COMMISSION DECISION

of 30 April 1996

on German aid to the coal industry for 1995 and 1996

(Only the German text is authentic)

(96/560/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,

I

Whereas, by letter of 5 October 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 and 1996; whereas, by letters of 6 December 1995, 18 December 1995 and 23 February 1996, Germany submitted the additional information requested by the Commission;

Whereas, in accordance with Decision No 3632/93/ECSC, the Commission gives its opinion on the following financial measures:

— aid totalling DM 2 708,5 million for 1995 and DM 2 539,2 million for 1996 for the sale of coal and coke to the Community steel industry together with a financial measure to assist the undertaking Saarbergwerke AG totalling DM 118,4 million for 1995 and DM 118,4 million for 1996 in the context of a debt-register claim to be charged to the public budgets,

— aid totalling DM 7 500 million for payments to the German coal industry in 1996 under the Fifth Electricity-from-Coal Law of 12 December 1995 [2] (*'fünftes Verstromungsgesetz'*),

— aid totalling DM 97 million for 1996 to enable mining undertakings to maintain their underground labour force (*'Bergmannsprämie'*),

— aid totalling DM 200 million for 1996 for the undertakings Ruhrkohle AG, Saarbergwerke AG, Gewerkschaft Auguste Victoria, Sophia Jacoba GmbH and Preussag to cover exceptional commitments;

Whereas the financial measures proposed by the Federal Government for the coal industry comply with the provisions of Article 1 (1) of Decision No 3632/93/ECSC; whereas, therefore, the Commission, in accordance with Article 9 (4), is required to check whether those measures conform to the general objectives and criteria defined in Article 2 and the specific criteria defined in Articles 3 and 4 of the Decision; whereas, in accordance with Article 9 (6) of the Decision, the Commission has to decide whether the measures are compatible with the modernization, rationalization and restructuring plan which the Commission approved by Decision 94/1070/ECSC [3];

II

Whereas the financial measures proposed by Germany for the coal industry pursuant to Article 3 of Decision No 3632/93/ECSC are limited from 1996 onwards to aid for coking coal (*'Kokskohlenbeihilfe'*), aid for coal for power stations (*'Beihilfe für die Verstromungskohle'*) and aid to maintain an underground labour force in deep mines (*'Bergmannsprämie'*);

Whereas the aid for coking coal will be granted, as explained in the letter of 5 October 1995, as part of a three-year ceiling for the period 1995 to 1997 totalling DM 8 065 million, of which DM 5 010 million is to be provided by the Federal Government and DM 2 700 million by the State of North Rhine-Westphalia; whereas the Federal Government's contribution is to be reduced from DM 1 760 million for the 1995 financial year to DM 1 650 million for the 1996 financial year and then to DM 1 600 million for the 1997 financial year; whereas the contribution from the Land of North Rhine-Westphalia is

[1] OJ No L 329, 30. 12. 1993, p. 12.
[2] *Bundesgesetzblatt* (German Law Gazette), 16. 12. 1995, p. 1638.
[3] OJ No L 385, 31. 12. 1994, p. 18.

to be reduced from DM 948,5 million for 1995 to DM 889,2 million for 1996 and then to DM 862,3 million for 1997; whereas the contribution from the Saar is to be replaced by a debt-register entry totalling DM 355 million to be charged to the public budgets and to assist the undertaking Saarbergwerke AG, of which DM 118,4 million is to offset losses for 1995 and DM 118,4 to offset losses for 1996; whereas those sums will be paid out as from the 1996 financial year and will be the subject of a final settlement in 1998;

Whereas the rules for coking coal are intended to cover the difference between production costs and the selling price freely agreed for coal of the same quality, in the light of the conditions prevailing on the world market; whereas this measure is covered by supply agreements between undertakings eligible for operating aid under Article 3 and aid for the reduction of activity under Article 4 of Decision No 3632/93/ECSC and the Community steel industry;

Whereas the payment based on the new system of aid for coking coal is to be regarded as a maximum amount; whereas, at the end of the three-year period, the exact difference between the agreed price and the production costs per tonne for all supplies will be determined by means of a final settlement; whereas, unlike under the previous system, no more advanced estimates of annual supply volumes are to be given; whereas only the volumes actually supplied may be the subject of aid; whereas, any amount of aid overpaid will be recovered, if necessary, after the final settlement; whereas the payments planned for 1995 and 1996 amount to DM 2 708,5 million and DM 2 539,2 million; whereas to these must be added financial measures totalling DM 118,4 million for each of the two years in the framework of a debt register entry to be charged to the public budgets, to be granted to the undertaking Saarbergwerke AG;

Whereas the inclusion of this measure in the modernization, restructuring and rationalization plan submitted by the Federal Government, the reduction in volumes and the imposition of a ceiling on aid for the period from 1992 to 1994 are in keeping with the objective set out in the first indent of Article 2 (1) of Decision No 3632/93/ECSC to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving the degression of aids; whereas the arrangements for granting this aid should then, in accordance with Article 3 of this Decision, help to improve the economic viability of the undertakings concerned by reducing production costs; whereas it must, however, be stressed, that the reduction in costs achieved between 1992 and 1995, which, according to the figures supplied by the German authorities, is of the order of 3,6 %, is totally inadequate, confirming the need for a firm approach to the reduction of capacity;

Whereas Germany must take care to ensure that this aid does not produce any discrimination between producers, between purchasers or between consumers as referred to in point (b) of Article 4 of the Treaty;

Whereas, in assessing the aid, the Commission has taken account, in accordance with the second indent of Article 2 (1) of Decision No 3632/93/ECSC, of the need to minimize the social and regional impact of restructuring;

Whereas, in the light of the above and on the basis of the information provided by the Federal Government, the aid planned for 1995 and 1996 is compatible with the objectives of the abovementioned Decision and with the smooth functioning of the common market;

III

Whereas the financial measure totalling DM 7 500 million which Germany wishes to take for the coal industry and which is intended to cover the difference between production costs and the sales price freely agreed between the contracting parties falls under the Fifth Electricity-from-Coal Law of 12 December 1995; whereas, in this context, it should be recalled that, in accordance with Article 9 (7) of Decision No 3632/93/ECSC, the rules based on the Third Electricity-from-Coal Law had to be fundamentally changed in order to be compatible with the provisions of that Decision; whereas, furthermore, the Federal Constitutional Court, by Order of 11 October 1994, declared the levy for the German coal industry known as the '*Kohlepfennig*' pursuant to the said Third Electricity-from-Coal Law to be unconstitutional and it therefore had to be abolished on 1 January 1996;

Whereas, unlike the old levy procedure, this aid is now entered in the Federal Budget and therefore complies with the provisions of Article 2 (2) of Decision No 3632/93/ECSC;

Whereas this measure is operating aid within the meaning of Article 3 of the framework decision and is intended to cover the difference between production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market; whereas the Commission is therefore required to give an opinion on it in accordance with Article 9 of the Decision and in particular check whether the measures, apart from complying with the specific criteria laid down in Article 3, are also compatible with the modernization, rationalization and restructuring plan;

Whereas, in its assessment of that plan, it had already emphasized that the prospects of a tangible improvement in the competitiveness of the German coal industry are poor and that any substantial decrease in aid could therefore only be achieved by gradually and continuing reducing production in the undertakings concerned;

Whereas, in this context, it should be recalled that the reduction in costs achieved between 1992 and 1995, which, according to the figures provided by the German authorities, is of the order of 3,6 %, is totally inadequate and therefore confirms the need for a firm approach to capacity reduction; whereas, therefore, the Commission reserves the right beyond the period covered by this Decision to demand a supplement to the modernization, rationalization and restructuring plan to enable it to determine whether the action taken by the German authorities has been adequate;

Whereas the Commission is, however, of the opinion that the decision by Germany to impose a ceiling on aid for coal for power stations and then gradually to reduce the amounts of aid from DM 7 500 million for 1996 to DM 7 000 million for 1997 and DM 7 000 million for 1998 is a step in the right direction in view of the objective of the first indent of Article 2 (1) of the Decision;

Whereas in assessing the aid the Commission has taken account, in accordance with the second indent of Article 2 (1), of the urgent need to minimize the social and regional impact of restructuring;

Whereas, in the light of the above and on the basis of the information provided by Germany, the aid planned for 1996 is compatible with the objectives of Decision No 3632/93/ECSC and with the smooth functioning of the common market;

IV

Whereas aid totalling DM 97 million is planned to enable mining undertakings to maintain a qualified underground labour force in deep mines (*'Bergmannsprämie'*); whereas this aid corresponds to DM 10 per underground shift; whereas it indirectly covers part of the difference between production costs and the foreseeable sales proceeds; whereas, according to the German notification, this aid is an extra payment to miners and thus also reduces production costs; whereas it is therefore aid which has to be assessed by reference to Article 3 of the Decision;

Whereas the proposed aid contributes to the maximization of productivity and therefore helps in the restructuring and rationalization of the coal industry; whereas it therefore also helps to achieve the objectives referred to in the first indent of Article 2 (1), namely to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving the degression of aid;

Whereas, in assessing the aid, the Commission has taken account, in accordance with the second indent of Article 2 (1), of the priority need to minimize the social and regional impact of restructuring;

Whereas, it should again be recalled that, despite the very slight decline in production costs at constant prices observed during the last few years, extra effort will be required from 1997 in order to generate a real trend towards a reduction in production costs at 1992 prices within the meaning of the second subparagraph of Article 3 (2);

Whereas this aid will improve the economic viability of the undertakings concerned in accordance with the provisions of Article 3 of the Decision by increasing productivity and thereby reducing production costs;

Whereas, in the light of the above and on the basis of the information provided by Germany, the aid planned for 1996 is compatible with the objectives of Decision No 3632/93/ECSC and with the smooth functioning of the common market;

V

Whereas the aid totalling DM 200 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG, Gewerkschaft Auguste Victoria, Sophia Jacoba GmbH and Preussag to cover exceptional costs is intended to cover additional costs due to the removal of waste water from

mines closed down as part of restructuring and near to working pits; whereas little or no water is pumped out of the closed-down mines and some of the water, which has nothing to do with the existing production, flows into the working pit nearby, thereby giving rise to additional costs;

Whereas this aid is specifically referred to in paragraph 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; whereas, in order to meet the requirements of Article 5 of the Decision, it may not exceed the expenditure;

Whereas the Commission has examined the information provided by Germany and the agreements between the public authorities and the undertakings concerned and has ascertained that this condition is met;

Whereas this lessening of pressure will reduce the financial imbalance between the undertakings concerned and enable them to continue their activities; whereas the aid therefore complies with the objectives given in Article 2 (1) of the Decision;

VI

Whereas Germany is to make sure that the aid granted under this Decision does not exceed the difference between production costs and the foreseeable sales proceeds in any undertaking or production unit;

Whereas the Commission is required, in accordance with the second indent of Article 3 (1) and Article 9 (2) and (3) of Decision No 3632/93/ECSC, to verify whether the aid granted for current production achieves the objectives set out in Articles 3 and 4 of the Decision; whereas 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 to assist the coal industry:

— aid totalling DM 2 708,5 million for 1995 and DM 2 539,2 million for 1996 for the supply of coal and coke to the Community steel industry, together with a financial measure to assist the undertaking Saarbergwerke AG totalling DM 118,4 million for 1995 and DM 118,4 million for 1996 in the framework of a debt-register claim to be charged to the public budgets,

— aid totalling DM 7 500 million for payments to the German coal industry in 1996 in connection with the Fifth Electricity-from-Coal Law of 12 December 1995,

— aid totalling DM 97 million for 1996 to maintain underground mine workers (*'Bergmannsprämie'*),

— aid totalling DM 200 million for 1996 for the undertakings Ruhrkohle AG, Saarbergwerke AG, Gewerkschaft Auguste Victoria, Sophia Jacoba GmbH and Preussag to cover exceptional costs.

Article 2

Germany shall ensure that, if the expenditure is cancelled or has been overestimated, it shall recover payment of any items referred to in this Decision.

Article 3

Germany shall provide information no later than 30 September 1996 about payments actually made during the 1995 financial year and no later than 30 September 1997 about payments actually made during the 1996 financial year.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 30 April 1996.

For the Commission

Christos PAPOUTSIS

Member of the Commission