

# COMMISSION

## COMMISSION DECISION

of 2 October 2001

on German aid to the coal industry for the period from 1 January 2002 to 23 July 2002

(notified under document number C(2001) 3005)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/171/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 Article 9(4) thereof,

Whereas:

I

(1) By letter of 22 November 2000, Germany notified the Commission, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of the financial measures it intended to take for the coal industry in 2002.

(2) Decision No 3632/93/ECSC expires on 23 July 2002. Accordingly, the Commission can, in accordance with the aforementioned Decision, only decide on aid to be granted to the coal industry up to 23 July 2002. Consequently, by letter of 30 January 2001 the Commission asked Germany to specify the amounts for each type of aid to be granted in the period from 1 January to 23 July 2002.

(3) The information requested by the Commission was transmitted by letter of 16 July 2001. Germany calculated the amounts of aid for the period from 1 January to 23 July 2002 on the basis of a theoretical model in which the number of days of coal production in the aforementioned period was related to the number of days of coal production during the whole of 2002.

(4) Pursuant to Decision No 3632/93/ECSC, the Commission is required to take a decision on the following financial measures:

(a) operating aid within the meaning of Article 3 of the Decision totalling DEM 1 917 million;

(b) aid for the reduction of activity within the meaning of Article 4 of the Decision totalling DEM 785 million;

(c) aid within the meaning of Article 3 of the Decision totalling DEM 33 million to maintain an underground labour force (*Bergmannsprämie*);

(d) aid to cover exceptional costs within the meaning of Article 5 of the Decision totalling DEM 1 320 million.

(5) In addition to the abovementioned amounts, the intention is to grant a cross-subsidy of DEM 200 million from the non-coal sector of RAG AG. This commitment of the undertaking forms part of an agreement (coal agreement) concluded on 13 March 1997 between the German Government and the regional governments of North Rhine-Westphalia and Saarland and the coal industry after consultation with the coalminers' trade unions and the electricity sector. The German Government guarantees the amount required to reach the level of the planned cross-subsidy, with RAG AG paying the German Government an amount equal to 0,25 % of this guarantee per half-year. Any sums received under this guarantee scheme must be paid back from the future profits of RAG AG deriving from its non-coal activities.

(6) In its letter of 22 November 2000 Germany confirmed that RAG AG would for 2002 transfer DEM 200 million from its non-coal sector to the coal sector. The statements made by Germany in no way indicate that the amount specified has to be taken up from the German Government's guarantee. Accordingly, the

<sup>(1)</sup> OJ L 329, 30.12.1993, p. 12.

amount does not include an aid component within the meaning of Article 4(c) of the ECSC Treaty. Moreover, the price to be paid by RAG AG for the German Government's guarantee is commensurate with any advantages which the undertaking could draw from it.

- (7) The financial measures proposed by Germany as referred to in point 4 come under the provisions of Article 1(1) of Decision No 3632/93/ECSC. In accordance with Article 9(4), the Commission is required to give its approval for 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 the modernisation, rationalisation and restructuring of and reduction of activity in the German coal industry which the Commission authorised by Decision 1999/270/ECSC <sup>(1)</sup> and Decision 2001/361/ECSC <sup>(2)</sup>.

## II

- (8) The amount of DEM 1 917 million that Germany is proposing to grant to the coal industry under Article 3 of Decision No 3632/93/ECSC for the period from 1 January to 23 July 2002 is 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 third countries.
- (9) 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.
- (10) 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 reducing 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, dropped by 15 % between 1994 and 2000. In 2001, these costs are

likely to drop by about 6 % and in 2002 by about 4 % (\*).

- (11) These reductions in production costs are the result, in particular, of the gradual closure of the least profitable production units that do not meet the criteria laid down in Article 3 of Decision No 3632/93/ECSC. In accordance with the plan for the modernisation, rationalisation and restructuring of and reduction of activity approved by the Commission in its Decision 2001/361/ECSC, the Friedrich Heinrich/Rheinland and Niederberg mines will be amalgamated in 2002. Production at the Niederberg site will be discontinued and the two remaining coal-fields will be attached to the Friedrich Heinrich/Rheinland mine. After amalgamation, the production capacity of the mines should be reduced to some 3,5 million tonnes, a reduction estimated at 2 million tonnes compared with 2000. The amalgamated mines should employ 3 800 underground workers, a reduction of around 1 000 posts compared with 2000.
- (12) The reduction in production costs will help to improve the economic viability of the German coal industry. Although the level of costs remains high, the continuous efforts which have led to a significant and sustained reduction in production costs mean that coal mining is less unprofitable and uncompetitive.
- (13) The Commission has carried out a detailed analysis of the geological conditions and economic situation specific to each production unit. Although there are certain variations between the production costs of the various production units, 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 also apply *mutatis mutandis* to each of the various production units.
- (14) Although the coal agreement of 1997 provided for an output of 37 million tce <sup>(3)</sup> in 2002, the additional measures concerning reduction of activity will cut production in 2002 to less than 28,5 million tce.
- (15) The German restructuring measures have helped, in accordance with Article 2(1), first indent, of Decision No 3632/93/ECSC, to achieve degression of aid in the coal industry.
- (16) 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 production costs and foreseeable revenue. Moreover, Germany undertakes, to ensure, in accordance

<sup>(1)</sup> OJ L 109, 27.4.1999, p. 14.

<sup>(2)</sup> OJ L 127, 9.5.2001, p. 55.

(\*) The Commission Decision contains data regarding Deutsche Steinkohle AG that must be regarded as confidential. They have been replaced by percentages solely for the purpose of this publication.

<sup>(3)</sup> tce = tonnes coal equivalent.

with Article 3(1), third indent, of the 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 third countries.

- (17) 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 the modernisation, rationalisation and restructuring of and reduction of activity in the coal industry and from the economic and financial forecasts submitted to the Commission in connection with the notification of aid relating to 2002. Where appropriate, Germany will propose to the Commission, on its own initiative, the necessary corrective measures, including measures to reduce production capacity.
- (18) On the basis of the information provided by Germany, and having regard to the obligations of the German Government set out in recitals 36 to 44 of this Decision, the operating aid planned for the period from 1 January to 23 July 2002 is compatible with Decision No 3632/93/ECSC, and in particular Articles 2 and 3 thereof.

### III

- (19) The sum of DEM 785 million that Germany is proposing to grant to the coal industry under Article 4 of Decision No 3632/93/ECSC for the period from 1 January to 23 July 2002 is intended to cover the difference between production costs and the selling price of 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 third countries.

- (20) 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 Decision.
- (21) The aid is intended to cover operating losses linked to production capacities closed down in the amalgamation of the Friedrich Heinrich/Rheinland and Niederberg mines and the operating losses of production units to be closed down after 2002 in accordance with Decision 2001/361/ECSC. All of these capacity reductions combined should bring about a concentration of production at those sites offering, in terms of production costs, the best prospects of improving economic viability.

- (22) 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 units 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.
- (23) 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. 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 capacity per tonne does not cause delivered prices for Community coal to be lower than those for coal of similar quality from third countries.
- (24) On the basis of the information provided by Germany, and having regard to the obligations on the German Government set out in recitals 36 to 44 of this Decision, the aid for reduction of capacity planned for the period from 1 January to 23 July 2002 is compatible with Decision No 3632/93/ECSC, and in particular Articles 2 and 4 thereof.

### IV

- (25) The aid measures totalling DEM 33 million are intended to fund the payments to miners in the German coal industry (*Bergmannsprämie*) for the period from 1 January to 23 July 2002. This is an incentive scheme, amounting to a sum of DEM 10 per underground job, aimed at encouraging skilled workers to work underground and rationalising 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 relieves the wage burden on the undertaking. Accordingly, this payment relates, in the broad sense, objectively to a component of the production costs of the undertaking concerned and as such 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.

- (26) 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 aid.
- (27) 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 more competitive by helping to reduce the costs of coal mining, thanks to increased productivity achieved by maintaining a skilled underground labour force.
- (28) 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, the difference between production costs and foreseeable revenue.
- (29) Having regard to the above and on the basis of the information provided by Germany, the aid proposed for the period from 1 January to 23 July 2002 for the *Bergmannsprämie* is compatible with the objectives of Decision No 3632/93/ECSC, and in particular Articles 2 and 3 thereof.
- V
- (30) The amount of DEM 1 320 million that Germany is proposing to grant to the coal industry under Article 5 of Decision No 3632/93/ECSC for the period from 1 January to 23 July 2002 is intended to cover the costs arising from or having arisen from the modernisation, rationalisation and restructuring of the coal industry which are not related to current production (inherited liabilities).
- (31) The closure of three mines in 2000, namely the Westfalen, Göttselborn/Reden and Ewald/Hugo mines, justify this relatively high amount of aid. The amalgamation of the Auguste Victoria and Blumenthal/Haard mines in 2001 and of the Friedrich Heinrich/Rheinland and Niederberg mines in 2002 also leads to a rise in exceptional costs.
- (32) This aid is 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 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 payments before 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.
- (33) These costs correspond to the categories defined in the Annex to Decision No 3632/93/ECSC and more specifically the costs mentioned in points I(a) to (d), (f) and (k). In accordance with Article 5(1) of the abovementioned Decision, the amounts of aid proposed by Germany for the period from 1 January to 23 July 2002 do not exceed the costs incurred.
- (34) 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.
- (35) Having regard to the above, and on the basis of the information communicated by Germany, the aid to cover exceptional costs for the period from 1 January to 23 July 2002 is compatible with the objectives of Decision No 3632/93/ECSC, and in particular Articles 2 and 5 thereof.
- VI
- (36) 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.
- (37) 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.

- (38) 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 disrupt 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.
- (39) It also 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 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.
- (40) The aid must not provide an economic advantage, either directly or indirectly, to production for which aid is not authorised or to any activity other than coalmining, for example, industrial activities relating to the mining or processing of coal from the Community.
- (41) 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.
- (42) 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.
- (43) 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 serve notification no later than 30 September 2003 of the level of aid actually paid in the period from 1 January to 23 July 2002. It will serve notification of any changes to the sums originally notified. In this annual list, it will provide all information required for verifying compliance with the criteria laid down in the abovementioned Articles.

- (44) 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 for the period from 1 January to 23 July 2002:

- (a) operating aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 1 917 million;
- (b) aid for the reduction of activity as defined in Article 4 of Decision No 3632/93/ECSC totalling DEM 785 million;
- (c) aid as defined in Article 3 of Decision No 3632/93/ECSC totalling DEM 33 million to maintain an underground labour force (*Bergmannsprämie*);
- (d) aid as defined in Article 5 of Decision No 3632/93/ECSC totalling DEM 1 320 million to cover exceptional costs.

*Article 2*

Germany shall ensure that the aid granted is used only for the purposes specified in its notifications of 22 November 2000 and 16 July 2001 and that any unused, overestimated or misused expenditure in relation to any items referred to in Article 1 is repaid to it.

*Article 3*

Without prejudice to the obligations under Article 9(1), (2) and (3) of Decision No 3632/93/ECSC, Germany shall provide information no later than 30 September 2003 about payments actually made during the period from 1 January to 23 July 2002.

*Article 4*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 2 October 2001.

*For the Commission*

Loyola DE PALACIO

*Vice-President*