Position of the Belgian industry on the Schuman Plan (28 March 1951)

Caption: On 28 March 1951, the Belgian Organisation of Blast Furnaces and Steel Works sets out the stance taken by the Belgian iron and steel industry on the draft Treaty establishing the European Coal and Steel Community (ECSC) and on its various transitional provisions.

Source: Archives historiques des Communautés européennes, Florence, Villa Il Poggiolo. Dépôts, DEP. Fernand Dehousse, FD. FD 127.

URL:
http://www.cvce.eu/obj/position_of_the_belgian_industry_on_the_schuman_plan_28_march_1951-en-40e79915-ddd1-4a96-a669-ca2dc78e1226.html

Last updated: 05/07/2016

Position of the Belgian steel industry on the draft treaty and the draft Convention on the Transitional Provisions (28 March 1951)

At the meeting held under his chairmanship on Wednesday, 21 March, Mr Meurice, Minister for Foreign Trade, asked the experts representing the sectors of the economy concerned to give the Interministerial Economic Coordination Committee their views on the draft treaty and the draft Convention on the Transitional Provisions initialled in Paris on 19 March.

As we reminded Mr Meurice, the Belgian steel industry notified the government members concerned of its main observations in a note drawn up on 10 February 1951. In view of the state of progress in the negotiations, it confined itself to a few essential points on which it considered it vital to obtain satisfaction in order for the Plan to be carried out in a manner which was both acceptable to the Belgian economy and in keeping with the basic aims set out in Mr Schuman's declaration of 9 May 1950.

It can only confirm that position today. As regards the transitional provisions, there have in fact been no amendments to the text since that time. As for the draft treaty, the changes made to it do not alter the substance of the provisions which were criticised; they relate only to points of detail and even worsen the impact of certain of the provisions.

As Mr Meurice requested, in this note we again summarise, as clearly and concisely as possible, our comments on the basic points which particularly concern the Belgian steel industry.

We must, before starting, draw the attention of members of the government to the extreme gravity of the decisions they will have to take in the next few days. These place a question mark over the fate and the very existence of two activities which are fundamental to the Belgian economy.

The effect of these decisions and of the losses of sovereignty that would be conceded is greater for the Belgo-Luxembourg Economic Union than for the other countries involved in the Schuman Plan, because here the relative importance of coal and steel production is greater. As a proportion of aggregate national product it can be estimated at 18 % for the BLEU, 8.9 % for West Germany, 5.8 % for France, 3.4 % for the Netherlands and 4.4 % for Italy.

Furthermore, as the Schuman Plan is only the first stage in a more comprehensive integration of the economy of the participating countries, the system adopted sets a precedent which will inevitably be binding on later extensions.

The basic comments of the Belgian steel industry relate to the following points:

A. — Draft Convention on the Transitional Provisions

— Duration and end of the transitional period (Article I(4); Article 26(4) and Article 29(3)).

— Additional equalisation payments in respect of coal intended for the Belgian steel industry (Article 26(2)(b)).

B. — Draft Treaty

— Harmonisation of progress in living standards and working conditions for workers (Article 3, point e).

— Representation of workers and consumers in producers' associations (Article 47, paragraph 3).

— Powers of the High Authority in the economic field (Articles 54, 56, 58, 59, 60 and 61).

A. — Transitional provisions

1. Duration and end of the transitional period
(Article I(4); Article 26(4) and Article 29(3))

The draft lays down that the transitional period shall end five years after the establishment of the common market in coal (Article I(4)). Additional periods not exceeding two years may be allowed by the High Authority, with the Council's assent, applying different ways and means in the case of Belgian coal (Article 26, paragraph 4) and for steel (Article 29, paragraph 3).

The main reason why there has to be a transitional period is the imbalances in the acceding countries' production costs, especially as regard wages and social charges. In the case of both the Belgian steel industry and the coal industry, these imbalances constitute the major obstacle to the establishment of the common market. The transitional period must not, therefore, end until the substantial imbalances have been absorbed. If this has not happened by the end of the five or seven years foreseen, an extension must be allowed.

In view of the importance of the question, the decision on this must be a matter for the Special Council of Ministers.

It is vital that when the Treaty is due to roll out all its consequences, the Member States should be able, with no trammels on their sovereignty, to evaluate the economic factors which dictate whether it is to be implemented in full.

We therefore request that Article I(4) be amended as follows:

'The transitional period shall begin on the date of the establishment of the common market and shall end five years after the establishment of the common market in coal, provided that at that time the Council has declared, by unanimous decision, that the fundamental imbalances between the economies of the Member States have disappeared.

Failing such a declaration, the transitional period shall be extended until the striking of a satisfactory balance, which must also be declared by unanimous decision of the Council.'

2. Additional equalisation payments in respect of coal intended for the Belgian steel industry
(Article 26(2)(b))

Apart from the general equalisation designed to reduce the prices of all types of Belgian coal immediately to the level of the forecast production costs at the end of the transitional period, the draft provides, with respect to Belgian coal sold to the Belgian steel industry, that the High Authority shall periodically fix the amounts of additional equalisation payments as it considers necessary, in view of all the operational factors involved for that industry, in order to avoid the Belgian steel industry's being prevented by the special arrangements for Belgian coal from being incorporated into the common market in steel.

These additional equalisation payments are therefore conditional and subject to assessment by the High Authority. They could even, according to the wording of the text, apply only to coal corresponding to the part of Belgian steel production sold on the common market and not to coal included in supplies for export.

Such a formula is completely contrary to the principle of equal access to raw materials, the logical and essential corollary to the Schuman Plan; it sets up an unjustifiable discrimination against the Belgian steel industry.

Since it has to be incorporated into the common market immediately and take on all the obligations of that market, the Belgian steel industry is entitled to be included unconditionally in the common market arrangements in respect of all the coal it needs. This will not give it any special advantage but simply put it

on an equal footing with the steel industries in the other acceding countries.

We therefore request that Article 26(2)(b) be replaced with the following text:

‘to allow additional compensation payments such as to enable Belgian steel industry undertakings to be supplied with the coal they need at a delivered-to-factory price which is, at most, equal to the price resulting from free competition on the common market.’

B. — Draft Treaty

1. Harmonisation of progress in living standards and working conditions for workers
(Article 3, point e)

Imbalances in wages and social charges particularly disadvantage this country, and the idea of harmonisation in living standards and working conditions which Mr Schuman explicitly formulates in his declaration of 9 May 1950 is extremely important for Belgium.

In the present text, it no longer figures as an objective which must be attained; it appears merely as a consequence which may emerge, but which is in no way necessary for an improvement in living standards.

The previous text entailed a commitment from the contracting parties to bring about this vital harmonisation and must be reinstated.

2. Representation of workers and consumers in producers’ associations
(Article 47, paragraph 3)

According to the draft, the High Authority will normally call upon producers’ associations to obtain information which it requires or to facilitate the fulfilment of its tasks, provided that the associations in question either permit the qualified representatives of the workers and consumers to participate in the leadership of these associations or in consultative committees affiliated to them, or in any other way give a satisfactory place in their organisation to the expression of the workers’ and consumers’ interests.

We are not against involving representatives of workers and consumers in the work of producers’ associations in a sensible manner, but that involvement cannot go further than the setting up of advisory committees attached to the associations. We could not under any circumstances allow interference, in any form, by workers’ and consumers’ representatives in the associations’ governing bodies. Such an approach would completely overturn the existing system in this country and constitute an unwarranted encroachment on the duties and responsibilities borne by producers alone.

3. Powers of the High Authority in the economic field
(Articles 54, 56, 58, 59, 60 and 61)

A. The system created by these provisions can be summarised as follows:

In principle, the governing system for the common market must be that of free competition. In so far as there is a need for any intervention to restrict that freedom, it can only be the responsibility of the High Authority. Although the right of undertakings to form associations is not prohibited, it is permitted only, and even then on certain conditions (Article 47), as a purely advisory relay body and an implementing agency for the High Authority.

a) As regards investment (Article 54), the High Authority may ask to be notified of all individual programmes which it considers important enough and may issue an opinion on such programmes. Although, in theory, this opinion has the force of a decision only where carrying out the investment involves government protection or subsidies, it is not hard to see that in practice it will be difficult for undertakings in most cases to go against the High Authority’s opinion. This will in fact give the High Authority very wide

powers in relation to investment, which contradicts the free competition system the draft treaty claims to be setting up.

What will make this power even greater is that the High Authority may facilitate the carrying out of programmes it approves by granting or guaranteeing loans. This type of financial involvement is completely outside the normal supervisory and monitoring role of the High Authority and will inevitably lead to unwarranted discrimination and arbitrary decisions.

b) As regards prices (Article 56), the High Authority, according to an extremely complicated system, monitors the prices charged and sales conditions. It has power to fix minimum or maximum prices where it considers this to be necessary.

c) As regards production programmes, the High Authority may set production quotas in the event of a manifest crisis (Article 58) and establish a system for the allocation of resources and manufacturing programmes in the event of a shortage (Article 59).

d) As regards agreements between undertakings (Article 60), all agreements which have the effect of fixing prices, restricting or controlling production or allocating markets or sources of supply are prohibited. Authorisation may only be granted to limited specialisation agreements or joint buying or joint selling agreements which are limited and revocable at any time, in respect of particular products and on very strict conditions which only the High Authority may evaluate, in particular the condition that such agreements do not affect a substantial proportion of products in the common market.

e) As regards industrial concentrations (Article 61), any concentration operation of whatever kind (merger, acquisition of shares, etc.) shall be prohibited save with prior authorisation from the High Authority, which shall grant or refuse such authorisations in accordance with criteria which are so general that, just as in the case of combines, they virtually amount to giving it discretionary powers. It may even (under Article 61(7)) go back on positions already established when the Treaty enters into force, if not to order a separation of assets, then at least to make such recommendations to undertakings as may prevent them from using their position for purposes contrary to the objectives of the Plan.

B. In brief, the draft gives the High Authority power to take major decisions on the running of undertakings, under threat of excessive penalties and in accordance with circumstances which in most cases it will itself evaluate.

The guarantees the draft gives as regards the exercise of these powers are completely inadequate. The fact that the High Authority’s decisions must be reasoned and that before acting, at least on prices and production, it has to consult the Consultative Committee and the Special Council of Ministers does not alter the fact that in vital areas producers’ rights of initiative and responsibilities are taken away from them.

As for the right to take an action before the Court of Justice, in most cases it will be illusory where economic questions are concerned. The Court’s function is mainly to rule on points of law. It may evaluate facts only in the event of misuse of powers or flagrant disregard of the Treaty (Article 33), and in matters relating to pecuniary sanctions (Article 36) and the establishment of an unlawful concentration (Article 61(5), second subparagraph). In most cases, the High Authority’s powers in the economic sphere have been drawn so widely and in such a general manner that it will be virtually impossible to challenge the grounds for its decisions.

What makes the risks of the proposed system even greater is that experience shows that, for basic commodities like coal and steel, completely free competition easily degenerates, during a slump, into a free-for-all, and in a boom it may lead to excesses. As there are hardly any periods when the economic situation is normal, the High Authority will have to intervene practically non-stop and that will leave us in a totally interventionist system which will require a huge administrative apparatus, blatantly contradicting both the basic principles of the Schuman Plan and those which have always been accepted in this country.

In view of the powers conferred on the High Authority, especially in relation to readjustment, this interventionism could even spread to activities unrelated to coal and steel.

It is not acceptable that the fate of two basic industries accounting together for more than 40 % of Belgian industrial output should be delivered entirely into the hands of six or nine strangers, who, what is more, cannot possibly, however competent they are, possess sufficient knowledge of the never-ending range and variety of contingencies which must be taken into account when it comes to organising production and taking decisions affecting the enormous groups over which they will have jurisdiction. The means of action provided for in the draft treaty will thus very probably be doomed to failure, and that could bankrupt the political concept itself.

The defining of production arrangements and prices is a task which is normally a matter for producers, whether individually or collectively, and they are much better qualified to do it than the High Authority. We cannot allow their right to associate and take concerted action to be curbed and restricted to the point where it is made completely ineffective (Article 60).

Belgium is particularly opposed to allowing such provisions because in this country undertakings may not only be set up without any restrictions, they may even in certain cases enjoy legal recognition and protection (executive order of 13 January 1935 allowing producers' groups to ask the government to extend their disciplines to outsiders).

It is in no sense, however, a question of setting up a system of cartels without restriction or control. While asking for producers' rights of initiative and basic responsibilities to be safeguarded, we acknowledge that the High Authority, as part of its general remit, must be effectively equipped to prevent any possibility of abuse. Such an arrangement is, in fact, completely in line both with the Havana Charter and with the economic cooperation agreement concluded between the United States and Belgium on 2 July 1948 (the Marshall Plan). In both cases, it was the harmful effects of commercial practices or agreements which it was sought to prevent and condemn, not such practices and agreements themselves. Even so, the High Authority must have power to act in the event of failure to act by the parties concerned.

Similarly, it is unacceptable that, where industrial concentrations are concerned (Article 61), the High Authority should be able to oppose an operation involving a merger or the acquisition of a share in another undertaking, which is simply to exercise right of ownership, on the pretext that the grouping so formed could engage in misuses of economic power.

Concentrations take place mainly for reasons of rationalisation and productivity which justify them from the economic standpoint. What should be controlled, therefore, is not the existence of concentrations but the abuses which could arise.

It is true that concentrations can become so large that their very existence poses an almost inevitable risk of abuses taking place. In such cases, it is logical that prior authorisation for the actual existence of the concentration should be required.

C. Having regard to these considerations, we consider it essential that the following amendments should be made to the provisions discussed above:

a) As regards investment (Article 54),

— the power granted to the High Authority to intervene in the financing of investment by granting loans or guarantees for loans should be removed;

— the High Authority should only be able to deliver opinions on individual programmes at the request of the undertakings concerned.

b) As regards prices (Article 56) and the regulating of production (Articles 58 and 59) the High Authority must act only in a substitute capacity in the event of failure to act by the parties concerned.

The supplementary rules proposed in respect of control by the High Authority of price scales, methods of price quotation and sales conditions should be replaced by a provision laying down that:

— the High Authority must be notified of price scales and sales conditions set up by undertakings or groupings thereof;

— if any prices or sales conditions applied are likely, in particular through unwarranted discrimination or other unfair practices, to disturb the economy of the common market or export markets, the High Authority may ask for them to be reviewed;

— if there is ongoing disagreement, the High Authority may, after consulting the Consultative Committee and the Council, draw up whatever recommendations are necessary.

c) As regards agreements between undertakings (Article 60), only agreements which would improperly prevent or restrict the normal freedom of competition in the common market should be prohibited.

Producers must be left with the power to conclude agreements, even if they affect a substantial part or the whole of the common market, on condition that the High Authority should be notified of the terms of the agreement.

The High Authority, after consulting the Consultative Committee and with the assent of the Council of Ministers, will be able to exercise a right of veto in the event that rules adopted would run counter to the basic objectives of the Plan as defined in Articles 2 and 3 of the draft Treaty and, in particular, would not be such as to ensure that deliveries to the common market were carried out in accordance with the rules as regards both price and quality; it may also encourage specialisation, a rationalisation of undertakings and cuts in costs, and enable the adjustments made necessary by market developments and the actual situation of undertakings to be carried out.

The High Authority must also, after consulting the Consultative Committee and with the assent of the Council of Ministers, be able to put a stop to collective action, while it is being taken, where such action strays from the objectives which have been fixed.

d) As regards industrial concentrations (Article 61), prior authorisation from the High Authority should be required in respect of operations which would have the effect of bringing the production capacity of the concentrated undertakings to a figure equal to or greater than:

— 10 % of the production capacity for crude steel or coal from the common market

— 20 % of the common market’s production capacity in the categories of products affected by the concentration. Such authorisation could be given only after the Consultative Committee had been consulted and with the assent of the Council of Ministers.

e) The maximum fines and periodic penalty payments which the High Authority may impose should be reduced to a reasonable level which does not imperil the existence of the undertakings.