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REPORT FROM THE COMMISSION

on the application of the Community rules for state aid to the coal industry in 2001

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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.

The report examines the financial aid granted by France, Germany, Spain and the United Kingdom to their coal industries in 2001.

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. After examining 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] 2 December 1998[2] and 21 December 2000[3] for Germany, 13 December 1994[4] and 3 June 1998[5] for Spain, 19 July 1995[6] for France, and 1 June 1994[7] and 15 November 2000[8] 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 2001, as they had for the previous years, 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:

1 Decision 94/1070/ECSC of 13 December 1994 - OJ L 385, 31.12.1994, p. 18.
2 Decision 99/270/ECSC of 2 December 1998 - OJ L 109, 27.4.1999, p.14.
3 Decision 2001/361/ECSC of 21 December 2000 - OJ L 127, 9.5.2001, p.55.
4 Decision 94/1072/ECSC of 13 December 1994 - OJ L 385, 31.12.1994, p. 31.
5 Decision 98/637/ECSC of 3 June 1998 - OJ L 303, 13.11.1998, p. 57.
6 Decision 95/465/ECSC of 19 July 1995 - OJ L 267, 9.11.1995, p. 46.
7 Decision 94/574/ECSC of 1 June 1994 - OJ L 220, 25.8.1994, p.12.
8 Decision 2001/114/ECSC of 15 November 2000 - OJ L 43, 14.2.2001, p. 27.

Member State	Commission Decision	Date of the Decision	Official Journal	Year of aid
United Kingdom	2001/683/ECSC	8 May 2001	L 241, 11.9.2001, p. 10	2001
United Kingdom	2001/807/ECSC	25 July 2001	L 305, 22.11.2001, p. 27	2001
United Kingdom	2001/82/ECSC	17 October 2001	L 35, 6.2.2002, p. 19	2001
Spain	2001/XXX/ECSC	11 December 2001	Not yet published	2001
Germany	2000/361/ECSC	21 December 2000	L 127, 09.05.2001, p. 55	2000-2001
France	2001/678/ECSC	23 May 2001	L 239, 7.9.2001, p. 35	2001

The amounts of financial aid referred to in this document are the final figures authorised by the Commission for 2001 under Decision No 3632/93/ECSC. Aid for various purposes such as, for example, the specific social benefits paid by the Member States as part of the special contribution provided for under Article 56 of the ECSC Treaty is therefore not included. This is the sixth 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 2001, coal production in the European Union totalled 77.3 million tonnes, down by 5.2 million tonnes compared with 2000. This reflects the general downward trend over the past few years, and should be further confirmed since the production forecast for 2002 is approximately 75 million tonnes.

Table 1

Coal production (1000 t)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001*
B	218	0	0	0	0	0	0	0	0	0
D	72153	57900	52000	53100	47900	45800	40700	39200	33300	29000
E	18551	18402	18194	17627	17688	18000	16320	15420	14800	13800
F	9478	8576	7538	7014	7310	5779	4862	4532	3166	2334
P	221	197	147	0	0	0	0	0	0	0
UK	83987	67463	48971	52630	48538	48490	41180	37080	31970	32121
Other	149	15	1	0	0	0	0	0	0	0
EU 15	**184757**	**152553**	**126851**	**130371**	**121436**	**118069**	**103062**	**96323**	**83236**	**77255**

Source: Member States; yearly statistics (1992-2000); *=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 2001, the workforce was reduced by 5 600 to 87 800 workers. The biggest drop in absolute terms was in Germany, with 4 400 job losses, followed by Spain (about 1 400). In France, there were about 1 000 job losses. Further reductions are expected in 2002, above all in Germany and Spain. In the

United Kingdom, the number of workers in the coal industry rose from about 11 500 in 2000 to 12 700 in 2001.

2.3. Coal demand and trade

Internal deliveries of coal within the Community (including net imports) remained almost stable at 257 million tonnes in 2001. This development is largely due to the electricity generating sector, which has always been the main coal user in the European economy, accounting for about 70% of total consumption. .

Table 2

Total internal deliveries of coal (1000 t)

	1993	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001***
B	11 118	11 569	13 122	12 106	10 767	11 077	9 897	9 628	9686
DK	10 219	11 569	12 937	13 011	11 161	10 446	7 804	6 671	5572
D	75 179	75 003	78 904	72 558	69 367	83 940	65 311	67 399	65126
EL	2 279	1 944	1 447	2 490	1 927	1 623	1 382	1 030	1150
E	30 802	29 518	31 152	28 778	32 778	30 948	34 681	37 133	35514
F	26 818	21 698	19 803	15 907	21 503	25 533	21 946	22 229	21095
IRL	3 092	2 988	3 104	3 147	3 043	2 918	1 839	2 795	2737
I	14 950	14 426	11 310	15 993	16 071	17 068	16 972	17 957	19859
L	277	303	217	245	195	153	151	171	203
NL	13 524	13 944	14 937	14 690	15 123	15 175	11 528	15 500	15942
A	3 029	2 826	2 728	3 393	3 317	3 458	3 733	3 731	3483
P	4 761	5 144	5 940	5 688	5 660	5 046	6 099	6 367	5751
FIN	4 222	5 549	6 192	4 034	4 096	3 081	3 785	4 573	4328
S	2 422	2 582	1 978	3 054	6 095	5 938	2 980	3 078	3147
UK	85 733	69 024	76 469	74 658	72 846	67 490	56 083	58 897	64051
EUR 15	**288 425**	**268 087**	**280 240**	**269 692**	**273 949**	**265 385**	**244 191**	**257 159**	**257644**

Source: Eurostat; yearly (1992-1998) and monthly (1999, 2000); *=estimates

In 2001, coal imports from third countries rose to more than 181 million tonnes in order to compensate for reduced internal production. The price of coal - unlike that of hydrocarbons - rose by around 20% on the international markets in 2001. A further important point is that imported coal from third countries is gradually replacing Community coal in some sectors of the market. The transport of coal by sea does not give rise to any major environmental problems. Unlike oil tankers, ships transporting coal do not cause large-scale pollution in the event of capsizing or collision and there are fewer risks of fire.

Table 3

Imports of coal from third countries (1000 t)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001*
B	13147	11404	12087	13671	12465	12459	12370	12634	10085	11237
DK	11789	10319	11544	12975	13116	13471	8070	7117	6412	6813
D	14248	12627	13896	13891	15578	19031	20527	22280	27500	28325
EL	2132	1337	1500	1409	1778	1214	1370	1203	1200	1235
E	13729	12293	11395	13595	11783	11045	14342	20198	21090	21623
F	21401	13900	11914	12790	11216	12437	17247	17491	18412	18177
IRL	2737	2690	2243	2744	2578	2874	2685	2384	2565	2689
I	17557	14287	15889	18481	16540	15292	16565	17309	19004	18591
L	253	251	207	107	107	99	91	153	114	124
NL	14661	14871	16746	17021	16644	20030	22078	19002	19000	19806
A	3796	3178	2580	2859	3637	3766	3727	3349	3450	3615
P	4445	4762	4990	5711	5349	5758	5113	6080	5000	5685
FIN	4232	5932	7862	5821	6866	6944	4608	3597	4573	4824
S	3001	3189	3024	3459	3211	3246	3012	2930	2963	2976
UK	19817	18078	14570	15612	17573	19370	20035	20758	23260	35305
EUR 15	**146945**	**129118**	**130447**	**140306**	**138441**	**147036**	**151840**	**154687**	**164628**	**180925**

Source: Eurostat; yearly (1992-1999) and monthly (2000); *=estimates

3. SITUATION IN EUROPEAN UNION COAL FIELDS

3.1. Germany

In the main coal producing country in the European Union, the coal industry is in effect concentrated in two fields, the Ruhr and the Saar. Following the merger[9] of the three German coal producers (Ruhrkohle AG, Saarbergwerke AG, Preussag Anthrazit GmbH), a single entity, Deutsche Steinkohle AG, now centralises the nation's entire coal production. Production is centred on 12 pits, employing about 52 600 workers at the end of 2001, including 24 300 underground.

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 9.2 billion German marks (DEM), to be reduced progressively to 5.3 billion by 2005. The Federal Government's share of the bill was to drop from DEM 7.7 billion in 1998 to DEM 3.8 billion in 2005, while that of North Rhine-Westphalia would increase, rising from 860 million to DEM 1 billion. Saarland's contribution would, as in the past, be paid by the Federal Government. The plan announced by the companies involved reducing production by around 20% between 2000 and 2002 and cutting back the workforce to around 56 000. Subsequently, production would be brought down to 26 million tonnes in 2005 and by that date only ten mines and 36 000 workers would still be in service. In the course of 2000, in view of the fall in coal prices to an all-time low and the steel industry's reduced demand for ore and coke, the German Government decided to expedite the restructuring process: in 2000 mining ceased completely in three pits (Westfalen, Göttelborn/Reden and Ewald/Hugo), and in 2001 the

9 See also section 5.2, Case T-156/98.

Auguste Victoria and Blumenthal/Haard mines were grouped together. In 2002, the Friedrich Heinrich/Rheinland and Niederberg mines will also be grouped together and production will be cut to 29 million tonnes. Following these restructurings, the costs of production, expressed in 1992 prices, should fall to DEM 242 per tce (tonne coal equivalent) in 2002, compared with DEM 288/tce in 1992. This is still, however, way out of line with prices on the international markets, currently around DEM 92/tce.

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). 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. A plan for the alternative development of mining communities was therefore provided along with the Spanish mining plan. Production is shared among 52 undertakings, mostly private (following the recent privatisation of Endesa, the only exception is Hunosa, which took over Minas de Figaredo in 1998). The industry employs around 15 600 workers, including contract workers. Eight companies alone produce more than one million tonnes annually and 10 others more than 100 000 tonnes. In Decision 98/637/ECSC of 3 June 1998, the Commission approved the second part of the plan, concerning the years 1998-2002, to modernise, rationalise and restructure the coal industry, which involves cutting production annually to no more than 14.5 million tonnes by 2002.

3.3. France

In France, coal mining is now concentrated on the Lorraine coal field, with two underground mines in operation (Merlebach and La Houve), and the Centre-Midi coal field, with five mines, one of which is underground (Gardanne, in Provence). The industry employs 6 945 people, 2 981 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 23 000 jobs were lost between 1986 and 2001. 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. According to Charbonnages de France, the cost of production is FRF 1 267 per tonne, compared with a market price of FRF 335. A recent Court of Auditors report urged the government to implement the mine closure programme without delay, with reference to the FRF 233 billion paid out between 1970 and 2000.

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 241 in 1976 to the current 18. 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 300 000 to 12 712 at the end of 2001 (including 9 294 underground) and production from 125 million tonnes to around 32 million tonnes.

Since the privatisation of British Coal on 31 December 1994, the UK coal industry has consisted solely of private undertakings. The largest is UK Coal plc[10] (13 pits in total: Clipstone, Daw Mill, Ellington, Harworth, Kellingley, Maltby, Rotherham Prince of Wales, Riccall/Whitemore Mine, Rossington, Stillingfleet Combine, Thoresby, Welbeck, Wistow Mine[11]), while Betws Anthracite, 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 have production costs very close to prices on the world market. Despite considerable improvements in productivity, however, the coal companies are now facing competition from imported coal and, above all, from gas. Imported coal, apart from its more competitive price, often has the advantage of a lower SO_2 content, which enables the electricity generating companies to comply more easily with the stringent restrictions on emissions, 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, with a relatively small investment. In 1999 and 2000, the situation has become increasingly critical, due both to the widespread drop in coal prices on the international markets and the high value of the pound sterling, and the imminent expiry of a moratorium on consents for the construction of new gas-fired generating stations was expected to exacerbate the situation. The British Government, considering that the problems of the national coal industry were of a temporary nature and that there was still a realistic prospect of achieving a return to satisfactory viability in the medium term, by letter of 26 July 2000 sent notification of a modernisation, rationalisation and restructuring plan for the UK coal industry and the UK Coal Operating Aid Scheme, covering the period from 17 April 2000 to 23 July 2002. On 15 November 2000, the European Commission approved the above-mentioned modernisation, rationalisation and restructuring plan for the UK coal industry, which provides for financial aid to the coal industry up to a total amount of no more than GBP 110 million. Later on, an increase to GBP 170 million was authorised. The purpose of the aid is to make the production units competitive following the expiry of the ECSC Treaty. At the same time, the Secretary of State for Trade and Industry announced that the government was lifting the moratorium on the construction of new gas-fired generating stations and giving the green light to six new power stations.

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,

[10] Formerly RJB Mining.
[11] The Riccall/Whitemore, Stillingfleet and Wistow pits are also known as the 'Selby Complex'.

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. Finally, we would reiterate that aid for various purposes, such as, for example, the specific social benefits paid by the Member States as part of the special contribution provided for under Article 56 of the ECSC Treaty is not included.

Table 4

Aid authorised 1994-2001

	1994	1995	1996	1997	1998	1999	2000	2001
Germany								
- operating aid*	[12]4845.8	4784.2	[13]5361.8	3280.5	2667.2	2665.9	2003.2	1789.5
- aid for the reduction of activity**	0.0	0.0	0.0	1637.7	1606.8	1646.4	1604.4	965.8
- other***	181.4	106.7	104.7	412.0	513.4	388.2	1086.0	1400.9
Spain								
- operating aid*	249.1	296.8	310.3	285.4	355.6	327.8	292.7	274.3
- aid for the reduction of activity**	499.9	501.3	462.8	419.1	403.2	399.6	405.6	350.2
- other***	205.6	255.3	255.1	363.8	400.5	343.9	422.8	444.6
France								
- operating aid*	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
- aid for the reduction of activity**	298.0	56.9	87.6	371.1	383.7	354.3	389.6	349.1
- other***	614.8	612.3	592.3	585.1	614.9	630.4	620.6	642.3
Portugal								
- operating aid*	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
- aid for the reduction of activity**	1.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0
- other***	3.6	0.9	0.9	0.0	0.0	0.0	0.0	0.0
United Kingdom								
- operating aid*	20.1	0.0	0.0	0.0	0.0	0.0	151.5	76.2
- aid for the reduction of activity**	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
- other***	870.0	1622.8	512.8	512.3	1317.2	0.0	0.0	0.0
EU TOTAL								
- operating aid*	5115.0	5081.0	5672.1	3565.9	3022.7	2993.7	2447.4	2140.0
- aid for the reduction of activity**	799.7	558.1	550.4	2427.9	2393.7	2400.2	2399.7	1665.1
- other***	1875.4	2595.7	1465.8	1873.2	2846.0	1362.5	2129.5	2487.8
Aid in €/ecu/tonne								
- operating aid*	68.31	42.57	51.33	35.73	34.56	34.95	34.42	33.2
- aid for the reduction of activity**	71.90	53.35	51.30	135.76	152.09	155.65	159.87	96.5

Figures expressed in million ecus/euros; State aid authorised in national currency has been converted into ecus/euros at the average exchange rate for the reference year.
*:Aid granted under Article 3 of Decision No 3632/93/ECSC.
**:Aid granted under Article 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.

Compared with 1994, there was a certain reduction in production-related aid per tonne of coal extracted, at least, which is in line with the degression principle established in Decision No 3632/93/ECSC. The increasing deployment of aid for the reduction of activity, on the other hand, has caused the overall total to rise, reducing the true significance of this result. The possibility of a Community coal industry which can compete commercially on the international markets appears more and more to be receding, despite the considerable efforts made by producers on both the technological and organisational fronts to improve productivity. There are two main reasons for this result. The first is that, as the most easily

[12] 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.

[13] 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.

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, even if the price of coal on the international markets has risen considerably during the last year, there is still a large difference between production costs in the EU countries and the price of imports. This is due to 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. Finally, 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 narrowed slightly during the last year, but is still very wide.

In practice, significant reductions have been seen 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. Even if Germany and Spain have not taken a final decision and are adopting a more cautious approach, those two countries are also making substantial restructuring efforts 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*). Such aid is meant to cover the difference between production costs and selling prices freely negotiated on the basis of conditions prevailing on the world markets for coal of a similar quality originating in non-member countries. Consequently, production for domestic and industrial consumption must be sold at prices which cover production costs. This aid was approved by the Commission, which took due account of the social and regional impact of the restructuring of the coal industry. The unemployment rate in the affected areas is indeed considerably higher than in the rest of the country. These areas are also generally eligible for aid from the regional development fund, under the Objective No 2 priorities. This aid has been entered in the federal budget and thus meets the requirements of Article 2(2) of Decision No 3632/93/ECSC.

For 2001, the Commission authorised DEM 9 180 million (EUR 4 693.7 million) in aid to the coal industry (under Articles 3, 4 and 5 of Decision No 3632/93/ECSC), the most important destinations of which were:

– a) DEM 3 847 million (EUR 1 966.9 million) in operating aid under Article 3;

– b) DEM 3 138 million (EUR 1 604.4 million) in aid for the reduction of activity under Article 4;

– c) DEM 71 million (EUR 36.3 million) under the system to maintain an underground labour force (*Bergmannsprämie*) under Article 3;

– d) DEM 2 124 million (EUR 1 086 million) under Article 5 to cover exceptional costs.

The subsidies in (a), totalling DEM 3 847 million, were intended to cover the difference between production costs and the selling price on the world market for coal of a similar quality from third countries. The above aid was to be allocated only to cover losses incurred in those production areas meeting the criteria of making progress towards achieving economic viability in the medium term, as stipulated in the first indent of Article 2(1) and in Article 3 of Decision No 3632/93/ECSC.

The DEM 3 138 million in aid for the reduction of activity, in (b), was paid to the Westfalen, Göttelborn/Reden and Ewald/Hugo sites, which were closed down in 2000, the Auguste Victoria and Blumenthal/Haard sites which are due to be regrouped and partially closed down in 2001, and the Friedrich Heinrich/Rheinland and Niederberg mines which are to undergo the same in 2002. Finally, the aid will cover the losses incurred at sites scheduled for closure after 2002.

The DEM 71 million referred to in (c), intended to finance the *Bergmannsprämie* supplement of DEM 10 per shift worked underground, is an incentive measure to encourage skilled mining personnel to work underground and help rationalise production. It indirectly covers part of the difference between the cost of production and foreseeable income. What is more, this aid reduces the cost of production by that amount and must therefore be examined in the light of Article 3 of Decision No 3632/93/ECSC.

The DEM 2 124 million in aid, referred to in (e), was to cover restructuring costs not linked to current production (inherited liabilities), such as 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. This aid is also granted pursuant to Article 5 of Decision No 3632/93/ECSC and is explicitly mentioned in Title II, paragraphs a), b), c), d), f) and k) of the Annex to this Decision.

The increase in the allocation in relation to the previous year may be explained by the closure of three production sites mentioned above, Westfalen, Göttelborn/Reden and Ewald/Hugo, in the course of the year.

4.2. Spain

For 2001, the Commission authorised ESP 186 541 million (EUR 1 121.1 million) in aid to the coal industry (under Articles 3, 4 and 5 of Decision No 3632/93/ECSC), the most important destinations of which were:

– a) ESP 45 636 499 056 million (EUR 274 280 883.34) in operating aid under Article 3;

– b) ESP 58 271 million (EUR 350 215 763.35) for the reduction of activity under Article 4; the authorised amount of ESP 58 271 will be deducted from any compensation which may by paid to Hunosa as tax credit on company tax following the consolidation of the balance sheets of the undertakings incorporated in Sepi;

– c) ESP 59 507 million (EUR 357 644 272.96) under Article 5, aimed at financing exceptional welfare benefits payable to workers made redundant as a result of modernisation, rationalisation, restructuring and reduction of activity in the Spanish coal industry;

– d) ESP 14 475 million (EUR 86 996 502.11) 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.

The Commission will take a decision on the following amounts at a later date when it has received the additional information it has asked Spain to provide:

– a) operating aid of ESP 1 115 500 944 (EUR 6 704 295.70) under Article 3 of Decision No 3632/93/ECSC for González y Díez, SA;

– b) aid for the reduction of activity of ESP 6 000 million (EUR 36 060 726.26) under Article 4 of Decision No 3632/93/ECSC for Hunosa and ESP 287 million (EUR 1 724 904.74) for Minas de la Camocha SA;

– c) aid of ESP 14 475 million (EUR 86 996 502.11), ESP 4 795 for Hunosa and ESP 394 million for González y Díez, SA to cover exceptional welfare aid under Article 5 of Decision No 3632/93/ESSC.

The ESP 45 636 499 056 million (EUR 274 280 883.34) in operating aid is intended to cover the operating losses of 42 coalmining companies accounting for an overall production of 10 706 900 million tonnes in 2001. The mean production cost in 1999, at 1992 prices, of the undertakings receiving aid under Article 3 of Decision No 3632/93/ECSC is EUR 73.37/tce, broken down as follows:

– 4.23% of production at costs below EUR 60/tce

– 52.72% of production at costs between EUR 60 and 79/tce

– 29.39% of production at costs between EUR 80 and 99/tce

– 13.66% of production at costs above EUR 100/tce.

The Commission has noted that the downward trend of production costs at 1992 prices observed during the period 1994-1999 will continue in 2001. The reduction envisaged for 2001, compared with 1994, will be 18.5% at 1992 prices.

The aid to reduce activity totalling ESP 58 271 million (EUR 350 215 763.35) is intended to cover the operating losses of the undertakings listed in the footnote which have been included in closure and/or action-reduction plans in conformity with Article 4 of Decision No 3632/93/ECSC.[14] The total production to be covered by the aid to reduce activity is 3 200 200 tonnes annual capacity.

The aid of ESP 59 507 million (EUR 357 644 272.96) is intended to cover, with the exception of the costs for the payment of social welfare benefits borne by the State as a special contribution pursuant to Article 56 of the Treaty, compensation paid to workers in Spanish coal undertakings who have had or will have to take early retirement or have lost their jobs under the modernisation, rationalisation, restructuring and activity-reduction plan for the Spanish coal industry. Part of this aid, totalling ESP 37 507 million (EUR 225 421 609.99), will be granted to Hunosa to cover the cost of workers who took early retirement before 1 January 2001 and about 500 workers who will retire in 2001. This part of the aid will be granted to Hunosa via Sepi. The remaining ESP 22 000 million (EUR 132 222 662.96) is intended to cover compensation for some 7 200 workers in other undertakings in early retirement at the end of 2001 as a result of the modernisation, rationalisation, restructuring and activity reduction measures.

The aid of ESP 14 475 million (EUR 86 996 502.11) which Spain proposes to grant is intended to cover the loss of value of the fixed assets of coal undertakings which have to close down totally or partially, and other exceptional costs to enable undertakings to cover the costs that have arisen or are due to arise from the progressive closures connected with the restructuring of the coal industry. Part of this aid, totalling ESP 5 193 million (EUR 31 210 558.60), is intended for Hunosa and will be granted via Sepi. The remaining sum, totalling ESP 9 676 million (EUR 58 153 931.22), concerns the other undertakings that are restructuring or reducing their activity.

4.3. France

For 2001, the Commission authorised FRF 6 503 million (EUR 991.4 million) in aid to the coal industry (under Articles 4 and 5 of Decision No 3632/93/ECSC), the most important destinations of which were:

– a maximum of FRF 2080 million (EUR 317.1 million) in aid for the reduction of activity, intended to cover operating losses;

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[14] Hunosa ESP 53 513 million (EUR 321 619 607.42), Minas de la Camocha SA ESP 4 743 million (EUR 28 506 004.11), the underground workings of Endesa ESP 635 million (EUR 3 816 426.86), the underground workings of Encasur ESP 328 million (EUR 1 971 319.70, Antracitas de Guillón ESP 782 million (EUR 4 699 914.66), Coto Minero Jove SA ESP 667 million (EUR 4 008 750.740), Industrial y Comercial Minera SA (Incomisa) ESP 144 million (EUR 865 457.43), Mina Escobal SL ESP 51 million (EUR 306 516.17), Minas de Escucha SA ESP 351 million (EUR 2 109 552.49), Minas de Valdeloso SL ESP 120 million (EUR 721 214.53), Promotora de Minas de Carbón SA ESP 298 million (EUR 1 791 016.07) and Virgilio Riesco SA ESP 186 million (EUR 1 117 882.51). The remaining sum of ESP 2 740 million (EUR 16 467 731.66) is intended for 13 undertakings which are reducing production capacity.

- a maximum of FRF 210 million (EUR 32.0 million) in aid for the reduction of activity, intended to cover the interest due for 2001 on the part of the loan issue floated by Charbonnages de France in 1997, 1998 and 1999 to cover the balance of the operating losses for those years which are not covered by direct subsidies and capital injections;

- a maximum of FRF 4 213 million (EUR 642.3 million) in aid to cover exceptional losses, allocated as follows:

  - FRF 1 021 million towards the cost of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age;

  - FRF 91 million as other exceptional expenditure on workers losing their jobs as a result of restructuring and rationalisation;

  - FRF 84 million towards residual costs resulting from administrative, legal or tax provisions;

  - FRF 382 million towards additional work resulting from restructuring;

  - FRF 10 million towards mining damage attributable to pits previously in service;

  - FRF 1 million towards exceptional intrinsic depreciation resulting from the restructuring of the industry;

  - FRF 2 624 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.

4.4. United Kingdom

For 2001, in accordance with the UK Coal Operating Aid Scheme referred to in paragraph 3.4, the Commission authorised a total of GBP 50.6 million (EUR 81.3 million) in aid to the coal industry (under Article 3 of Decision No 3632/93/ECSC). This aid is meant to cover the difference between production costs and selling prices prevailing on the world markets for coal of a similar quality originating in non-member countries.

This aid was allocated to the following mines:

- GBP 21.525 million to the Longannet colliery, run by Mining (Scotland) Ltd,

- GBP 20.325 million to the Selby colliery, run by UK Coal Plc,

- GBP 3.807 million to the Hatfield colliery, run by Hatfield Coal Company Ltd,

- GBP 1.996 million to the Betws colliery, run by Betws Anthracite Co;

- GBP 1.168 million to the Blenkinsopp colliery, run by Blenkinsopp Collieries Ltd,

- GBP 1.031 million to the Aberpergwm colliery, run by Mining (Scotland) Ltd,

– GBP 286 000 to the Eckington colliery, run by Moorside Mining Company Ltd,

– GBP 264 000 to the Hay Royds colliery, run by J. Flack & Sons Ltd,

– GBP 217 000 to the Blaentillery No 2 colliery, run by Ffynonau Duon Mines Ltd.

5. LEGAL DISPUTES

No new legal actions were recorded in the course of the year in question. The state of progress in ongoing cases is outlined below.

5.1. Complaints

On 26 August 1997 the Commission registered a complaint (ref. 97/4717) from five French undertakings[15] including Thion et Cie, against the public undertaking Charbonnages de France, concerning the alleged misuse of State aid it had received. On 9 February 1999, the Commission forwarded to the French Government a letter of formal notice[16] pursuant to Article 88 of the ECSC Treaty concerning State aids paid since 1994. The French Government set out its arguments in a letter dated 8 April 1999. In the context of this dispute, the Commission authorised the aid notified by France for 2001, except as regards a sum of EUR 1.5 million (FRF 10 million) on which the Commission must take a decision, expected during the first half of 2002, when the complaint has been examined.

On 26 October 2000, 16 November 2000 and 1 March 2001, the Commission registered a complaint (ref. 2000/51839 calling for explanations as to the destinations of the aid for payments to 357 workers of the former Minas de Lières SA (Milsa) undertaking and the aid granted to cover the technical costs of closing down that undertaking. In a further letter, one of the complainants demanded the right to receive the benefit in kind of coal for household use. The complainants also alleged that the mine covered by the closure measures had been reopened by Hunosa.

The complainants based their application on the 1991-1993 restructuring plan notified by Spain, which provided for the total closure of Milsa. It is in this context that the aid was authorised and granted. Now, several months later, the mines have been reopened by Hunosa with major operating losses.

The information which the Commission asked Spain to provide shows that the aid granted during the closure of Milsa in 1992-1993 was used in accordance with the requirements of Decisions 91/599/ECSC of 17 December 1990 and 93/146/ECSC of 23 December 1992 which authorised it.

The Commission has however asked Spain for additional information about any aid which might have been paid to Hunosa to cover operating losses during the years 1998-2001 and the technical costs of the final closure which took place during the second half of 2001.

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15 Thion & Cie, Maison Balland Brugneaux, Société Nouvelle Vinot Postry, Établissements Lekieffre, Charbogard.

16 OJ C 99, 10.4.1999, p. 9.

5.2. Appeals

The British company RJB Mining Plc lodged an appeal with the Court of First Instance of the European Communities against certain Commission Decisions, viz.:

- Case T-111/98 against Decision Nos 98/635/ECSC, 98/636/ECSC and 98/637/ECSC of 3 June 1998 on the authorisation of State aids to the Spanish coal industry for 1994, 1995, 1996, 1997 and 1998. Proceedings are currently stayed pending a decision in Case C-427/99P.

- On 31 January 2001, the Court of First Instance in Luxembourg annulled the Commission Decision of 29 June 1998 authorising the amalgamation of the undertakings RAG, Saarbergwerke and Preussag Anthrazit (Case T-156/98). According to the Court, the Commission, wrongly, did not assess the transaction cost and, more specifically, whether, and to what extent, the financial support possibly linked to the transaction cost, a token sum, boosted RAG's financial and hence its commercial strength. RAG had in fact bought Saarbergwerke back for the token sum of DEM 2. On 12 and 19 April 2001, the Federal German Government and RAG appealed against the judgment.[17] A further Commission Decision on the amalgamation of the above undertakings is planned for 2002. In parallel with this procedure relating to an amalgamation, the Commission sent a letter of former notice dated 4 February 2000 to the German Government concerning the possible grant of State aid in the framework of the RAG/Saarbergwerke amalgamation. The German Government replied on 5 May 2001, stressing that the repurchase of Saarbergwerke by RAG for DEM 2 did not contain any element of State aid. A Commission Decision on the State aid component of the amalgamation of the abovementioned undertakings in expected in 2002.

- On 12 July 2001, the Court of First Instance in Luxembourg ruled on Joined Cases Case T-63/99 and T-12/99,[18] rejecting the applicant's appeals for annulment of Commission Decision Nos 99/2707ECSC[19] and 99/299/ECSC.[20] This Decision confirms the position of the Court of First Instance in its judgment of 9 September 1999 in Case T-110/98 in which it rejected the applicant's appeal for Decision No 98/687/ECSC to be annulled.[21]

- Case T-170/99 against Decision No 99/451/ECSC of 4 May 1999 on the authorisation of State aids to the Spanish coal industry for 1999. Proceedings are currently stayed pending a decision in Case C-427/99P.

- Case C-427/99P - the applicant appealed to the Court of Justice against the judgment of the Court of First Instance in Case T-110/98. The case is currently before the Court of Justice.

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17 Cases C-157/01 and C-169/01 P.

18 UK Coal plc, formerly RJB Mining, *v* the Commission

19 Decision of 2 December 1998 on the authorisation of State aids to the German coal industry for 1998.

20 Decision of 22 December 1998 on the authorisation of State aids to the German coal industry for 1999.

21 Decision No 98/687/ECSC of 10 June 1998 on the authorisation of State aids to the German coal industry for 1997.

- Case C-371/00P - the applicant appealed to the Court of Justice against the ruling of the Court of First Instance of 25 July 2000 in Case T-110/98 concerning the annulment of Commission Decision 98/687/ECSC. The case is currently before the Court of Justice.[22]

6. CONCLUSIONS

With the ECSC Treaty and the last of the ECSC schemes for State aid to the coal industry due to expire soon,[23] this would seem to be a good time to describe the role of these aid schemes in achieving the aims laid down by the ECSC Treaty and to consider the future of coal in the framework of the ambitious goals set for it by the EU.

The European Commission and the Member States have worked together to meet the objectives of the ESCS Treaty and the State aid schemes have played a very important part in managing the structural changes which have characterised the development of the Community coal industry. The ECSC Treaty and the aid schemes have made it possible to adapt Community coal to an increasingly competitive and diversified energy market, while preserving economic and social cohesion for workers in the industry and the regions in which collieries are located. Social dialogue has been one of the characteristics of the ECSC industries and the ECSC Consultative Committee has made a major contribution to it.

With the ECSC Treaty shortly about to expire, only five Member States still produce coal: Germany, United Kingdom, Spain, France and, to a minor extent, Italy. Enlargement of the European Union towards Central and Eastern Europe will, however, bring in two big new producers: Poland, which currently produces more than the 15 Member States of the EU put together, and the Czech Republic. Other candidate countries, in particular Estonia, also produce solid fuels, mostly lignite and oil shales.

Thanks to the restructuring, modernisation and rationalisation efforts accomplished during the period in which Decision No 3632/93/ECSC has been in force, part of the Community industry, essentially the UK coalfields, have achieved economic viability or are at least close to it. However, most Community coal production is not competitive with imports from third countries and with other energy products. Poland and the Czech Republic have also achieved economic viability, but the foreseeable increase in labour costs in future could make further restructuring necessary.

On 25 July 2001, the European Commission approved a Council Regulation on State aid to the coal industry aimed at maintaining access to coal reserves as part of the process of ensuring security of energy supply. This aim, which justifies maintaining subsidised Community coal production, must be achieved on acceptable economic terms. It means that the restructuring and activity-reduction in the coal industry which have the main feature of the State aid schemes implemented under the ECSC Treaty will have to continue beyond 23 July 2002.

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22 The ruling followed an appeal by UK Coal which considered that some elements of its appeal in Case T-110/98 had not been considered by the Court.

23 Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry, OJ L 329, 30.12.1993, p.12.