COMMISSION DECISION

of 22 December 1998

on German aid to the coal industry for 1999

(notified under document number C(1998) 4569)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/299/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], in particular Article 2(1) and Article 9 thereof,

Having regard to Commission Decision of 2 December 1998 on German aid to the coal industry for 1998 [2],

Whereas:

I

By letters of 25 September 1998, 2 December 1998 and 14 December 1998, 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 1999.

In accordance with the provisions of Decision No 3632/93/ECSC, the Commission gives its opinion on the following financial measures for 1999:

(a) operating aid within the meaning of Article 3 totalling DEM 5 141 million;

(b) aid for the reduction of activity within the meaning of Article 4 totalling DEM 3 220 million;

(c) aid within the meaning of Article 3 totalling DEM 73 million to maintain an underground labour force *(Bergmannsprämie)*;

(d) aid within the meaning of Article 5 totalling DEM 11,3 million to assist the undertaking RAG Aktiengesellschaft to cover exceptional costs;

(e) aid within the meaning of Article 5 totalling DEM 748 million to assist the undertakings RAG Aktiengesellschaft and Sophia Jacoba GmbH 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).

The financial measures proposed by Germany for the coal industry fall within the scope 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 these measures. For this purpose, it checks whether they 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), the Commission has to decide whether the notified measures are compatible with the plan for modernisation, rationalisation, restructuring and the reduction of activity approved by the Commission in its Decision of 2 December 1998.

II

The aid pursuant to Article 3, totalling DEM 5 141 million, is intended for the operation of the mines owned by the undertakings RAG Aktiengesellschaft, Preussag Anthrazit GmbH, Dr Arnold Schäfer GmbH and Merchweiler GmbH.

In the case of RAG Aktiengesellschaft, the aid is intended in particular to assist the mines Friedrich Heinrich/Rheinland, Niederberg, Walsum, Lohberg/Osterfeld, Prosper/Haniel, Westerholt, Auguste Victoria, Blumenthal/Haard and Heinrich Robert. The measure is also intended for the mines Ensdorf and Warndt/Luisenthal, which have been owned by RAG Aktiengesellschaft since 1 January 1998. In the case of Preussag Anthrazit GmbH, the measure is intended for the site at Ibbenbüren.

This aid 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. It will permit the undertakings and production sites to take the measures required to achieve a gradual reduction in production costs.

According to the information supplied by Germany, the average production costs in the mines covered by Article 3 should in real terms be 8,2 % lower in 1999 than in 1995 at 1992 prices, namely DEM 246 per tce as compared with DEM 268 per tce. The reduction in production costs is in accordance with the aims of the

[1] OJ L 329, 30.12.1993, p. 12.
[2] OJ L 109, 27.4.1999, p. 14.

plan for modernisation, rationalisation, restructuring and the reduction of activity, as approved by the Commission in its Decision of 2 December 1998.

If the conditions in Article 3 cannot be met by an undertaking, the Commission may, in its assessment of the notified measures, require Germany to justify any deviations from the 1998 – 2002 restructuring plan as amended by Germany and approved by the Commission on 2 December 1998 and, if necessary, propose corrective measures such as the inclusion of mines belonging to the undertaking in question in the closure plan in accordance with Article 4 of Decision No 3632/93/ECSC.

In its assessment of the operating aid pursuant to Article 3 of Decision No 3632/93/ECSC, the Commission has also taken account of the need to minimise the social and regional impact of the restructuring of coal mining in regions which are already affected by above average structural unemployment.

The fact is that unemployment in 1998 in the coalfields of the Ruhr stands at about 15 % (district of Duisburg 15,8 %, Recklinghausen 13,7 %, Gelsenkirchen 16,4 %), which is far above the West German average of 9,7 %. In the Saar too, unemployment is above average in the coalmining areas (Saarbrücken 13,9 %, Saarlouis 11 %).

The coalmining areas are also target areas for Community regional support (Objective 2 regions whose industrial development is lagging behind) and at the same time areas to be developed within the meaning of Article 92(3)(c) of the EC Treaty.

On the basis of the information provided by Germany and the undertakings given (see section VI of this Decision), the operating aid proposed for 1999 is compatible with Decision No 3632/93/ECSC, in particular Articles 2 and 3 thereof.

III

The aid totalling DEM 3 220 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. In the context of the undertaking RAG Aktiengesellschaft, it will assist the mines Fürst Leopold/Wulfen, Ewald/Hugo, Haus Aden/Monopol and Westfalen in particular. The measure is also intended for the Göttelborn/Reden mine, which has been owned by RAG Aktiengesellschaft since 1 January 1998.

The abovementioned closures are part of the agreement of 13 March 1997 which will reduce production capacity by 10 million tce in comparison to 1997 (21 % of total production capacity) and lead to the shedding of 30 000 jobs between 1998 and 2002.

Pursuant to Article 4 of Decision No 3632/93/ECSC, the production sites Göttelborn/Reden, Ewald/Hugo and Westfalen will be completely closed down before the abovementioned Decision expires on 23 July 2002. The Commission notes that the undertaking RAG Aktiengesellschaft has decided to bring forward the closure of the Ewald/Hugo mine to 30 April 2000 (instead of July 2002) in the light of the aid ceiling and the fall in the prices of coal on the world market.

According to the information supplied by Germany, the production decrease between 1995 and 1999 is expected to be 15,2 %, or 8,6 million tce. The number of employees should fall by 25 680 or 25,5 % between 1995 and 1999.

The Commission notes that the planned reduction in production capacity is in line with the aims of the plan for modernisation, rationalisation, restructuring and the reduction of activity which it approved by Decision of 2 December 1998.

The aid for the reduction of activity proposed for 1999 is compatible with Decision No 3632/93/ECSC, and in particular Articles 2 and 4 thereof.

IV

The aid totalling DEM 73 million to cover extra payments to German miners *(Bergmannsprämie)*, 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. Although the extra payments are not part of the production costs of the coalmining undertakings, the aid helps to reduce the undertakings' wage costs. It is therefore 'aid' within the meaning of Article 1(2) of Decision No 3632/93/ECSC, which must be examined on the basis of Article 3 of that Decision.

The proposed aid helps to maximise productivity and thus facilitates the restructuring and rationalisation of mining. It therefore also helps to achieve the objective referred to in the first indent of Article 2(1) of Decision No 3632/93/ECSC, namely, in the light of coal prices on international markets, to make further progress towards economic viability with the aim of achieving degression of aids.

In its assessment of the aid, the Commission has taken account, in accordance with the second indent of Article 2(1) of the abovementioned Decision, of the need to minimise the social and regional impact of restructuring.

The aid helps, in keeping with Article 3 of Decision No 3632/93/ECSC, to improve slightly the deficient competitiveness of the undertakings concerned, since the increase in productivity due to the maintenance of a qualified underground labour force reduces production costs.

Germany gives its assurance that the aid, together with any other aid for current production, will not exceed the difference between production costs and expected income in any undertaking or production unit.

In the light of the above and on the basis of the information provided by Germany, the aid to maintain an underground labour force *(Bergmannsprämie)* proposed for 1999 is compatible with the objectives of Decision No 3632/93/ECSC, in particular Articles 2 and 3 thereof.

V

The aid to assist the undertakings RAG Aktiengesellschaft and Sophia Jacoba GmbH to cover exceptional costs in accordance with Article 5 of Decision No 3632/93/ECSC amounts to DEM 759,3 million.

This financial measure includes, firstly, aid amounting to DEM 11,3 million to cover exceptional costs to assist the undertaking RAG Aktiengesellschaft.

The aid 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, water which has nothing to do with existing production flows into the working pit nearby, thereby giving rise to additional costs.

This aid, which is not related to current production and is specifically provided for in section I(i) and section 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.

The abovementioned financial measure includes, secondly, aid to cover exceptional costs amounting to DEM 748 million to assist the undertakings RAG Aktiengesellschaft and Sophia Jacoba GmbH.

The aid 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).

A portion of this aid, amounting to DEM 609 million, is the result of decisions taken by mining undertakings and electricity producers, the Federal Government, the State Governments of North Rhine-Westphalia and the Saar and the trade union representing the mining industry during the negotiations ('Kohlerunde') on 11 November 1991. The remaining DEM 139 million is the result of new closures decided on 13 March 1997.

It is intended to cover the following costs, except the costs of social benefits which the State has taken on as a special contribution within the meaning of Article 56 of the ECSC Treaty: 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 section 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 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 consequently enable them to continue their activities. The aid therefore complies with the objectives set out in Article 2(1) of Decision No 3632/93/ECSC.

VI

In the light of the aim to minimise the aid and in accordance with its own principle 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 (net prices without discounts) which cover the production costs.

The Commission notes that Germany has included in regulations the measures needed to ensure that the aid granted under this Decision does not exceed the difference between production costs and the selling price for delivery to user undertakings freely agreed between the contracting parties on the basis of the conditions prevailing on the world market. The aid per tonne of current production may not cause prices for Community coal to fall below 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 coal users in the Community.

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 coalmining in the Community, and that it will not provide an economic advantage, either directly or indirectly, for any activity other than coalmining, such as for industrial activities relating to the mining or processing of coal from the Community.

Furthermore, the Commission would remind Germany that an essential feature of the aid rules is that the aid must be in the Community interest and must not disturb the functioning of the common market.

To enable the Commission to examine whether the undertakings 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 of each production unit during the previous year and to transmit all information pursuant to Article 9 of Decision No 3632/93/ECSC. Should it not be possible to any great extent to meet the conditions laid down in Article 3(2) of Decision No 3632/93/ECSC, Germany will propose the necessary corrective action to the Commission, such as a review of the classification of mines pursuant to Articles 3 and 4 of Decision No 3632/93/ECSC.

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 communicate, no later than 30 September 2000, the level of aid actually paid in 1999 and any changes to the sums originally notified. In this annual list, Germany is to provide all information required for verifying compliance with the criteria laid down in the abovementioned Articles.

In approving the aid, the Commission has taken account of the need to minimise the social and regional impact of restructuring,

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 5 141 million;

(b) aid for the reduction of activity as defined in Article 4 of Decision No 3632/93/ECSC totalling DEM 3 220 million;

(c) aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 73 million to maintain an underground labour force *(Bergmannsprämie)*;

(d) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 11,3 million to assist the undertaking RAG Aktiengesellschaft to cover exceptional costs;

(e) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 748 million to assist the undertakings RAG Aktiengesellschaft 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 the obligations arising from this Decision.

Germany shall ensure that the aid granted, as referred to in Article 1, is used only for the specified purposes and that any unused, overestimated or misused expenditure in relation to any items referred to in Article 1 is repaid to Germany.

Article 3

Germany shall provide information no later than 30 September 2000 about payments actually made during the 1999 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, 22 December 1998.

For the Commission

Christos PAPOUTSIS

Member of the Commission