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MID-TERM REPORT FROM THE COMMISSION TO THE COUNCIL

on the application of Decision No 3632/93/ECSC establishing Community rules for State aid of the Member States to the coal industry in 1994-97

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1. Introduction

Article 10(2) of Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry stipulates that the Commission is to submit to the Council, by 30 June 1997 at the latest, a report on experience and problems in applying the Decision and may propose any appropriate amendments, in accordance with the procedure laid down in the first paragraph of Article 95 of the ECSC Treaty.

This report starts by looking back at developments in Commission policy on State aid to the coal industry since the 1960s. It then turns to the situation today in the coal industry and on the coal market in the European Union and to economic and social trends in the individual coalmining regions. After analysing the financial position of coal undertakings in the European Union, the aid schemes and restructuring strategies, the report examines how far the objectives of the Decision have been attained and highlights the practical problems encountered and possible improvements in application of the Decision. It closes by looking ahead to the broader prospects, both in terms of the general trends in energy policy and on the external front, in preparation for enlargement of the Union.

2. Development of Commission policy on State aid to the coal industry

Since 1964 the Community has defined successive aid codes to keep the Member States' aid to the coal industry compatible with the rules on aid and subsidies in the ECSC Treaty. In the process, since the 1960s the ECSC rules originally designed for two high-growth strategic industries have had to be tailored to management of an industry in decline, with dwindling prospects of profitability. This lasting crisis forced the Commission to consider the conditions for exemptions from Article 4(c) of the Treaty, which abolishes and prohibits "subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever".

The preamble to the first Decision on Community rules for State aid to the coal industry - Decision No 3/65/ECSC of 17 February 1965[1] - therefore stressed that in regions where there were not yet sufficient development opportunities adaptation of the undertakings to the new conditions on the coal market could carry with it the risk of serious disturbance in economic and social conditions and that in order to avoid this risk it could be necessary to adjust the pace of rationalisation and to grant aid to cover the resultant costs to undertakings.

The objective of Decision No 3/65/ECSC was to adjust coal production to the market situation and the measures consisted mainly of aid for rationalisation and closure programmes to cover the resultant welfare costs.

By 1970, when the Decision expired, the competitive and financial position of pits in the Community had hardly improved. A new Decision was therefore adopted - Decision No 3/71/ECSC.[2] It gave a clearer definition of the strategy for the industry than the 1965 Decision. For example, Article 1 of the 1971 Decision allows authorisation of aid to facilitate attainment of the following objectives:

> "(1) concentration of production on the pits best able to improve their productivity and best fitted to supply the Community with energy, having regard in particular to their location in relation to markets and to their reserves of the grades of coal in demand;
>
> (2) the continued adjustment of production to the state of the energy market, in so far as this does not lead to serious disturbances in economic and social conditions in regions where the development potential is as yet insufficient."

After the 1973/74 crisis on the world oil markets had shaken the Community's security of supply, the Commission, with the unanimous assent of the Council, adopted Decision No 528/76/ECSC[3] on 25 February 1976 (backdated to 1 January 1976) to extend the aid to the coal industry.

By contrast to the earlier Decisions, the objective of this third Decision was not only to soften the social impact of the scaling-down of mining activity but also to stabilise coal production under satisfactory economic conditions. The aim was to allow investments in more rational, profitable production. Since these are long-term investment programmes, the Decision was valid for ten years.

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1 OJ No 31, 25.2.1965, p. 480.

2 OJ No L 3, 5.1.1971, p. 7.

3 OJ No L 63, 11.3.1976.

Coal production held steady between 1975 and 1982 but then fell under the combined impact of market forces (rebound from the oil crisis) and the Member States' desire to curb the constant increase in the aid required to keep much of the European coal industry alive. In 1986, when Decision No 528/76/ECSC expired, it was clear that a new Decision on the rules for aid had to be adopted. The time had come to retarget the objectives and return to the philosophy underlying the first two Decisions, i.e. to adapt production under socially acceptable conditions.

Against this background, in June 1986 the Commission approved Decision No 2064/86/ECSC.[4] The preamble to this Decision stressed the need for further restructuring, modernisation and rationalisation of the coal industry under regionally and socially acceptable conditions to make this branch of industry competitive again. However, the Decision noted that the often unfavourable geological conditions made it unlikely that the Community's coal industry would become fully competitive again in the years ahead. From then on, in order to obtain authorisation from the Commission, aid to the coal industry had to help to achieve at least one of the following objectives:

- improving the competitiveness of the coal industry, which contributes to ensuring greater security of supply;
- creating new capacity provided it is economically viable;
- solving the social and regional problems related to developments in the coal industry.

A Commission assessment of the aid granted by Member States to the coal industry between 1987 and 1993 found that the objectives set in Decision No 2064/86/ECSC had only partly been attained. Particularly intensive restructuring and streamlining had been carried out in the United Kingdom, France and Belgium, where the aid had brought substantial improvements in competitiveness or made it possible to complete closure programmes under regionally and socially acceptable conditions. Against this, the indicators for the Spanish and German coal industries over the same period showed that aid granted automatically on the basis of the quantities produced encouraged investments in maintaining production capacity offering no long-term guarantee of economic viability.

In response to these mixed results, the Commission was forced to consider tightening up the rules on aid, particularly in the light of the general upward trend in aid - incompatible with the transitional, exceptional nature of the scheme - and of the fact that despite continued restructuring, modernisation and rationalisation of the industry, a large proportion of coal production in the Community was still uncompetitive against imports from non-Community countries and would remain so, given the differences in costs.

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4 OJ No L 177, 1.7.1986, p. 2.

With Decision No 3632/93/ECSC[5] of 28 December 1993 the Commission sought to create a framework for coal policy valid until the ECSC Treaty expires in July 2002 and tailored to the new energy economics. The first two objectives of Decision No 2064/86/ECSC in particular had lost much of their raison d'être in this new context. As the world coal market was stable, with abundant supplies from a wide variety of geographical sources, the security of supply argument was no longer sufficient justification for maintaining unprofitable capacity. Also, the unfavourable geological conditions virtually precluded creating new economically viable capacity. Consequently, Decision No 3632/93/ECSC provides only for residual operating aid conditional on making further progress towards economic viability in the light of coal prices on international markets, with the aim of degression of aid. However, this should imply that the mines or undertakings receiving this aid must have hope of achieving a degree of competitiveness with imported coal in the long term. Henceforth, the two main justifications for aid are to solve the social and regional problems created by total or partial reductions in the activity of production units and to help the coal industry adjust to environmental protection standards. Another innovation in Decision No 3632/93/ECSC is the transparency requirement. Article 2 clearly states that once the three-year transitional period expires, only aid entered in Member States' public budgets or channelled through strictly equivalent mechanisms will be authorised. In particular, this implies that the amounts received must be indicated properly in the undertakings' accounts.

The objective of degression of aid implies cutting costs and/or capacity. The efforts to cut production costs must form part of a restructuring, rationalisation and modernisation plan for the industry, drawing a distinction between production units considered capable of attaining the cost-cutting target and which, therefore, could aspire to a degree of competitiveness in the long term and units which will not be able to, in which case a plan must be produced to scale down their activities and close them down by 2002 (when the ECSC Treaty and the current rules on aid expire). Exceptional social and regional problems could be the only reasons for postponing closure beyond that date.

3. Coal industry and market in the European Union

Since the new framework Decision entered into force at the start of 1994, the basic parameters for the coal market in the European Union, particularly the factors influencing consumption, have deteriorated further. Throughout the period from 1992 (the reference year for Decision No 3632/93/ECSC) to 1996, despite the increased demand for energy, solid fuels lost further market share to other sources, particularly oil products and, above all, natural gas. This illustrates how the coal market is affected by developments on the energy market. Despite very low coal prices, the low prices also charged for alternative sources, together with the first moves to deregulate the electricity market and the mounting environmental pressures, prevented any increase in solid fuels' share of the energy market in most Member States.

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[5] OJ No L 329, 30.12.1993, p. 12.

3.1 Production

From over 184 million tonnes in 1992, coal production in the Community fell to around 128 million tonnes in 1996. The sharpest contraction was in the United Kingdom, where production was down from 84 million tonnes in 1992 to just over 50 million tonnes in 1996. By comparison, over the same period production fell from 72 million tonnes to 53 million tonnes in Germany and from 9.5 million tonnes to 7.3 million tonnes in France but held relatively steady in Spain on 17.8 million tonnes, against 18.6 million tonnes in 1992. In two countries - Belgium and Portugal - coal production has ceased completely. Consequently, the fastest restructuring was in the United Kingdom which concentrated production solely at profitable pits in preparation for the privatisation of the British Coal Corporation.

Deregulation of the UK electricity market in turn has given power station operators free access to primary energy sources. This has unleashed fierce competition from natural gas which has eroded the market share taken by coal and, for want of other outlets for coal, triggered a sharp reduction in production. Although the far-reaching restructuring and the productivity improvements obtained after privatisation have enabled British coal to recapture part of the UK market from imported coal, nevertheless it is still not genuinely competitive against coal imported from outside the Community.

Table 1

Coal production (in '000 tonnes)

	1986	1992	1993	1994	1995	1996	% change 1996/92
B	5625	218	0	0	0	0	-100
D	87126	72153	64175	57623	58858	53105	-26
E	15895	18551	18402	18194	17627	17800	-4
F	14394	9478	8576	7538	7014	7335	-23
P	212	221	197	147	0	0	-100
UK	104635	83987	67463	48971	52630	50160	-40
Others	95	149	15	1	0	0	-100
EUR 15	**227982**	**184757**	**158828**	**132474**	**136129**	**128400**	**-31**
EUR 12	**227970**	**184720**	**158824**	**132474**	**136129**	**128400**	**-30**

3.2 Consumption

Intra-Community deliveries of coal fell from 315 million tonnes in 1992 to 270 million tonnes in 1996. This trend in total deliveries is largely attributable to the electricity industry, the leading consumer. Over 68% of coal deliveries today are for power generation. Coking plants now take just 19%. The remaining 13% are for industry and domestic heating. Including deliveries in Finland, Sweden and Austria in 1992, intra-Community deliveries therefore fell by over 20% or 70 million tonnes in six years.

Table 2

Intra-Community deliveries of coal (in million tonnes)

	Power stations*	Coking plants	Industry	Domestic	Others
1990	203.259	67.823	34.292	11.484	2.644
91	214.550	64.858	35.957	13.419	2.767
92	205.673	60.196	34.935	11.175	2.797
93	180.883	52.869	32.794	9.748	2.458
94	163.332	50.571	31.554	9.488	2.185
1995	194.543	52.402	31.961	6.856	2.677
96	184.026	50.191	29.822	6.642	1.695

* Public sector power stations and coal mine power stations.

Including the new German Länder from 1991 and EUR 15 from 1995.

Coal provides 21% of the energy consumed for electricity generation out of 50% by all fossil fuels. Generally, coal's share of gross intra-Community energy consumption fell from 16.1% in 1992 to 13.5% in 1996.

Niche markets, particularly for anthracite, with different price structures from the rest of the coal market will also have to be monitored more closely by the Commission, given the small number of producers in the Community, to avoid potential distortion of competition.

3.3 Imports and world market in solid fuels

Including Finland, Sweden and Austria, imports from non-EU countries also fell, from 147 to 138 million tonnes. This partly dashed the leading non-EU producers' expectations that lower production in the Community would be matched by an equivalent increase in imports. The leading non-EU suppliers of coal, based on the 1996 estimates, are, in decreasing order, the USA (37.9 million tonnes), South Africa (27.1 million tonnes), Australia (17.1 million tonnes), Poland (17.1 million tonnes) and Colombia (12.8 million tonnes). While the competitiveness of the USA and Australia remains unchallenged in view of their extremely favourable geological conditions, which allow open-cast mining in many places, nevertheless, in time, higher safety standards in underground mines and improvements in working conditions coupled with the likely wage trends could undermine the competitiveness of a number of other countries, which rely more on the ready availability of a large workforce than on favourable geological conditions. Although these countries' policies exert only a marginal influence on world market coal prices, the steady introduction of minimum safety standards will nevertheless call for new mining equipment and safety facilities.

There is also a growing risk that coal imported from non-EU countries could replace Community coal on certain segments of the market, not only for price reasons but also on quality and environmental grounds (very low sulphur content in coal from certain countries).

Finally, as regards security of supply, coal is a very reliable fuel available from an extremely wide range of geographical and geopolitical sources, with producing countries in every continent. This diversity of supply has brought great stability to the market and prices (see Table 3) even at times of crisis. It must be remembered that this objective situation lies at the very core of Decision No 3632/93/ECSC: one of the recitals states that as a result of the abundant supplies from a wide variety of geographical sources "even in the long term and with increased demand for coal the risk of persistent interruption of supply ... is ... minimal".

Table 3

Imports of coal from non-EC countries

	1986	1992	1993	1994	1995	1996	% change 1996/92
B	6792	13147	11404	12087	13671	10520	-20
DK	11065	11789	10319	11544	12975	13600	15
D	9401	14248	12627	13896	13891	15300	7
GR	1756	2132	1337	1500	1409	1409	-34
E	8688	13729	12293	11395	13595	11575	-16
F	13877	21401	13900	11914	12790	14920	-30
IRL	2025	2737	2690	2243	2243	2572	-6
I	18990	17557	14287	15889	18481	17990	2
L	157	253	251	207	107	97	-62
NL	11550	14661	14871	16746	17021	16500	13
A	3687	3796	3178	2580	2995	2995	-21
P	1477	4445	4762	4990	5981	5150	16
FIN	0	4232	5932	7862	5711	6300	49
S	4352	3001	3189	3024	3459	3177	6
UK	9759	19817	18078	14570	15612	15700	-21
EUR 15	**103576**	**146945**	**129118**	**130447**	**139941**	**137805**	**-6**
EUR 12	**95537**	**135916**	**116819**	**116981**	**127776**	**125333**	**-8**

Table 4

Price trends for coal imports from non-EU countries

	Coking coal *	Steam coal					
	in US$/t				EU weighted average		Exchange rate
Year		Max.	EU average	Min.	in US$/tce	in ECU/TJ	ECU/US$
1990	59.80	54.14	48.89	44.19	54.26	1458	1.27
1991	59.20	55.27	47.25	42.78	52.01	1441	1.23
1992	57.30	52.98	46.62	40.85	51.77	1362	1.30
1993	55.00	47.69	40.00	31.51	44.81	1304	1.17
1994	54.30	45.13	38.62	29.98	43.71	1254	1.19
1995	58.40	55.04	44.88	32.95	50.53	1319	1.31
1996	57.50	46.81	42.79	39.53	48.64	1290	1.29

*for the fourth quarter of each year.

4. Economic and social situation in coalmining regions in the European Union

Article 2 of the Treaty establishing the European Coal and Steel Community (ECSC) states that "the Community shall progressively bring about conditions which will of themselves ensure the most rational distribution of production at the highest possible level of productivity, while safeguarding continuity of employment and taking care not to provoke fundamental and persistent disturbances in the economies of Member States". Over the years, social concerns have gradually become the decisive factor in Community coal policy. Article 2 was written for an industry growing on a Community market but gradually the social welfare provisions in the Treaty have had to be tailored to manage the crisis in a sector in decline and severely tested by competitors worldwide.

The Community has therefore fine tuned the tools for managing the social impact of the crisis, giving priority to an adjustment and conversion policy. The instruments in the ECSC Treaty (particularly Articles 54 and 56) have been joined by the EC Treaty provisions on the Structural Funds. The Commission has carefully targeted aid from these various instruments on the regions hardest hit, most recently by deciding on 15 June 1994, six months after adoption of the new rules on State aid, to extend the RECHAR II Community initiative.[6] The Commission stressed that it took this decision because many coal-mining areas are amongst the areas of the Community which have been or are likely to be hardest hit by problems of industrial restructuring, and because they have special difficulties in adjusting rapidly to changing economic circumstances. It added that this Community initiative would give priority to improving the environment, to promoting new economic activities and to developing human resources.

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6 OJ No C 180, 1.7.1994, p. 26.

Table 5

RECHAR II funding(1994-1997)

Country	Programme	Funding from Structural Funds (in ECU million at 1994 prices)	Total project value
D	Brandenburg	30.250	49.322
D	Niedersachsen	1.650	3.300
D	Nordrhein-Westfalen	66.448	280.412
D	Saarland	6.260	22.861
D	Sachsen	29.800	53.630
D	Sachsen-Anhalt	19.220	30.603
D	Thüringen	5.000	10.000
A	Rechar	1.800	7.036
B	Hainaut	0.930	1.860
B	Limburg	14.750	56.190
E	Rechar	33.630	55.969
F	Bourgogne	1.520	3.080
F	Languedoc-Roussillon	1.000	2.738
F	Lorraine	10.790	25.109
F	Midi-Pyrénées	1.130	4.440
F	Provence-Côte d'Azur	1.000	2.024
F	Rhône- Alpes	1.000	2.024
F	Nord-Pas-de-Calais	16.680	39.318
GR	Rechar	1.500	2.025
I	Sardegna	0.770	1.560
I	Toscana	0.890	32.573
P	Rechar	0.860	1.147
UK	East Midlands	41.640	99.278
UK	Eastern Scotland	9.880	21.888
UK	Wales	20.210	46.443
UK	West Midlands	12.510	27.858
UK	Western Scotland	3.000	6.501
UK	North East England	23.170	51.153
UK	North West	6.820	15.281
UK	Yorkshire	44.030	96.191
Total		**408.138**	**1051.814**

This extra effort from the Structural Funds has been backed up by greater use of the social welfare allowances to help workers to adapt provided for by Article 56 of the ECSC Treaty. For example, on 13 April 1994 the Commission adopted social measures in connection with the restructuring of the coal industry.[7] In its information note on this subject, the Commission stressed that the Community has clear responsibilities under the ECSC Treaty and may, consequently, have recourse to specific instruments to promote readaptation and intensify the associated measures in order to attenuate the consequences of restructuring for workers and to share the cost. As regards the type of social measures to apply, the Commission noted that, as a result of the change in the structure of the coal industry workforce and, in particular, the decline in the number of older workers in recent years, there will be fewer opportunities for early retirement while other measures, notably redeployment, will have to be more widely employed. The Commission also took account of certain countries' practice of protecting incomes by granting a flat-rate severance premium. As a result, between 1994 and 1996 the following additional aid was granted to workers from the European Union coal industry:

Table 6

Social measures for the coal industry (in ECU)

	1994		1995		1996	
	Beneficiaries	Grants	Beneficiaries	Grants	Beneficiaries	Grants
Belgium	525	1.622.998	324	1.216.000	484	1.346.000
Germany	4.000	12.879.241	3.907	15.628.000	3.340	13.360.000
Spain	4.344	5.709.654	2.376	8.107.695	864	3.246.000
France	2.610	6.825.998	503	1.790.000	1.150	4.600.000
Portugal	212	637.844	16	64.000	2	8.000
United Kingdom	13.809	24.043.909	850	1.870.000	270	594.000
Total	25.500	51.719.644	7.976	28.675.695	6.110	23.154.000

7 OJ No C 108, 16.4.1994, p. 3.

4.1 Germany

In what is now the main coal producing country in the European Union, the coal industry is in effect concentrated in two fields, the Ruhr and the Saar. Production is centred on 19 pits, employing a total of over 90 000 workers, including 55 000 underground (provisional figures for 1996). Compared with certain other countries in the Union, the rate of job losses has been relatively low in recent years and has scarcely exceeded 8% a year. Given the extremely diverse economic fabric of the regions concerned - the fruit of the voluntary retraining policy pursued for many years - job losses in the coal industry have so far had no significant effect on the unemployment rate.

Commission Decision 94/1070/ECSC[8] authorising the first modernisation, rationalisation and restructuring plan for the coal industry submitted by the German authorities under Decision No 3632/93/ECSC took account of the need to minimise the social and regional impact of restructuring, considering that the mines in question could not be made competitive at all in the future. Since the economic position of the German pits concerned has not improved and this is a social and regional problem, Germany's initial plan has merely put off economically inevitable decisions and will mean even faster job losses under socially acceptable conditions in the years ahead.

4.2 Spain

The Spanish coal industry has been restructuring since 1990. The 1990-93 plan cut production by 7% to 18.1 million tonnes in 1993 compared with 19.4 million tonnes in 1990 and reduced the workforce by 33% (to 28 140 workers in 1993 from 42 000 in 1990). These contrasting trends can be explained by the fact that the reduction in the least competitive underground production has been offset by increases in far less labour-intensive, appreciably more competitive open-cast production.

The Spanish authorities asked to notify the Commission of their national plan to restructure, rationalise, modernise and reduce the activity of the coal industry in two phases: a first phase, covering the period 1994 to 1997 and approved by Commission Decision 94/1072/ECSC,[9] with the objective of reducing underground production by around 12% and the workforce by 27% compared with 1993, to be followed by a second phase for 1998 to 2002 based on the lessons drawn from the first phase.

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[8] OJ No L 385, 31.12.1994, p. 18.

[9] OJ No L 385, 31.12.1994, p. 31.

Coalmining is spread over a number of fields: Asturias (Central and Western field), León (Bierzo-Villablino, Sabero and North), Palencia (Guardo and Barruelo), Catalonia (Pirenaica), Teruel (Teruel-Mequinenza) and South (Puertallano and Peñarolla).

Around a hundred undertakings, mostly private with the exception of the public undertakings HUNOSA, Minas de Figaredo, Endesa and Encasur, share production. Only four undertakings produce more than one million tonnes a year and 13 more than 200 000 tonnes. Some 12.7 million tonnes come from underground workings and 5.4 million tonnes from open-cast mining. As in Germany, all coal mined in Spain is produced at a loss.

The notification from the Spanish Government stated that 61 out of a total of 96 coal undertakings could be expected to make progress towards improving their economic viability in the light of coal prices on international markets, as provided for by Article 3 of Decision No 3632/93/ECSC, by reducing production costs. At the same time, however, closure plans had been drawn up for 35 undertakings, including the public underground workings, as provided for by Article 4 of the same Decision. Although some of these will not finally close until after 23 July 2002, the phase-out plan will nevertheless lead to a significant reduction in activity before then.

The coal regions in Spain are highly dependent on mining. Some are in isolated areas, adding to the need to back up the restructuring with regional conversion measures to create new and economically sound activities capable of reabsorbing the redundant workers into productive employment, as provided for by Article 56 of the ECSC Treaty. But despite the RECHAR schemes, reindustrialisation is at a standstill in most Spanish coalfields, pushing the unemployment rate above the national average.

The measures taken to implement the first (1994-97) phase of the restructuring deviated considerably from the plan. The Spanish Government has announced that it intends to notify the Commission of a new plan for 1998 to 2002 taking account of this deviation in the past and in line with the general and specific objectives of Decision No 3632/93/ECSC. This plan will be backed up by measures to reactivate the economy and to soften the social and regional impact of the restructuring.

4.3 France

In France, coalmining is now concentrated on the Lorraine and Centre-Midi coalfields. The producer, Charbonnages de France, is a public sector undertaking. The process of reducing production capacity has been under way for many years, mainly due to unfavourable geological conditions. In the process, the Nord-Pas-de-Calais field was closed completely in 1990 and over 20 000 jobs were lost between 1986 and 1996.

The activity-reduction plan submitted by the French authorities in accordance with Decision No 3632/93/ECSC was authorised by Commission Decision 95/465/ECSC[10]. Prior to finalisation of this plan, the French authorities consulted the two sides of the industry to produce a common vision of the French coal industry's future culminating in the signing of a National Coal Pact between Charbonnages de France and the trade union organisations.

This Pact provides for progressively ending coalmining by 2005. The acute social and regional problems made it impossible for the French authorities to keep to the deadline of 2002 set in Decision No 3632/93/ECSC for the closure plan. Staggering the closures over a ten-year period should help to reduce the particularly sensitive social and regional problems in regions which for years have been affected by the reduction in activity in the coal industry and will enable a maximum number of workers to benefit from measures based on age by the year 2000.

As the activity-reduction plan is put into action, the underground mines at Forbach (Lorraine coalfield) and La Mure (Dauphiné, Centre-Midi coalfield) and the open-cast mine at Carmeaux are scheduled to close this year.

4.4 Portugal

Portugal has three coalfields, of which recently only the Douro field has been economically viable. The Carbonifera do Douro (ECD) company concentrated over 95% of production in the region in the Germunde pit and one small open-cast mine. Since the late 1980s the company has suffered mounting operating losses which have been covered by State aid. These are due mainly to geological conditions, depletion of resources, poor coal quality and difficulties in disposing of output. After Electricidade de Portugal, virtually the only client, decided to convert the nearby power station to natural gas at the start of 1995, there was no longer any outlet for the coal produced.

In response, the Portuguese Government therefore submitted to the Commission, on 5 August 1994, an activity-reduction plan, as required by Article 8 of Decision No 3632/93/ECSC. This provided, in particular, for complete closure of the Germunde mine on 31 December 1994. This plan was approved by Commission Decision 94/994/ECSC[11] and duly put into action. Since 1995 coal is no longer mined in Portugal. The closures led to the loss of 650 jobs between 1992 and 1996.

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[10] OJ No L 267, 9.11.1995, p. 46.

[11] OJ No L 379, 31.12.1994, p. 3.

4.5 United Kingdom

Between 1991 and 1994 the British Coal Corporation carried through its final restructuring and rationalisation programme to tailor its production capacity to the continuing contraction of the market and to world market prices.

As required by Article 8 of Decision No 3632/93/ECSC, in March 1994 the United Kingdom Government notified the Commission of the modernisation, rationalisation and restructuring plan for the coal industry which was subsequently approved by Commission Decision 94/574/ECSC.[12] The priority was to make the UK coal industry fully competitive with coal prices on international markets and to privatise British Coal. To achieve this objective, the industry had to step up the restructuring and close many mines.

Also in March 1994 the United Kingdom Parliament adopted the Act on the privatisation of British Coal and the establishment of an independent body, the "Coal Authority", responsible, amongst other things, for issuing operating licences under a transparent, non-discriminatory scheme guaranteeing fair competition between all coalmining undertakings. Privatisation was completed by 31 December 1994. Consequently, since the start of the 1995-96 financial year, the United Kingdom coal industry consists exclusively of private undertakings which receive none of the aid provided for by Articles 3, 4, 6 and 7 of Decision No 3632/93/ECSC.

Most of the former British Coal mines which remained open after the restructuring process (a total of 19 mines) were taken over by RJB Mining. Concessions for six others were bought or leased by Coal Investments PLC. In Scotland and Wales, one mine was transferred to Mining Scotland and four were taken over by the workers: Hatfield Coal, Betws Anthracite, Tower and Monktonhall (which was recently declared bankrupt).

Since then Coal Investments has been declared bankrupt. Two of its mines have closed and three have been bought up by staff. The other was auctioned off. RJB Mining has also closed down one mine.

The generally positive picture with restructuring and privatisation in the United Kingdom must nevertheless be put into perspective. Although the industry's production costs are now very close to world market prices, this is no guarantee of economic survival. In particular, until 1998 the UK coal industry will continue to benefit from supply contracts with electricity producers, which buy coal at above world market prices. Consequently, not until these contracts expire will it be possible to have a clear idea of the real competitiveness of the privatised UK coal industry.

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[12] OJ No L 220, 25.8.1994, p. 12.

Question marks also remain about the production costs of the privatised pits and the real workforce, since the private undertakings receive no aid and, consequently, are under no obligation to submit these data.

Beyond 1998 there is also a danger that the prospects for UK coal, produced mainly underground, could be clouded by the high sulphur content and the cost and necessity of installing desulphurisation equipment, which would further erode its competitiveness against natural gas.

In addition, until 2002 at least the heavy social costs of restructuring will continue to be borne by the State budget, as inherited liabilities, as provided for by Article 5 of Decision No 3632/93/ECSC. Approximately 24 000 underground workers lost their jobs between 1992 and 1996. Although the accompanying social welfare measures under Article 56 of the ECSC Treaty have been generally satisfactory (with British mines preferring severance grants), the results have been more mixed on retraining for jobs outside the industry and creating alternative jobs under the auspices of the British Coal Enterprise. An impressive number of alternative jobs have been created (officially over 127 000 between 1985 and 1995). However, many former miners have had to accept sharp wage cuts in order to find new employment.

In a related development, the situation remains critical in certain coalmining regions, where the unemployment rate is often above the national average, which, however, is well below the level in most European Union countries.

Table 7

Underground staff employed at the end of the year (in thousands)

	1986	1992	1993	1994	1995	1996	% change 1996/92
B	13.3	0.8	0.3	0	0	0	-100
D	107.1	78.3	71.8	64.7	58.4	55.3	-29
E	37.4	30	25	23.7	21.6	21.3	-29
F	18.5	7.5	7	6.4	6.1	5.3	-29
IRL	0.3	0.3	0	0	0	0	-100
P	0.8	0.5	0	0	0	0	-100
UK	108.4	36	21	9.1	11.5	11.8	-67
EUR 15	**285.8**	**153.4**	**125.1**	**103.9**	**97.6**	**93.7**	**-39**

Table 8

Production costs (in ECU/tce)

	1986	1992	1993	1994	1995	1996	% change 1996/92
B	132						
D	125	143	151	154	159	155	
E	130	147	131	127	133	116	
F	117	100	110	125	134	129	
P	101	121	112	107			
UK	93	71	62	52	43	41	
EU		112	114	119	110	104	

5. Financial position of coal undertakings in the European Union, aid schemes and restructuring strategies

How can compliance with Article 4 of the ECSC Treaty, written for a strongly growing industry, be reconciled with social and regional management of an industry in decline? Although the underlying problem of loss of competitiveness is the same for all coal undertakings in the European Union, the strategies adopted by Member States to solve it vary widely. In general terms, three different strategies can be identified.

5.1 Germany and Spain

These two countries have decided to maintain the operating aid for current production provided for by Articles 3 and 4 of Decision No 3632/93/ECSC. This is intended primarily to cover undertakings' operating losses. Since the the end of the three-year transition period allowed by Article 2 of the Decision, such aid must be funded from public budgets instead of the special non-budgetary levy mechanisms previously used to fund the coal industry.

In this context, at the end of 1994 the German Constitutional Court ruled the "Kohlepfennig" levy anti-constitutional and prohibited it as from 31 December 1995. The Court reached its judgment on the following grounds: by choosing to raise finances through a special contribution, the legislators had departed from three fundamental principles of financial organisation. In making these fiscal rules, they had assumed legislative powers beyond the scope of financial organisation; in view of the non-budgetary nature of the proceeds of the special contribution, they had called into question the budgetary powers of the Parliament; they had undermined the principle of equality in taxation by shifting the charge to the taxpayer from the fiscal burden to a special charge. Since, in the light of the Court judgment, the aid arrangements were amended before the end of the transition period provided for in Article 9(7) of Decision No 3632/93/ECSC, i.e. before 31 December 1996, this made no difference to approval of the aid notified by Germany.

Between 1992 and 1996 operating aid totalling over ECU 23 billion was granted to the German coal industry, with no significant degression observed over the period.

However, for years German coal undertakings, notably Ruhrkohle and Saarberg, have been conducting policies, some more successful than others, to diversify into profit-making non-mining activities as a first step towards realigning the undertakings.

Spain will bring its aid for current production into line with Decision No 3632/93/ECSC, i.e. enter it in State budgets, with effect from 1 January 1998. For 1997, it sent notification of a mechanism which it considered strictly equivalent. However, to avoid any problem with the transparency of this aid, after discussion with the Commission departments concerned it was finally decided to enter the aid in the State budget.

During the transition period, aid to the Spanish coal industry was, therefore, still funded mainly by means of a levy on electricity prices charged to consumers by OFICO (Electricity Compensation Office). The Commission approved aid granted to the Spanish coal industry under this scheme in 1994, 1995 and 1996. For 1997, Spain published the rate of the levy on electricity prices (4.864%) in an addendum to the State budget.

Between 1992 and 1996 operating aid totalling over ECU 3 billion was granted to the Spanish coal industry. No degression was observed and the undertakings' financial position deteriorated further over this period.

This suggests that progress with Spain's modernisation, rationalisation, restructuring and activity-reduction plan has been unsatisfactory. In February 1996 the Spanish Government signed programme contracts with the largest undertakings receiving the aid referred to in Article 4 - HUNOSA, Minas de Figaredo SA and Mina la Camocha SA - committing it to pay more aid than provided for in the restructuring plan originally submitted. The Commission asked for further details of the aid envisaged under these programme contracts. The Commission considered the replies inadequate and finally, on 23 April 1997, sent the Spanish Government a letter of formal notice to submit the information requested and propose appropriate measures to correct the deviation from the original plan.

The other Spanish coal undertakings seem to offer no guarantee of implementing the restructuring measures to improve their economic viability and thus justifying the aid which they receive, particularly under Article 3. On 23 April 1997 the Commission therefore wrote to ask the Spanish authorities for explanations about progress with the modernisation, rationalisation and restructuring plan plus any corrective measures proposed.

5.2 France and Portugal

Coal undertakings in these two countries were in a very similar position. First, geological conditions were relatively unfavourable, with small depleted reserves and prohibitive costs, as in Germany and Spain, plus, finally, a national energy policy shifting away from using coal as a fuel. As a result, the authorities and coal undertakings in both these countries are resolutely pursuing an activity-reduction strategy aiming at ending coalmining completely in the long term.

As regards management of State aid, both countries have kept to the letter and spirit of Decision No 3632/93/ECSC. France granted operating aid totalling ECU 818 million between 1992 and 1996, with clear degression (from ECU 187 million in 1992 to less than ECU 87 million in 1996). The same trend was observed in Portugal, naturally on a smaller scale, with operating aid totalling ECU 14 million after declining from ECU 5.8 million in 1992 to ECU 1.8 million in 1994, the last year of coalmining in that country.

5.3 United Kingdom

The United Kingdom is the only country in the European Union today close to operating a competitive coal industry. Aid linked to current production between 1992 and 1996 totalled just ECU 22 million, a very modest amount compared with the volume produced.

However, leaving aside the social and regional problems outlined earlier, it is relatively difficult to demonstrate any intrinsic long-term economic viability in the UK coal industry, with the exception of a few open-cast mines. It must not be forgotten that the most modern installations in the United Kingdom, where the privatised undertakings are now breaking the productivity records, are the fruit not only of highly efficient, rigorous management but also of a pro-active investment programme by the public authorities via the British Coal Corporation in the 1970s, the most striking example being the development of the Selby coalfield. In other words, the privatised coal undertakings in the United Kingdom are benefiting from a situation created partly by public aid in the past. A close watch will have to be kept to see whether they in turn make the heavy investments which are the only way of securing the long-term future of the industry.

6. <u>Attainment of the objectives of the Decision</u>

6.1 Definition of aid

One of the principal improvements made by the new framework, compared with the earlier Decisions, is the exhaustive definition of aid. Indirect aid is often particularly difficult to keep track of. It takes the form of measures by the authorities which have no impact on the budget but nevertheless give coal undertakings an economic advantage. Exemptions from environmental standards are one example. Another are loans granted to coal undertakings by public or semi-public bodies which the undertakings could not have obtained under normal market economy conditions.

6.2 Transparency

The other area where major progress has been made is with the requirement for greater transparency in the form of clear budgeting of all aid, after a transition period. This provision has caused a number of problems, particularly in Germany and Spain, because it implies ending aid schemes based on levies paid by electricity consumers and entering all aid in public budgets or strictly equivalent mechanisms. This objective has now been attained in Germany (with the abolition of the Kohlepfennig), providing a true picture of the volume of aid granted to the coal industry there. Spain was unable to make similar changes to the OFICO arrangements by the end of the transition period but should do so in 1998 at the latest. Regrettably, no breakdown of aid in Germany between Articles 3 and 4 is available, for lack of detailed information on production costs per pit. This unclearness will have to be rectified from 1997 on to enable the Commission to perform its monitoring task.

6.3 Degression

By contrast, no significant progress has been made towards economic viability and, hence, degression of aid. However, given the fundamental energy economics and geological data, it would be illusory to imagine that this objective could be attained. Member States will therefore have to be urged to make a realistic appraisal of the situation with the result that a steadily growing proportion of the aid linked to current production should be authorised under Article 4 of the Decision, i.e. as aid for the reduction of activity.

6.4 Social and environmental objectives

Although the principal economic objective of the new aid code has not been attained, fortunately the two other "subsidiary" objectives have, namely to solve the social and regional problems and to adjust to new environmental protection standards. Clearly with no prospects of economic viability for the industry in France and Germany and at the vast majority of the pits in Spain and some in the United Kingdom, the Member States have opted primarily for social and regional choices taking account of a series of parameters.

6.5 Evaluation of aid authorised

The policy mapped out by Decision No 3632/93/ECSC has certainly made it possible to keep the situation under control in an extremely difficult context. Without a strict framework for aid, there was a risk that, on the pretext of safeguarding security of supply - which, as seen, was by no means at risk - the Member States would embark on investment programmes to modernise the coal industry without any real prospect of economic viability. Such investments were indeed made in the past, particularly in Germany and Spain.

It must be hoped that situations like this will no longer be repeated in the future since they do not make for optimum allocation of national budget resources.

The new framework kept the volume of aid authorised relatively stable throughout the period 1990-96, probably even allowing a slight degression in real terms, allowing for inflation. However, it is also clear that despite the reduction in production the amount of aid per tonne has increased. This is due, in particular, to the fact that the closures have not necessarily been at the mines with the highest production costs. In other words, in certain countries and regions unprofitable capacity, in some cases with production costs five times world market rates, has been kept in operation, mainly for social reasons, while in others, particularly the United Kingdom, application of strictly economic criteria closed mines which were much closer to profitability. This unsatisfactory result is due to the lack of a genuine Community approach to restructuring.

At the same time one objective difficulty with evaluating the amount of aid must also be recognised. The world market coal prices used to determine the level of aid are not a fixed indicator. More specifically, steam coal prices, expressed in US dollars, rose by 12% between 4/1993 and 3/1996 (from US$43 to US$48 per tce), while coking coal prices rose by 5% over the same period (from US$55 per tonne to US$57.6 per tonne). Since the US dollar depreciated against the ECU by around 8.5% over the same period, world market coking coal prices in ECU fell slightly, whereas steam coal prices rose slightly. Consequently, the impact of the exchange rate for the dollar is by no means negligible.

Another factor which has influenced the level of aid reported is the steady reduction in the "reference price" required by Decision No 3632/93/ECSC which specifies that the amount of aid is determined from "the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market". This has been artificially high, particularly in Spain, pushing up the level of aid actually reported.

Finally, it must also be remembered that Article 9(7) of Decision No 3632/93/ECSC allows Member States a grace period during the first three years of application of the new rules to bring their arrangements into line with the Decision. This therefore makes it difficult to assess the effectiveness of the Commission's policy from trends over this period.

Strict application of the principles laid down in the Decision from 1997 onwards should end this uncertainty.

Table 9

Aid authorised 1992-1996

	1992	1993	1994	1995	1996
Germany					
- linked to current production *	4497.7	4462.6	***4845.8	4784.2	5370.2
- not linked to current production **	246.7	256.3	181.4	106.7	104.7
Spain					
- linked to current production *	463.3	373.3	730.8	731.9	730.8
- not linked to current production **	108.9	0.0	145.3	135.0	148.7
France					
- linked to current production *	186.9	190.2	298.0	56.9	87.6
- not linked to current production **	774.6	818.1	614.8	612.3	592.3
Portugal					
- linked to current production *	5.8	6.4	1.8	0.0	0.0
- not linked to current production **	0.0	1.0	3.6	0.9	0.9
United Kingdom					
- linked to current production *	0.0	1.9	20.1	0.0	0.0
- not linked to current production **	13.1	12.4	870.0	1622.8	494.0
EU TOTAL					
- linked to current production *	5153.7	5034.4	5896.6	5572.9	6188.7
- not linked to current production **	1145.0	1087.8	1815.0	2477.7	1340.6
Aid linked to current production in ECU/tonne	28.1	31.7	44.7	41.17	48.20

*: Aid granted under Articles 3, 4, 5 and 6 of Decision No 2064/86/ECSC and under Articles 3 and 4 of Decision No 3632/93/ECSC.

**: Inherited liabilities under Decision No 2064/86/ECSC and aid granted under Articles 5, 6 and 7 of Decision No 3632/93/ECSC.

***: Disregarding the activation of DM 5 350 million (ECU 2 779 million) from a credit line to cover compensation fund debts in the context of the German Law of 19 July 1994 guaranteeing coal supplies for power stations.

7. Application of the Decision

7.1 Practical problems and possible improvements

Application of the new rules on aid is governed by Commission Decision No 341/94/ECSC[13] of 8 February 1994 implementing Decision No 3632/93/ECSC. This aims at obtaining comparable communications from the Member States so that the data on the financial position of the undertakings, particularly their production costs, can be checked and the Commission can monitor conditions of supply to the principal consumers in the Community, by placing an obligation on coal and, where appropriate, steel undertakings in the Community to submit information to the Commission on coal and coke supplies in the Community.

In practice the implementing Decision has had only limited effect since the undertakings have not always used the specified forms in the spirit of the Decision. This is particularly true of form A on production costs, where some undertakings have included aid in their sales revenue.

Also, for technical and practical reasons aggregate totals rather than individual deliveries have been reported for coking coal deliveries to the steel industry and steam coal deliveries to power stations. Computerisation should allow closer monitoring, minimise bureaucracy and safeguard the imperative confidentiality.

On recent trends, no changes in the framework Decision seem necessary between now and 2002. On the contrary, the Decision should provide the impetus required to change the direction of coal policy in all coal-producing countries.

On the other hand, the framework Decision will have to be applied more rigorously, particularly to rule out any possibility of deviation of the aid. To achieve this, the rules in the implementing Decision will have to be applied even more vigorously to allow more systematic monitoring.

Finally, apart from the purely technical difficulties, one crucial problem with application of the new framework Decision is that the undertakings and the Member States' Governments do not always realise clearly enough that the exemptions allowed by Article 4(c) of the ECSC Treaty by no means imply exemption from the other rules on competition in the Treaty. On the contrary, the preamble to the Decision recalls that "in order to perform its task the Community must ensure the establishment, maintenance and observance of normal competitive conditions" and that "in the light of the abovementioned provisions, State aid must cause no distortion of competition and must not discriminate between coal producers, purchasers or consumers in the Community."

[13] OJ No L 49, 19.2.1994, p. 1.

7.2 Complaints and disputes

In a letter dated 2nd August 1997[14] the Commission informed the German Government that it had decided to institute the procedure provided for by Article 88 of the ECSC Treaty in response to two complaints lodged through the Office of the United Kingdom Permanent Representative alleging that German companies were selling coal on the Community market with irregular State aid from the German Government authorised under Decision No 3632/93/ECSC (Cases 96/4724 and 96/4752).

These complaints concerned the sale of German anthracite on the European, and particularly UK, market at prices well below the production costs. The sales covered by the complaint seemed to have been made at a loss with the help of the aid granted to coal producers by the German Government. The extremely competitive prices were compensated for by direct or indirect use of State aid received from the German Government to cover operating losses under Decision No 3632/93/ECSC. According to the plaintiff, these practices distorted competition on the European anthracite market. The plaintiff also pointed out that the same companies sold the same product at higher prices in other Member States.

The Commission sent the German Government a letter of formal notice requesting the information needed so that, without prejudice to its final position, it could check whether the conditions laid down in Decision No 3632/93/ECSC and the Community rules on competition had been met.

The letter also indicated the measures which could be taken should the German companies' practices be confirmed.

In addition, on 23 April 1997 the European Commission sent the Spanish Government a letter of formal notice requesting information on changes made to the objectives and criteria in the activity-reduction plans and on the State aid under the contract programmes with HUNOSA, Minas de Figaredo and Mina de la Camocha SA. In this letter the Commission requested Spain to provide information on any deviation from the plans which it had approved for 1994-97 and to propose the necessary corrective measures.

The Commission published this letter in the Official Journal[15] to give the other Member States and interested parties notice to submit their comments. After receiving the reply from the Spanish Government and the comments from the third parties concerned, it is now up to the Commission to take a decision.

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14 OJ No C 258, 23.8.1997, p. 2.

15 OJ No C 137, 3.5.1997, p. 6.

8. Political prospects

8.1 General trends in energy policy

The Commission White Paper on "An energy policy for the European Union"[16] identified three objectives as being most relevant to the energy sector:

- overall competitiveness;
- security of energy supply;
- environmental protection.

Although coal has clear advantages for the first two of these objectives, this does not necessarily count in favour of Community coal and the third point raises certain problems, for both Community and imported coal alike.

This notwithstanding, the philosophy in the White Paper confirms the general direction of the coal policy enshrined in Decision No 3632/93/ECSC. It states that for economic operators to have full confidence in the internal energy market and to be ensured that market principles prevail, it will be essential that there is a maximum of transparency and consistency in applying the competition provisions of the Treaties. It adds that a phased reduction and transparency of State aid to the coal industry is needed, with the aim of ensuring that in the medium term Community coal production costs decrease.

8.2 The environment

At its meeting on the environment on 19 June 1997, the Council adopted conclusions on Community strategy on climate change. Conclusion 10 envisages further initiatives to contribute to meeting the emission-reduction objectives. The various options mentioned by the Council include progressive reduction/removal of fossil fuels and other subsidies, tax schemes and regulations which counteract energy efficiency, in particular by including climate change considerations in the 1997 review of the guidelines for State aid to the coal industry.

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16 COM(95) 682 final.

These conclusions force the Commission to rethink its strategy on solid fuels and, in particular, to assess their impact on the environment and climate change. To this end, the Commission will soon be submitting a communication on the future of solid fuels. Clearly the crux of the question is use of rather than production of solid fuels in the European Union, considering that, as mentioned earlier, the sharp reduction in production in the Community has been accompanied by stabilisation of imports which now account for over half of solid fuel consumption in the EU, at a time when use of coal worldwide is expanding.

8.3 Enlargement

The Central and Eastern European energy market is dominated heavily by solid fuels. The situation of the coal industry in these countries must therefore be examined as part of the pre-accession process. This applies in particular to Poland, the leading coal producer in Europe with over 135 million tonnes in 1996, of which around 18 million tonnes was exported to the European Union, and also holds true, to a lesser extent, for the Czech Republic.

The Europe Agreement concluded between the European Communities and their Member States and the Republic of Poland, as approved by Council and Commission Decision 93/743/Euratom, ECSC, EC of 13 December 1993,[17] entered into force on 1 February 1994. It includes a protocol on ECSC products (Protocol 2), Article 8 of which stipulates that public aid in any form whatsoever except derogations allowed pursuant to the ECSC Treaty is incompatible with the proper functioning of the Agreement, insofar as it may affect trade between the Community and Poland. It adds that any practices contrary to this Article will be assessed on the basis of criteria arising from the application of the rules of Articles 65 and 66 of the ECSC Treaty, Article 85 of the EEC Treaty and the rules on State aids, including secondary legislation. The rules necessary for implementation of the procedure for assessing State aid must be adopted by the Association Council by the end of a transition period of three years from the entry into force of the Agreement, i.e. this year.

Consequently, provided the preliminary work is completed soon, next year Poland can be expected to make its State aid to the coal industry more transparent, in accordance with Decision No 3632/93/ECSC, and to agree a notification and monitoring mechanism with the Commission.

[17] OJ No L 348, 31.12.1993, p. 1.

9. Main conclusions

Decision No 3632/93/ECSC provides an adequate framework to back up the adjustments which have become inevitable in the European Union coal industry for want of any medium- to long-term prospects of economic viability for the vast majority of the industry.

The new framework has raised awareness of the real level of aid in each coal-producing country and prompted the Governments and undertakings to shift the emphasis of their strategies increasingly towards activity reduction.

The practical difficulties which have emerged here and there are not signs of imprecision or ineffectiveness of the rules in the Decision and the implementing Decision but of lack of rigorous application by certain Member States, combined, in some cases, with a degree of negligence with regard to the competition rules in the Treaty.

The new rules take the sectoral objectives in the ECSC Treaty as the starting point but place the coal industry in the general context of energy policy, as defined in the White Paper, thus opening up prospects beyond the year 2002.

Decision No 3632/93/ECSC also provides a firm foundation for bringing the rules on State aid in the Central and Eastern European countries closer into line with the Community rules, in preparation for enlargement.

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