COMMISSION DECISION

of 6 February 1991

on financial aid by the Federal Republic of Germany to the coal industry in 1990 and supplementary aid to the coal industry for 1989

(only the German text is authentic)

(91/406/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],

Whereas :

I

In its letters of 3 January and 8 October 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 financial measures it intends to take in order to support the coal industry in 1990.

In its letter of 8 October 1990, the German Government also informed the Commission, pursuant to Article 9 (3), of a supplementary measure it intends to take in support of the coal industry with regard to 1989.

Pursuant to the above Decision, the Commission must give a ruling on the following financial measures submitted to it for approval :

— aid totalling DM 3 550 million to sales of coal and coke to the Community iron and steel industry in 1990,

— aid totalling DM 152 million under a scheme for maintaining the underground labour force in deep mines *(Bergmannsprämie)* for 1990,

— aid totalling DM 20 million for special depreciation in 1990,

— aid totalling DM 306 million to finance social benefit schemes in the coal industry in 1990, corresponding to the difference between actual and standard social charges,

— supplementary aid totalling DM 982 million to sales of coal and coke to the Community iron and steel industry in 1989.

The measures which the German Government intends to take to support the coal industry comply with the provisions of Article 1 (1) of Decision No 2064/86/ECSC. The Commission must therefore give a ruling under Article 10 of the Decision as to whether they comply with the objectives and criteria set out in that Decision and whether they are compatible with the proper functioning of the common market.

II

In accordance with Articles 4 and 12 of the Decision, coal undertakings are authorized, where necessary, to grant rebates on their list prices or production costs for deliveries to the Community iron and steel industry under long-term contract of coking coal, blast furnace coke and coal for injection into blast furnaces. These rebates must not cause the delivered prices of Community coal and coke to work out lower than those which would be charged for coal from non-member countries and coke made from non-member country coking coal.

Since 1 January 1989, the German Government's policy on aid to sales of coal and coke to the Community steel industry has been based on the principle of placing a ceiling on the amount of such aid for the years 1989, 1990 and 1991. The overall amount of aid planned for the period from 1 January 1989 to 31 December 1991 amounts to DM 10 960 million, while the total quantities eligible for this aid are expected to be 69,8 million tonnes.

On 28 February 1990, the Commission adopted Decision No 90/199/ECSC [2] on aid from the Federal Republic of Germany to the coal industry in 1989. This Decision authorized the German Government to grant aid of DM 2 865 million under the new system to sales of coal and coke to the Community iron and steel industry. The

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

[2] OJ No L 105, 25. 4. 1990, p. 21.

Commission had noted in its Decision that the amount of aid, which corresponded to the budgetary resources available for the year 1989, would not cover the full amount necessary course of that year to cover an estimated quantity of 24,5 million tonnes of coal and coke.

By its letter of 8 October 1990, the German Government informed the Commission of the adjustment it intended to make to the amount authorized by the Decision. Compared with this amount, the additional sum for 1989 will be DM 982 million, bringing the total amount of aid to sales of coal and coke for 1989 to DM 3 847 million.

The German Government also plans to pay coal producers, within the framework of the budgetary resources available, a sum of DM 3 550 million for 1990, in respect of production of 23,8 million tonnes of coal and coke.

In view of the notification, the Commission feels that the progressive reduction in aid which is one of the objectives of the new scheme is beginning to take effect. It notes in the light of the information supplied by the German Government that this downward trend should become more marked in the course of 1991.

The Commission welcomes both the principle of placing a ceiling on aid and its progressive reduction, which should help speed up restructuring of the coal industry and hence improve its competitiveness in conformity with the first indent of Article 2 (1) of Decision No 2064/86/ECSC.

Moreover, this aid is compatible with the provisions of Articles 4 and 12 of the Decision, as it does not lead to delivered prices lower than those which would be charged for coal from non-member countries.

It will also be necessary, pursuant to Article 11 (1) of Decision No 2064/86/ECSC, to ensure that this aid does not lead to discrimination within the meaning of the ECSC Treaty, as between Community buyers or users of coal or coke.

The German Government is to communicate at the end of 1990 any changes with regard to sales and information relating to production costs and the guide price, in order to enable the Commission to ensure that all the abovementioned provisions are complied with.

III

The aid of DM 152 million to finance mineworkers' bonuses *(Bergmannsprämie)* of DM 10 for every shift worked underground enables the undertakings to maintain a skilled underground workforce. This type of aid, which helps to increase productivity, is specifically provided for in Article 6 of the Decision and contributes to an improvement of the competitiveness of the industry in accordance with the first indent of Article 2 (1) of the Decision.

The aid covering special depreciation improves the competitiveness of the coal industry in that it enables restructuring to be speeded-up.

Since, at 0,1 % of the production cost, it is very low, this aid will not give the German coal undertakings a significant competitive advantage over other Community coal producers, especially since the returns do not cover the production costs. In view of its purpose, this measure conforms to the objective specified in the first indent of Article 2 (1) of the Decision.

The information supplied to the Commission regarding aid to finance social benefit schemes in the coal industry shows that the aid which the German Government intends to grant for these purposes makes the ratio between the burden per mineworker in employment and the benefits per person in receipt of benefit lower than the corresponding ratio in other industries. The difference between actual and standard charges in 1990 amounts to DM 306 million. Since the limits set in Article 7 of Decision No 2064/86/ECSC have thereby been exceeded, this must be considered as indirect aid to current production and must be examined on the basis of Article 10 (2) of the Decision. The reduction of about 1 % in production costs which it entails will not give the German coal industry a significant competitive advantage over other Community coal producers. Since this measure reduces the industry's operating costs, it helps solve the social and regional problems relating to developments in the coal industry by permitting a better phasing of restructuring and rationalization measures. It thus helps to achieve the objective referred to in the third indent of Article 2 (1) of the Decision.

IV

Consequently, the aid measures referred to in this Decision are compatible with the proper functioning of the common market.

This Decision does not prejudge the compatibility with Decision No 2064/86/ECSC of the amounts of aid scheduled by the Government of the Federal Republic of Germany for the years following 1990 under the system it has established for aid to sales of coal and coke to the Community iron and steel industry,

HAS ADOPTED THIS DECISION :

Article 1

The Government of the Federal Republic of Germany is hereby authorized to grant aid of DM 4 028 million to the German coal industry for the 1990 calendar year. The total amount shall be made up of the following aid :

1. aid totalling DM 3 550 million to sales of coal and coke to the Community iron and steel industry ;
2. aid totalling DM 152 million under a scheme for maintaining the underground labour force in deep mines *(Bergmannsprämie)*;
3. aid totalling DM 20 million for special depreciation ;
4. aid totalling DM 306 million to finance social benefit schemes in the coal industry, corresponding to the difference between actual and standard social charges.

Article 2

The Government of the Federal Republic of Germany is hereby authorized to grant supplementary aid of DM 982 million to sales of coal and coke to the Community iron and steel industry for 1989, bringing the total amount of aid under this measure to DM 3 847 million for 1989.

Article 3

The Government of the Federal Republic of Germany shall notify the Commission by 30 June 1991 of the total amounts of aid paid in 1990.

Article 4

This Decision is addressed to the Government of the Federal Republic of Germany.

Done at Brussels, 6 February 1991.

For the Commission

António CARDOSO E CUNHA

Member of the Commission