

COMMISSION DECISION

of 2 December 1998

on German aid to the coal industry for 1998

(notified under document number C(1998) 4026)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/270/EC)

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 28 October 1997, 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 1998. By letters of 26 March 1998, 28 April 1998, 27 August 1998, 23 October 1998 and 4 November 1998, Germany submitted the additional information requested by the Commission.

By letter of 26 March 1998, Germany submitted, in accordance with Article 8(4) of Decision No 3632/93/ECSC, the new guidelines for its coal policy up to the year 2002, which modify the plan approved by the Commission by Decision 94/1070/ECSC⁽²⁾ on aid to the coal industry in 1994 (hereinafter referred to as 'the 1994 restructuring plan').

In accordance with Decision No 3632/93/ECSC, the Commission first gives an opinion on the compatibility of the plan for the modernisation, rationalisation and restructuring of and reduction of activity in the coal industry with the general and particular objectives of the Decision.

Secondly, it gives its opinion, in accordance with the Decision, on the following financial measures for 1998:

- (a) operating aid within the meaning of Article 3 of the Decision totalling DEM 5 171 million;
- (b) aid for the reduction of activity within the meaning of Article 4 of the Decision totalling DEM 3 164 million;
- (c) aid within the meaning of Article 3 of the Decision totalling DEM 81 million to maintain an underground labour force ('Bergmannsprämie');
- (d) aid within the meaning of Article 5 of the Decision totalling DEM 1 011 million to assist the undertakings RAG Aktiengesellschaft, Saarbergwerke AG, Preussag Anthrazit GmbH and Sophia Jacoba GmbH to cover exceptional costs. This aid includes:
 - aid to cover additional drainage costs, as part of restructuring, to assist the undertakings RAG Aktiengesellschaft, Saarbergwerke AG and Preussag Anthrazit GmbH totalling DEM 161 million,
 - aid totalling DEM 850 million to assist the undertakings RAG Aktiengesellschaft, Saarbergwerke AG 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 comply with the provisions of Article 1(1) of Decision No 3632/93/ECSC. In accordance with Article 9(4), the Commission is therefore

⁽¹⁾ OJ L 329, 30.12.1993, p. 12.

⁽²⁾ OJ L 385, 31.12.1994, p. 18.

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) 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.

On 20 July 1998, the coal-mining undertaking RJB Mining Plc, an undertaking within the meaning of Article 80 of the ECSC Treaty, brought an action before the Court of First Instance of the European Communities against the Commission Decision of 10 June 1998 on German aid to the coal industry in 1997⁽¹⁾.

II

On 13 March 1997, agreement was reached on the new guidelines for the German coal industry for the period from 1998 to 2005 between the Federal Government, the Federal State Governments of North-Rhine Westphalia and the Saar, the coal undertakings and the trade union federations for mining and electricity production in the framework of Article 8(4) of Decision No 3632/93/ECSC.

This agreement provides for a continuing reduction in annual production to 37 million tonnes of coal equivalent (tce) in 2002 and a reduction of 30 000 in the workforce to a total of 56 000, including subsidiary activities. Production will then be provided by 12 mines. Although the planning is for the period up to 2005, the individual measures agreed in November 1997 only apply up to the expiry of Decision No 3632/93/ECSC. The changes in costs, the prices of imported coal and above all the sales opportunities cannot be foreseen with sufficient accuracy to be able to lay down precisely the rate at which activity in this sector subsequently needs to be reduced.

The plan for modernisation, rationalisation, restructuring and the reduction of mining activity has been checked by the Commission as regards the individual mines of the undertakings RAG Aktiengesellschaft, Saarbergwerke AG and Preussag Anthrazit GmbH.

⁽¹⁾ Case T-110/98; OJ C 299, 26.9.1998, p. 38.

Plan for modernisation, rationalisation, restructuring and the reduction of activity in coal mining for the period from 1998 to 2002

The planning behind the plans for the modernisation, rationalisation, restructuring and reduction of activity in the German coal industry is based on the following objectives:

- optimum use of the lower financial resources,
- reduction of production and costs,
- according to the current plans, the retention of access to the main reserves and the option of moving northwards,
- ensuring supplies to customers of appropriate quality and in good time,
- a socially acceptable reduction in staff avoiding laying off for operational reasons,
- consideration of the regional impact of measures.

To implement these objectives, the situation with regard to the mines was assessed by the undertakings on the basis of the following criteria:

- extent of the deposits,
- 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. On this basis, the undertakings concerned have submitted the following information to the Commission.

Restructuring of the production units of RAG Aktiengesellschaft

A. Closures

- the Emschermulde with the mines Hugo/Consolidation and Ewald/Schlängel & Eisen,
- the Lippemulde with the mines Fürst Leopold/Wulfen and Westerholt,

— the Bereich Ost (eastern zone) with the mines Haus Aden/Monopol and Heinrich Robert,

— the Westfalen mine.

1. The Emschermulde with the mines Hugo/Consolidation and Ewald/Schlägel & Eisen

The first measure in the abovementioned areas, the reorganisation of the Emschermulde with the creation of the amalgamated mine Ewald/Hugo, was agreed and implemented as long ago as 1 July 1997.

This is the last of several stages of restructuring which this mining area has undergone since the undertaking RAG Aktiengesellschaft was founded.

According to the plan, mining at the Ewald/Hugo mine will cease before 23 July 2002, by which date the high-quality coking coal in this deposit will have been extracted. The Emschermulde coalfield will thus be finally closed down.

In 1997, production amounted to 4,4 million tce, and the number of employees was 6 832.

2. The Lippemulde with the mines Fürst Leopold/Wulfen and Westerholt

The following measures are planned for the Lippemulde:

(a) on 1 April 1998, the mines Fürst Leopold/Wulfen and Westerholt will be merged to form the amalgamated mine Lippe. The Fürst Leopold production site is to be maintained until the amalgamated production site has been completed in 2001;

(b) up to 2001, activity in the mine Fürst Leopold/Wulfen will be gradually reduced by mining the economically extractable reserves and allowing pits to be closed. The closure of pits and the corresponding open-cast sites will optimise the infrastructure both below and above the ground. The remaining activity will be concentrated on the Westerholt production site.

In 1997, production amounted to 4,9 million tce and the number of employees was 6 035.

3. The Bereich Ost with the mines Haus Aden/Monopol and Heinrich Robert

The following measures are planned for this area:

(a) on 1 April 1998, the mines Haus Aden/Monopol and Heinrich Robert were combined to form the amalgamated mine Ost, while abandoning the northern pit of Haus Aden. Up to the year 2000, the production site Haus Aden will be retained for the Monopol pit;

(b) in 2000, production in the Haus Aden/Monopol and Heinrich Robert pits will be concentrated on the Heinrich Robert production site on completion of the underground link. This involves the abandonment of mine sections and the closure of pits and open-cast mines.

This measure will ensure the production of coking coal in the eastern coalfield and, for the time being, the option of moving to the north.

In 1997, production amounted to 5 million tce and the number of employees was 6 857.

4. The Westfalen mine

The Westfalen mine will be closed down in the year 2000. Up to that date, optimum economic use will be made of the site. This process has already begun and is ensuring low cost.

In 1997, production amounted to 2,5 million tce and the number of employees was 2 809.

B. *Other measures*

In addition to the measures described above for the final reduction of production capacity, the modernisation, restructuring and rationalisation process will be continued in all remaining pits. This will bring about additional costs reductions.

The Friedrich Heinrich/Rheinland mine

Following the completion of the amalgamation of the two pits during the first half of the 90s with the disposal of infrastructure and the closure and redevelopment of the open-cast pits which were no longer required, substantial progress has been made as regards productivity by means of further rationalisation.

By concentrating activity on the highest-yield pits and thereby achieving a progressive increase in the face output, it has been possible to reduce the number of faces operated. As the downstream areas were optimised at the same time, the mine is today among those with the lowest deficit.

In 1997, production amounted to 3,7 million tce and the number of employees was 4 117.

The Niederberg mine

Despite the cutback in production, there has been a positive development in recent years at the Niederberg mine as regards the reduction of production costs. Further rationalisation will stabilise the mine's situation. In 1997, production was 2,2 million tce and the number of employees was 2 424.

The Walsum mine

The Walsum mine is one of the undertaking's richest and most efficient mines. The targeted selection of seams and certain technical measures should help to overcome the mine's temporary operational problems as regards mining and to guarantee its performance. In 1997, production amounted to 2,9 million tce and the number of employees was 3 802.

The Lohberg/Osterfeld mine

Although the rationalisation measures are currently a burden as regards the cost and performance data at this production site, the Lohberg/Osterfeld mine does produce high-quality coking coal. It is in the process of consolidation and will shortly have disposed of the elaborate underground infrastructure which was the result of the amalgamation with the former Osterfeld mine. In 1997, production amounted to 2,9 million tce and the number of employees was 4 262.

The Prosper/Haniel mine

The Prosper/Haniel mine has recorded production costs in recent years which are among the undertaking's lowest. Further operational rationalisation is expected over the next few years. In 1997, production amounted to 3,7 million tce and the number of employees was 4 078.

The Auguste Victoria mine

The Auguste Victoria mine is one of the undertaking's high-deposit efficient mines. Following its sale by the undertaking BASF in 1992 and its full integration into the undertaking's mining sector in 1996, the potential for rationalisation was exploited. This development is

positive in overall terms, but is temporarily impaired by geological difficulties. In 1997, production amounted to 3,1 million tce and the number of employees was 4 173.

The Blumenthal/Haard mine

The Blumenthal/Haard mine is currently also faced with production difficulties due to geology. The resulting loss of production is temporarily increasing costs. The concentration of the pits operated together with a future plan for the continuing option of moving northwards should permanently reduce the costs. In 1997, production amounted to 3,3 million tce and the number of employees was 4 447.

C. Impact of the planned measures

The result of the measures described above is to reduce the number of jobs in the undertaking's mining sector as a whole by about 44 500 from an average of 89 500 in 1992 to 45 500 in 2002. This corresponds to the shedding of about 4 500 jobs per annum. Compared with the 1994 restructuring plan, this means an actual reduction in 14 500 jobs by 2002. The proposed change to the labour force is based on an annual productivity increase of 4 %. In 1997, the number of employees was 60 820.

Expressed at 1992 prices, the reduction in production costs up to 2002 will be DEM 37 per tce, more than twice as much as envisaged in the 1994 restructuring plan (DEM 16 per tce). Up to 31 December 1997, real costs had fallen by about DEM 21 per tce.

Production is to be reduced from 47,6 million tce in 1992 to 30,1 million tce in 2002. Compared with the 1994 restructuring plan, this means a reduction of a further 8,2 million tce during this period. In 1997, production amounted to 38,7 million tce.

Restructuring of the production units of the undertaking Saarbergwerke AG

The agreement on the new guidelines for the German coal industry of 13 March 1997 will lead to a further reduction in production and make it necessary to close one of the company's mines in the year 2000.

A. Closures

The Göttelborn/Reden mine

Despite considerable investment during the period from 1990 to 1995 to amalgamate the Reden, Göttelborn and Camphausen mines, the production site must be closed down in the year 2000 because of geological difficulties.

In 1997, production amounted to 1,9 million tce and the number of employees was 2 899.

B. Other measures

The Enseldorf mine

It has been possible to maintain a high level of productivity thanks to the programme for the modernisation of this production site which was started in the early 1990s. The Enseldorf mine was traditionally the most productive German mine and is expected to maintain its productivity during the period under review. The conditions for this are in place and are to be guaranteed in the medium term by means of continuing increases in productivity. In 1997, production amounted to 2,5 million tce and the number of employees was 2 231.

The Warndt/Luisenthal mine

The mine is expected to increase its performance, since:

- two pits are to be closed at the end of 1999
- and
- new layouts in the future pits and the use of new technology will result in substantial optimisation.

In 1997, production amounted to 2,2 million tce and the number of employees was 3 504.

C. Impact of the planned measures

The labour force will be reduced from 18 671 to 8 478 in 2002, a reduction of 10 193 workers. Compared with the 1994 restructuring plan, this means that the labour force will be reduced by an additional 6 000 up to 2002. In 1997, the number of employees was 14 220.

Expressed at 1992 prices, the reduction in production costs will be DEM 100 per tce in 2002, DEM 40 per tce higher than envisaged in the 1994 restructuring

plan. By 31 December 1997, real costs had fallen by DEM 44 per tce.

The production capacity will be reduced from about 8 million tce in 1992 to 5,1 million tce up to 2002. Compared with the 1994 plan, this is a fall of a further 2,2 million tce. In 1997, production amounted to 6,7 million tce.

Restructuring of the production units of Preussag Anthrazit GmbH

The undertaking expects its costs to continue to fall gradually during the period from 1998 to 2002. Compared with the last plan submitted for this period in August 1994, production has, however, been revised downwards due to a downward trend in sales (from 2,05 million tce per annum to about 1,7 million tce per annum). Given the situation now achieved with regard to pit operation, the undertaking believes that the performance by shift can be significantly improved, therefore reducing production costs to some extent. In 1997, production amounted to 1,7 million tce.

The basis for this improvement is provided by the implementation of the restructuring plan drawn up in 1990.

This plan provides for the following measures:

- conversion of the extraction process from advancing working to retreating working. The preliminary work required (preliminary driving of accompanying roads) was for the most part carried out in 1991 to 1994 and extended during the following two years to the desired degree. This conversion means that the entire output from retreating workings can be extracted,
- equipping of the workings and headings with more efficient extraction and driving equipment. The re-equipping has how largely been completed,
- adaptation of the infrastructure to the lower production volume and its consolidation. This process tends to depend on the layout, but has already largely been completed and should have an impact on the level of the fixed costs,
- the labour force of 4 024 in 1992 will be reduced to 2 667 in 2002. This corresponds to a reduction of 33 % instead of approximately 25 % as foreseen in the 1994 restructuring plan. In 1997, the production unit had a labour force of 2 757.

III

IV

According to the plan notified by Germany, the reduction in State aid will lead to a permanent reduction in coal production. Production is expected to fall from 47 million tce in 1997 to 37 million tce in 2002. 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. Compared with the 1994 plan, which showed a cost reduction of DEM 28 per tce, the reduction of DEM 46 per tce now planned is much higher. World market prices should remain relatively stable at about DEM 80 per tce, which would allow the unfavourable relationship between imported coal and German coal to continue.

Production in 2002 will be reduced to 37 million tce, as compared with 48 million tce in the 1994 restructuring plan.

The number of employees will fall to about 56 000 by 2002 instead of the figure of approximately 82 400 envisaged in the 1994 plan.

On the basis of the above, it can be concluded that a substantial reduction in aid can largely be achieved by means of measures to reduce mining activity.

When implementing the plan for the period from 1998 to 2002, Germany must therefore keep track of the changes in the production costs of the undertakings which receive State aid pursuant to Article 3 of the Decision. Germany has given its assurance that, if the objective of a realistic downward trend cannot be achieved, it will propose the necessary corrective measures to the Commission such as a review of the classification of mines pursuant to Article 3 and 4 of Decision No 3632/93/ECSC.

In its assessment of the plan, the Commission has taken account of the need to minimise the social and regional impact of the reductions in the German coal industry as far as possible.

In the light of the above, the Commission takes the view that the plan submitted by Germany is compatible with the objectives and criteria of Decision No 3632/93/ECSC.

The aid pursuant to Article 3 totalling DEM 5 171 million is intended for the operation of the mines owned by the undertakings RAG Aktiengesellschaft, Saarbergwerke AG and Preussag Anthrazit GmbH, Dr Arnold Schäfer GmbH and Merchweiler GmbH.

In the case of RAG Aktiengesellschaft, the aid is intended to assist the mines Friedrich Heinrich/Rheinland, Niederberg, Walsum, Lohberg/Osterfeld, Prosper/Haniel, Westerholt, Auguste Victoria, Blumenthal/Haard and Heinrich Robert. In the case of Saarbergwerke AG, the measure is intended for the mines Enseldorf and Warndt/Luisenthal. In the case of Preussag Anthrazit GmbH, the measure is intended for the site Ibbenbüren.

This aid totalling DEM 5 171 million 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.

According to the information supplied by Germany and taking account of Article 3(3) of Decision No 3632/93/ECSC, the average production costs in the mines covered by Article 3 should in real terms be 5,4 % lower in 1997 than in 1995 at 1992 prices, i. e. DEM 253 per tce as compared with DEM 268 per tce.

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 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 VIII of this Decision), the aid proposed for 1998 is compatible with Decision No 3632/93/ECSC, in particular Articles 2 and 3 thereof.

V

The aid totalling DEM 3 164 million proposed for the reduction of activity pursuant to Article 4 of Decision No 3632/93/ECSC is tended 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 the context 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.

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

In accordance with the provisions of Article 4 of Decision No 3632/93/ECSC, the production sites Göttelborn/Reden, Ewald/Hugo and Westfalen will be completely closed down before the Decision expires. The amalgamation of mines will result in partial closures that will provide a continuous 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.

According to the information supplied by Germany, the production decrease between 1992 and 1998 is expected to be 22 %. The aid proposed for 1998 is compatible with Decision No 3632/93/ECSC, in particular Articles 2 and 4 thereof.

VI

The aid totalling DEM 81 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. 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 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 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 decreasing the 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 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 slightly improve the insufficient competitiveness of the undertakings concerned since the increase in productivity as a result of 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 proposed for 1998 is compatible with the objectives of Decision No 3632/93/ECSC, in particular Articles 2 and 3 thereof.

VII

The aid to assist the undertakings RAG Aktiengesellschaft, Saarbergwerke AG, Preussag Anthrazit GmbH and Sophia Jacoba GmbH to cover exceptional costs in accordance with Article 5 of Decision No 3632/93/ECSC amounts to DEM 1 011 million.

This financial measure includes, firstly, aid amounting to DEM 161 million to cover exceptional costs to assist the undertakings RAG Aktiengesellschaft, Saarbergwerke AG and Preussag Anthrazit GmbH.

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 the existing production flows into the working pit nearby, thereby giving rise to additional costs. This water also has to be purified.

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 850 million to assist the undertakings RAG Aktiengesellschaft, Saarbergwerk AG 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).

This aid 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 unions representing the mining industry and the electricity

producers during the negotiations ('Kohlerunde') on 11 November 1991.

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 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 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 (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 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.

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 — for example, 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 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 during the previous year and of all information pursuant to Article 9 of Decision No 3632/93/ECSC. If the conditions laid down in Article 3(2) of Decision No 3632/93/ECSC cannot be met, 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 objective set out in Articles 3 and 4 of the Decision. Germany must therefore provide notification no later

than 30 September 1999 of the level of aid actually paid in 1998 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.

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 5 171 million;
- (b) aid for the reduction of activity as defined in Article 4 of Decision No 3632/93/ECSC totalling DEM 3 164 million;
- (c) aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 81 million to maintain an underground labour force ('Bergmannsprämie');
- (d) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 161 million to assist the undertakings RAG Aktiengesellschaft, Saarbergwerke AG and Preussag Anthrazit GmbH to cover exceptional costs;
- (e) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 850 million to assist the undertakings RAG Aktiengesellschaft, 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 the obligations arising from this Decision. Germany shall ensure that the aid granted is used only for the

specified purposes and that any unused, over-estimated or misused expenditure in relation to any items referred to in this Decision is repaid to Germany.

Article 3

Germany shall provide information no later than 30 September 1999 about payments actually made during the 1998 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, 2 December 1998.

For the Commission
Christos PAPOUTSIS
Member of the Commission