COMMISSION

COMMISSION DECISION

of 10 June 1998

on German aid to the coal industry for 1997

(notified under document number C(1998) 2046)

(Only the German text is authentic)

(Text with EEA relevance)

(98/687/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 Article 2(1) and Article 9 thereof,

Whereas:

I

By letter of 30 September 1996, 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 1997. By letters of 15 October 1996, 5 June 1997, 22 October 1997, 27 January 1998 and 4 March 1998, Germany submitted the additional information requested by the Commission.

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

(a) operating aid within the meaning of Article 3 of the Decision totalling DEM 6 364 million;

(b) for the reduction of activity within the meaning of Article 4 of the Decision totalling DEM 3 217 million;

(c) within the meaning of Article 3 of the Decision totalling DEM 87 million to maintain an underground labour force ('Bergmannsprämie');

(d) within the meaning of Article 5 of the Decision totalling DEM 200 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG, Preussag Anthrazit GmbH and Sophia Jacoba GmbH to cover exceptional costs;

(e) within the meaning of Article 5 of the Decision totalling DEM 609,2 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG and Sophia Jacoba GmbH to cover exceptional costs to enable the undertakings to cover the costs arising from or having arisen from the restructuring of the coal industry which are not related to current production.

The financial measures proposed by Germany for the coal industry comply with the provisions of Article 1(1) of Decision No 3632/93/ECSC. In accordance with Article 9(4), the Commission is therefore required to give an opinion on those measures. For this purpose, it checks 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 and whether they are compatible with the functioning of the common market. Furthermore, in accordance with Article 9(6) of the Decision, the Commission has to decide whether the measures are compatible with the modernisation, rationalisation and restructuring plan which the Commission approved by Decision No 94/1070/ECSC [2] on aid to the coal industry in 1994.

By letter of 5 May 1998, the coal producer RJB Mining plc, an undertaking within the meaning of Article 80 of

[1] OJ L 329, 30. 12. 1993, p. 12.

[2] OJ L 385, 31. 12. 1994, p. 18.

the ECSC Treaty, lodged a complaint with the Commission against the aid to the coal industry planned by Germany in 1997 and 1998. In the complainant's view, the aid can be expected to impair the normal functioning of the market and of competition and is therefore incompatible with the Treaty, in particular Articles 2 and 4 thereof.

II

As the German notification indicates, the financial measures totalling DEM 9 581 million indicated in section I(a) and (b) are aid for the sale of coal and coke to the Community steel industry totalling DEM 2 581 million and aid for coal for power stations totalling DEM 7 000 million. This aid is defined by Germany as sales aid.

The aid for the sale of coal and coke to the Community steel industry will be granted, as explained in the German notification of 5 October 1995, as part of a limited three-year payment. For the period 1995 to 1997, this amounted to DEM 8 065 million, of which DEM 5 010 million was provided from the Federal budget and DEM 2 700 million from the budget of the State of North Rhine-Westphalia. The Federal Government's annual contribution will be reduced from DEM 1 760 million for the 1995 financial year to DEM 1 650 million for the 1996 financial year and then to DEM 1 600 million for the 1997 financial year. The contribution from the State of North Rhine-Westphalia is to be reduced from DEM 948,5 million for 1995 to DEM 889,2 million for 1996 and then to DEM 862,3 million for 1997. The contribution from the Saar is to be replaced by a debt-register entry totalling DEM 355 million to be charged to the Federal budget to assist the undertaking Saarbergwerke AG, of which DEM 118,4 million is to offset losses for 1995 and the same amounts are to offset losses for 1996 and 1997. Those sums will be paid out as from the 1996 financial year and will be the subject of a final settlement in 1998.

The payment on the basis of these aid rules is to be regarded as a maximum amount. At the end of the three-year period, the exact difference between the agreed price and the production costs per tonne for the entire sale will be determined by means of a final settlement. Unlike under the earlier rules, no more advance estimates of the annual sales volume covered by the aid are to be given. Only the volumes actually supplied may be the subject of aid. Any amount of aid overpaid will be recovered.

The aid for the sale of coal for power stations falls under the fifth electricity from coal Law of 12 December 1995 ([1]).

Under that Law, the coal companies must submit proof of the use made of the flat-rate amounts paid to them by providing notification of the volumes supplied to thermal power stations in 1997. According to the Law, the average aid contribution per tonne may not be greater than the difference between the average production costs and the price of coal imported from third countries and delivered to a thermal power plant. This rule excludes the possibility of exceeding the maximum amount due to an increase in sales.

The aid was limited in 1996 to a maximum of DEM 7 500 million and then in 1997 to DEM 7 000 million.

The Commission finds, after consideration of the information provided by Germany, that the planned amounts of aid per tonne notified in the framework of the rules on sales aid do not exceed the difference between the production costs and the revenue to be expected on the basis of prices freely agreed between the contracting parties and, for coal produced in the Community, do not lead to prices for delivery to plants which are lower than those for coal of similar quality from third countries.

For the aid actually paid, an annual settlement is to be made, if necessary, before the end of 1998 on the basis of the actual costs and revenue and the volume actually sold.

In its assessment of the two measures described, the Commission assumes that, whatever principles Germany has laid down for the award of aid to coal undertakings within the meaning of the ECSC Treaty — in this case sales aid — the measures, since they cover a large part of these undertakings' production costs, are, whatever market the products concerned are intended for, *de facto* aid to current production, which falls under Articles 3 and 4 of Decision No 3632/93/ECSC.

III

The operating aid proposed pursuant to Article 3 of Decision No 3632/93/ECSC is intended to assist the mines of the undertakings Ruhrkohle AG, Saarbergwerke AG and Preussag Anthrazit GmbH. In the case of Ruhrkohle AG, the aid is to assist the Friedrich Heinrich/Rheinland, Niederberg, Walsum, Lohberg/Osterfeld, Prosper/Haniel, Westerholt, Auguste Victoria, Blumenthal/Haard and Heinrich Robert mines. In the case of Saarbergwerke AG, the measure is intended to assist the

([1]) BGBl. I, p. 1638.

Ensdorf and Warndt/Luisenthal mines. In the case of Preussag Anthrazit GmbH, the aid is planned for the Ibbenbüren mine. This aid totalling DEM 6 364 million is intended to cover the difference between production costs and the selling price freely agreed between the contracting parties on the basis of the conditions prevailing on the world market for coal of similar quality from third countries.

On the basis of the information provided by Germany and pursuant to Article 3(3) of the abovementioned Decision, the Commission notes that the costs at constant prices fell by 15 % between 1996 and 1992. There is a significant difference between the average production costs, which were DEM 269 per tonne of coal equivalent (tce) in 1996, and the world market prices of DEM 80 per tonne of coal equivalent for similar qualities. This difference may, however, be reduced to a certain extent over the next few years as production concentrates on the most productive pits.

The cost reduction recorded exceeds the cost reduction notified by Germany in the framework of the modernisation, restructuring and rationalisation plan which the Commission approved by Decision 94/1070/ECSC.

The Commission furthermore believes that the principle of reducing the aid which Germany has included in legislation and budgetary provisions following the approval of the abovementioned plan will help to boost this trend.

The aim is to minimise the aid. Pursuing the principle applied by Germany that aid is only to be paid for production which is supplied for electricity generation and to the Community iron and steel industry, Germany undertakes to sell the production intended for use by industry and as domestic coal at prices which cover the production costs.

The Commission does not have any objections to the aid which Germany proposes granting for 1,28 million tonnes of sized anthracite produced by the undertaking Preussag Anthrazit GmbH which is intended for the generation of electricity. However, it is not yet able to take a decision pursuant to Article 3 of Decision No 3632/93/ECSC on the sum of DEM 65 million which Germany proposes granting to this undertaking, as the Commission was informed, for 1997. This sum covers the difference between the production costs and the average selling price for 647 000 tonnes of sized anthracite which that undertaking has sold to industry and as domestic coal.

The Commission will take its decision following the current examination of the sale of sized anthracite by that undertaking in the United Kingdom. On the basis of complaints and its own subsequent investigations, the Commission sent a letter of formal notice to the German Government on 2 August 1997 notifying it officially of the contents of the complaints and asking it to comment on the behaviour of the undertakings referred to and to state the position of the German Government [1].

Germany gives its assurance pursuant to the provisions of Article 86 of the ECSC Treaty that the aid will be limited to what is absolutely essential, taking account of social and regional considerations relating to the decline of coal mining in the Community, and that it will not provide an economic advantage, either directly or indirectly, for any activity other than coal mining, e.g. for industrial activities relating to the mining or processing of coal from the Community.

In its assessment of the operating aid pursuant to Article 3 thereof, the Commission has taken account of the urgent need, as indicated in the second indent of Article 2(1) of Decision No 3632/93/ECSC, to minimise the social and regional impact of the restructuring of coal mining. It also takes note, in accordance with the second subparagraph of Article 3(2), of the trend towards a reduction in production costs at constant prices. It must also be added that the restructuring policy announced by Germany in the Agreement of 13 March 1997 between the coal-producing States of North Rhine-Westphalia and the Saar, the German coal industry, workers' representatives and the Federal Government should enable the production costs and aid to be further reduced.

Having examined the information provided by Germany, the Commission finds that the proposed amounts of aid per tonne notified in the context of these rules on sales aid do not exceed the difference between production costs and the revenue to be expected on the basis of the prices freely agreed between the contractual partners and will not lead to prices for delivery to plants of coal produced in the Community which are below those for coal of similar quality from third countries.

Subject to a decision on the sum of DEM 65 million on the basis of the information provided by Germany and the undertakings given (see section VIII), the aid proposed for 1997 is compatible with Decision No 3632/93/ECSC, in particular Articles 2 and 3 thereof.

[1] OJ C 258, 23. 8. 1997, p. 2.

IV

The aid totalling DEM 3 217 million proposed for the reduction of activity pursuant to Article 4 of Decision No 3632/93/ECSC is intended to cover the difference between production costs and the sales price freely agreed on the basis of the conditions prevailing on the world market for coal of similar quality from third countries and to assist the mines of the undertaking Ruhrkohle AG, in particular the Sophia-Jacoba, Fürst Leopold/Wulfen, Ewald/Huo, Haus Aden/Monopol and Westfalen mines. In the case of the undertaking Saarbergwerke AG, the measure is intended for the Göttelborn/Reden mine.

This aid is part of a programme for the complete or partial closure of the abovementioned mines.

Apart from the closure of the Sophia-Jacoba mine, which is part of the German modernisation, rationalisation and restructuring plan which the Commission approved on 13 December 1994, the abovementioned closures are part of the Agreement of 13 March 1997 which will reduce production capacity by 16 million tonnes (34 % of total production capacity) and lead to the shedding of 33 000 jobs between 1997 and 2002.

In accordance with the provisions of Article 4 of Decision No 3632/93/ECSC, the Sophia-Jacoba mine was completely closed down in 1997. The Göttelborn/Reden, Ewald/Hugo and Westfalen mines will be completely closed down before the abovementioned Decision expires. The amalgamation of mines will result in partial closures that will provide a persistent and presumably significant reduction in mining activity before the Decision expires. In accordance with the second indent of Article 2(1) of Decision No 3632/93/ECSC, this aid will help to solve the social and regional problems associated with the complete or partial reduction of activity.

The fall in production of 17 % in 1996 compared with 1992 is in conformity with the objectives notified in the modernisation, rationalisation and restructuring plan which the Commission approved by Decision 94/1070/ECSC.

The aim is to minimise the aid. Pursuing the principle applied by Germany that aid is only to be paid for production which is supplied for electricity generation and to the Community iron and steel industry, Germany undertakes to sell the production intended for use by industry and as domestic coal at prices which cover the production costs.

The Commission does not have any objections to the aid which Germany proposes granting for 125 000 million tonnes of sized anthracite produced by the undertaking Sophia-Jacoba GmbH which is intended for the generation of electricity. However, it is not yet able to take a decision pursuant to Article 4 of Decision No 3632/93/ECSC on the sum of DEM 12 million which Germany proposes granting to that undertaking, as the Commission was informed, as part of the aid to the undertaking Ruhrkohle AG for 1997. This sum covers the difference between the production costs and the average selling price for 120 000 tonnes of sized anthracite which that undertaking has sold to industry and as domestic coal.

The Commission will take its decision following the current examination of the sale of sized anthracite by that undertaking in the United Kingdom. On the basis of complaints and its own subsequent investigations, the Commission sent a letter of formal notice to the German Government on 2 August 1997 notifying it officially of the contents of the complaints and asking it to comment on the behaviour of the undertakings referred to and to state the position of the German Government [1].

Subject to a decision on the sum of DEM 12 million on the basis of the information provided by Germany and the undertakings given (see section VIII), the aid proposed for 1997 is compatible with Decision No 3632/93/ECSC, in particular Articles 2 and 3 thereof.

V

The aid totalling DEM 87 million to cover extra payments to German miners ('Bergmannsprämien'), which amount to DEM 10 per underground shift, is intended to provide an incentive for qualified staff to work underground and to help rationalise production. According to the German notification, this aid to miners is a pecuniary benefit and therefore helps to reduce the production costs of the mining undertakings accordingly. It is therefore aid which must be examined on the basis of Article 3 of Decision No 3632/93/ECSC.

The proposed aid helps to maximise productivity and therefore facilitates the restructuring and rationalisation of mining. It therefore also helps to achieve the objective

[1] See previous footnote.

referred to in the first indent of Article 2(1) of Decision No 3632/93/ECSC, i.e. to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving digression of aids.

In its assessment of 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 urgent need to minimise the social and regional impact of restructuring.

The aid helps, in accordance with the provisions of Article 3 of the abovementioned Decision, to achieve a slight improvement in the viability of the undertakings concerned since the increase in productivity as a result of the maintenance of a qualified underground labour force reduces production costs.

In the light of the above and on the basis of the information provided by Germany and the undertakings given by Germany as indicated in section VIII, the aid proposed for 1997 is compatible with the objectives of Decision No 3632/93/ECSC, in particular Articles 2 and 3 thereof.

VI

The aid totalling DEM 200 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG, Preussag Anthrazit GmbH and Sophia Jacoba GmbH to cover exceptional costs is intended to cover additional drainage costs in mines closed down as part of restructuring and near to working pits. Since little or no water is pumped out of the closed-down mines, 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.

This aid, which is specifically provided for in II(b) of the Annex to Decision No 3632/93/ECSC, covers expenditure, resulting from restructuring, on the supply of water and the removal of waste water. To meet the requirements of Article 5 of the Decision, the special aid may not exceed the expenditure.

The Commission has examined the agreements between the public authorities and the undertakings concerned and, as part of an audit, the information given with regard to costs and has ascertained that the aid does not exceed the earmarked resources.

This will make it possible to reduce the pressure on the undertakings concerned, which will reduce their financial imbalance and enable them to continue their activities. The aid therefore complies with the objectives given in Article 2(1) of Decision No 3632/93/ECSC.

VII

The aid totalling DEM 609,2 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG and Sophia Jacoba GmbH to cover exceptional costs is intended to cover the costs arising from or having arisen from the restructuring of the coal industry which are not related to current production (inherited liabilities).

This aid is the result of agreements reached between the mining undertakings, the Federal Government, the State Governments of North Rhine-Westphalia and the Saar, the trade unions representing the mining industry and the electricity generators during the negotiations ('Kohlerunde') held on 11 November 1991.

It is intended to cover the following costs: the costs of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age, other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalisation, the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalisation and to workers entitled to such payments before the restructuring, supply of free coal to workers who lost their jobs as a result of restructuring and rationalisation and to workers entitled to such supply before the restructuring. From a technical and financial viewpoint, it is intended to cover additional underground safety work resulting from restructuring and exceptional intrinsic depreciation provided that it results from the restructuring of the industry.

This aid to cover the costs expressly referred to in I(a), (b), (c), (d), (f) and (k) of the Annex to Decision No 3632/93/ECSC may not exceed the said costs if it is to be in conformity with the provisions of Article 5 of the abovementioned Decision.

The Commission has examined the information regarding the costs as part of an audit and has ascertained that the aid does not exceed the earmarked resources.

This will make it possible to reduce the pressure on the undertakings concerned, which will reduce their financial imbalance and enable them to continue their activities. The aid therefore complies with the objectives given in Article 2(1) of Decision No 3632/93/ECSC.

VIII

The Commission notes that Germany has inserted into regulations the measures needed to ensure that the aid granted under this Decision does not exceed the difference between production costs and selling price (no charge being made for delivery) freely agreed between the contracting parties in the light of the conditions prevailing on the world market in any undertaking or production unit. The aid per tonne of current production may not cause prices for Community coal to be lower than those of coal of a similar quality from third countries. Germany will also take care to ensure that the aid does not distort competition or produce discrimination between coal producers or between coal buyers and users in the Community.

This Decision does not pre-empt the Commission's opinion on the restructuring plan for the period from 1998 to 2002, which will be the subject of a later Decision by the Commission pursuant to Article 8 of Decision No 3632/93/ECSC.

To enable the Commission to examine whether the production units which receive operating aid under Article 3 of Decision No 3632/93/ECSC actually generate a trend towards a reduction in production costs at world prices, Germany undertakes to notify the Commission no later than 30 September of each year of the production costs for the production units concerned during the previous year and of all information pursuant to Article 9 of Decision No 3632/93/ECSC. If any of these production units do not meet the conditions laid down in Article 3(2) of Decision No 3632/93/ECSC, Germany will propose to the Commission pursuant to Article 4 of the Decision to include them either in a plan for closure by 23 July 2002 or, on exceptional social and regional grounds, in a plan entailing a gradual, significant reduction in capacity.

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. Germany must therefore provide notification no later than 30 September 1998 of the level of aid actually paid in 1997 and of any changes to the sums originally notified. In this annual list, Germany will provide all information required for verifying compliance with the criteria laid down in the abovementioned Articles,

HAS ADOPTED THIS DECISION:

Article 1

Germany is hereby authorised to take the following measures to assist the coal industry:

(a) operating aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 6 299 million. The Commission will take a decision at a later date on the remaining sum of DEM 65 million to assist the undertaking Preussag Anthrazit GmbH;

(b) aid for the reduction of activity as defined in Article 4 of Decision No 3932/93/ECSC totalling DEM 3 205 million. The Commission will take a decision at a later date on the remaining sum of DEM 12 million to assist the undertaking Sophia Jacoba GmbH;

(c) aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 87 million to maintain an underground labour force ('Bergmannsprämie');

(d) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 200 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG, Preussag Anthrazit GmbH and Sophia Jacoba GmbH to cover exceptional costs;

(e) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 609,2 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG and Sophia Jacoba GmbH to cover exceptional costs to enable the undertakings to cover the costs arising from or having arisen from the restructuring of the coal industry which are not related to current production.

Article 2

In accordance with Article 86 of the ECSC Treaty, Germany undertakes to take all appropriate measures, whether general or particular, to ensure fulfilment of its obligations arising from this Decision. Germany shall ensure that the aid granted is used only for the specified purposes and that, if the expenditure is cancelled, has been overestimated or is incorrect, it shall recover payment of any items referred to in this Decision.

Article 3

Germany shall provide information no later than 30 September 1998 about payments actually made during the 1997 financial year and shall forward the information pursuant to Article 9 of Decision No 3632/93/ECSC.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 10 June 1998.

For the Commission
Christos PAPOUTSIS
Member of the Commission