COMMISSION

COMMISSION DECISION
of 21 December 2000
on German aid to the coal industry for 2000 and 2001

(notified under document number C(2000) 4407)

(Only the German text is authentic)

(Text with EEA relevance)

(2001/361/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,

Having regard to Commission Decision 1999/270/ECSC of 2 December 1998 authorising Germany to grant aid to the coal industry for 1998 and also giving a favourable opinion on the compatibility with Decision No 3632/93/ECSC of the new guidelines for coal policy up to the year 2002 [2],

Whereas:

I

(1) By letter of 28 September 1999, 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 2000. By letters of 21 December 1999, 18 February 2000, 13 April 2000, 15 May 2000, 14 July 2000 and 22 November, Germany submitted the additional information requested by the Commission.

(2) By letter of 29 September 2000, moreover, 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 2001. By letter of 22 November 2000, Germany submitted the additional information requested by the Commission.

(3) In its letters of 21 December 1999 and 22 November 2000, Germany more specifically notified the Commission, in accordance with Article 8(4) of Decision No 3632/93/ECSC, of certain changes to the plan for the modernisation, rationalisation and restructuring of activity in the coal industry approved by the Commission by Decision 1999/270/ECSC.

(4) In accordance with Decision No 3632/93/ECSC, the Commission first gives an opinion on the compatibility of the proposed changes to the plan referred to in recital 3 with the general and particular objectives of the Decision. Secondly, it gives its opinion, in accordance with the abovementioned Decision, on the following financial measures:

(a) for 2000:

— operating aid within the meaning of Article 3 of the Decision totalling DEM 3 847 million,

— aid for the reduction of activity within the meaning of Article 4 of the Decision totalling DEM 3 138 million,

— aid within the meaning of Article 3 of the Decision totalling DEM 71 million to maintain an underground labour force ('Bergmannsprämie'),

— aid to cover exceptional costs within the meaning of Article 5 of the Decision totalling DEM 2 124 million;

(b) for 2001:

— operating aid within the meaning of Article 3 of the Decision totalling DEM 3 433 million,

— aid for the reduction of activity within the meaning of Article 4 of the Decision totalling DEM 1 889 million,

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

— aid within the meaning of Article 3 of the Decision totalling DEM 67 million to maintain an underground labour force ('Bergmannsprämie'),

— aid to cover exceptional costs within the meaning of Article 5 of the Decision totalling DEM 2 740 million.

(5) 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 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, 4 and 5 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 notified measures are compatible with the plan for modernisation, rationalisation, restructuring and the reduction of activity, as modified by Germany.

II

(6) On 13 March 1997, agreement was reached on the new guidelines for the German coal industry for the period 1998 to 2005 (hereinafter called the agreement on coal) between the Federal Government, the Federal State Governments of North Rhine-Westphalia and Saarland, the coal undertakings and the trade union federations for mining and electricity production. Although the planning was for the period up to 2005, the Commission, by Decision 1999/270, approved the various modernisation, rationalisation, restructuring and reduction of activity measures only up to 2002, more specifically the date of expiry (23 July 2002) of the ECSC Treaty and of Decision No 3632/93/ECSC.

(7) This agreement provided for a continuing reduction in production, from 47 million tce [1] in 1997 to 37 million tce in 2002. This plan involved a reduction of 30 000 in the workforce to a total of 56 000 in 2002, including subsidiary activities. The agreement also provided for a gradual reduction in the total amount of aid linked to the new plan for the restructuring of the German coal industry, the ceiling being fixed at DEM 6,9 billion for 2002.

(8) Only 12 production sites were to remain operational after 2002. Apart from the merger of several sites and the concentration of activity on the most productive deposits, the agreement also provided for the closure of three mines. The 'Westfalen' and 'Göttelborn/Reden' mines were due thus due to cease production in 2000, while the closure of the 'Ewald/Hugo' mine was planned for 2002.

(9) In view of the difficult conditions on the international markets, due in particular to the rapid fall in coal prices since 1997, and given the fact that the aid provided for in the coal agreement could not exceed a certain ceiling established in the framework of multiannual planning. Germany decided to bring forward the closure of the 'Ewald/Hugo' mine to 30 Apil 2000. The year 2000 thus sees the closure of three production units.

(10) The plan for the modernisation, rationalisation, restructuring and reduction of activity in the coal industry for the period 1998 to 2002 is based on two fundamental objectives, namely optimum use of the lower financial resources and reduction of production and productions costs.

(11) Under the plan, moreover, restructuring measures must be implemented in a way which ensures that the workforce is reduced in a socially acceptable manner, avoiding economic redundancies, and secondly that the regional impact of the measures adopted is taken into account.

(12) In order to achieve these objectives, the situation of the production sites must be assessed on the basis of the following criteria: extent of the deposit, coal quality, costs. These standard criteria should make it possible to provide an objective assessment of the current situation and the future development of the production units.

(13) Commission Decision 1999/270/ECSC of 2 December 1998 also stated that 'it can be concluded that a sustantial reduction in aid can largely be achieved by means of measures to reduce mining activity'. Indeed, 'even if the average production costs in the German coal industry have fallen slightly, taking account of Article 3(3) of Decision No 3632/93/ECSC, the production costs, expressed at 1992 constant prices, are still too high as they should be DEM 242 per tce in 2002 as compared with DEM 288 per tce in 1992'.

III

(14) In the light of the above, the German Government notified the Commission on 14 December 1999 of its decision to close a further two production sites in 2001 and 2002. Under the coal agreement, these measures were not due to be taken until after 2002.

(15) Several factors account for the early closure of these two production units, particularly the fall in coal prices on international markets to an historically low level and the sharp decline in demand for coal from the steel industry which has led to a substantial reduction in revenue.

(16) The first measure planned for 2001 is the amalgamation of the 'Auguste Victoria' and 'Blumenthal/Haard' mines. Of the 'Blumenthal/Haard' mine, only the Haltern coalfield will be maintained with access from the 'Auguste Victoria' mine. The latter features a compact well structured field allowing optimum working.

[1] Tonnes of coal equivalent.

(17) The 'Auguste Victoria' mine should produce 3,160 million tce in 2000 and has 3 600 registered underground workers. As regards the 'Blumenthal/Haard' mine, the German authorities consider that it should produce 2,124 million tce in 2000, with 3 370 registered underground workers.

(18) The amalgamation of the two mines in 2001 will bring production down to some 3,5 million tce, a reduction estimated at between 1,5 and 2 million tce compared with 2000. The number of underground workers should not exceed 4 000, a reduction of around 3 000 compared with the year 2000.

(19) The second measure planned for 2002 is the amalgamation of the 'Friedrich Heinrich/Rheinland' and 'Niederberg' mines. Production at the 'Niedeberg' site will be finally closed down, the two deposits maintained being attached to the 'Friedrich Heinrich/Rheinland' mine.

(20) The 'Friedrich Heinrich/Rheinland' mine should produce 3,298 million tce in 2000 and has 3 090 registered underground workers. The 'Niederberg' line should produce 2,132 million tce in 2000, with 1 720 underground workers.

(21) After amalgamation in 2002, the production capacity of the mine should be reduced to some 3,5 million tonnes, a reduction estimated at 2 million tonnes compared with 2000. The amalgamated mine should employ 3 800 underground workers, a reduction of around 1 000 posts compared with 2000.

(22) Although the coal agreement provided or an output of 37 million tce in 2002, the additional measures concerning reduction of activity — including the closures of two mines referred to above ('Blumenthal/Haard' and 'Niederberg') — will cut production in 2002 to less than 29 million tce.

(23) At 35 million tce, estimated production for 2000 is therefore lower than had been foreseen by the coal agreement for 2002.

(24) In its notification of 22 November 2000, Germany stated that new reductions of activity inevitably leading to additional closures of production sites had to be considered.

(25) According to the notifications of 28 September and 14 December 1999 concerning the year 2000, Germany was proposing to grant aid under Article 3 of Decision No 3632/93/ECSC totalling DEM 5 047 million and aid under Article 4 of that Decision totalling DEM 2 024 million. According to the German Government, new measures relating to reduction of activity will entail a revision of the aid granted under Decision No 3632/93/ECSC. According to the notification of 22 November 2000, aid proposed for 2000 under Article 3 of Decision No 3632/93/ECSC now amounts to DEM 3 847 million and aid under Article 4 of that Decision to DEM 3 138 million. In other words, this corresponds to a reduction of DEM 1 200 million in aid under Article 3 of Decision No 3632/93/ECSC.

(26) According to the German Government, these new measures to reduce activity will have very serious social and regional consequences if they are not planned in an optimum manner. It should be emphasised in this connection that the unemployment rate recorded in coalmining areas is already significantly higher than that in regions wihout coal. Germany estimates that the unemployment rate in the Ruhr coalfield was 14 % in 1999 and 12 % in Saarland, although these figures are even higher if the spotlight is placed in particular on the situation in locations affected by the decline in coal production. The major reductions in activity carried out in recent years, which will have resulted in a 25 % reduction in coal production between 1997 and 2000, have contributed to this difficult social situation.

(27) The closure of three mines in 2000 alone and the cutbacks in production already planned for 2001 and 2002 will considerably worsen the social situations in the regions concerned. The total workforce in the coal industry was expected to fall from 66 000 in 1999 to 57 000 in 2000. Germany expected the restructuring of the coal industry to cut the workforce by a further 21 000 between 2000 and 2005, an average rate of 350 to 400 job losses per month.

(28) Germany considers that the very difficult social situation described in recitals 26 and 27 cannot be allowed under any circumstances to be aggravated further by new measures relating to reduction of activity to be implemented immediately. The current programme of accompanying social measures is based very largely on the effective redeployment of the workforce outside the coal industry. If the workforce in the coal industry were to be cut at a faster rate, this would seriously compromise this programme.

(29) Consequently, in order to alleviate as far as possible the social and regional problems which will inevitably result from the new reductions in activity notified by Germany in its letter of 22 November 2000, the German authorities consider that it will be possible to carry out the latter measures only after 2002.

(30) The German Government undertakes however to implement these closure measures as soon as possible after 2002, in a manner which is compatible with the undertakings entered into by the various interested parties in Germany, particularly under the agreement on coal. It should be pointed out in this connection that the agreement on coal is based not only on criteria for the optimum use of financial resources, and a reduction in output and costs but also on the principle of a restructuring of the coal industry which takes account of the social and regional impact of measures to reduce activity. It should moreover be noted that several measures, including those referred to in recitals 14 and to 23 above, already result in reductions in production and the workforce which are significantly greater than those provided for in the coal agreement concluded in 1997.

(31) In any event, all the closure measures referred to in recitals 24 and 25 will be implemented in an effective and tangible way at the latest immediately after the expiry of the coal agreement.

IV

(32) According to the 20th recital of Decision No 3632/93/ECSC, the principle of reducing the coal industry's production costs and capacity is necessary in order to achieve degression of aids. The 21st recital lays down moreover that 'a policy of rational distribution of production requires reductions of costs and of capacity to be concentrated primarily on those areas of production receiving the highest level of aid'.

(33) In this connection, Article 2(1) of the abovementioned Decision lays down that aid granted to the coal industry must help to achieve at least one of the three objectives mentioned, including the following:

— to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving degression of aids,

— to solve the social and regional problems created by total or partial reductions in the activity of production units.

(34) The closure measures which will be carried out by means of mergers of mines in 2001 and 2002, and the new measures to reduce activity to be implemented by Germany after 2002, must help to achieve the objectives set out in recital 33. They must bring about a concentration of production at those sites offering, in terms of production costs, the best prospects of improving economic viability.

(35) Coal production which cannot help to achieve this objective will be phased out and will be eligible only for aid for the reduction of activity under Article 4 of Decision No 3632/93/ECSC.

(36) The German auhorities have scheduled certain closure measures to take effect after the expiry of Decision No 3632/93/ECSC. As stated in recitals 26 to 29 above, and in accordance with the provisions of Article 4(2) of Decision No 3632/93/ECSC, these measures cannot be implemented more quickly because of their exceptional social and regional consequences. It should be pointed out in this connection that major reductions of activity will be carried out in 2001 and 2002, while 2000 has already seen the closure of three mines.

(37) In accordance with Article 2(2) of Decision No 3632/93/ECSC, the measures which will be carried out after 2002 form part of a plan for a gradual and continuous reduction of activity providing for a significant reduction before the expiry of Decision No 3632/93/ECSC. Production of coal in Germany, estimated at 35 million tce for 2000 will have to be cut to 30,5 million tce in 2001 and 28,5 million tce in 2002, which is a reduction in capacity of almost 20 % in the space of two years.

(38) The German Government undertakes to ensure that the reductions in production referred to in recitals 36 and 37 above are carried out in strict compliance with the provisions of Decision No 3632/93/ECSC by the sole coalmining undertaking in Germany, Deutsche Steinkohle AG, which forms part of the RAG Aktiengesellschaft Group. In particular, Deutsche Steinkohle AG will carry out all necessary measures to achieve the reductions in production among the production sites in the undertaking, for which there will be an additional DEM 1 200 million of aid for reduction of activity.

(39) All these reductions of activity will also enable Germany to achieve degression of aid. The agreement on coal concluded in 1997 provides for a ceiling on such aid, which is fixed at DEM 6 900 million for 2002. Having regard to production conditions and price trends on international markets, such a reduction in the amount of aid requires the gradual closure of the least profitable production capacities.

(40) The Commission notes that these reductions of capacity form part of the sequence of the major measures for restructuring, rationalisation, modernisation and reduction of activity which have already been carried out since the 1997 coal agreement came into force.

(41) These measures which resulted in a reduction in production from 47 million tce to 35 million tce between 1997 and 2000, have produced a significant reduction in production costs. (Thus, the production costs linked to production sites receiving aid under article 3 of Decision No 3632/93/ECSC were reduced — at constant 1992 prices — by around 10 % between 1994 and 1997 and should fall by 6 % between 1997 and 2000). [1]. The new rationalisation measures should moreover allow further reductions in production costs (of up to 6 % between 2000 and 2001 and 4 % between 2001 and 2002).

(42) The successive plans implemented by Germany should therefore allow a significant reduction in production costs expressed at constant prices of the order of DEM 62 per tce over the period covered by Decision No 3632/93/ECSC. This must be regarded as being in line with the provisions of Article 3 of Decision No 3632/93/ECSC.

(43) Having regard to the above, the Commission considers that the modifications to the plan for modernisation, rationalisation, restructuring and reduction of activity which was approved by the Commission in its Decision 1999/270/ECSC of 2 December 1998, are compatible with the objectives and criteria laid down in Decision No 3632/93/ECSC, and in particular Articles 2, 3 and 4 thereof. The gradual reductions in production capacity will have to help to achieve the objectives laid down in Article 2(1), first and second indents. Firstly, in accordance with Article 3 of Decision No 3632/93/ECSC, further progress towards economic viability will have to

[1] The decision adopted by the Commission contains information on the production costs of Deutsche Steinkohle AG which must be treated as confidential. Solely for the purposes of this publication, it has been replaced by figures expressed as percentages.

be made with the aim of achieving degression of aids. Secondly, in accordance with Article 4 of Decision No 3632/93/ECSC, these measures have been designed to solve the social and regional problems created by reductions in activity.

(44) Germany will give reasons for any deviation from the plan for modernisation, rationalisation, restructuring and reduction of activity in coalmining which is the subject of this Commission Decision.

(45) If it becomes apparent, in particular, that the condiions and criteria laid down in Article 3 of Decision No 3632/93/ECSC cannot be met, Germany will propose to the Commission on its own initiative the necessary corrective measures. These measures include a possible review of the classification of production capacities in accordance with Articles 3 and 4 of Decision No 3632/93/ECSC.

V

(46) The amounts of DEM 3 847 and 3 433 million that Germany is proposing to grant to the coal industry under Article 3 of Decision No 3632/93/ECSC, for 2000 and 2001 respectively, are intended to cover the difference between production costs and the selling price for coal freely agreed between the contracting parties on the basis of the conditions prevailing on the world market for coal of similar quality from non-member countries.

(47) This aid is granted only to cover operating losses linked to production capacities meeting the conditions laid down in Article 2(1), first indent and Article 3 of Decision No 3632/93/ECSC.

(48) The measures relating to restructuring, rationalisation, modernisation and reduction of activity in the coal industry taken since 1994 have enabled significant progress to be made in terms of a reduction of production costs for coal. For production capacities receiving aid under Article 3 of Decision No 3632/93/ECSC, production costs, expressed at constant 1992 prices, (went down by 12 % between 1994 and 1999). In 2000, production costs (will record a further reduction of around 3 % compared with 1997).

(49) The year 2001 will see a further significant reduction in production costs (of 6 %) in the space of a year.

(50) These reductions in production costs are the result of the major restructuring of the coal industry, and in particular the gradual closure of the least profitable production units which do not meet the criteria laid down by Article 3 of Decision No 3632/93/ECSC.

(51) It should be noted that the annual reductions in production costs of the German coal industry have, to some extent, been offset by the costs connected with the workforce of the undertaking. There has been some delay in following up the reductions in production with the necessary cutbacks in the workforce, in order to attenuate as far as possible the social consequences of the measures to reduce activity. Costs in 2000 have therefore been influenced by the excessive size of the workforce compared with the level of activity.

(52) The reductions in production costs in 2000 and 2001 helped to improve the economic viability of the German coal industry. Although the level of costs remains high, the sustained efforts which have led to the significant ongoing reduction in production costs mean that coalmining is less unprofitable and uncompetitive.

(53) The level of coal prices on the international market has, to a certain degree, limited the impact of the reductions in production costs on improved viability of the coal industry. The measures to reduce certain production capacities and the already apparent recovery in coal prices on the world market should however help to increase the impact on reductions in production costs on the viability of the sector.

(54) The Commission has carried out a detailed analysis of the operating conditions and economic situations specific to each production unit. Although there are certain variations between the production costs of the various production sites, the situation for each site considered individually does not differ significantly from the situation and development of the coal industry as a whole. The terms and conclusions of the analysis of the data relating to the whole of the German coal industry therefore apply *mutatis mutandis* at the level of the various production units.

(55) The restructuring measures have moreover helped, in accordance with Article 2(1), first indent of Decision No 3632/93/ECSC, to achieve degression of aid. Operating aid, not including the amount for the 'Bergmannsprämie' went down from DEM 6 357 million in 1997 to DEM 5 141 million in 1999. It will be DEM 3 847 million for 2000 and DEM 3 433 million for 2001.

(56) The reduction in the amount of operating aid between 2000 and 2001 is moreover directly linked to a reduction in aid per tonne. The efforts to reduce production costs therefore reduced the need for State aid for production covered by measures under Article 3 of Decision No 3632/93/ECSC.

(57) In accordance with Article 3(1), first indent, of Decision No 3632/93/ECSC, Germany is taking the necessary measures to ensure that the amount of aid per tonne does not exceed for each production unit the difference between the production cost and foreseeable revenue in 2000 and 2001 respectively. Germany undertakes moreover to ensure, in accordance with Article 3(1) third indent of the abovementioned Decision, that the amount of operating aid per tonne does not cause delivered prices for Community coal to be lower than those for coal of a similar quality from non-member countries.

(58) Should it transpire that certain production capacities could not meet the conditions laid down in Article 3 of Decision No 3632/93/ECSC, Germany will give the reasons for any deviations from the forecasts given in the plan for modernisation, rationalisation, restructuring and reduction of activity in the coal industry and compared with the economic and financial forecasts submitted to the Commission in connection with the notification of aid relating to 2000 and 2001. Germany will propose to the Commission, on its own initiative, where appropriate, the necessary corrective measures, including measures to reduce production capacity in addition to those mentioned in recitals 14 to 31.

(59) On the basis of the information provided by Germany, and having regard to the obligations on the German Government set out in recitals 82 to 90 of this Decision, the operating aid planned for 2000 and 2001 is compatible with Decision No 3632/93/ECSC, and in particular Articles 2 and 3 thereof. These aid amounts, DEM 3 847 million for 2000 and DEM 3 433 million for 2001, are moreover in line with the provisions of the plan for modernisation, rationalisation, restructuring and reduction of activity in the coal industry, and in particular the new guidelines for this plan as set out in recitals 14 to 31.

VI

(60) The sums of DEM 3 138 million and DEM 1 889 million that Germany is proposing to grant to the coal industry under Article 4 of Decision No 3632/93/ECSC, for 2000 and 2001 respectively, are intended to cover the difference between production costs and the selling price for coal freely agreed between the contracting parties on the basis of the conditions prevailing on the world market for coal of a similar quality from non-member countries.

(61) In accordance with Article 4(1) of the abovementioned Decision, this aid is granted only for the purpose of covering the operating losses linked to production capacities which are unable to meet the conditions laid down in Article 3(2) of the said Decision.

(62) The considerable amount of aid notified under Article 4 of Decision No 3632/93/ECSC for 2000 reflects the major reduction of activity measures carried out during that year, as well as those planned for subsequent years. As stated in recitals 14 to 45, this reduction in capacity must result in a concentration of production at those sites offering the best prospects of improving economic viability in terms of production costs.

(63) The aid planned for 2000 is intended firstly to cover losses on current production at the 'Westfalen' and 'Göttelborn/Reden' mines whose closure in 2000 was planned in the agreement on coal, as well as operating losses at the 'Ewald/Hugo' mine whose closure, originally planned for 2002, has been brought forward to 2000. This aid must also cover the operating losses at production sites which will be closed as a consequence of the amalgamation of mines, namely 'Auguste Victoria' and 'Blumenthal/Haard' in 2001 and 'Friedrich Heinrich/Rheinland' and 'Niederberg' in 2002 (see recitals 16 to 21). Finally, the aid proposed under Article 4 of Decision No 3632/93/ECSC covers operating losses at production capacities which will have to close after the expiry of Decision No 3632/93/ECSC and which were notified to the Commission on 22 November 2000 (see recitals 24 and 25).

(64) The final closure of the production units in 2000 has resulted in a significant reduction — from DEM 3 138 million to DEM 1 889 million — in the amount of aid notified under Article 4 of Decision No 3632/93/ECSC for 2001.

(65) In accordance with Article 4(2) of Decision No 3632/93/ECSC, exceptional social and regional grounds justify the postponement of the closure of certain production capacities beyond the date of expiry of the ECSC Treaty. These measures form part of a plan for the gradual and continuing reduction of activity providing for a significant reduction in production before the expiry of the abovementioned Decision (see recitals 36 and 37).

(66) In accordance with Article 3(1), first indent, of Decision No 3632/93/ECSC, Germany is taking the necessary measures to ensure that the amounts of aid per tonne do not exceed for each production unit the difference between production costs and foreseeable revenue for 2000 and 2001 respectively. Moreover, Germany undertakes to ensure, in accordance with Article 3(1), third indent, of the abovementioned Decision, that the amount of aid for reduction of activity per tonne does not cause delivered prices for Community coal to be lower than those for coal of a similar quality from non-member countries.

(67) On the basis of the information provided by Germany, and having regard to the obligations on the German Government set out in recitals 82 to 90 of this Decision, the aid for reduction of activity planned for 2000 and 2001 is compatible with Decision No 3632/93/ECSC, and in particular Articles 2 and 4 thereof. These aid amounts, DEM 3 138 million for 2000 and DEM 1 889 million for 2001, are moreover in line with the provisions of the plan for modernisation, rationalisation, restructuring and reduction of activity in the coal industry, and in particular the new guidelines for this plan as set out in recitals 14 to 31.

VII

(68) The aid measures totalling DEM 71 million and DEM 67 million are intended to fund the payments to miners in the German coal industry ('Bergmannsprämie'), for 2000 and 2001 respectively. This is an incentive scheme, corresponding to a sum of DEM 10 per underground job, aimed at encouraging skilled workers to work underground and help to rationalise production. According to the notifications submitted by Germany, this aid covers a cash benefit for miners. Although this payment to miners is not involved directly in the calculation of the production costs of the undertaking, the aid intended to cover this payment constitutes a reduction of the wage burden borne by that undertaking. It therefore constitutes aid within the meaning of Article 1(2) which has to be examined in accordance with the provisions of Article 3 of Decision No 3632/93/ECSC.

(69) The proposed aid facilitates the restructuring and rationalisation of the coal industry by allowing productivity levels to be raised as far as possible. This aid therefore helps to achieve the objective referred to in Article 2(1), first indent, of Decision No 3632/93/ECSC, namely to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving degression of aids.

(70) This aid will help to some extent, in accordance with the provisions of Article 3 of Decision No 3632/93/ECSC, to make the coal industry less uncompetitive by helping to reduce the costs of coalmining, thanks to increased productivity achieved by maintaining a skilled labour force underground.

(71) In accordance with Article 3(1), first indent, of Decision No 3632/93/ECSC, Germany undertakes to ensure that the combination of the 'Bergmannsprämie' with other aid for current production does not exceed, for each production unit and for each year, the difference between production costs and foreseeable revenue.

(72) Having regard to the above and on the basis of the information provided by Germany, the aid proposed for 2000 and 2001, amounting to DEM 71 million and DEM 67 million respectively for the 'Bergmannsprämie', is compatible with the objectives of Decision No 3632/93/ECSC, and in particular Articles 2 and 3 thereof.

VIII

(73) The amounts of DEM 2 124 and DEM 2 740 million that Germany is proposing to grant to the coal industry under Article 5 of Decision No 3632/93/ECSC, for 2000 and 2001 respectively, are intended to cover the costs arising from or having arisen from the modernisation, rationalisation or restructuring of the coal industry which are not related to current production (inherited liabilities).

(74) Some of this aid, namely DEM 609 million for 2000 and DEM 562 million for 2001, is the result of decisions taken by the mining undertakings, the Federal Government, the State Governments of North Rhine-Westphalia and Saarland and the trade unions representing the mining industry and the electricity producers during the negotiations (Kohlerunde) on 11 November 1991.

(75) The remainder of the aid, DEM 1 515 million for 2000 and DEM 2 178 million for 2001, is intended to cover the costs arising from further closures scheduled under the agreement on coal of 13 March 1997. This amount covers in particular the costs resulting from reductions in capacity connected with the amalgamations in 1998 of the production units 'Haus Aden/Monopol' and 'Heinrich Robert' on the one hand and the units 'Fürst Leopold/Wulfen' and 'Westerholt' on the other.

(76) The increase in the amount of aid notified for 2000 under Article 5 of Decision No 3632/93/ECSC, as compared with the amount authorised by the Commission for 1999 [1], is justified by the closure in 2000 of three production units, namely 'Westfalen', 'Göttelborn/Reden' and 'Ewald/Hugo'.

(77) The impact of these closure measures is reflected moreover in the considerable amount of aid notified under Article 5 of Decision No 3632/93/ECSC for 2001. The amalgamation in 2001 of the 'Auguste Victoria' and 'Blumenthal/Haard' mines is also a factor in increased exceptional costs.

[1] See Commission Decision 1999/299/ECSC of 22 December 1998, OJ L 117, 5.5.1999, p. 44.

(78) These aids are intended to cover the following, with the exception of the costs of social benefits borne by the State by way of the special contribution referred to in Article 56 of the ECSC Treaty: the cost 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; the supply of free coal to workers who lose their jobs as a result of restructuring and rationalisation and to workers entitled to such supply before the restructuring. On the technical and financial levels, the aid 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.

(79) The costs described in recital 78 correspond to the categories of costs defined in the Annex to Decision No 3632/93/ECSC, and more specifically the costs mentioned in point I(a), (b), (c), (d), (f) and (k). In accordance with Article 5(1) of the abovementioned Decision, the amounts of aid proposed by Germany for 2000 and 2001 do not exceed the costs incurred.

(80) The reduction in pressure on the undertaking receiving aid made possible by the covering of these costs will reduce its financial imbalance and enable it to continue its activities. The aid therefore complies with the objectives of Article 2(1) of Decision No 3632/93/ECSC.

(81) Having regard to the above, and on the basis of the information communicated by Germany, the aid to cover exceptional costs for 2000 and 2001, amounting to DEM 2 124 and DEM 2 740 millions respectively, is compatible with the objectives of Decision No 3632/93/ECSC, and in particular Articles 2 and 5 thereof.

IX

(82) Given that the aim is to minimise aid, and 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 (net prices without discounts) which cover the production costs.

(83) In accordance with Article 2(2) of Decision No 3632/93/ECSC, the aid must be entered by Germany in the national, regional or local public budgets or channelled through strictly equivalent mechanisms.

(84) 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 proper functioning of the common market. 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.

(85) It also gives it 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 the economic considerations linked to the necessary restructuring of the coal industry on the one hand and the social and regional considerations relating to the decline of coalmining in the Community on the other.

(86) It must not provide an economic advantage, either directly or indirectly, for production for which aid is not authorised or for any activity other than coalmining, for example industrial activities relating to the mining or processing of coal from the Community.

(87) To enable the Commission to examine whether the production units which receive operating aid pursuant to 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 of all the information pursuant to Article 9 of Decision No 3632/93/ECSC.

(88) If, in particular, the conditions laid down in Article 3(2) of the abovementioned Decision cannot be met, Germany will propose the necessary corrective action to the Commission such as a review of the classification of production capacities pursuant to Articles 3 and 4 of the Decision.

(89) 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 only the objectives set out in Articles 3 and 4 of the Decision. Germany will provide notification no later than 30 September 2001 of the level of aid actually paid in 2000 and no later than 30 September 2002, the level of aid actually paid in 2001. It will give notification of any changes to the sums originally notified. In this annual list, it will provide, in accordance with recital 88, all information required for verifying compliance with the criteria laid down in the abovementioned Articles.

(90) 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

The changes to the plan for the modernisation, rationalisation and reduction of activity in the coal industry, as approved by the Commission in Decision 1999/270/ECSC of 2 December 1998, are compatible with the objectives and criteria laid down in Decision No 3632/93/ECSC.

Article 2

Germany is hereby authorised to take the following measures to assist the coal industry for 2000:

(a) operating aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 3 847 million;

(b) aid for the reduction of activity as defined in Article 4 of Decision No 3632/93/ECSC totalling DEM 3 138 million;

(c) aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 71 million to maintain an underground labour force ('Bergmannsprämie');

(d) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 2 124 million to cover exceptional costs.

Article 3

Germany is hereby authorised to take the following measures to assist the coal industry for 2001:

(a) operating aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 3 433 million;

(b) aid for the reduction of activity as defined in Article 4 of Decision No 3632/93/ECSC totalling DEM 1 889 million;

(c) aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 67 million to maintain an underground labour force ('Bergmannsprämie');

(d) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 2 740 million to cover exceptional costs.

Article 4

In accordance with Article 86 of the ECSC Treaty, Germany undertakes to take all appropriate measures, whether general or particular, to ensure fulfiment of the obligations arising from this Decision.

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

Article 5

Germany shall provide information no later than 30 September 2001 about payments actually made during the 2000 financial year and shall forward the information pursuant to Article 9 of Decision No 3632/93/ECSC.

Article 6

Germany shall provide information no later than 30 September 2002 about payments actually made during the 2001 financial year and shall forward the information pursuant to Article 9 of Decision No 3632/93/ECSC.

Article 7

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 December 2000.

For the Commission

Loyola DE PALACIO

Vice-President