

## COMMISSION DECISION

of 16 October 1974

approving additional aids to be granted by the Federal Republic of Germany for the benefit of undertakings in the coal industry in respect of the calendar years 1971, 1972 and 1973

(Only the German text is authentic)

(74/613/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 2, 3, 4 and 5 thereof;

Having regard to Commission Decision No 3/71/ECSC <sup>(1)</sup> of 22 December 1970 on Community rules for intervention by Member States for the benefit of the coal industry;

Having regard to Decision No 73/287/ECSC <sup>(2)</sup> of 25 July 1973 on coking coal and coke, and in particular Article 9 (1) thereof;

Having consulted the Council;

Whereas on 14 November 1973 the Commission of the European Communities adopted Decision No 73/397/ECSC <sup>(3)</sup>; whereas this Decision approved the aid proposed by the Government of the Federal Republic of Germany for the benefit of the coal industry in respect of 1972 to the extent that it had been included and examined by the Commission in the 'supplementary report on financial intervention by Member States in 1972 for the benefit of the coal industry' <sup>(4)</sup>;

Whereas, as stated in that report <sup>(5)</sup>, the Federal Government had adopted a number of measures to aid the largest German coal undertaking, the Ruhrkohle AG (RAG); included the entry in November 1971 in the Official Debt Register (Schuldbuck) of a claim (Schuldbuckforderung) in favour of RAG in an amount of DM 1 000 million;

Whereas the purpose of that measure was to improve the undertaking's liquidity position, RAG being able to use its claim as security in order to obtain additional credit from the banks;

Whereas, according to the annual reports for 1971 and 1972 published by RAG:

— in 1971 operating losses of DM 178 million were not covered by financial assistance from public funds but carried forward to the 1972 financial year;

— in 1972 operating losses rose by DM 567 million;

Whereas RAG's total losses therefore amounted to DM 745 million at the end of 1972;

Whereas, in order to ease RAG's critical position the Federal Government has authorized the release of DM 650 million from the specially created stabilization reserve (which was to be funded out of the company's registered claim), in order to cover part of the operating losses sustained in 1971 and 1972; whereas, following the implementation of this measure RAG still had at the end of 1972 uncovered losses of DM 95 million, which were carried forward to the 1973 financial year;

Whereas RAG's registered claim was thus used not only to improve its liquidity position but also to cover losses;

Whereas RAG's total losses of DM 745 million at the end of 1972 exceeded its share capital of DM 500 million by almost 150%, so that it would no longer have been possible for the undertaking to stay in business;

Whereas the economic and social situation in the Land North Rhine-Westphalia, where RAG carries on

<sup>(1)</sup> OJ No L 3, 5. 1. 1971, pp. 7 *et seq.*

<sup>(2)</sup> OJ No L 259, 15. 9. 1973, p. 41.

<sup>(3)</sup> OJ No L 346, 17. 12. 1973, pp. 15 *et seq.*

<sup>(4)</sup> Doc. SEC(73) 2272 fin., pp. 3 *et seq.*

<sup>(5)</sup> Doc. SEC(73) 2272 fin., pp. 4 *et seq.*

the greater part of its activities, is at present relatively favourable, although there are still problems in certain fields, mostly in connection with coal-mining<sup>(1)</sup>; whereas, however, this situation would change if RAG had to cease its activities and dismiss, within a relatively short period of time, the 170 000 employees whose jobs at present it provides; whereas in the circumstances it follows that the covering of losses is compatible with the provisions of the first subparagraph of Article 9 (1), since the effect of this is to prevent a drop in production due to market forces which would result in serious economic and social upheavals in an area where, in the short term, there is insufficient employment for such a large number of workers;

Whereas, as regards the appropriateness of the aid having regard to the difference between production costs and revenue, it can be seen that the aid will cover only approximately 87% of the total operating losses for 1971 and 1972; whereas the operating losses stem almost exclusively from the collieries; whereas the aids therefore comply with the provisions of Article 9 (2) of Decision No 3/71/ECSC;

Whereas the aid is to be paid for two previous financial years (1971 and 1972); whereas other aids granted by the public authorities to the undertaking during those two financial years, and included and examined in the Commission memorandum, were counted as exceptional income when determining the amount of the losses; whereas the payment of the aid in respect of the previous years is therefore compatible with the provisions of Article 9 (5) of Decision No 3/71/ECSC;

Whereas it can be concluded from the explanation given above that the covering by the public authorities of part of the operating losses sustained by RAG in the financial years 1971 and 1972 is compatible with the provisions of Article 9 of Decision No 3/71/ECSC;

Whereas, for the purposes of an examination of the compatibility of the aid to cover operating losses sustained by RAG with the proper functioning of the common market (Article 3 (1) of Decision No 3/71/ECSC), the total amount of DM 650 million must be divided proportionally between the financial years 1971 and 1972 and added to the amounts of aid already approved by the Commission for 1971/72;

<sup>(1)</sup> See the Commission Decision of 17 February 1971 concerning investment premiums in the German coal-mining regions (OJ No L 57, 10. 3. 1971, p. 19).

Whereas 87% of the operating losses sustained by RAG are to be covered by the aid; whereas if this percentage is applied to each of the financial years the aid (DM 650 million) can be broken down into DM 155 million for 1971 and DM 495 million for 1972 (42.3 million u.a. and 135.2 million u.a. respectively);

Whereas the following amounts of aid are to be granted to the entire coal industry in the Federal Republic of Germany in 1971 and 1972;

	<i>million units of account</i>	
	1971	1972
Original amounts	210.1	261.1
Additional amounts	42.3	135.2
Total	252.4	396.3
Aid per metric ton	2.16	3.65

Whereas the total amount of German aid for 1972 is 143.9 million units of account (= + 57% higher than for 1971); whereas the increase in the amount of aid per metric ton amounts to 69%;

Whereas, as far as can be seen from the overall foreign trade figures, this has had no unfavourable effects on the trade in coal within the Community;

Whereas, although aid towards the covering of the losses sustained by RAG has reduced the difference between the amount of subsidies granted in Germany and in the other Member States, it has, however, at the same time, created a difference between the subsidies granted to RAG and those granted to the other German undertakings in 1972, since the aid was for the benefit of one undertaking only; whereas, on account of this and in view of the increase in the number of price alignment agreements concluded in 1972, the Commission has examined the competitive situation; whereas it was found that the various German undertakings in the coal industry were in competition with RAG in respect of certain parts of their production, but that there were no substantial indications that the aid granted to RAG to cover its losses had led to a distortion of competition on the common market in coal; whereas the quantities of coal sold at the aligned prices in 1972 were in fact greater than those sold in 1971; whereas such alignment agreements were

concluded exclusively between undertakings which did not belong to RAG; whereas such price agreements did not arise as a result of the special aid granted to RAG but are an indirect result of competition between the German coal industry as a whole and coal and other energy substitutes imported from non-member countries; whereas the prices applied by RAG do not enable it to undercut the prices of the imported energy substitutes;

Whereas, in view of the situation prevailing in 1972, the Commission has no reason to doubt that the common market in coal is functioning properly; that it could become necessary, in order that the common market in coal may continue to function properly, to impose limits; whereas it would, however, like to remind the Federal Government on any further increase in the differences between aids granted to individual undertakings;

Whereas it has also been found that:

- the prices charged by RAG for coking coal and boiler coal do not amount to indirect aid to industrial consumers of coal;
- the closure of five unprofitable pits belonging to RAG (annual output = approximately five million metric tons) in 1972 has led to rationalization and concentration of production on pits where productivity is highest;

Whereas it can therefore be said in conclusion that the release of DM 650 million from the specially created stabilization reserve — that is funds to be provided under RAG's registered claim — in order to cover operating losses sustained in 1971 and 1972 is compatible with the proper functioning of the common market;

Whereas, furthermore, the Government of the Federal Republic of Germany notified the Commission, pursuant to Article 2 of Decision No 3/71/ECSC, of the financial interventions, direct or indirect, proposed for the benefit of the coal industry during 1973; whereas the aids listed below are subject to authorization pursuant to the Decision referred to above:

Aids as follows to be paid through the 'Aktionsgemeinschaft Deutsche Steinkohlenreviere GmbH' in respect of pit closure:

	<i>in DM 1 000 000</i>
— aid in respect of equalization of burdens (Lastenausgleich) payments	21.0
— closure premiums	75.0
Total	96.0

Aid to water supply undertakings in respect of expenditure incurred in removing underground water from closed pits	30.0
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Premiums to staff in respect of shifts worked underground (coal-winning premium)	110.0
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Investment aids to individual projects under an overall investment programme	160.0
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Payment of the instalments owed by RAG in respect of state-guaranteed compensation to the former mine-owning companies	56.9
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Whereas the aids listed above satisfy the requirements set out in Articles 6 to 9 of Decision No 3/71/ECSC in respect of the admissibility of such support measures taken by a State;

Whereas the aid to be paid through the 'Aktionsgemeinschaft Deutsche Steinkohlenreviere' may be granted only on condition that it is used in connection with 'a total or partial closure of pits' (Article 6 (1) of Decision No 3/71/ECSC);

Whereas the amounts of such aids do not exceed the permissible level;

Whereas as regards the aid in respect of 'equalization' payments the government has taken into account the fact that the closure of a pit, leads to the destruction to a considerable degree of the original fixed assets; whereas the aid which consists in the remission of two-thirds of the levy payable on assets and 'credit gains' (Vermögens- und Kreditgewinnabgabe) to the Equalization Fund (Lastenausgleichsfonds) is in any case considerably lower than the amount of capital lost as a result of the closure of the pits and is therefore within the limits laid down in Article 6 of Decision No 3/71/ECSC;

Whereas the closure premium paid to the undertakings in the coal industry by the Aktionsgemeinschaft Deutsche Steinkohlenreviere in respect of the closures amounts to a lump sum of DM 15 per metric ton produced; whereas this amount was calculated on the basis of the balance sheet of the Ruhrkohle AG for 1971; whereas this gives the following picture of the future obligations of the undertakings in the coal industry in respect of mining damage, pensions and miners' concessionary coal allowances;

**Continuing obligations in respect of mining damage and social charges**

*in DM per metric ton produced*

	1969	1970	1971
Mining damage	10.58	12.16	13.29
Pensions	5.62	5.54	6.47
Miners' concessionary coal	6.11	6.05	6.29
Total	22.31	23.75	26.05

Whereas it is only the charges listed above which exceed the closure premium of DM 15 per metric ton granted by the Federal Government;

Whereas the lump sum aid granted does not therefore exceed the expenditure on the closure of pits and is therefore compatible with the provisions of Article 6 (2) of Decision No 3/71/ECSC;

Whereas the payment of aid amounting to DM 30 million for the removal of underground water from closed pits is likewise compatible with Article 6 (1) of Decision No 3/71/ECSC;

Whereas the aid towards the payment of the coal-winning premium helps the coal industry to achieve a stable situation as regards qualified workers, which is absolutely imperative if its productivity is to increase; whereas the undertakings are moreover involved in expenditure on the recruitment, training, retraining and retention of staff which greatly exceeds the amount of the contribution to this premium;

Whereas the purpose and amount of the coal-winning premium show that this measure is compatible with Article 7 (3) of Decision No 3/71/ECSC;

Whereas the purpose of the investment aids is to increase the economic viability of the German coal industry; whereas such aid is to be granted to those

undertakings of an optimal size within the meaning of Section 18 of the Law of 15 May 1968 concerning the redeployment and recovery of the German coal industry and the German coal mining regions; whereas the undertakings may use the aid only for investments in pits, auxiliary installations and processing plant; whereas a maximum of 30% of purchase costs and/or manufacturing costs in respect of the investment projects may be covered by the aid;

Whereas it is not yet possible to indicate how the aid for 1973 will be apportioned among the individual projects; whereas this will not be possible before the end of 1973;

Whereas the purpose and amount of the aid applied for show that this measure is compatible with the provisions of Article 7 (2) of Decision No 3/71/ECSC; whereas the Federal Government is bound to notify the Commission at least once a year in the case of each project of the objectives pursued, the amounts invested and the amount of aid granted;

Whereas provision has been made for 1973 for the public authorities in lieu of RAG to pay an instalment of DM 56.9 million to the former pit owners, who have a state-guaranteed claim to compensation *vis-à-vis* RAG;

Whereas in 1972 RAG suffered losses and will once again suffer high losses in 1973; whereas the payment of the instalments by the public authorities is to be regarded as a measure aimed at preventing RAG from becoming bankrupt and thereby jeopardizing the jobs of approximately 160 000 persons;

Whereas payment by the Federal Government of the instalments in respect of state-guaranteed compensation is therefore compatible with the provisions of the first subparagraph of Article 9 (1) of Decision No 3/71/ECSC;

Whereas as regards the appropriations of the aid having regard to the difference between production costs and revenue it is found that the aid will cover only a fraction of the operating losses which RAG can be expected to have sustained during 1973; whereas such aid is therefore compatible with the provisions of Article 9 (2) of Decision No 3/71/ECSC;

Whereas the examination of the compatibility of the German aid with the proper functioning of the common market must include all direct and indirect measures to be taken for the benefit of the coal industry in 1973 (Article 3 (2) of Decision No 3/71/ECSC);

Whereas on that basis of calculation the total cost of the proposed direct and indirect measures amounts to 410.2 million units of account, i.e. 4.04 units of account per metric ton produced; whereas this means a 3.5% increase in the total amount of aid compared to 1972; whereas the amount of aid per metric ton will rise from 3.65 units of account to 4.04 units of account i.e. by 10.7%;

Whereas the German coal industry receives less aid (per metric ton) than the Belgian, French and Dutch industries; whereas the German aids are, however, twice as high as those granted in the United Kingdom;

Whereas the following remarks can be made on the compatibility of the total amount of the German aids with the proper functioning of the common market:

- such amount is consistent with the tonnage forecasts for 1973, having regard to the Community's overall supply position in respect of coke and coal, so that the requirements of the first subparagraph of Article 3 (1) of Decision No 3/71/ECSC are satisfied;
- there has been no noticeable decline in trade in coal between the Federal Republic of Germany and the other Community countries in 1973;
- as regards the prices of German coal, more price alignment agreements were concluded in 1972 than in 1971;
- the prices of German coking coal and boiler coal in 1973 did not amount to indirect aid to industrial consumers of coal;
- the closure of unprofitable pits will lead to rationalization and the concentration of production in pits where productivity is highest;

Whereas it can therefore be concluded that the German aids for the benefit of the coal industry are compatible with the proper functioning of the common market;

Whereas this applies even when account is taken of those aids paid to the coal mines under Decision No 73/287/ECSC;

Whereas, pursuant to Article 11 (1) of Decision No 3/71/ECSC, the Commission must ensure that the aids authorized are employed for the purposes set out in Articles 6 to 9 of that Decision; whereas the Commission must be informed in particular of the amount of the aid and of the manner in which it is appointed,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Government of the Federal Republic of Germany is hereby authorized to grant to RAG in respect of the calendar years 1971 and 1972 aid in an amount of DM 650 million to cover operating losses. The following aids may be granted in respect of the calendar year 1973 for the benefit of the German coal industry as a whole:

1. remission of two-thirds of the obligations of pits due to be closed in respect of the levy on assets and 'credit gains' (Vermögens- und Kreditgewinnabgabe);
2. payment of a closure premium, in an amount of DM 15 per metric ton produced, through the 'Aktionsgemeinschaft Deutsche Steinkohlenreviere';
3. reimbursement of the cost of pumping out underground water from closed pits, up to a maximum of DM 30 million;
4. partial remission of the wages tax due from undertakings in the coal industry; up to a maximum of DM 110 million;
5. grant of investment aid in an amount not exceeding DM 160 million to undertakings in the coal industry in order to encourage investment;
6. payment of instalments owed by RAG in respect of the state-guaranteed compensation of the former mine-owning companies, up to a maximum of DM 56.9 million.

#### *Article 2*

The Federal Government shall notify the Commission by 30 November 1974 of details of the aids granted pursuant to this Decision, in particular as regards

the amounts paid and the manner in which such amounts are apportioned.

Done at Brussels, 16 October 1974.

*Article 3*

*For the Commission*

This Decision is addressed to the Federal Republic of Germany.

*The President*

François-Xavier ORTOLI