

## COMMISSION DECISION

of 13 December 1994

on German aid to the coal industry for 1994

(Only the German text is authentic)

(Text with EEA relevance)

(94/1070/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 <sup>(1)</sup>, and in particular Articles 8 and 9 thereof,

## I

Whereas, by letter of 28 December 1993, 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 1994;

Whereas, by letter of 29 April 1994, Germany submitted to the Commission a plan for the modernization, rationalization and restructuring of the coal industry, in accordance with Article 8 of the abovementioned Decision;

Whereas, by letters of 6 September and 23 November 1994, the Member State provided additional information;

Whereas, in accordance with Decision No 3632/93/ECSC, the Commission gives its opinion on the compatibility of the plan for modernization, rationalization and restructuring of the coal industry with the general and specific objectives set out in the Decision and establishes the following measures for 1994:

- aid totalling DM 2 853 million for the sale of coal and coke to the Community steel industry,
- aid totalling DM 110 million for maintaining the underground labour force (*'Bergmannsprämie'*),
- aid totalling DM 127,8 million for compensation between coalfields and DM 57,9 million for compensation for coal with a low volatile matter content,

— aid totalling DM 5 800 million under the Third Electricity-from-Coal Law of 13 December 1974 <sup>(2)</sup> (*'drittes Verstromungsgesetz'*) in the form of revenue from the compensation fund for 1994. This corresponds to a levy rate (*'Kohlepfennig'*) of 8,5 %,

— the setting-up of a credit line of DM 6 000 million under Article 3 of the Law of 19 July 1994 guaranteeing Coal Supplies for Power Stations and amending the Law on Nuclear Energy and the Law on Electricity Supply <sup>(3)</sup> (*'Gesetz zur Sicherung des Einsatzes von Steinkohle in der Verstromung und zur Änderung des Atomgesetzes und des Stromeinspeisungsgesetz'*) for the purpose of clearing debts from the compensation fund entered under the Third Electricity-from-Coal Law, which amounted to DM 5 350 million on 31 December 1993, and to ensure the future solvency of that fund;

Whereas the financial measures proposed by the Federal Government for the coal industry comply with the provisions of Article 1 of Decision No 3632/93/ECSC and must be approved by the Commission in accordance with Article 9; whereas the Commission takes its decision above all with regard to the general objectives and criteria defined in Article 2 and the specific criteria defined in Articles 3 and 4 of the Decision; whereas, in accordance with Article 9 (6) of the Decision, the Commission is required to check whether the measures are in conformity with the plans submitted;

## II

Whereas the plan submitted by the Federal Government for the modernization, rationalization and restructuring of the coal industry has to be assessed in the light of the general objectives and criteria defined in Article 2 (1) of Decision No 3632/93/ECSC and the specific objectives and criteria defined in Articles 3 and 4 thereof;

Whereas the production targets set out in this plan are based on the guidelines for the German coal industry agreed by the mining undertakings, the Federal Government, the Federal Land Governments of North

<sup>(1)</sup> OJ No L 329, 30. 12. 1993, p. 12.

<sup>(2)</sup> German Law Gazette, 17. 12. 1974, p. 3473.

<sup>(3)</sup> German Law Gazette, 28. 7. 1994, p. 1618.

Rhine-Westphalia and the Saar and the trade union federations of the coal industry and electricity producers during the 'Kohlerunde' negotiations on 11 November 1991;

Whereas, for coal intended for use in thermal power stations, the Law of 19 July 1994 guaranteeing Coal Supplies for Power Stations and amending the Law on Nuclear Energy and the Law on Electricity Supply lays down the amount of aid provided for under the plan for the period from 1 January 1995 to 31 December 2000; whereas no special rules have yet been laid down with regard to the volume of aid for the production of coal for the Community steel industry;

Whereas the restructuring plans of the mining undertakings Ruhrkohle AG, Saarbergwerke AG, Preussag Anthrazit GmbH, Gewerkschaft Auguste Victoria GmbH and Sophia Jacoba GmbH include measures intended to reduce the output of the German coal industry by 14 million tonnes between 1 January 1994 and 31 December 1999; whereas 64 million tonnes were produced in 1993;

Whereas in the year 2000 a maximum of 35 million tonnes of coal are to be produced for thermal power stations and a maximum of 15 million tonnes for delivery to the steel industry;

Whereas, to meet this objective, the German coal industry has adopted rationalization and restructuring measures aimed at concentrating production on those locations which offer the least unfavourable prospects in terms of production costs, that is to say, gradually to close down the production sites having the biggest deficits; whereas Sophia Jacoba GmbH is to be finally closed down in 1997;

Whereas the geological conditions of the coalfields are such that the coal has to be mined at even greater depth and the introduction of new technologies would consequently do little to produce any tangible improvement in the competitiveness of the German coal industry; whereas, compared with 1992 prices, average production costs are due to fall by only DM 26 between 1992 and 2002, from DM 286 to DM 260, despite substantial production cuts during that period; whereas a significant reduction in aid can therefore only be achieved by means of a gradual and continuous reduction in the level of activity in the undertakings concerned;

Whereas, as a result of this situation, the Federal Government has decided to impose on current costs an upper limit of DM 7 500 million for 1996 and DM 7 000 million per annum for the period from 1997 to 2000, as regards aid for coal for use in thermal power stations, regardless of the volume produced;

Whereas the Federal Government is expected to decide in the next few months to reduce future aid for the supply of coal to the steel industry; whereas the Commission must express its opinion on that decision;

Whereas, by placing a ceiling on aid based on current costs, to be further reduced at a future date in parallel with the gradual reduction of production capacities, Germany is starting a course of action which is compatible with the first and second indents of Article 2 (1) of Decision No 3632/93/ECSC, namely action which will help, in the light of coal prices on international markets, to make further progress towards economic viability with the aim of achieving degression of aids and solving the social and regional problems created by total or partial reductions in the activity of production units;

Whereas, in view of the limited ability of undertakings to improve their economic viability due to current prices on international markets, the Commission, in making its assessment, has also taken account of the urgent need to minimize the social and regional impact of restructuring, and to give mining undertakings medium-term prospects to enable successful structural changes to be made;

Whereas, in the light of the above, the plan submitted by Germany is compatible with the objectives and criteria defined in Articles 2, 3 and 4 of the Decision, provided that it complies with all of the conditions set out therein, in particular as far as non-discrimination between coal producers and between coal buyers and users in the Community is concerned;

### III

Whereas the aid of DM 2 853 million which Germany wishes to grant to the coal industry under the rules on coking coal is intended to cover the difference between production costs and the selling price freely agreed for coal of the same quality in the light of the conditions prevailing on the world market; whereas this aid is covered by agreements between undertakings eligible for operating aid under Article 3 of the Decision and the Community steel industry;

Whereas it is intended to guarantee that the coal undertakings concerned shall supply their 1994 production, which is limited to 18 million tonnes, to the steel industry; whereas failure to grant the aid would in the short term lead to the closure of all the production units concerned, thereby further exacerbating the social and regional problems created by the reductions in coalmining;

Whereas, since 1 January 1992, the German Government has been granting aid for the supply of coal and coke to the steel industry according to a system aimed at increasing the pressure on production costs over a three-year period from 1 January 1992 to 31 December 1994; whereas, continuing the policy it followed from 1989 to 1991, the Government also reduced the ceiling

on aid for the period from 1992 to 1994 and in addition introduced a financial contribution of DM 16 per tonne payable by the coal undertakings (cost sharing);

Whereas aid totalling DM 9 106 million is planned for this period, based on a total sales volume of 57,2 million tonnes; whereas the aid earmarked for this period is equivalent to only 83 % of the aid granted under the old rules during the previous three-year period; whereas the sales volumes subsidized are equivalent to 81 % of the volumes subsidized between 1989 and 1991;

Whereas the aid planned by Germany for 1994 is 12 % less than in 1993;

Whereas any plan for a subsequent change to the amount approved under this Decision must be notified in accordance with the second indent of Article 3 (1) of Decision No 3632/93/ECSC to enable the Commission to express an opinion on it in accordance with Article 9 of that Decision;

Whereas the inclusion of this measure in the modernization, restructuring and rationalization plan submitted by the Federal Government, the reduction in volumes and the imposition of a ceiling on aid for the period from 1992 to 1994 are in keeping with the objective set out in the first indent of Article 2 (1) of the Decision to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving degression of aids;

Whereas, in assessing the aid, the Commission has also taken account, in accordance with the second indent of Article 2 (1), of the urgent need to ease the social and regional impact of restructuring;

Whereas the stabilization of costs planned for 1994 must, in keeping with the plan notified by Germany, generate a trend towards a reduction in production costs at 1992 prices within the meaning of the second subparagraph of Article 3 (2);

Whereas the arrangements for granting the aid will, in accordance with the provisions of Article 3 of the Decision, help to improve the economic viability of the undertakings concerned by reducing production costs;

Whereas Germany must take care to ensure that this aid does not produce any discrimination between producers, between purchasers or between consumers as referred to in point (b) of Article 4 of the ECSC Treaty;

Whereas, in the light of the above and on the basis of the information provided by Germany, the aid planned for 1994 is compatible with the objectives of Decision No 3632/93/ECSC and with the smooth functioning of the common market;

#### IV

Whereas aid totalling DM 110 million is planned to enable mining undertakings to maintain their underground labour force in deep mines (*'Bergmannsprämie'*); whereas this aid corresponds to DM 10 per underground shift; whereas it therefore indirectly covers part of the difference between production costs and the foreseeable sales proceeds; whereas, according to the German notification, this aid is an extra payment to miners and thus also reduces production costs; whereas it is therefore aid which has to be assessed by reference to Article 3 of the Decision;

Whereas the aid contributes to the maximization of productivity and therefore helps in the restructuring and rationalization of the coal industry; whereas it therefore also helps to achieve the objectives 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 achieving the degression of aids;

Whereas, in assessing the aid, the Commission has taken account, in accordance with the second indent of Article 2 (1), of the urgent need to minimize the social and regional impact of restructuring;

Whereas the stabilization of costs planned for 1994 must, in keeping with the plan notified by Germany, generate a trend towards a reduction in production costs at 1992 prices within the meaning of the second paragraph of Article 3 (2);

Whereas this aid will improve the economic viability of the undertakings concerned in accordance with the provisions of Article 3 of the Decision by increasing productivity and thereby reducing production costs;

Whereas, in the light of the above and on the basis of the information provided by the Federal Government, the aid planned for 1994 is compatible with the objectives of Decision No 3632/93/ECSC and with the smooth functioning of the common market;

#### V

Whereas the aid of DM 127,8 million for compensation between coalfields and the aid of DM 57,9 million for compensation for coal with a low volatile matter content are intended to provide partial compensation for the fact that some coal producers receive revenue which is lower than production costs because of sales to electricity producers under contracts for the purchase of German coal concluded by electricity generators (*'Jahrhundertvertrag'*); whereas, according to the information provided by Germany, the compensation between coalfields covers 7,5 million tonnes and the compensation for coal with a low volatile matter content 2,3 million tonnes; whereas this aid, which was provided for until 31 December 1989 under the Third

Electricity-from-Coal Law, has been entered in the German national budget since 1 January 1990; whereas Germany has taken this opportunity to introduce the principle of reducing those amounts by 10 % per annum; whereas they therefore indirectly cover part of the difference between production costs and foreseeable sales proceeds;

Whereas the inclusion of this aid in the modernization, restructuring and rationalization plan and its gradual reduction will contribute to greater financial discipline in the undertakings concerned; whereas this aid therefore achieves the objectives set out in the first indent of Article 2 (1) of the Decision;

Whereas, in assessing this aid, the Commission has, in accordance with the second indent of Article 2 (1), also taken account of the urgent need to ease the social and regional impact of restructuring; whereas it has also taken account of the increased transparency of the aid following its inclusion in the national budget as from 1 January 1990;

Whereas the stabilization of costs planned for 1994 must, in keeping with the plan notified by Germany, generate a trend towards a reduction in production costs at 1992 prices within the meaning of the second indent of Article 3 (2);

Whereas the aid helps to improve the economic viability of the undertakings concerned by reducing production costs;

Whereas, in the light of the above and on the basis of the information provided by Germany, the aid planned for 1994 is compatible with the objectives of Decision No 3632/93/ECSC and with the smooth functioning of the common market;

## VI

Whereas the aid of DM 5 800 million to the coal industry planned by the Federal Government is covered by the Third Electricity-from-Coal Law for quantities of coal agreed between coal and electricity producers under schemes linked to the '*Jahrhundertvertrag*', whereas this Law provides for the creation of a compensation fund financed from a levy, the '*Kohlepfennig*'; whereas the purpose of this fund is to provide partial compensation for price differences between Community coal and imported coal in respect of 11,5 million tonnes coal equivalent (tce) and between Community coal and fuel oil in respect of 23 million tce; whereas the compensation fund therefore covers 34,5 million tce per annum and benefits electricity producers who purchase German coal at a price which more or less reflects production costs;

Whereas this measure constitutes aid within the meaning of Article 1 (3) of Decision No 3632/93/ECSC, according to which the term 'aid' also covers the allocation, for the direct or indirect benefit of the coal industry, of the

charges rendered compulsory as a result of State intervention, without any distinction being drawn between aid granted by the State and aid granted by public or private bodies appointed by the State to administer such aid; whereas the Commission must therefore take a decision on this measure in accordance with Article 9 of the Decision;

Whereas a decision has been taken each year pursuant to Commission Decision No 2064/86/ECSC on aid granted in accordance with the Third Electricity-from-Coal Law <sup>(1)</sup>; whereas, in accordance with Article 9 (7) of Decision No 3632/93/ECSC, the existing rules must be brought into line with the provisions of that Decision no later than 31 December 1996; whereas, if this has not yet been done, an assessment must be made as to whether the aid achieves the objectives set out in Article 2 (1) of the Decision;

Whereas the slight increase of 1,7% in the aid in 1994 compared with 1993 is due to the downward trend in energy prices expressed in DM on the international market despite the stabilization of production costs; whereas Germany has therefore decided to place an upper limit at current prices on this aid on 1 January 1996 and gradually to reduce it further as from 1 January 1997;

Whereas, in view of the proposed increase in the aid for 1994 of 1,7% compared with 1993, the Commission takes the view that Germany's decision to introduce a ceiling in 1996 and thereafter to reduce the levels of aid is a welcome development in the context of the objectives set out in the first indent of Article 2 (1);

Whereas, in assessing the aid, the Commission has taken account, in accordance with the second indent of Article 2 (1), of the urgent need to minimize the social and regional impact of restructuring;

Whereas, in view of the above and on the basis of the information provided by Germany, the aid proposed for 1994 is compatible with the objectives set out in Article 2 (1) of Decision No 3632/93/ECSC;

## VII

Whereas the Law of 19 July 1994 guaranteeing Coal Supplies for Power Stations and amending the Law on Nuclear Energy and the Law on Electricity Supply amends the Third Electricity-from-Coal Law of 19 April 1990; whereas the solvency of the compensation fund is currently guaranteed as it has been possible to open a credit line of DM 6 000 million;

Whereas this credit line is intended to provide compensation for the fund's deficit, which amounted to

<sup>(1)</sup> OJ No L 177, 1. 7. 1986, p. 1.

DM 5 350 million on 31 December 1993; whereas this deficit is due to the fact that, in several coal production years, the fund's revenue — for example, revenue from the 'Kohlepfennig' — has not been sufficient to cover the financial obligations to electricity producers who purchase Community coal under the Third Electricity-from-Coal Law; whereas these obligations have been higher than expected because energy prices on the international market in DM have fallen; whereas the balance of DM 650 millions is intended to guarantee the solvency of the fund, if necessary, in the coal production years 1994 and 1995;

Whereas this measure must be regarded as an indirect measure within the meaning of Article 1 (2) which is linked to marketing and gives coal undertakings an economic advantage by reducing the costs which they would normally have to bear;

Whereas the Commission notes that that part of the credit line which is intended to compensate for the fund's deficit on 31 December 1993 supplements the aid granted in accordance with Decision No 2064/86/ECSC; whereas, in accordance with the measures which have to be applied pursuant to Article 9 (7) of the Decision, it is a positive development to bring the rules into line with Decision No 3632/93/ECSC; whereas the Commission notes that this measure is part of a system which specifically provides for the gradual reduction of aid in accordance with the first indent of Article 2 (1);

Whereas, in view of the above and on the basis of the information provided by Germany, the aid proposed for 1994 is compatible with the objectives set out in Article 2 (1) of Decision No 3632/93/ECSC;

Whereas the Commission notes that the balance of DM 650 million is to be used, if necessary, to provide compensation for deficits during the coal production years 1994 and 1995 but cannot give an opinion on any payments until a detailed explanatory statement has been submitted;

## VIII.

Whereas this Decision does not prejudice the question of whether the new German system of aid which must be introduced for coal for sale to the steel industry is compatible with the Treaties and with Decision No 3632/93/ECSC; whereas this also applies to the changes which have to be made, in accordance with Article 9 (7), to the rules on aid which are linked to agreements between coal and electricity producers;

Whereas Germany will ensure that the aid granted under this Decision does not exceed, for any undertaking or production unit, the difference between production costs and foreseeable revenue;

Whereas the Commission is required, in accordance with the second indent of Article 3 (1) and Article 9 (2) and (3) of Decision No 3632/93/ECSC, to verify whether the aid granted for current production achieves the objectives set out in Articles 3 and 4 of the Decision; whereas it must therefore be informed as to the level of payments and their allocation,

HAS ADOPTED THIS DECISION:

### Article 1

Germany is hereby authorized to take the following measures in 1994 to support the coal industry:

- aid totalling DM 2 853 million for the supply of coal and coke to the Community steel industry,
- aid totalling DM 110 million to maintain underground mine workers ('*Bergmannsprämie*'),
- aid totalling DM 127,8 million for compensation between coalfields and DM 57,9 million for compensation for coal with a low volatile matter content,
- aid totalling DM 5 800 million in connection with the Third Electricity-from-Coal Law as revenue from the compensation fund ('*Ausgleichsfonds*') for 1994, corresponding to a levy rate ('*Kohlepfennig*') of 8,5%,
- activation of DM 5 350 million, out of a credit line totalling DM 6 000 million, in the context of Article 3 of the Law of 19 July 1994 guaranteeing Coal Supplies for Power Stations and amending the Law on Nuclear Energy and Law on Electricity Supply for the purpose of clearing debts as at 31 December 1993 from the compensation fund entered under the Third Electricity-from-Coal Law.

### Article 2

Germany shall provide information no later than 30 September 1995 about the amounts actually paid during the 1994 production year.

### Article 3

Germany shall provide information no later than 30 September 1995 about changes occurring during 1994 in the sale of coal and coke to the steel industry, in the target price and in all data relevant to production costs.

*Article 4*

In accordance with Decision No 3632/93/ECSC, the Federal Government shall give notification, where appropriate, of any plan to disburse, in full or in part, the balance of DM 650 million from the credit line in the context of the Law of 19 July 1994 guaranteeing Coal Supplies for Power Stations and amending the Law on Nuclear Energy and the Law on Electricity Supply.

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*Article 5*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 13 December 1994.

*For the Commission*

Marcelino OREJA

*Member of the Commission*