COMMISSION DECISION

of 14 November 1973

approving new aids from the Federal Republic of Germany for the year 1972 for the benefit of the undertakings in the coal industry

(Only the German text is authentic)

(73/397/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community and in particular Articles 2, 3, 4 and 5 thereof;

Having regard to Commission Decision No 3/71/ECSC (1) of 22 December 1970 on Community rules for intervention by Member States for the benefit of the coal industry;

Having regard to the Decision No 70/1/ECSC (2) of 19 December 1969 on coking coal and coke, and in particular Article 9 (1) thereof;

Having consulted the Council;

Having considered the following grounds;

Whereas the Commission of the European Communities adopted Decision No 72/372/ECSC (3) on 19 October 1972; whereas this Decision approved for the aids intended by the Government of the Federal Republic of Germany to be granted for the benefit of the coal industry in respect of 1972 to the extent that they had been included and examined by the Commission in the 'Memorandum on financial interventions by Member States for the benefit of the coal industry in 1972' (4);

Whereas during the preparation for consultations with the Council on 6 September 1972 concerning the Memorandum on financial interventions in respect of 1972 by the Member States' Governments for the benefit of the coal industry, the representative of the Commission was informed by the Government of the Federal Republic of Germany that new measures should be adopted for 1972 because the situation on the German coal market had deteriorated much further than expected during 1972 owing to an appreciable drop in sales accompanied by rising costs; whereas as a result, the most important mining undertaking in the Federal Republic of Germany, Ruhrkole AG (RAG), was faced with increasing difficulties as regards profits and liquidity; whereas intervention measures therefore became necessary which, with one exception, relate specifically to RAG;

Whereas the Government of the Federal Republic of Germany informed the Commission, pursuant to Article 2 of Decision No 3/71/ECSC, of the new or supplementary interventions which it proposes to implement directly or indirectly for the benefit of the coal industry in respect of the year 1972; whereas, of these interventions, the following aids require approval pursuant to the aforementioned Decision:

	Millions of DM
The transfer during the years 1972 to 1975 of RAG's redemption moneys to the former proprietors' guaranteed claims account, with the effect of extinguishing pro rata the amount of the guarantee	53·7
Grant of a debt register claim to RAG	1 000·0
Grant to the entire German coal industry of a guarantee for financing pithead stocks	720·0
Revolving utilization of the hitherto existing guarantee limit for the joint and several debts of RAG	200·0

Whereas the aforementioned aids are in accordance with the criteria laid down in Articles 6 to 9 of Decision No 3/71/ECSC for the admissibility of such State assistance;

Whereas when RAG was founded in 1969, the former colliery owners received claims against RAG for the fixed assets contributed; whereas the public authorities took over the deficiency guarantee for this; whereas, because of the undertaking's unfavourable financial situation, the losses in the financial years 1970 and 1971 greatly exceeded RAG's share capital; whereas in 1972 the profit-and-loss position again showed no improvement; whereas, on the contrary, the financial losses increased even further;

Whereas the economic and social situation in Land of North Rhine-Westphalia, where RAG carries out

(1) OJ No L 3, 5. 1. 1971, p. 7.
(2) OJ No L 2, 6. 1. 1970, p. 10.
(3) OJ No L 256, 14. 11. 1972, p. 13.
(4) Doc. No XVII/52/2/72.

the greater part of its activities, is at present relatively favourable, although there are still problems in certain fields, mostly to do with coal-mining (1); however, that this situation would change if, in the event of discontinuance of the aids granted by the German authorities, RAG had to cease its activities and dismiss overnight the 170 000 employees whose jobs it at present provides; whereas in the circumstances it follows that the transfer of redemption moneys (DM 53·7 million) is compatible with the provisions of point 1, Article 9 (1), since the effect of this is to prevent a drop in production due to market forces which would result in serious economic and social difficulties in an area where, in the short term, there are insufficient opportunities of employment for such a large number of workers;

Whereas, as regards the allocation of the aid according to the difference between production costs and revenue, it can be seen that the aid will cover only about 10 % of the expected RAG operating losses for 1972; whereas the operating losses stem almost exclusively from the collieries and are due to the fact that on the one hand the revenue does not cover the production costs and on the other hand that high costs are incurred for the maintenance of pithead stocks; whereas the aids therefore comply with the provisions of Article 9 (2) of Decision No 3/71/ECSC; whereas it therefore follows from the foregoing that the transfer of RAG's redemption moneys by the public authorities to the guaranteed claims account is consistent with the provisions of Article 9 of Decision No 3/71/ECSC;

Whereas, with the guarantee of a debt register claim about DM 1 000 million, the Federal Government and the Government of the Land of North Rhine-Westphalia are endeavouring to strengthen the basic capital and liquid assets of RAG; whereas the capital sum is not being paid out all at once, but the public authorities are paying RAG 8 % interest and 2 % redemption annually; whereas for 1972 the total amount of interest and redemption was DM 46·7 million; whereas in order to pay interest and redemption on the total debt register claim, annual payments are to be continued until 1997; whereas provided that the total debt register claim is not eroded by operating losses, RAG is in a position to borrow money from the banks against the debt register claim guaranteed by the public authorities, but must then itself pay interest and redemption to the banks; whereas these terms show that interest-free capital of DM 1 000 million was placed at the disposal of RAG by the German authorities in order to improve the liquidity of the undertaking and to provide it with an interest advantage;

Whereas the advantages of the improvement in liquidity cannot be qualified as an aid; whereas there are also no figures available for determining the interest advantage, since the debt register claim was only allocated to RAG on 14 November 1972 by a decision of the German authorities;

Whereas for an appraisal of these interventions in the context of Decision No 3/71/ECSC, the same observations apply as were made earlier with reference to the transfer of redemption moneys to the guaranteed claims account and according to which the interventions measures is compatible with the provisions laid down in point 1, Article 9 (1), of Decision No 3/71/ECSC; whereas this appraisal applies only to the aforementioned case of improvement in liquidity or granting of an interest advantage; whereas where the RAG's 1972 debt register claims is used to write off accumulated operating losses, the covering of losses would have be the object of fresh examination by the Commission;

Whereas the guarantee for the financing of pithead stocks enables the German coal industry to borrow money from the banks against its stocks of coking coal and coke in order to increase its own liquidity;

Whereas this intervention does not affect the production costs, revenue or results of the collieries; whereas it has connection with the net costs of maintaining pithead stocks, which must be borne entirely by the undertakings themselves; whereas if the coal industry receives bank loans against pithead stocks, it has to pay the relevant interest itself; whereas the advantages of improved liquidity as a form of aid cannot be quantified;

Whereas for an appraisal of this intervention the same observations apply as were made earlier with reference to the transfer of redemption moneys to the guaranteed claims account and according to which the intervention measure is compatible with the provisions laid down in point 1, Article 9 (1), of Decision No 3/71/ECSC;

Whereas in order to improve RAG's liquidity and to ensure the undertaking's credit-worthiness at the banks, the Federal Government has stated that it is now prepared not to reduce the guarantee limit of DM 3 700 million set in 1969 but to retain it unchanged; whereas this means that if RAG were to reduce its previously incurred debts by making redemption payments, it would be able to raise new

(1) See Commission Decision of 17 December 1971 on investment premiums in the German coal-producing areas (OJ No L 57, 10. 3. 1971, p. 19).

loans from the banks which would automatically be guaranteed by the Federal Republic as long as they did not exceed the limit of DM 3 700 million; whereas this utilization of revolving loans totals approximately DM 200 million in 1972;

Whereas the advantages of improved liquidity as a form of aid cannot be calculated;

Whereas for an appraisal of these interventions the same observations apply as were made earlier with reference to the transfer of redemption moneys to the guaranteed claims account and according to which the intervention measure is compatible with the provisions laid down in point 1, Article 9 (1), 1 of Decision No 3/71/ECSC;

Whereas for an examination of the compatibility of the new German aids with the proper functioning of the common market, it is only the transfer of redemption moneys to the guaranteed claims account by the public authorities that can be assessed quantitatively; whereas all other new interventions serve to increase liquidity or constitute non-quantifiable interest advantage for the undertaking;

Whereas an amount of DM 53·7 million is involved in the transfer of redemption moneys to the guaranteed claims account; whereas if this amount is added to the aids already approved for 1972, the total aids to RAG in 1972 are increased by 0·65 DM (= 0·18 u.a./t); whereas in relation to the aids received by coal producers in other Member States those granted to RAG, per metric ton produced would still be considerably less;

Whereas considering the low amount of 0·18 u.a./t no important effects are expected on the conditions of competition between RAG and the other German coal-producing areas or between the former and the Ruhr collieries which do not belong to it; whereas the new aid measure is designed to suit the specific circumstances of RAG, which apply only to that undertaking;

Whereas the new measures proposed by the German Government for 1972 are therefore not likely to be prejudicial to the proper functioning of the common market pursuant to Article 3 (1) of Decision No 3/71/ECSC;

Whereas the Commission in accordance with Article 11 (1) of Decision No 3/71/ECSC must ensure that the aids it has approved are used for the purpose specified in Article 9 of that Decision;

Whereas in order to do so the Commission must be informed in particular of the amount and the apportionment of these aids,

HAS ADOPTED THIS DECISION:

Article 1

The Government of the Federal Republic of Germany shall be authorized to grant the following new aids for the benefit of the undertakings of the German coal industry:

1. Transfer of RAG's redemption moneys to the guaranteed claims of the former proprietors against RAG for the value of the fixes assets contributed to the undertaking, up to an amount of DM 53 700 000.

2. Transfer of a guarantee to the amount of DM 720 000 000 for the financing of pithead stocks.

3. Granting of a debt register claim amounting to DM 1 000 000 000 for the purpose of strengthening the base capital and the liquidity of RAG.

4. Utilization of revolving credits up to an amount of DM 200 000 000 for the purpose of improving the liquidity and safeguarding the creditworthiness of RAG at the banks.

Article 2

The Federal Government shall notify the Commission by 31 December 1973 of the details of the aids granted pursuant to this Decision, especially as regards the amount and apportionment of the payments made.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 14 November 1973.

For the Commission

The President

François-Xavier ORTOLI