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REPORT FROM THE COMMISSION

on the Application of the Community Rules for State Aid to the Coal Industry in 1996 and 1997

COMMISSION REPORT

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1. Introduction

Article 10 of Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry requires the Commission to report each year to the Council, the European Parliament and the ECSC Consultative Committee on the application of these rules.

This report examines the financial aid granted by France, Germany, Portugal, Spain and the United Kingdom to their coal industries in 1996 and 1997.

Such measures may be considered compatible with the proper functioning of the common market only if they help to achieve at least one of the following objectives:

- to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving degression of aid;
- to solve the social and regional problems created by total or partial reductions in the activity of production units;
- to help the coal industry adjust to environmental protection standards.

As required by Article 8 of the Decision, the Member States submitted to the Commission their plans to modernise, rationalise and restructure the coal industry. Following notification of the plans the Commission delivered opinions on their conformity with the general and specific objectives set by Articles 2, 3 and 4 of Decision No 3632/93/ECSC, and in particular the Decisions adopted on 13 December 1994[1] for Germany and Spain, 19 July 1995[2] for France, 3 November 1994[3] for Portugal and 1 June 1994[4] for the United Kingdom.

In accordance with Article 9(1) of Decision No 3632/93/ECSC, the Member States notified all the financial aid they intended to grant for 1996 and 1997, as they had for 1994 and 1995, on the basis of these modernisation, rationalisation and restructuring plans. The Commission's rulings on these measures were given in the Decisions set out below:

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[1] Decision No 94/1070/ECSC and Decision No 94/1072/ECSC - OJ L 385, 31.12.1994, p.18 and p.31 (respectively).

[2] Decision No 95/465/ECSC - OJ L 267, 9.11.1995, p. 46.

[3] Decision No 94/994/ECSC - OJ L 379, 31.12.1994, p. 3.

[4] Decision No 94/574/ECSC - OJ L 220, 25.8.1994, p. 12.

Member State	Commission Decision	Date of the Decision	Official Journal	Year of aid
United Kingdom	96/274/ECSC	7 February 1996	L 102, 25.4.1996, p. 42	1995/96
United Kingdom	96/514/ECSC	20 March 1996	L 216, 27.8.1996, p. 6	1996/97
United Kingdom	97/376/ECSC	18 December 1996	L 158, 17.6.1997, p. 44	1997/98, 1996/97
United Kingdom	97/577/ECSC	30 April 1997	L 237, 28.8.1997, p. 13	1998/99
France	96/458/ECSC	30 April 1996	L 191, 1.8.1996, p. 45	1996
Germany	96/560/ECSC	30 April 1996	L 244, 25.9.1996, p. 15	1995, 1996
Germany	98/687/ECSC	10 June 1998	L 324, 2.12.1998, p. 30	1997
Portugal	96/576/ECSC	29 May 1996	L 253, 5.10.1996, p.20	1995, 1996
Spain	96/575/ECSC	30 April 1996	L 253, 5.10.1996, p. 15	1996
Spain	96/591/ECSC	30 April 1996	L 259, 12.10.1996, p. 14	1995 (Sup.94)
Spain	98/635/ECSC	3 June 1998	L 303, 13.11.1998, p. 47	1994,1995,1996
Spain	98/636/ECSC	3 June 1998	L 303, 13.11.1998, p. 53	1997

The amounts of financial aid referred to in this document are the final figures authorised by the Commission for 1996 and 1997 under Decision No 3632/93/ECSC. This is the third report under Article 10 of this Decision following its entry into force on 1 January 1994.

2. Coal industry and market

2.1 Production

In 1996 and 1997, coal production in the European Union totalled 127.5 and 122 million tonnes, down by over 14 million tonnes compared with 1995. This reflects the general downward trend over the past few years, with the exception of 1995 in which there was a temporary increase of almost 4 million tonnes over the preceding year. The downward trend is further confirmed by the production forecast of 100 million tonnes for 1999.

Table 1

Coal production (*1000 t)

	1992	1993	1994	1995	1996	1997	1998*	% var. 1997/93
B	218	0	0	0	0	0	0	- 100
D	72153	64175	57623	58858	54261	51212	45500	- 20
E	18551	18402	18194	17627	17465	17997	17500	- 2
F	9478	8576	7538	7014	7314	5981	5066	- 33
P	221	197	147	0	0	0	0	- 100
UK	83987	67463	48971	52630	48538	46981	39000	- 30
Other	149	15	1	0	0	0	0	- 100
EUR 15	**184757**	**158828**	**132474**	**136129**	**127578**	**121963**	**106900**	**-23**

Source: Eurostat: yearly and monthly statistics (*)Commission estimates

2.2. Employment

Continuation of the measures to rationalise and reduce activity in the coal industry in most coal-producing countries led to a further drop in employment figures. In 1996, the workforce was reduced by 5 400; in 1997, there was a decline in restructuring activity and numbers were reduced by a further 3 000, resulting in a final total of 91 800 underground workers.

In 1996 and 1997, the biggest drop in absolute terms was in Germany (8 000 job losses), followed by Spain (1 300).

Estimates for 1998 put job losses within the Community as a whole at around 13 400 in the underground mining industry. Significant cutbacks are anticipated in all countries, particularly Germany (-4 700), Spain (-4 800) and the United Kingdom (-3 400).

2.3 Coal demand and trade

Internal deliveries of coal within the Community (including net imports) totalled 270.8 million tonnes in 1997, compared with 271.5 million tonnes in 1996 and 280.6 million tonnes in 1995. This development is largely due to the electricity generating sector, which has always been the main coal user in the European economy, accounting for almost 70% of total consumption.

Table 2

Consumption of coal for electricity generation (1000 t)

	1993	1994	1995	1996	1997	1998
B	6122	6407	6233	5791	4553	4900
DK	11148	12443	10340	14487	12559	10000
D	56112	54451	55079	56507	51796	54500
EL	91	64	114	170	170	100
E	24822	25815	23272	22611	22572	24000
F	7928	7845	8844	9480	9480	12000
IRL	2146	2226	2312	2351	2331	2518
I	5524	6788	8216	7585	7450	7000
NL	7669	8601	9292	8926	8500	9000
A	731	808	1057	1259	1088*	4565*
P	3852	4073	4614	4317	4203	3960
FIN	3940	5457	4011	5997	4873	2813
S	928	942	828	1230	827	1039*
UK	66163	61794	60135	54761	54837	47200
EUR 15	197176	197714	194347	195472	185239	183595

Source : Eurostat: yearly and monthly statistics * Estimates

In 1996, coal imports from third countries amounted to 138.5 million tonnes, more or less the same as in 1995. In 1997, there was an increase of 8.2 million tonnes, bringing total imports to 146.7 million tonnes. This was due both to the steady decline in Community production and to the greater competitiveness of imported coal. A further important point is that imported coal from third countries is gradually replacing Community coal in some sectors of the market, for ecological as well as economic reasons, since the imported coal is of higher quality and contains fewer pollutants.

Table 3

Imports of coal from third countries (1000t)

	1992	1993	1994	1995	1996	1997	1998*	% var. 1997/93
B	13147	11404	12087	13677	12462	12457	11600	9
DK	11789	10319	11544	12843	13121	13501	10500	31
D	14248	12627	14140	15041	16596	19797	21300	57
EL	2132	1337	1500	1320	1285	779	1400	- 42
E	13729	12293	11396	13654	11047	11047	13400	- 10
F	21401	13900	11850	9764	12313	12313	18200	- 11
IRL	2737	2690	2239	2496	2232	2618	2800	- 3
I	17557	14287	15759	18755	16555	15583	16500	9
L	253	251	206	113	106	96	100	- 62
NL	14661	14871	16750	16989	16643	19818	20200	33
A	3796	3178	2998	2818	3402	3049	3400	- 4
P	4445	4762	4960	5940	5028	5660	4900	19
FIN	4232	5932	7922	5341	6122	7395	4400	25
S	3001	3189	3028	3495	3205	3242	3200	2
UK	19817	18078	14624	15638	17287	19370	19500	7
EUR 15	**146945**	**129118**	**131003**	**137884**	**138487**	**146725**	**151300**	**14**

Source: Eurostat: yearly and monthly statistics (*)Commission estimates

3. Situation in European Union coal fields

3.1 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 16 pits, employing almost 80 000 workers, including 50 000 underground. The rate of job losses has been relatively low compared with other countries in the Union. Given the extremely diverse economic fabric of the regions concerned, a benefit 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.

On 13 March 1997, an agreement was signed between the German Government, the *Länder* of North Rhine-Westphalia and Saarland, the trade unions and the coal producers on the future of the German coal industry. It provides for annual aid, currently standing at over 10 billion German marks, to be reduced progressively to 5.5 billion by 2005. The Federal Government's share of the bill will drop from DM 7.7 billion in 1998 to DM 3.8 billion in 2005, while that of North Rhine-Westphalia will increase by 860 million to DM 1 billion. Saarland's contribution will, as in the past, be paid by the Federal Government. The decisions were ratified by the management boards of Ruhrkohle AG and Saarbergwerke AG on 25 November 1997. The plan announced by the companies involves reducing production by around 20% by 2002 and cutting back the workforce to around 56 000. The Westfalen, Göttelborn/Reden (Saarland) and Ewald/Hugo collieries will be closed down in 2000. Two of the five central plants in operation will be closed, with the loss of 500 jobs. Four other mines are to be combined into two units, Haus Aden/Monopol with Heinrich Robert and Fürst Leopold/Wulfen with Westerholt. These restructuring operations should bring production costs, expressed at 1992 prices, down to DM 242 per tce (tonne coal equivalent), compared with DM 288/tce in 1992 and around DM 270/tce in 1997. This is still, however, way out of line with prices on the international markets, currently around DM 66/tce.

Although there has as yet been no binding decision on the matter, two other mines may close between 2002 and 2005.

The merging of the three German coal producers (Ruhrkohle, Saarbergwerke, Preussag Anthrazit) into a single entity, Deutsche Kohle AG, provided for by the same agreement, was approved by the Commission on 29 July 1998 (decision not yet published). The new company will centralise the nation's entire coal production, and the merger will also affect significant areas of the companies' non-mining activities.

3.2 Spain

In Spain, coal mining is spread over a number of fields: Asturias (Central and Western field), Léon (Bierzo-Villablino, Sabero and Nord), Palencia (Guardo and Barruelo), Cataluña (Pirenaica), Teruel (Teruel-Mequinenza), Sud (Puertollano and Peñaroya). Around eighty undertakings, mostly private (following the recent privatisation of Endesa, the only exception is Hunosa, which recently took over Minas de Figaredo), share production and employ some 23 000 underground workers. Only four undertakings produce more than one million tonnes annually and 13 more than 200 000 tonnes. In 1997, 12.8 million tonnes come from underground workings and 5.2 million tonnes from open-cast mining. A series of closures announced for the end of 1998 and first few months of 1999 should reduce production by around a million tonnes. The Spanish coal fields are small, geographically isolated areas which are highly dependent on coal mining. This has a direct effect on the possibility of redeployment and reindustrialisation and, consequently, on the employment level.

3.3 France

In France, coal mining is now concentrated on the Lorraine coal field, where three underground mines were in operation at the end of 1997, and the Centre-Midi coal field, with five mines, one of which is underground. The industry employs 12 114 people, fewer than 5 000 of whom work underground. The country's only producer, Charbonnages de France, is a public sector undertaking. As part of the process of reducing production capacity which has been under way for many years and which is mainly due to unfavourable geological conditions, over 20 000 jobs were lost between 1986 and 1997. Under the National Coal Pact agreed between the two sides of industry in 1995, this process will have to continue over the next few years, leading to the complete cessation of coal mining in France by the year 2005. The seriousness of the social and regional problems has prevented the French Government from keeping to the 2002 deadline provided for in Decision No 3632/93/ECSC. The main thing, however, is that the French authorities have recognised the total lack of any prospect of the French coal industry becoming competitive in the medium or long term and are firmly committed to a reduction of activity and programmed closures.

3.4 United Kingdom

For many years, the United Kingdom was the European Union's largest coal producer. The sector has gone through a drastic restructuring process, particularly with the privatisation of the British Coal Corporation in 1994, as a result of which the number of large collieries in operation has fallen from 170 in 1983/1984 to the current 19. There are also around 50 small mines (employing fewer than 100 persons) and a variable number of open-cast workings. Over the same period, the number of workers has dropped from over 200 000 to less than 14 000 and production from 110 million tonnes to around 47 million tonnes.

Since the privatisation of British Coal was completed on 31 December 1994, the coal industry in the United Kingdom has consisted solely of private undertakings. The largest is RJB Mining (14 pits in total in 1998), while Midland Mining, Hatfield Coal Company, Goire Tower Anthracite Company, Scottish Coal and Blenkinsopp Collieries have one pit each. Celtic Energy operates a number of open-cast workings. Thanks to the concentration of activity on the most productive mines and strenuous and protracted efforts to increase viability, these companies, none of which receive State aid, have production costs which are only slightly higher than prices on the world market. In 1998, the multiannual supply contracts concluded in 1993 with the electricity generating companies came up for renewal. These contracts, in which prices were pre-set and calculated to decrease over time while remaining higher than international market prices, guaranteed a remunerative market for British coal production. Now, however, despite considerable improvements in productivity, the national companies are facing competition from imported coal and, to an even greater extent, from gas. Imported coal, apart from its more competitive price, has the advantage of a lower sulphur content, which enables the electricity generating companies to comply with the stringent restrictions on emissions without having to install costly gas scrubbing equipment, while gas not only produces fewer pollutants, but also, with the new combined cycle gas turbine technology (CCGT), enables over 50% efficiency to be achieved in converting thermal energy into electricity. The Minister for trade and industry recently submitted to the Parliament a report on the energy policy of the United Kingdom in which he describes the intention to limit the building permits concerning new gas power stations, and to encourage the maintenance of a significant number of power stations fuelled by coal to ensure sufficient diversification of the countrys energy resources.

3.5 Others

Coal production ceased in Belgium in 1992 and in Portugal in 1994. There is no significant production in any other European Union country.

4. Financial aid scheduled for the coal industry

This report covers the measures set out in Article 1 of Decision No 3632/93/ECSC, viz:

- any direct or indirect measure or support by public authorities linked to production, marketing and external trade which, even if it is not a burden on public budgets, gives an economic advantage to coal undertakings by reducing the costs which they would normally have to bear;

- 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;

- aid elements contained in financing measures taken by Member States in respect of coal undertakings which are not regarded as risk capital provided to a company under standard market-economy practice.

This report classifies aid according to the categories used in Articles 3, 4, 5, 6 and 7 of Decision No 3632/93/ECSC, i.e. distinguishing between operating aid, aid for the reduction of activity, aid to cover exceptional costs, aid for research and development and aid for environmental protection.

For all requests for authorisation it approved in accordance with Article 9 of Decision No 3632/93/ECSC, the Commission checked that the Member States concerned had provided all the required information and, on the basis of that information, that the measures were in line with the general criteria and objectives laid down in Article 2 of the Decision and with the specified criteria, viz.:

- Aid granted under Article 3: this must not exceed the difference between production cost and the price on the international market; coal may not be placed on the market at a price lower than that charged for coal of a similar quality produced in third countries; the aid must not distort competition between users; principle of annual correction.

- Aid granted under Article 4: requirement to present and respect a closure plan.

- Aid granted under Article 5: this must not exceed the costs it is intended to cover; strictly limited to the costs expressly mentioned in the Annex to Decision No 3632/93/ECSC.

When assessing aid, the Commission took full account of the need to mitigate as far as possible the social and regional consequences of the restructuring of mining activity, in accordance with the second indent of Article 2(1) of Decision 3632/93/ECSC. It also checked that the aid was compatible with the proper functioning of the common market.

A breakdown of the overall amount of aid granted by the Member States spread over these different categories also gives a fairly clear idea of the coal policy being pursued at national level and of the progress being made in the modernisation, rationalisation and restructuring process.

Table 4

Aid authorised 1992-1997

	1992	1993	1994	1995	1996	1997
Germany - operating aid* - other**	 4 497,7 246,7	 4 462,6 256,3	 ***4 845,8 181,4	 4 784,2 106,7	 ****5 361,8 104,7	 4 919,1 412,0
Spain - operating aid* - other**	 463,3 108,9	 373,3 0,0	 748,9 205,6	 798,1 255,3	 773,1 255,1	 704,5 363,8
France - operating aid* - other**	 186,9 774,6	 190,2 818,1	 298,0 614,8	 56,9 612,3	 87,6 592,3	 ***** *****
Portugal - operating aid* - other**	 5,8 0,0	 6,4 1,0	 1,8 3,6	 0,0 0,9	 0,0 0,9	 0,0 0,0
United Kingdom - operating aid* - other**	 0,0 13,1	 1,9 12,4	 20,1 870,0	 0,0 1 622,8	 0,0 512,8	 0,0 512,3
TOTAL EU - operating aid* - other**	 5 153,7 1 145,0	 5 034,4 1 087,8	 5 914,6 1 875,4	 5 639,2 2 598,0	 6 222,5 1 465,8	 5 623,6 1 288,1
Operating aid in ecu/tonne	28,1	31,7	44,7	41,17	48,77	48,40

Figures expressed in million ecus; State aid authorised in national currency has been converted into ecus at the average exchange rate for the reference year. The total for 1997 does not include the figures for France.

* 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.

*** No account taken of the activation of DM 5 350 million (ECU 2 779 million) from a credit line to cover compensation fund debts under the German law of 19 July 1994 guaranteeing coal supplies for power stations.

**** Aid originally authorised for ECU 5 370.2 million, but DM 3.75 million used by Sophia Jacoba GmbH and DM 9.8 million by Preussag Anthrazit GmbH in breach of the Decision.

***** France notified the aid granted for 1997, but it was not authorised and is still being considered by the Commission.

Compared with 1993, there was a clear increase in production-related aid per tonne of coal extracted (the calculations for 1997 do not include France), which is, in overall terms at least, at variance with the degression principle established in Decision No 3632/93/ECSC. With the exception of a certain potential in the United Kingdom, the possibility of a Community coal industry which can compete commercially on the international markets can be definitively ruled out, despite the considerable efforts made by producers on both the technological and organisational fronts to improve productivity.

There are two main reasons for this rather unsatisfactory result. The first is that, as the most easily accessible seams are exhausted, the coal has to be mined in increasingly difficult geological conditions and at greater and greater depths, in some cases exceeding 1 500 metres. This is exacerbated by more stringent regulations on mining health and safety and environmental protection, application of which has inevitably increased costs, with the result that, over the reference period, production costs have not fallen as anticipated.

Secondly, the price of coal on the international markets has dropped considerably over the past few years, for various reasons. Several non-European producers already operating on the international markets, for example, have adopted more efficient extraction methods, assisted by more favourable geological conditions; others, such as China, which in the past produced only for the domestic market, have begun to export coal, adopting aggressive marketing policies; the specific economic situation in other traditionally exporting countries, such as Indonesia and South Africa, where the national currencies are undergoing substantial devaluation and there is an urgent need to obtain hard currency, and the low price of natural oil and gas, have put strong pressure on prices to drop.

In short, the gap between production costs in the Community coal industry and the price of coal on the international markets, which is the main basis for calculating State aid, has become entrenched over the years rather than narrowing as hoped.

In practice, the only significant reductions have been in Portugal, where mining activities ceased completely at the end of 1994, and in the United Kingdom which, while maintaining a considerable degree of mining activity, has cut production drastically, keeping open only the most profitable mines. Of particular note is the position of France, which aims to cease all mining activity by 2005. The more cautious approach adopted by Germany and Spain, which have not taken any final decision, seems to be dictated by social and regional concerns rather than any kind of realistic prospect of their coal industry achieving economic equilibrium.

The aid granted by the various Member States is described in detail below.

4.1 Germany

Germany's aid to the coal industry under Article 3 of Decision No 3632/93/ECSC was restricted, as from 1996, to aid for coking coal intended for the steel industry, aid for steam coal for electricity generation, and aid to maintain an underground labour force (*Bergmannsprämie*). Consequently, production for domestic and industrial consumption must be sold at prices which cover production costs.

4.1.1 1996

For 1996, the Commission authorised DM 10 441 million (ECU 5466.5 million) in aid to the coal industry (under Articles 3 and 5 of Decision No 3632/93/ECSC), distributed as follows:

a) DM 2 359.2 for the supply of coal and coke to the Community steel industry, plus a financial measure worth DM 118.4 million for Saarbergwerke AG, charged to the public budget;

b) DM 7 486.4 million for 1996 to cover payments to German coal mines under the fifth law on coal for electricity generation (*Verstromungsgesetz*) of 12 December 1995;

c) DM 97 million under a system to maintain an underground labour force (*Bergmannsprämie*);

d) DM 200 million for Ruhrkohle AG, Saarbergwerke AG, Gewerkschaft Auguste Victoria, Sophia Jacoba GmbH and Preussag to cover exceptional costs.

The aid for supply of coal and coke to the Community steel industry referred to under a) came out of a three-year allocation for 1995-1997 totalling a maximum of DM 8 065 million, charged partly against the Federal budget and partly against the budgets of the *Länder* concerned.

A final breakdown of the amounts paid in 1996 and 1997 will be calculated in 1998. Aid granted under this scheme is to be considered as a maximum. At the end of the three-year period, a detailed account will be drawn up to establish the exact difference between the price charged and the production cost per tonne for all coal supplied. Unlike the system operated in the past, the amount of the annual supply covered by the aid is not fixed in advance. The subsidy is only available for the quantities actually supplied. Any excess amount paid will be recovered upon completion of the final accounts.

The financial measure worth DM 7486.4 million paid by Germany to the coal industry for supplies to electricity generators, referred to under b), is intended to cover the difference between the production costs and the price freely agreed by the contracting parties, and falls within the fifth law on coal for electricity generation (*Verstromungsgesetz*) of 12 December 1995. It should be remembered in this context that, under Article 9(7) of Decision No 3632/93/ECSC, the system provided for by the third law on coal for electricity generation had to be completely overhauled to bring it into line with the Decision, and that the German Constitutional Court, in its ruling of 11 October 1994, deemed the *Kohlepfennig* levy instituted in favour of the German coal industry by the said third law to be unconstitutional, with the result that it was abolished with effect from 1 January 1996.

Unlike the former levy system, this aid now falls within the Federal budget, thereby meeting the requirements of Article 2(2) of Decision No 3632/93/ECSC.

The two types of aid described above were considered by the Commission to be aid for current production within the scope of Article 3 of Decision No 3632/93/ECSC, since they cover a large proportion of the production costs of the companies in question, irrespective of the market for which the products are intended and of the principles established by Germany for the granting of aid to coal producers. The Commission considers Germany's decision to place a ceiling on aid for electricity generation as from 1996, followed by a gradual reduction in the amount of aid from DM 7 500 million for 1996 to DM 7 000 million for 1997 and DM 7 000 million for 1998, to be a step in the right direction in the light of the aims pursued by Article 2 of Decision No 3632/93/ECSC.

The DM 97 million in aid referred to under c) is intended to fund the *Bergmannsprämie* supplement payable to miners in the German coal industry at the rate of DM 10 per shift worked underground, to enable mining companies to maintain a skilled workforce underground. In this way it indirectly covers part of the difference between production costs and estimated revenue. This aid takes the form of a cash bonus for miners and reduces the coal producers' production costs accordingly. As such it should be examined in the light of Article 3 of Decision 3632/93/ECSC.

The DM 200 million in aid for Ruhrkohle AG, Saarbergwerke AG, Gewerkschaft Auguste Victoria, Sophia Jacoba GmbH and Preussag, referred to under d), was intended to cover the exceptional costs incurred in pumping out pits closed down under restructuring measures situated next to pits still in production. The cessation or slowing down of the pumping out of water in closed down mines leads to infiltration of water into working mines which has nothing to do with existing production and gives rise to additional costs. This aid, granted under Article 5 of Decision No 3632/93/ECSC, is explicitly mentioned in point II(b) of the Annex to the Decision.

4.1.2 1997

For 1997, the Commission authorised DM 10 470.4 million (ECU 5331.2 million) in aid to the coal industry (under Articles 3, 4 and 5 of Decision No 3632/93/ECSC), distributed as follows:

a) DM 6 357.2 million in operating aid under Article 3;

b) DM 3 217 million in aid for the reduction of activity under Article 4;

c) DM 87 million in aid for the *Bergmannsprämie* scheme to maintain an underground labour force under Article 3;

d) DM 200 million in aid under Article 5 for Ruhrkohle AG, Saarbergwerke AG, Preussag Anthrazit GmbH and Sophia Jacoba GmbH, to cover exceptional costs;

e) DM 609.2 million in aid under Article 5 (exceptional costs) for Ruhrkohle AG, Saarbergwerke AG and Sophia Jacoba GmbH, to enable them to cover costs resulting from restructuring of the coal industry which are not linked to current production.

The subsidies under a) and b), totalling DM 9 574.2 million, comprise DM 2 581 million in aid for the supply of coal and coke to the Community steel industry and DM 6 993.2 million for the supply of coal for electricity generation. Germany defines this as aid for coal sales. The aid for the supply of coal for electricity generation falls within the scope of the fifth law on electricity generation of 12 December 1995 (*Verstromungsgesetz*) referred to above in the report on 1996. In 1997, it was subject to a ceiling of DM 6 993.2 million. Aid actually paid is to be adjusted annually on the basis of actual costs and revenue and quantities actually sold by the end of 1998. The DM 3 217 in aid for the reduction of activity under Article 4 of Decision No 3632/93/ECSC, referred to in b) above, went to the Ruhrkohle AG mines Sophia-Jacoba[5], Ewald/Hugo, Westfalen, Fürst Leopold/Wulfen and Haus Aden/Monopol; and to Saarbergwerke AG's Göttelborn/Reden mine, as part of a programme of total or partial closure of these mines under the agreement of 13 March 1997[6].

[5] Closed in 1997

[6] Cf. section 3.1

The DM 87 million referred to in c) intended to finance the *Bergmannsprämie* supplement of DM 10 per shift worked underground, is an incentive measure to encourage skilled mining personnel to work underground and help rationalise production. The criteria pertaining to this aid are similar to those for 1996.

The DM 200 million granted to Ruhrkohle AG, Saarbergwerke AG, Preussag Anthrazit GmbH and Sophia Jacoba GmbH, referred to in d), is to cover the exceptional costs incurred for pumping out pits closed down under restructuring measures which are situated next to pits still in production. The same criteria apply as to aid in this category granted in 1996 (paragraph d)).

The DM 609.2 million in aid, referred to in e), paid to Ruhrkohle AG, Saarbergwerke AG and Sophia Jacoba GmbH, was to cover restructuring costs not linked to current production (inherited costs). It was granted as a result of decisions taken at the *Kohlerunde* negotiations of 11 November 1991 between the coal industry, the Federal Government, the *Land* governments of North Rhine-Westphalia and Saarland, the trade unions in the coal sector and the electricity generators, and is intended to cover social security benefits payable to workers forced to take early retirement, other exceptional costs, supply of free coal to workers made redundant as a result of restructuring and rationalisation and payment of allowances outside the statutory system to workers made redundant as a result of restructuring and rationalisation and those entitled to such benefits prior to restructuring. On the technical and financial side, the aid is intended for the supplementary safety measures needed underground and the exceptional intrinsic depreciation resulting from the restructuring of the industry..

The restructuring plan for 1998-2002 was examined by the Commission in accordance with Article 8 of Decision No 3632/93/ECSC in connection with the authorisation of aid for 1998.

4.2 Spain

4.2.1 1996

For 1996, the Commission authorised a total of PTA 165 274 million (ECU 1028.1 million) in aid to the coal industry under Articles 3, 4 and 5 of Decision No 3632/93/ECSC. The main destinations were:

a) PTA 124 271 million under Articles 3 and 4 to cover operating losses;

b) PTA 33 339 million under Article 5 to cover exceptional welfare benefits payable to workers made redundant as a result of modernisation, rationalisation, restructuring or reduction of activity in the Spanish coal industry;

c) PTA 7 480 million under Article 5 to cover the technical costs of pit closures resulting from modernisation, rationalisation, restructuring and reduction of activity in the Spanish coal industry;

d) PTA 50 million under Article 6 to support research and development projects;

e) PTA 100 million under Article 5 for environmental protection.

The PTA 124 271 million referred to in a) were intended to fully or partially compensate operating losses borne by coal producers.

This breaks down into PTA 49 882 million in operating aid under Article 3 of Decision 3632/93/ECSC, and PTA 74 389 million in aid for the reduction of activity under Article 4.

Of the PTA 49 882 in operating aid, PTA 43 836 million were to come from the electricity producers' compensation fund (OFICO) and the remaining PTA 6046 million from the public purse.

On 28 December 1995, Spain adopted Royal Decree No 2203/1995 on the specific costs linked to the system of subsidies to the coal industry. This defines aid to cover operating losses, aid to cover exceptional costs and the other forms of aid to the coal industry likely to be applied for by coal producers supplying fuel to electricity generators.

The aid was funded by means of a levy on electricity prices charged to consumers, administered by OFICO. In 1996, aid was not entered in public budgets or in strictly equivalent mechanisms. This situation was remedied in 1997 with the adoption of the mechanism described below.

The Spanish coal producers in receipt of operating aid may only raise their annual production costs by two points below the consumer price index at most.

Of the PTA 74 389 million in aid for the reduction of activity, PTA 21 687 million were to be funded through OFICO and the remaining PTA 52 702 million from the public purse.

The recipients of the PTA 52 702 million covered by the general State budget are Hunosa, Minas de Figaredo SA and Mina de La Camocha SA, in the central Asturias coal field.

The remaining PTA 21 687 million would also go to these companies, as well as to others in the north-western, north-eastern, and southern Spanish coal fields, which are scheduled to close by the expiry date of Decision No 3632/93/ECSC.

The PTA 33 339 million in aid referred to in b) was intended to cover the allowances payable to workers in the Spanish coal industry forced to take early retirement or made redundant as a result of the implementation of the plan to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry. Around two thirds of this aid was covered by the general State budget, the rest being financed by OFICO.

The PTA 7 480 million referred to in c) went to partially cover the fall in value of the fixed assets of coal producers having to effect total or partial closures. These producers have also been faced with exceptional costs as a result of the first phase of programmed closures scheduled to 31 December 1997. Some of this aid will be covered by the general State budget and the remainder through OFICO.

The PTA 50 million referred to in d), paid to certain coal producers and mineral exploration operators, was to support research and development. Amounting to less than 20% of the total R&D expenditure of these companies, it was intended to solve specific problems arising from the peculiar nature of coal deposits in Spain and to improve environmentally-friendly techniques for using coal. In its assessment, the Commission satisfied itself that the aid in question conformed to the rules laid down in the Community framework for State aid for research and development.

The PTA 100 million, referred to in e), granted by Spain to certain coal producers, was to support environmental protection. It was intended to enable producers to adapt more easily to the new environmental protection standards, and not in any way to cover the costs of improvements required as a normal consequence of their mining activity. In the course of its assessment, the Commission satisfied itself that the aid in question conformed to the rules laid down in the Community framework for State aid for the environment.

4.2.2 1997

For 1997, the Commission authorised a total of PTA 177 234 million (ECU 1 068.4 million) in aid to the coal industry (under Articles 3, 4 and 5 of Decision No 3632/93/ECSC). The main destinations were as follows:

a) PTA 47 347 million in operating aid under Article 3 of the Decision;

b) PTA 69 530 million in aid for the reduction of activity under Article 4 of the Decision;

c) PTA 51 244 million under Article 5 to cover exceptional social welfare benefits payable to workers made redundant as a result of the measures to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry;

d) PTA 9 113 million under Article 5 to cover exceptional technical costs occasioned by pit closures under the measures to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry.

Of the PTA 47 347 million in operating aid referred to in a), PTA 46 347 million was to be covered by the specific costs under remuneration of activities charged to the national electricity system and the remaining PTA 1 000 million was to come from the public budgets.

From 1997 onwards, Spain proposed to the Commission that it include part of the aid to the coal industry in a mechanism it considered to be strictly equivalent to entry in the public budgets as provided for in Article 2(2) of Decision No 3632/93/ECSC. This involved adding a supplementary clause to Law No 12/1996 of 30 December 1996 on the general State budget for 1997, to the effect that the specific costs of coal mining be added to the bill for electricity supplied by the distribution companies at the rate of 4.864%. The Commission's view was that entry of aid in the public budgets offered the best guarantee of transparency and it noted the undertaking by Spain to adjust the mechanisms put forward as strictly equivalent and implemented in 1997 accordingly.

The Spanish coal producers in receipt of aid are committed to cutting their production costs, at constant prices, by 2%, in line with the aim of generating a trend towards a reduction in production costs at 1992 prices as provided for in Article 3(2) of Decision No 3632/93/ECSC. This reduction, if limited, is in keeping with the principle of degression of aid. A sharper reduction would seriously threaten the survival of these companies, and the social consequences would be severe, as the mines concerned are in isolated and economically backward areas. But here again, the fact is that the arguments in favour of the survival of these mines are social rather than economic.

Of the PTA 69 530 million in aid for the reduction of activity, referred to in b), 20 235 million were covered by the specific costs charged to the national electricity system, and the remaining PTA 49 295 million were to come from the public budgets. The funds were intended for the mines in the central Asturias coal field and the coal fields in north-western, north-eastern and southern Spain scheduled to close by the expiry date of Decision No 3632/93/ECSC.

The PTA 51 244 million referred to in c) were to fund the allowances payable to workers in the Spanish coal industry forced to take early retirement or made redundant as a result of the implementation of the 1994-1997 plan to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry, and early retirement outside the statutory system of workers still without employment following the restructuring measures implemented prior to 31 December 1993.

Part of this aid - PTA 33 316 million - was covered by the general State budget, and the remaining PTA 17 928 million classed as specific costs charged against the national electricity system. All these forms of aid are currently entered in the public budgets.

The PTA 9 113 million referred to in d) was intended to partially cover the fall in value of the fixed assets of coal producers having to effect total or partial closures, and the other exceptional costs occasioned by the progressive closures under the 1994-1997 plan to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry.

Part of this aid - PTA 5 538 million, was covered by the general State budget, the remaining PTA 3 575 million being classed as specific costs charged against the national electricity system. Since 1 January 1998, these forms of aid have been entered in the public budgets.

4.3 France

4.3.1 1996

For 1996, the Commission authorised a total of FF 4 115 million (ECU 679.96 million) in aid to the coal industry (under Articles 4, 5 and 6 of Decision No 3632/93/ECSC). The main destinations were:

a) FF 569 million in aid for the reduction of activity, to cover operating losses;

b) FF 15 million in aid for research and development;

c) FF 3 831 million in aid to cover exceptional costs.

The FF 569 million referred to in a), granted under Article 4 of Decision No 3632/93/ECSC, is intended to partially offset the operating losses of Charbonnages de France. It is part of the plan to reduce the company's activity prior to complete closure, scheduled for 2005. In view of the exceptional social and regional consequences this will have, the French Government, in cooperation with the social partners, has decided to stagger the closures over the intervening period. The aid will help to fund solutions to the social and regional problems arising from the total or partial reduction of the activity of the production units.

The FF 15 million referred to in b) was allocated to Charbonnages de France under Article 6 of Decision No 3632/93/ECSC to support its research and development projects. Accounting for less than 20% of the company's total R&D expenditure, it mainly concerns, in the mining sector, further improvement of cutting and excavation performance, improvement of safety and working conditions (in particular through research in the fields of ergonomics, ventilation and safety vis-à-vis firedamp problems), the extension of remote control and monitoring and transmission of information, the environment and, in connection with the utilisation of coal, coal behaviour, the upgrading of ash, the analysis of gaseous pollutants and the development of fluidised bed combustion. The Commission is satisfied that this aid is in conformity with the Community framework of State aid for research and development.

The FF 3 831 million referred to in c) is to cover exceptional costs arising from the modernisation, rationalisation or restructuring of the coal industry which are not related to current production (inherited liabilities). In accordance with Article 5 of Decision 3632/93/ECSC, this covers the costs explicitly defined in the Annex to the Decision, viz:

- FF 516 million towards the cost of paying social welfare benefits resulting from the pensioning-off of workers before they reach the statutory retirement age;
- FF 155 million as exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalisation;
- FF 72 million as payment towards residual costs resulting from administrative, legal or tax provisions;
- FF 189 million towards additional underground safety work resulting from restructuring;
- FF 22 million towards mining damage caused by pits previously in service;
- FF 35 million towards exceptional intrinsic depreciation resulting from the restructuring of the industry;
- FF 2 842 million towards the increase in the contributions, outside the statutory system, to cover social security costs as a result of the drop, following restructuring, in the number of contributors.

4.3.2 1997

France notified a request for authorisation for State aid to the coal industry of FF 5 334 million (ECU 806.6 million) to be granted to the public undertaking Charbonnages de France. FF 2 889 million of this were to cover restructuring costs, and FF 2 445 million intended as capital injection. The aid was not approved by the Commission and its conformity with the criteria of the Decision is currently being assessed.

4.4 United Kingdom

Since the privatisation of British Coal was completed at the end of 1994 and the new legal and administrative framework for the British coal industry was brought in by the 1994 Coal Industry Act, the United Kingdom has no longer granted State aid related to current production. All aid in respect of the period concerned was therefore authorised under Article 5 of Decision No 3632/93/ECSC as exceptional costs arising from the modernisation, rationalisation or restructuring of the coal industry (inherited liabilities), according to the provisions of the Annex.

4.4.1 1996/97

For 1996/97, the Commission authorised £402 million (ECU 512.8 million) in aid to the coal industry. The main destinations were as follows:

a) £37 million to the British Coal Corporation or the public body replacing it, to cover the cost of exceptional social welfare benefits payable to workers who lose their jobs as a result of restructuring, rationalisation and modernisation of the coal industry;

b) £115 million for contributions to the pension schemes of the British Coal Corporation employees and their dependents;

c) £90 million for supply of free coal or smokeless fuel or, in some cases, cash payment to former employees of the British Coal Corporation or their dependents;

d) £59 million in compensation for accidents or physical injuries sustained by former employees of the British Coal Corporation and their dependents;

e) £95 million towards the cost of environmental damage resulting from mining activity prior to privatisation;

f) £6 million to cover the costs arising from the British Coal Corporation's residual activities.

The £37 million referred to in a), intended to cover the exceptional social welfare costs arising from the closure of British Coal Corporation mines, is to help the company and the British Government to meet their compensation obligations towards the workers who have lost their jobs or been transferred to other mines as a result of the measures to restructure, rationalise and modernise the British coal industry.

The £115 million referred to in b) is intended to cover contributions to pension schemes and other pension arrangements for around 600 000 persons insured through their activity as employees of the British Coal Corporation. The pension rights of British Coal Corporation employees who stay on after privatisation, relating to their employed activity after the date of privatisation, are the responsibility of the new industry-wide pension schemes financed entirely by the new companies.

The £90 million referred to in c), covering the entitlement of former employees of British Coal Corporation or their dependents to free coal or smokeless fuel or, in some cases, cash-in-lieu, arises from the British Coal Corporation's obligations under agreements signed with the miners' trade unions. For workers transferring to the new privatised companies. this obligation has been taken over by the new companies. This aid was originally covered by the provision of £2 000 million authorised by Decision No 90/634/ECSC. This reserve, held by the British Coal Corporation, was paid back to the government when the company was privatised, and reauthorisation is needed for the amounts in question for the financial years following privatisation.

The £59 million referred to in d) is to cover the cost of compensation payable by British Coal Corporation to workers sustaining accidents or other physical injury in the course of their paid activity. within the undertaking prior to the date of privatisation. The beneficiaries of these financial measures are workers made redundant, retired or transferred to the privatised companies. The new companies are responsible for all obligations in connection with accidents occurring after privatisation.

The £95 million referred to in e) allocated to the Coal Authority, a public sector body, and/or, provisionally, to the residual part of the British Coal Corporation, is intended to cover liabilities for the environmental damage caused by underground production activities prior to privatisation of the British Coal Corporation. Part of these liabilities are for damage caused on the surface by subsidence. The other liabilities include the rehabilitation of abandoned mine sites and tips, methane venting and water pumping from old workings. The companies succeeding the British Coal Corporation are responsible for the obligations connected with the working of the resources or mines transferred to them, as this is one of their areas of responsibility defined in their operating licences.

The £6 million, referred to in f), to cover the costs arising from the British Coal Corporation's residual activities between privatisation and the dissolution of the Corporation is to meet the Corporation's obligation to cover certain residual activities not related to current production, such as the management and disposal of the Corporation's residual property assets and liabilities in the period up to December 1997, the privatisation of the remaining subsidiaries, particularly the taxes on the revenue from sale of these subsidiaries, the obligations to complete certain ongoing research programmes, the Corporation's responsibilities with regard to certain legal action taken against it (other than for compensation for industrial injury or damage to health) and, finally, the cost to the Coal Authority of activities relevant to maintaining access to coal reserves after mining has stopped.

4.4.2 1997/98

For 1997/1998, the Commission authorised £347 million (ECU 512.3 million) in aid to the coal industry. The main destinations were:

a) £23 million to the British Coal Corporation or the public body succeeding it to cover the cost of exceptional social welfare benefits payable to workers made redundant as a result of measures to restructure, rationalise and modernise the British coal industry;

b) £55 million for contributions to the pension schemes of British Coal Corporation employees and their dependents;

c) £93 million for the supply of free coal or smokeless fuel, or, in some cases, cash-in-lieu, to former British Coal Corporation employees or their dependents;

d) £67 million to cover compensation for accidents or physical injuries sustained by former British Coal Corporation employees or their dependents;

e) £87 million to cover environmental damage resulting from mining activity prior to privatisation;

f) £22 million to cover costs arising from residual activities of the British Coal Corporation.

The aid granted for the 1997/1998 financial year was a continuation of the aid authorised for 1996/1997, falling within the same categories, which are described in detail under the relevant paragraphs for the previous year.

4.5 Portugal

Since the Germunde mine closed on 31 December 1994, there has been no subsidised coal production in Portugal. For 1995 and 1996, therefore, the only aid paid by Portugal was under Article 5 of Decision 3632/93/ECSC, to cover exceptional costs. The ESC 345.9 million (just under ECU 1.8 million) concerned went to partially cover the compensation payable to some 49 employees of Carbonífera do Douro who lost their jobs when mining activity ceased definitively. These costs are not related to current production and must therefore be classed as inherited liabilities. The first set of payments was made in respect of the 1995 financial year and the second in respect of 1996.

5. Legal disputes

5.1 Complaints

The Commission monitors very closely the influence State aid can have on the proper functioning of the Community market in coal, taking any measures necessary to put a halt to illegal practices in connection with State aid. The Commission Decision of 29 July 1998, adopted following two complaints formally lodged on 23 October and 5 November 1996 through the office of the United Kingdom Permanent Representative to the EU by the British company Celtic Energy Ltd, concerning the German mining companies Sophia Jacoba GmbH and Preussag Anthrazit GmbH, is one example. The complaints concerned the sale of subsidised anthracite placed on the Community market in 1996 and 1997 by the German companies.

The prices charged by these two companies on the Community market were extremely low in relation to production costs and, according to the complaints, could only have been possible with the help of German State aid under Decision No 3632/93/ECSC. This aid which, according to the complaints, covered a large proportion of the said companies' production costs, was alleged to have been partially used for a purpose other than that for which it had been authorised.

Following an exchange of correspondence with Germany, the United Kingdom and certain competing companies, the Commission upheld the complaints and ordered Sophia Jacoba GmbH and Preussag Anthrazit GmbH to repay to the Federal Government the DM 3.75 million and DM 9.8 million respectively which had been used in breach of Decision No 96/560/ECSC, relating to State aid for 1996. Preussag Anthrazit was also ordered, for the same reason, to repay DM 6.8 million received in State aid for 1997 and paid prior to the Decision.

The figures given in this report have been adjusted to take into account these reimbursements, the companies concerned having confirmed that they have repaid the amounts in question.

5.2 Appeals

Recently, the British company RJB Mining Plc lodged appeals with the Court of First Instance of the European Communities against certain Commission Decisions taken in 1997, viz:

1) Case T-110/98 against the Commission Decision of 10 June 1998 on German aid to the coal industry for 1997.

2) Case T-111/98 against Commission Decisions 98/635/ECSC, 98/636/ECSC and 98/637/ECSC of 3 June 1998 on Spanish aid to the coal industry for 1994, 1995, 1996, 1997 and 1998.

These appeals are currently before the Court of First Instance of the European Communities.

6. Conclusions

The application of the Community system of aid to the coal industry essentially results in a series of derogations to Article 4c) of the ECSC Treaty, the main objective of which is to minimise the social and regional consequences of restructuring and the reduction in activity in the European Union coal industry which, without these derogations, would be largely condemned to disappear rapidly.

Since Decision No 3632/93 ECSC was adopted, its principles and objectives have led to greater transparency of the aid granted. However, it has in general not helped to secure medium-term prospects for the industry.

While State aid can offer an adequate means of coping with economic crises, the state aid given to coal production in the EU has not been capable of providing an answer in economic terms to the structural crisis facing the European coal industry. In practice, they have often only provided a relatively slight improvement in production costs in the light of coal prices on the world market. This is largely due to the progressive deterioration in production conditions brought about by increasingly difficult geological conditions and often the lack of structural change in the coal-producing firms resulting from the absence of competitive pressure.

The strategy of lowering production costs through the use of more advanced technology has proved ineffective; the same technology is being used abroad in more favourable geological conditions and ground has, if anything, been lost rather that gained in terms of competitiveness.

A further problem is that, if it extends over several decades, as has been the case since 1965 with the coal industry, State aid tends to become absorbed into the economic fabric of the undertakings concerned, where it takes on a sort of life of its own: interests become established, habits become standard practice and turn into rights. A policy of reducing aid dependent on bringing down production costs thus becomes even more difficult to implement. Consequently, every time there has been a significant reduction in aid, it has been achieved through mine closures rather than any sharp drop in production costs in existing mines.

As is stated in this report, two negative environmental effects of coal subsidies have to be kept in mind. First, they encourage the use of domestically produced coal, which is sometimes of lower quality than imported coal. Secondly, by encouraging the use of coal they contribute to higher emissions of CO_2. However, the Commission is promoting through several programmes the development and implementation of clean coal technologies.