COMMISSION DECISION

of 14 February 1990

concerning a financial measure taken by the Federal Republic of Germany in respect of the coal industry in 1990

(Only the German text is authentic)

(90/633/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 Articles 2 (1) and 10 thereof,

Whereas :

I

In its letter of 3 January 1990, 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 1990 to the electricity generators using Community coal. This compensatory amount is financed through a compensation fund *(Ausgleichsfonds)* set up under the third Electricity-from-coal Law.

According to the notification from the Government of the Federal Republic of Germany, the sum in question, financed through the *'Kohlenpfennig'* levy system, amounts to estimated revenue of DM 5 300 million for 1990, equivalent to a levy rate of 8,25 %, of which DM 4 900 million is for current expenditure in 1990.

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 made obligatory by government action.

In addition, the scheme confers an economic advantage on coal undertakings. It therefore constitutions 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 the Decision.

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 35 000 million by 31 December 1989.

By Decision 90/632/ECSC [2] the Commission authorized the sum of DM 4 900 million for 1989.

The aid planned for 1990 totals DM 4 900 million.

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.

[1] OJ No L 177, 1. 7. 1986, p. 1.

[2] See page 18 of this Official Journal.

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. Community aids must be on a declining scale and must be backed up by the sort of restructuring, rationalizing and modernization plan required as a condition for the application of Decision 89/296/ECSC.

So that it could verify that the conditions for applying Decision No 2064/86/ECSC are met, the Commission, in Decision 89/296/ECSC of 30 March 1989 on financial aid by the Federal Republic of Germany to the coal industry in 1988 and additional financial aid to the coal industry in 1987 [3], asked the Government of the Federal Republic of Germany to submit to it by 30 September 1989 a plan for reducing, over a period to 31 December 1993 at the latest, the compensatory payments made under the third law on electricity generated from coal and any other measure with equivalent effect.

VI

So far the Government of the Federal Republic of Germany has not submitted to the Commission any such plan for reducing compensatory payments.

As a result, the Commission is unable at this stage to gain an overall view on the course planned up to 31 December 1993 for compensatory payments made under the said law to assist the coal industry in the Federal Republic of Germany.

Nevertheless, the Commission learns from its information for the year 1990 only that whereas the levy rate for 1989 was 8,5 %, the rate adopted by the Federal Republic of Germany for 1990 is 8,25 %, a decline of 0,25 %. Furthermore, it has been decided to enter into the budget the compensation between mining areas *(Revierausgleich)* and the compensation for coal with low volatile matter content *Niederflüchtige Kohle)*.

In view of the foregoing considerations, the Commission considers that a start has been made on giving effect to the scaling-down required in Decision 89/296/ECSC.

Bringing compensation between coalfields and compensation for low-volatile coal into the budget is a step towards the more rational exploitation of resources.

Although the Commission takes note of these favourable trends, application of the parameters laid down in the third Electricity-from-coal Law, on the basis of the available data supplied by the German authorities, means that only a compensatory payment intended to cover content expenditure for 1990 up to an amount of DM 4 600 million can be authorized.

This Decision may not be taken to imply any prior appreciation of the compatibility with the provisions of 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 under the third Electricity-from-coal Law is hereby authorized up to an amount of DM 4 600 million for 1990.

Article 2

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

(1) OJ No L 116, 28. 4. 1989, p. 52.