COMMISSION

COMMISSION DECISION

of 4 April 1995

on German aid to the coal industry for 1995

(Only the German text is authentic)

(Text with EEA relevance)

(95/464/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 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry [1], and in particular Articles 2 (1) and 9 thereof,

Whereas :

I

By letter of 25 January 1995, Germany notified the Commission, in accordance with Article 9 (1) of Decision No 3632/93/ECSC, of the aid it intended to grant to the coal industry in 1995.

In accordance with that Decision, the Commission establishes the following measures for 1995 :

— aid totalling DM 95 million for maintaining the underground labour force ('Bergmannsprämie'),

— aid totalling DM 5 900 million under the Third Electricity-from-Coal Law of 13 December 1974 [2] ('drittes Verstromungsgesetz') in the form of revenue from the compensation fund ('Ausgleichsfonds') for 1995. This corresponds to a levy rate ('Kohlepfennig') of 8,5 %,

— aid totalling DM 200 million to cover exceptional costs for the undertakings Ruhrkohle AG, Saarbergwerke AG, Gewerkschaft Auguste Victoria, Sophia Jacoba GmbH and Preussag.

The financial measures proposed by the Federal Government for the coal industry comply with the provisions of Article 1 of Decision No 3632/93/ECSC and are to be approved by the Commission in accordance with Article 9. The Commission is to take its decision above all with regard to the general objectives and criteria defined in Article 2 and the specific criteria defined in Articles 3 and 4 of the Decision. In accordance with Article 9 (6) of the Decision, the Commission is required to check whether the measures are in conformity with the modernization, rationalization and restructuring plans on which it expressed a favourable opinion on 13 December 1994 in accordance with Article 8 (2) and (3).

II

The aid of DM 92,8 million for compensation between coalfields and the aid of DM 50,8 million for compensation for coal with a low volatile-matter content are intended to provide partial compensation for the fact that some coal producers receive revenue which is lower than production costs because of sales to electricity producers. According to the information provided by the Federal Government, the compensation between coalfields relates to 7,4 million tonnes and the compensation for coal with a low volatile-matter content to 2,3 million tonnes. Since 1990 this amount has been reduced by 10 % per annum.

[1] OJ No L 329, 30. 12. 1993, p. 12.
[2] German Law Gazette, 17 December 1974, p. 3473.

The inclusion of this aid in the modernization, restructuring and rationalization plan and its gradual reduction will contribute to greater financial discipline in the undertakings concerned. This aid therefore achieves the objectives set out in the first indent of Article 2 (1) of the Decision i.e. to make, in the light of coal prices on international markets, further progress towards economic viability and consequently to reduce aid.

In assessing this aid, the Commission has, in accordance with the second indent of Article 2 (1), also taken account of the urgent need to ease the social and regional impact of restructuring.

In accordance with Article 3 of the Decision, the aid helps to improve the economic viability of the undertakings concerned by reducing production costs.

The slight reduction in costs expected in 1995 at constant prices compared with 1994 should generate a trend towards a reduction in production costs within the meaning of the second indent of Article 3 (2).

In the light of the above and on the basis of the information provided by the Federal Government, the aid planned for 1995 is compatible with the objectives of Decision No 3632/93/ECSC and with the smooth functioning of the internal market.

III

Aid totalling DM 95 million to finance the 'Bergmannsprämie' is planned to enable mining undertakings to maintain their underground labour force in deep mines. This aid corresponds to DM 10 per underground shift. According to the information provided by Germany, this aid is an extra payment to miners and also reduces production costs. It is therefore aid which has to be assessed by reference to Article 3 of the Decision.

The aid contributes to increasing productivity and therefore helps in the restructuring and rationalization of the coal industry. It therefore also helps to achieve the objectives referred to in the first indent of Article 2 (1), i.e. to make, in the light of coal prices on international markets, further progress towards economic viability and consequently to reduce aid.

In assessing this aid, the Commission has, in accordance with the second indent of Article 2 (1), also taken account of the urgent need to ease the social and regional impact of restructuring.

The slight reduction in costs at constant prices expected in 1995 compared with 1994 should generate a trend towards a reduction in production costs within the meaning of the second indent of Article 3 (2).

This aid will improve the economic viability of the undertakings concerned in accordance with the provisions of Article 3 of the Decision by reducing production costs.

In the light of the above and on the basis of the information provided by the Federal Government, the aid planned for 1995 is compatible with the objectives of Decision No 3632/93/ECSC and with the smooth functioning of the internal market.

IV

The aid of DM 5 900 million to the coal industry planned by the Federal Government is covered by the Third Electricity-from-Coal Law which provides for the creation of a compensation fund financed from a levy, the 'Kohlepfennig'. The purpose of this fund is to provide partial compensation for price differences between Community coal and imported coal in respect of 11,5 million tce and between Community coal and fuel oil in respect of 23 million tce. The compensation fund therefore covers 34,5 million tce per annum and benefits electricity producers who purchase German coal at a price which more or less reflects production costs.

This measure constitutes aid within the meaning of Article 1 (3) of Decision No 3632/93/ECSC, according to which the term 'aid' also covers the allocation, for the direct or indirect benefit of the coal industry, of the charges rendered compulsory as a result of State intervention, without any distinction being drawn between aid granted by the State and aid granted by public or private bodies appointed by the State to administer such aid. The Commission must therefore take a decision on this measure in accordance with Article 9 of the Decision.

A decision has been taken each year pursuant to Commission Decision No 2064/86/ECSC [1] on aid granted in accordance with the Third Electricity-from-Coal Law. In accordance with Article 9 (7) of Decision No 3632/93/ECSC, the existing rules must be brought into line with the provisions of this Decision no later than 31 December 1996. If this has not been done, an assessment must be made as to whether the aid corresponds to the principles set out in Article 2 (1) of the Decision. In this context it should be pointed out that, by decision of 11 October 1994 (ref. 2 BvR 633/86), the Federal Constitutional Court ruled that the provisions of the Third Electricity-from-Coal Law concerning the imposition of the 'Kohlepfennig' levy for the benefit of the German coal industry are incompatible with the basic law 'Grundgesetz') and that they must cease to be applied with effect from 1 January 1996.

The slight increase of 1,7 % in the aid in 1995 compared with 1994 is due to the slight nominal increase in production costs at current prices (which, however, corresponds to a decrease at constant prices) and the estimated downward trend in energy prices in German marks of 10 %, which is itself a result of trends on the world market for coal and heavy fuel oil and changes in the exchange rate of the German mark to the United States Dollar. The Federal Government has therefore decided to place an upper limit at current prices on this aid as from 1 January 1996 and gradually to further reduce it as from 1 January 1997.

In view of the proposed increase in the aid for 1995 of 1,7 % compared with 1994, the Commission welcomes the Federal Government's decision to introduce a ceiling in 1996 and gradually to further reduce it within the meaning of the first indent of Article 2 (1).

In assessing this aid, the Commission has, in accordance with the second indent of Article 2 (1), also taken account of the urgent need to ease the social and regional impact of restructuring.

In the light of the above and on the basis of the information provided by the Federal Government, the aid planned for 1995 is compatible with the objectives set out in Article 2 of Decision No 3632/93/ECSC and with the smooth functioning of the internal market.

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

V

The aid amounting to DM 200 million to cover exceptional costs in favour of the undertakings Ruhrkohle AG, Saarbergwerke AG, Gewerkschaft Auguste Victoria, Sophia Jacoba GmbH and Preussag is intended to cover additional costs arising in conjunction with the removal of waste water from pits which were closed down as part of the restructuring measures and are near working pits. Since little or no water is drained from the closed pits, some of the water which is not in any way used in connection with production flows into nearby working pits, thereby creating additional costs.

This aid is expressly referred to in point II (b) of the Annex to Decision No 3632/93/ECSC as a measure intended to cover expenditure, resulting from restructuring, on the supply of water and the removal of waste water. In order to comply with the provisions of Article 5 of that Decision, it may not exceed those costs.

The Commission has examined the information provided by Germany and the agreements between the State and the undertakings concerned and has come to the conclusions that this condition has been met.

This assistance will reduce the financial imbalance within the companies concerned and enable them to continue to operate. The aid therefore complies with the objectives set out in Article 2 (1) of Decision No 3632/93/ECSC.

VI

This Decision does not prejudge the question of whether the new German system of aid which must be introduced for coal intended for the steel industry is compatible with the Treaties and with Decision No 3632/93/ECSC. This also applies to the changes which have to be made, in accordance with Article 9 (7), to the rules on aid which are linked to agreements between coal and electricity producers.

The Federal Government must ensure that the aid granted pursuant to this Decision does not exceed, for each undertaking or production unit, the difference between production costs and foreseeable revenue.

The Commission is required, pursuant to the second indent of Article 3 (1) and Article 9 (2) and (3) of Decision No 3623/93/ECSC, to verify whether the aid granted for current production achieves the objectives set out in Articles 3 and 4 of that Decision. It must therefore be informed as to the level of payments and their allocation,

HAS ADOPTED THIS DECISION:

Article 1

Germany is hereby authorized to take the following measures in 1995 to support the coal industry:

— aid totalling DM 92,8 million for compensation between coalfields and DM 50,8 million for compensation for coal with a low volatile-matter content,

— aid totalling DM 95 million for maintaining the underground labour force ('Bergmannsprämie'),

— aid totalling DM 5 900 million ion the context of the Third Electricity-from-Coal Law of 13 December 1974 in the form of revenue from the compensation fund ('Ausgleichsfonds') for 1995, corresponding to a levy rate ('Kohlepfennig') of 8,5 %,

— aid totalling DM 200 million to cover exceptional costs for the undertakings Ruhrkohle AG, Saarbergwerke AG, Gerwerkschaft Auguste Victoria, Sophia Jacoba GmbH and Preussag.

Article 2

Germany shall provide information no later than 30 September 1996 about the amounts actually paid during the 1995 production year.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 4 April 1995.

For the Commission

Christos PAPOUTSIS

Member of the Commission