to be progressively reduced, and supported by a plan for restructuring, modernizing and rationalizing the coal industry.

VI

It turns out that the *de facto* and *de jure* circumstances which prompted the Commission to adopt Decision 89/296/ECSC for the year 1988 have not changed in 1989 in such a way as to justify any increase in the compensatory payments in 1989.

On the country, compared with the situation on the energy market in the Federal Republic of Germany in 1988, the trend already observed and foreseeable for 1989 on that market is characterized rather by rising prices for reference fuels, namely fuel oil and imported coal.

Moreover, the new level of tax on fuel oil for power stations has reinforced this trend in the Federal Republic of Germany.

Under these circumstances, application of the parameters laid down in the third Electricity-from-coal Law may not give rise to compensatory payment for 1989 in excess of the amount authorized in Decision 89/296/ECSC, which nevertheless includes the additional compensatory amount of DM 200 million to be paid for 1988 as additional aid resulting from bringing the estimate into line with the actual figure based on receipts from application of a levy rate of 7,25 %.

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

HAS ADOPTED THIS DECISION :

Article 1

The compensatory payment provided for in the third Electricity-from-coal Law shall be authorized for 1989 up to an amount of DM 4 900 million.

Article 2

An additional compensatory payment of DM 200 million shall be authorized for 1988.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 February 1990.

For the Commission

António CARDOSO E CUNHA

Member of the Commission