ISSN 0378-6978

L 385

Volume 37

31 December 1994

Official Journal of the European Communities

English edition

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II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 July 1994

concerning aid granted to the Volkswagen Group for investments in the new German *Länder*

(Only the German text is authentic)

(Text with EEA relevance)

(94/1068/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to the Agreement establishing the European Economic Area, and in particular subparagraph (a) of Article 62 (1) thereof,

Having given the parties concerned the opportunity to submit their comments, in accordance with the abovementioned Articles [1],

Whereas:

I

By letter dated 14 January 1992, the Commission informed Germany of its decision of 18 December 1991 to initiate the procedure provided for in Article 93 (2) of the EC Treaty with respect to investment aid measures proposed by the German authorities for the Volkswagen Group in the new *Länder*.

In opening the procedure the Commission expressed serious doubts as to the compatibility of the aid with Article 92 of the EC Treaty for the following reasons:

— the State aid had not been properly notified to the Commission in accordance with the procedure provided for in Article 93 (3) and could not yet be fully quantified,

— the apparently high aid intensity proposed for a plan involving significant expansion of capacity within the European car market could give rise to an unfair distortion of competition,

— not enough evidence had been presented to justify the combination of a relatively high intensity of regional aid and the granting of indirect investment as well as temporary operating aid by the Treuhandanstalt (THA) in connection with the structural and economic problems in the new *Länder*; indeed, the overall aid intensity might be disproportionately high and incompatible with the criteria of the Community framework on State aid to the motor vehicle industry.

II

By letters dated 19 September 1990, 14 December 1990 and 14 March 1991 the Commission requested the notification, in accordance with the Community framework on State aid to the motor vehicle industry, of the aid measures supporting the investments of Volkswagen AG in the new German *Länder* and stressed that such aid could not be granted without prior notification and approval by the Commission.

Germany explained by letter dated 29 May 1991 that, in its view, the Community framework did not apply to the new German *Länder* between 1 January and 31 March 1991 because it had been due to expire by the end of 1990 and its renewal by the Commission in December 1990 could only become legally binding upon formal acceptance of the prolongation by the German Government or upon a formal decision of the

[1] OJ No C 68, 17. 3. 1992, p. 14, opening a one-month deadline for comments from third parties.

Commission following an Article 93 (2) procedure. Given that the aid measures in question were approved before 31 March 1991, they could only be scrutinized by the Commission with reference to the approved regional aid schemes for the new *Länder* (¹).

The legal position taken by Germany was not accepted by the Commission, on the following grounds:

— Commission Decision 90/381/EEC of 21 February 1990 amending German aid schemes for the motor vehicle industry (²), which was not challenged by Germany, was not limited in time so that the renewal of the Community framework by the Commission in December 1990 did not affect the notification obligation,

— Germany did not challenge or react to the renewal of the Community framework itself so the Commission could legitimately assume it would abide by its provisions,

— when approving the extension of existing regional aid schemes to the new *Länder* (SG(91) D/12002 of 9 January 1991) the Commission stipulated that Community frameworks should be complied with. That extension means that the provisions of the 19th Joint Tasks Framework Programme (published by the German Government in July 1991 and approved by letter SG(90) D/27707 of 2 October 1991) also apply in the new *Länder*. Hence the provision on prior notification of aid to the motor vehicle industry also applies in those *Länder*.

Consequently, the Commission considered the aid as non-notified given that it was approved by the German authorities before prior agreement by the Commission (³).

The decision to initiate the Article 93 (2) procedure was based on a first detailed analysis of the information contained in the German authorities' letters of 16 September and 10 December 1991, and several bilateral contacts between the German authorities and representatives of the Commission.

In its letter of 14 January 1992 the Commission requested Germany not only to comment within one month on the decision to open the Article 93 (2) procedure in the Volkswagen case but also to confirm within 10 working days that all aid payments to Volkswagen for its investments in Mosel, Chemnitz and Eisenach had been suspended. If such confirmation was not received in due time, the Commission reserved the right to stop payment of all State aid by interim decision (see the Commission's letter to the Member States of 4 March 1992).

III

By letter dated 29 January 1992, Germany agreed to suspend further aid payments until the Article 93 (2) procedure was terminated. By letter dated 31 March 1992 Germany submitted its observations on the Commission's letter of 14 January 1992.

By its letter dated 24 April 1992, the Commission requested Germany, THA and Volkswagen to provide further information necessary to complete its analysis of the case.

These questions, which were explained and justified at a bilateral meeting on 28 April 1992 and repeated in letters of the Commission dated 14 May, 5 June, 21 August and 17 November 1992, were answered point by point by the German authorities' letters of 20 May, 3 and 12 June, 20 and 29 July, 8 and 25 September, 2, 16 and 21 October, and 4 and 25 November 1992. Volkswagen supplemented this information with letters to the Commission dated 15 June and 30 October 1992, and 12 and 20 January 1993. These replies were further discussed at several meetings between the Commission departments, the German authorities and Volkswagen on 16 June, 9 September, 12 and 16 October and 3 December 1992, and 8 and 11 January 1993.

In early January 1993, at a time when the Commission had completed its analysis of the case and was ready to take a final decision, Volkswagen informed the Commission off the record that it was reviewing its investment plans in the new *Länder* and suggested that the Commission did not take its decision until the review was completed. This view was shared by the German authorities.

On 13 January 1993 Volkswagen decided to postpone substantial parts of its proposed investments by up to three years. As the revised timetable of the project changed a number of parameters used by the Commission in its assessment of the compatibility of the proposed aid measures under the Community framework, the Commission agreed to revise its analysis, taking account of the changes to Volkswagen's investment plans.

Details of the modified project were presented to the Commission at a bilateral meeting on 5 May 1993. Written information on the new investment plan was submitted by the German authorities by letter of 6 June 1993, supplemented by Volkswagen in letters dated 24 June and 6 July 1993 and in a fax message dated 10 November 1993. The new information was further discussed at bilateral meetings on 18 May, 10 June,

(¹) There is no disagreement as to the applicability of the Community framework after 31 March 1991, as Commission approval of the application of the regional aid scheme to the new *Länder* after 31 March 1991 was subject to compliance with the various Community framework in operation.

(²) OJ No L 188, 20. 7. 1990, p. 55 (see Article 1).

(³) The proposed aid to the Volkswagen Group was registered on 2 July 1991 as non-notified aid under Nos NN 75/91, NN 77/91, NN 78/91 and NN 79/91.

and 2 and 22 July 1993. New information on the Volkswagen Group's capacity plans was sent by the German Government by letter dated 15 February 1994 and by a fax message dated 25 February 1994.

During a site visit in early April 1994 new evidence on the projects was collected, and this had to be incorporated in the analysis as it pointed to changes in the project. This evidence was discussed at bilateral meetings on 11 May and 2, 7 and 24 June 1994 and supplemented by further written information transmitted at those meetings and sent by the German authorities and Volkswagen on 10 May, 30 June and 4 and 12 July 1994. Furthermore, by a letter to Volkswagen dated 24 May 1994, the German authorities revised the aid contracts for the projects.

Among the issues considered in the various letters and meetings were:

— details of Volkswagen's investment plan for the new *Länder* and their relationship with existing vehicle production,

— the precise amounts of State aid proposed or already paid to Volkswagen or the joint venture (Mosel I),

— the precise scope of the obligations assumed by THA with regard to Volkswagen and the joint venture,

— an analysis of capacity, production, product cost and price structure and financial performance at Mosel I,

— the valuation and calculation of the purchase prices for the THA-owned plants (Mosel I, Motorenwerke Chemnitz (MWC or Chemnitz I) and Eisenach) taken over or to be taken over by Volkswagen,

— capacity, production and cost forecasts for the new plants (Mosel II and Chemnitz II) and the development of annual capacity of all Volkswagen Group plants in Europe until 1997/98,

— an analysis of the proposed expenditure to determine its eligibility for aid according to the criteria applied by the Commission in its implementation of the Community framework on State aid to the motor vehicle industry,

— a detailed analysis of the net additional costs of the new plants at Mosel and Chemnitz compared with equivalent plants in a central non-assisted region of the Community to be chosen by Volkswagen as an 'equivalent plant',

— consideration of any possible adverse effects on the sector as a whole arising from the granting of the proposed aid measures, in particular with respect to capacity development.

On 16 June 1993 the Commission approved rescue aid in the form of bank loan guarantees by THA for Sächsische Automobilbau GmbH (SAB or Mosel I) of up to DM 150 million to secure the interim financing of Mosel I until the final decision in the present case [1]. This had become necessary as the company was facing a shortage of liquidity after the payment stop for aid, which included the loss coverage by THA.

IV

With regard to the joint venture SAB, the German Government and Volkswagen argued that:

— Mosel I had been created by THA and Volkswagen in December 1990 as part of the restructuring of the former VEB Sachsenring, the producer of the Trabant car, which had been taken over by THA in 1990. The joint venture had been the least costly option for restructuring that was acceptable from a social point of view. Mosel I and associated efforts in the restructuring of the old Zwickau plants were also a necessary interim step for the planned new project Mosel II as it served to build up a skilled workforce in the area,

— the joint venture had taken over the existing car plant at Mosel, including a paint shop, from VEB Sachsenring with effect from 1 July 1991 at a price determined by independent accountants on the basis of asset replacement values,

— Mosel I had originally been assembling Polo cars and was currently producing Golf cars for its own account. Until the end of 1992, all materials were obtained in 'completely knocked-down' form (CKD) from Volkswagen at prices corresponding to the normal prices applied internally within the Volkswagen Group. The assembled cars were subsequently sold back to Volkswagen at a price equalling the final market sales price less sales and distribution costs. This was common practice for all assembly plants within the Volkswagen Group. The costs of inputs received from Volkswagen were also linked to the development of the end-user price by a 'price corridor' to ensure that the value added at Mosel I remained constant even in the event of falling end-user market-prices. Thus, no advantage as compared to assembly in other plants accrued to Volkswagen by this arrangement,

— the obligation of THA to cover the losses of Mosel I up to DM 430 million did not constitute State aid to Volkswagen. The continuing losses were due to the fact that CKD production was generally uneconomic when compared to 'fully built-up' (FBU) production; the assembly work could be performed more efficiently at other Volkswagen plants. Additional losses were caused by the product changeover to the new Golf A3 in August 1992. Volkswagen was sharing the losses in proportion to its 12,5 % equity participation. Moreover, the loss coverage by THA was limited to DM 430 million, which was less than 65 % of the total accumulated losses of Mosel I by

[1] Aid No N 313/93, OJ No C 214, 7. 8. 1993, p. 9.

the end of 1993, which amounted to DM 673,5 million,

— as the Commission, on opening the procedure, had issued a payment stop on all aid payments to Mosel I, THA's payments of loss compensation to SAB which, according to the contract setting up this company, were to occur quarterly, could not be made either. Volkswagen therefore argued that SAB could charge interest on these arrears against THA, which it calculates at DM 20,5 million. This would be common commercial practice and would not constitute aid,

— the price at which Volkswagen will take over the remaining 87,5 % stake in Mosel I from THA with effect from 1 January 1993 is equal to 87,5 % of the replacement value of net assets, or at least DM 150 million. Consequently, there is no reason to believe that the price would involve an aid element. The actual valuation led to a sales price of DM 180 million, to which a further DM 70 million for the present value of the use of the accumulated loss carryforwards has to be added.

With regard to Motorenwerke Chemnitz GmbH (the former VEB Barkas plant, or Chemnitz I), Germany and Volkswagen argued that:

— VEB Barkas had established a facility for the production of 1,1 and 1,3 litre four-stroke engines based on Volkswagen technology. After German monetary union, Volkswagen remained the sole customer for these engines. Volkswagen was paying the same prices to Barkas — later renamed Motorenwerke Chemnitz GmbH (MWC) — as the internal prices applied to engines built in Volkswagen's plant in Salzgitter. The losses of Barkas/MWC until the take-over of the plant by the Volkswagen Group in January 1992 were due not to product pricing but to the inefficiency and capacity under-utilization of the old plant. The coverage of these losses by THA did not, therefore, amount to indirect State aid to Volkswagen,

— the price of DM 68 million at which Volkswagen has taken over MWC was the higher of two independent valuations, one being based on the asset value of the plant and the other on its profitability prospects. The price thus reflected a fair market value and did not contain any State aid element,

— the construction of a modern engine production facility at the site required decontamination works, to which THA would contribute up to DM 155 million. Since this was necessary to make the premises economically viable, such THA payments did not constitute State aid. The Commission accepts that decontamination expenditure does not constitute State aid [1].

As regards cylinder head production at Eisenach, the German Government and Volkswagen argued that the purchase price of DM 53,8 million for the plant was a fair market price based on two independent valuations commissioned separately by Volkswagen and THA, and therefore did not contain any aid element.

On opening the procedure the Commission had regarded all Volkswagen's investment plans in Saxony as a single project and therefore intended to decide on all elements of State aid together. Even after its decision in 1993 to postpone investment in the new plants, Volkswagen initially argued that this did not affect the production technology, the labour input and other crucial variables. This year, however, on the basis of information collected during a site visit and through new expert advice, it became obvious that this view could no longer be maintained. Volkswagen also acknowledged to the Commission that their former plans had become obsolete and that they were being reworked. The new plans for the new car and engine plants Mosel II and Chemnitz II will now be closely linked to the development of the Golf A4 that will be put into production at the same time as Mosel II is now planned to come on stream, i.e. in 1997. A final version of the new plans will only be available at the end of 1994. On the basis of current information these new plans will include significant changes in technology and production structure. Under these circumstances it is obvious that the original link between the investment projects in the existing former THA plants and the new greenfield projects has been severed. The Commission has therefore decided to limit its current decision to the restructuring aid for the existing plants, on which it can form a clear opinion on the basis of the available information, and to postpone the decision on the aid to the greenfield projects until Volkswagen and Germany are able to present their definitive investment and aid plans. This Decision thus covers the proposed aid to the Mosel I, Chemnitz I and Eisenach projects.

As to the compatibility of the proposed State aid measures, Germany argued further as follows:

(i) Article 92 (2) (c)

This should be the legal basis for the assessment of the compatibility of the aid measures. Despite the fact that Germany was unified on 3 October 1990, the new *Länder* still suffer from economic disadvantages which result from the division of Germany. The Commission should therefore examine whether such economic disadvantages still justify State aid. If so, all other assessment criteria and in particular those related to the Community framework on State aid to the motor vehicle industry, including sectoral considerations and the possible risk of overcapacity, do not apply.

(ii) Article 92 (3) (a)

With regard to the permitted level of aid, the German authorities claim that the new *Länder* now qualify as least developed areas if the latest statistics are taken into account. They refer to the Delors II package, where these areas are proposed as

[1] Letter SG(91) D/17825 of 26 September 1991.

Objective 1 areas, which makes them eligible for regional aid up to 75 % NGE.

(iii) Article 92 (3) (b)

Germany argues that this is a further legal basis for the granting of aid in these cases. In its view the problems of integration and restructing of the former planned economy into a market economy represent a serious disturbance of the German economy.

(iv) Non-applicability of the Community framework on State aid to the motor vehicle industry between 1 January 1991 and 31 March 1991.

The German authorities insist that the Community framwork was renewed and altered (thereby including West Berlin) in a legally incorrect way so that they were able to consider the Commission's letter of 31 December 1990 (renewal) as a non-binding recommendation based on Article 93 (1). They thus consider that the Community framework was no longer applicable to them as from 1 January 1991. It is accepted that the Community framework was binding once again as from 1 April 1991 given that the Commission's letter of 11 April 1991 on regional aid in the new *Länder* stipulates compliance with existing frameworks. The Commission had been orally informed of this position in early 1991 and should not therefore, in accordance with Article 5 of the EC Treaty, have objected to such aid by initiating a procedure.

V

The only comment which the Commission received from other Member States following publication of the opening of the Article 93 (2) procedure in the *Official Journal of the European Communities* was a note from France dated 7 January 1993, in which it pointed out that, in view of the additional car-making capacity created by Volkswagen's investments and other assisted projects in the new *Länder*, it was keeping a close eye on the Commission's handling of the case. The French Government further stressed that:

— the new German *Länder* should not be exempt from Community solidarity with regard to State aid granted pursuant to Article 92 (2) (c),

— the approval of any aid by the Commission should be based on a detailed analysis of the incremental costs attributable to the structural handicaps of the new *Länder* and of any indirect support provided by THA.

Germany replied to the remarks of the French Government by a fax message to the Commission dated 15 October 1993 stressing again its position concerning the applicability of Article 92 (2) (c) and 92 (3) (a).

VI

As explained when the Article 93 (2) procedure was initiated, Volkswagen's investment plans in the new *Länder* originate in its decision to accommodate the additional demand for cars in Eastern Germany and Eastern Europe after the political and economic changes in the region by starting production within this new market itself.

The investment is taking place in several stages. The first stage was the formation in December 1990 of a joint venture with THA, SAB, in which Volkswagen's stake is 12,5 %, although Volkswagen is responsible for its day-to-day management. The joint venture started small-scale assembly of the VW Polo (on a semi knocked-down (SKD) basis) at the existing former Trabant plant at Mosel (Mosel I) in May 1990, and began in 1991 to produce the VW Golf (on a CKD basis). A second phase, originally planned for 1994, involves the building of a new plant in Mosel (Mosel II) under the sole responsibility of Volkswagen Sachsen (VWS), a fully-owned subsidiary of Volkswagen created in December 1990. VWS also took over from Automobilwerke Eisenach cylinder head production in Eisenach in mid-1991, for which it will rent a modern building on the Eisenach-West site until the end of 1996. On 1 January 1992 VWS took over MWC, the owner of an existing engine plant (Chemnitz I), from THA. At this location the second phase involves the construction of a new engine plant (Chemnitz II), also originally planned for 1994.

According to information obtained from Germany in the course of the Article 93 (2) procedure:

1. the timetable for the entire investment project has been substantially revised since the procedure was opened. On 13 January 1993 Volkswagen decided to postpone a large part of the investment relating to the new plants. As a result, the new car plant Mosel II, which had originally been scheduled for 1994, will not become fully operational until 1997. The new engine plant Chemnitz II, also originally planned for 1994, will start production in 1996;

2. Mosel I consists essentially of a paint shop and an assembly facility with, according to Volkswagen, an annual capacity of 92 000 units (400 cars per day) and is currently used to produce the Golf model. Car bodies are received from the body shop of Mosel II, which is already operating at a reduced capacity equal to that of Mosel I. Other inputs amounting to about 25 % of materials are received from local suppliers; it is intended to gradually increase this share over the next few years. The remaining inputs are supplied from other Volkswagen plants in Western Germany. The current production at Mosel I was scheduled to stop by the end of 1993 but will, as a result of the revised timetable for the start of Mosel II, continue until 1997 when the new plant becomes fully operational. At present Volkswagen does not have any specific plans for Mosel I after that date. The plant currently employs some 1 900 people. Total investments in Mosel I until 1997 will be DM 519,3

million, of which DM 492,2 million is considered eligible by the German authorities for investment aid. This includes DM 232,9 million paid by SAB to Sachsenring Zwickau (SAZ) for the purchase of the plant;

3. at the time of the formation of the joint venture between Volkswagen and THA, total operating losses of Mosel I until 1993 were forecast at DM 529,1 million. THA had agreed to cover 87,5 % of the losses, up to a ceiling of DM 430 million. Actual losses have meanwhile risen to an accumulated DM 415 million by the end of 1992 and to DM 673,5 million by the end of 1993. The DM 430 million ceiling for THA loss coverage remained unchanged. Before the payment stop in January 1992, THA had paid DM 145,7 million for loss coverage (DM 140,5 million in cash plus DM 5,2 million as an advance on interest due);

4. the Mosel I plant was purchased from SAZ for a total of DM 232,9 million. This price was determined following a valuation performed by the auditors of Volkswagen on the basis of a methodology developed by THA's auditors. It includes DM 67,8 million for completion of the paint shop. SAZ produced Golf A2 car bodies in 1991 and 1992 for SAB but incurred no losses on such production given that it was paid on a value-added basis;

5. the old engine plant at Chemnitz has so far been used for production of the EA 111 (1,05/1,3 l) Polo short engine (Rumpfmotor). It has an annual capacity of approximately 280 000 units and employs some 540 people. Production of the old EA 111 engines was stopped in June 1994. Until production starts at Chemnitz II in 1996, the plant will be used to produce a modified version of the EA 111 1,05 l short engine. In addition and in order to safeguard employment at Chemnitz, in early 1993 Volkswagen started to use the existing engine completion and testing lines to finish 1,3 and 1,6 l engines for use in Mosel I;

6. Chemnitz I was purchased by Volkswagen from THA with effect from 1 January 1992 for DM 68 million. This price is based on the company's closing balance sheet at the end of 1991, which yielded a higher value than an independent cash-flow valuation resulting in DM 65 million. The latter valuation was based on the assumption that engine production would only run until June 1994. Germany confirmed that THA has spent or earmarked DM 155 million for investment, site clearance or decontamination of the old plant (under Barkas and MWC) until its sale to Volkswagen. Of that amount DM 83,7 million was strictly linked to decontamination works. DM 25,7 million was invested only after the sale in 1992 and 1993. This latter amount will be eligible for investment aid in the form of direct investment grants (Investitionszuschüsse) of DM 5,8 million and tax breaks (Investitionszulagen) of DM 2,0 million, which will be reimbursed to THA by Volkswagen. THA has also covered losses by Barkas and MWC until the sale of the company to the tune of DM 59 million and DM 18 million;

7. the relatively modern cylinder head production facilities at Eisenach have been sold to Volkswagen for DM 53,8 million. The sale price is based on an independent valuation which has been reduced by DM 5 million to reflect the social costs arising from the planned closure of the plant at the end of 1996. Before the sale, THA spent DM 6 million to clear the building of unnecessary facilities, resulting in a net sales price of DM 47,8 million. Total investment in the project by Volkswagen has been DM 72 million, of which DM 30 million is considered by the German authorities to be eligible for investment aid;

8. the Mosel II car plant will be completed and fully operational in 1997. It will consist of a press shop, which has come on stream — as originally planned — in 1994 (to partly supply Mosel I); a body shop, which is already operational at reduced capacity and will be expanded to full capacity by 1997, a paint shop and a trim and final assembly facility which have yet to be completed. The plant will be used for the production of Golf cars of the next model generation. The new Chemnitz II engine plant will come on stream in 1996 and produce a new EA 111 (1,4/1,6 l) engine starting 1996 and a next-generation engine as from 1997. Final plans as to the investment volume, the capacity and employment levels of these plants will be available later this year;

9. for Mosel I, the German authorities have proposed restructuring aid under the regional aid schemes of up to DM 141,6 million, broken down into direct grants (Investitionszuschüsse) of DM 113,2 million and tax breaks (Investitionszulagen) of DM 28,4 million. In addition, THA has agreed to cover 87,5 % of the operating losses of Mosel I between 1991 and 1993, up to a total of DM 430 million. For Eisenach, the German authorities have proposed regional aid in the form of direct grants, tax breaks and special depreciation of up to DM 10,55 million in total;

10. the former Trabant factories at Mosel and Zwickau, which are replaced by Mosel I, used to have an annual assembly capacity of 200 000 units. The old engine plant at Chemnitz used to have an annual capacity of 280 000 units before Volkswagen's investments:

11. as a result of Volkswagen's efforts to build a base of local suppliers in the region, at the end of last year (1993) there were already 87 newly established enterprises in the new *Länder* supplying the plants at Mosel and Chemnitz with parts and components. Volkswagen intends to increase the number of local suppliers further during the coming few years.

VII

When the Commission initiated the procedure laid down in Article 93 (2), questions relating to the proposed Geman aid measures which concerned it most were the following:

— the Commission wanted to ascertain whether the arrangements between THA and Volkswagen relating to the project, in particular as regards taking over of losses of Mosel I, and the sales prices received by THA for the Mosel I, Chemnitz and Eisenach plants, contained elements of State aid. The information provided up to that time by the German authorities was not sufficient to quantify the State aid element in those arrangements,

— furthermore, it was necessary to ascertain whether the restructuring aid provided to these plants by the German Government and THA complied with the requirements for this type of aid and in particular whether it was in proportion to the restructuring effort undertaken.

The information obtained from the German authorities and Volkswagen in the course of the procedure has enabled the Commission to acquire a fuller picture of all aid elements and of the amount of such aid.

With regard to the agreement of THA to cover 87,5 % of the accumulated losses of Mosel I between 1991 and 1993, up to a limit of DM 430 million, the Commission considers that this agreement does not correspond to the normal behaviour of a private investor when participating in a joint venture. This follows from the fact that, although THA holds an 87,5 % stake in Mosel I, the company was to be taken over by Volkswagen with effect from 1 January 1993 at a price based on the company's assets or its earnings value. Thus THA was not in a position to recover any of the joint venture's losses incurred and compensated for by it up to that date. In view of the fact that the total accumulated losses of Mosel I up to 1993 amounted to DM 673,5 million (DM 415 million up to the end of 1992), the Commission concludes that the full DM 430 million constitutes State aid. As regards the claim made by Volkswagen and SAB that THA has to pay DM 20,5 million in interest for its arrears in loss compensation payments to SAB, it must be borne in mind that any aid proposal has to be judged in advance by the Commission and that any claim for aid becomes valid only after Commission approval. Consequently, any interest charged because THA cannot pay aid to SAB before the end of the Commission's investigation would constitute further aid.

As regards the capital injection of DM 245,1 million by THA into SAB in 1991, which was intended to finance investment, it must be concluded on the basis of the provisions of the Grundsatzvereinbarung (Basic Agreement) of 1990 between THA and Volkswagen that THA could reasonably have expected to recover these amounts through the sales price. This capital injection cannot, therefore, be regarded as State aid.

As regards the obligation of Volkswagen to take over the remaining 87,5 % of shares in the joint venture from THA before 1994 at a price equal to 87,5 % of the net replacement value of the assets at the time of the take-over, the Commission was concerned that even excluding the loss compensation this might result in an unreasonably low price.

While the price paid to SAZ by SAB for Mosel I might already have been fixed below its objective value, the Commission considers this to be irrelevant to the present case since this sale was virtually an intra-THA transaction. It is, however, highly important that the price on the sale to Volkswagen is correct, given the substantial investment in Mosel I after its transfer to SAB. On the basis of a valuation by the auditors of Volkswagen and THA, the price amounts to DM 250 million (including DM 70 million for the present value of the accumulated loss carryforwards). The methodology established in the basic agreement of December 1990 and the calculations employed have been verified and accepted by an independent auditing expert at the request of the Commission.

As regards the acquisition of the Chemnitz plant, the Commission notes that THA took over the old Barkas engine plant, which was technologically outdated and thus did not meet Western European standards in quality and productivity, and undertook a slow restructuring effort combined with a gradual reduction in the workforce. Continuation of production in that period mainly served to maintain employment (Beschäftigungsgesellschaft), a path that no rational private investor would have followed and which led to losses of DM 59 million. Their compensation by THA, before the new entity, MWC, was set up, is thus a direct consequence of the belated restructuring efforts of THA. Deducting this amount, which can be regarded as State aid only to Barkas, and the sum of DM 83,7 million spent by THA on decontamination, THA's investment in MWC amounts to DM 71,3 million (1991 to 1993), while loss compensation to MWC was DM 18 million (1991). This loss compensation as well as the investment aid of DM 7,8 million have to be regarded as State aid to MWC. THA could reasonably have expected to recover the remaining investment in MWC through the sales price to Volkswagen.

As regards the sale of MWC to Volkswagen at the beginning of 1992, the Commission was concerned that this might result in an unreasonably low price. The actual sales price amounts to DM 68 million. It corresponds to the asset value as determined by an auditing company hired jointly by THA and Volkswagen, which exceeded an independent cash-flow valuation yielding DM 65 million. The Commission informed the German authorities that this asset valuation could not be regarded as an objective valuation because the valuers were instructed to arbitrarily assess the fixed assets at DM 50 million. It was also concerned that the cash-flow valuation might underestimate the value of the plant as it was based on the assumption that the plant would

terminate its operations in June 1994 and that all the workers would be made redundant at that time, involving high redundancy costs. As the new plant Chemnitz II will begin to operate only 18 months later, this assumption cannot be maintained. If these alleged redundancy costs are excluded, the cash flow- valuations would match the asset-based valuation.

Furthermore, on the assumption that the old plant would stop production of EA 111 engines in June 1994, the Commission was originally satisfied that the price corresponded to a fair value of the plant and did not contain any element of State aid to Volkswagen. In the light of new information provided by Volkswagen and the German Government to the effect that production of the EA 111 1,05 l engine will continue in a slightly modified form at the plant at least until 1996 and that the engine dress-up and testing lines, the use of which was not originally planned by Volkswagen, have been employed since 1993 and will continue to be employed to produce the 1,3/1,6 l engines mainly destined for Mosel I, the Commission questioned whether the earnings valuation of MWC was not based on incomplete information and thus the price would be below a fair market value. It would thus lead to the granting of restructuring aid to the purchaser Volkswagen which would be unjustified, since the company had already been restructured by THA. Volkswagen's claim that this 1,05 l engine, which is to be produced until 1996, is practically a new engine must be rejected in the light of the engine's specifications as presented to the Commission and its automotive expert. These show clearly that the engine is essentially the same as the old version. The very small amount of the investment linked to the changeover (DM 2,7 million) also bears this out. On the basis of the figures in the cash-flow valuation, it was calculated that the average gross contribution to earnings from the continuation of engine production is DM 1 million per month. This calculation was accepted by the German authorities, Volkswagen and THA [1]. This amount can, however, be reduced by the normal monthly depreciation of the investment necessary to continue production of the 1,05 l engine in order to obtain the net contribution (according to the information transmitted to the Commission this investment is equal to the abovementioned DM 2,7 million). Unless Volkswagen augments the sales price by the equivalent of this net contribution, the sales price of Chemnitz I would contain State aid.

Volkswagen also decided to anticipate some of the investments earmarked for Chemnitz II in order to be able to build a new EA 111 1,4/1,6 l engine in Chemnitz I as from the end of 1994. This engine is entirely new and cannot be produced at Chemnitz I without considerable investment (DM 48,7 million). If production at Chemnitz were at a certain stage to be limited to this type of engine, a monthly payment would no longer be required. This would also hold true if production were to be limited to spare parts for engines.

As regards the purchase price for Eisenach cylinder head production, the Commission finds that the price of DM 53,8 million determined by an independent valuation corresponds to a fair market price. Considering that most of the workers at Eisenach will be made redundant in 1996 and in all probability will not find jobs at other distant Volkswagen facilities, the Commission can also accept the reduction of the established asset value by DM 5 million to reflect the social costs for those workers.

The direct aid for the restructuring of Mosel I, Chemnitz I and Eisenach, as quantified above, has been awarded by the German authorities under the aid scheme 'Gemeinschaftsaufgabe zur Verbesserung der regionalen Wirtschaftsstruktur' (Joint Tasks Scheme for the Improvement of Regional Economic Structures), the 'Investitionszulagengesetz' (Law on Investment Tax Breaks) and the 'Fördergebietsgesetz' (Law on Assisted Areas), which have previously been approved by the Commission.

The proposed aid for the three projects consists of the following:

— for Mosel I, restructuring aid in the form of direct grants of DM 113,2 million and tax breaks of DM 28,4 million by the German Government and of loss compensation of DM 430 million by THA,

— for Chemnitz I, restructuring aid in the form of loss compensation by THA to Barkas of DM 59 million and to MWC of DM 18 million and investment aid by the German Government of DM 7,8 million. Further aid would be contained in the sales price, unless the price was augmented in the way described above,

— for Eisenach, restructuring aid in the form of direct grants, tax breaks and special depreciation of DM 10,55 million.

As the aid measures reduce the financial burden borne by Volkswagen for its investments in the new *Länder*, they threaten to distort competition between motor vehicle manufacturers within the Community. As there is a very high level of intra-Community trade in the motor vehicle sector, the proposed measures also affect trade among Member States. They consequently fall within the scope of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement.

VIII

By not notifying the aid contained in the agreement of THA to cover losses incurred by the joint venture, the German Government has infringed Article 93 (3) of the EC Treaty. The German authorities have also failed to notify, in accordance with Article 93 (3), the payment of

[1] The sales contract for Mosel I contains a clause on the sale of Chemnitz which refers to such a payment of DM 1 million per month in the event of continuation of the 'old' EA 111 engine.

part of the regional and other aid related to the investments in the plants at Mosel, Chemnitz and Eisenach. Since the Federal Government did not notify the aid measures in advance, the Commission was not able to submit its comments on the measures before they were implemented. As part of the aid was thus granted in breach of Article 93 (3), it is unlawful.

Since the procedural provisions of Article 93 (3), which are also of significance from the point of view of public order, are mandatory and since the Court of Justice confirmed their direct effect in its judgment of 19 June 1973 (1), the unlawfulness of the aid cannot be remedied after the event.

After the opening of the procedure the German Government suspended all further aid payments pending closure of the Article 93 (2) procedure.

IX

As regards the legal basis on which the Commission should assess the compatibility of the proposed measures, the German Government has stressed that the derogations provided for in Article 92 (2) (c) (certain areas of the Federal Republic of Germany affected by the division of Germany), Article 92 (3) (a) (areas where the standard of living is abnormally low or where there is serious underemployment) and Article 92 (3) (b) (serious disturbance in the economy of a Member State) would apply to all the measures which the Commission might consider as constituting aid.

The derogation in Article 92 (3) (b) can certainly not be applied to Germany. It is true that German unification has had negative effects on the German economy, but these alone are not sufficient to apply Article 92 (3) (b) to an aid scheme, let alone to an *ad hoc* case of aid. The last time the Commission considered that an aid scheme remedied a serious disturbance in the economy of a Member State was in 1991, when aid was approved for a privatization programme in Greece (2). In that Decision the Commission noted that the privatization programme was an integral part of the undertakings given under Council Decision 91/306/EC of 4 March 1991 concerning the recovery of the entire national economy. The German situation is clearly different.

The exemption provided for in Article 92 (2) (c) must be interpreted strictly. The Commission considers that the derogations provided for in Article 92 (3) (a) and (c) and the Community framework on State aid to the motor vehicle industry, allow it to deal with the problems which the new *Länder* are facing.

The following section contains more detailed explanation of the aid proposed by the German Government which the Commission, in the light of its analysis, can accept unconditionally. This analysis, as has already been stated, relates solely to the interim establishments (Mosel I, Chemnitz I and Eisenach), since the aid proposed for the new plants cannot yet be assessed.

Mosel I

As regards Mosel I, the Commission notes that after the monetary union of Germany in July 1990, the existing Trabant production at Zwickau and Mosel ceased to be viable, as the market for the Trabant car had virtually vanished. In order to safeguard car production at the traditional location, THA arranged with Volkswagen to establish the joint venture Mosel I to restructure the former Trabant plants in Saxony, to transform the Zwickau plants into a component supplier and to set up modern car production at the newest of the existing Trabant plants as an interim solution until the planned future plant would come on stream. From the beginning it was clear that this restructuring would not only entail substantial investments, but also heavy operating losses during the first years of production which no private investor would be willing to absorb alone. The Commission therefore views both the direct investment aid provided by the German authorities and the loss coverage provided by THA as part of a single effort to secure the long-term viability of automobile production at Mosel, and consequently concludes that they must be assessed as restructuring aid.

With regard to such aid, the Community framework stipulates that it must be linked to a satisfactory restructuring plan and granted only where it can be demonstrated that the Community interest is best served by keeping a manufacturer in business. It also requires that the aid does not allow a beneficiary to increase its market share at the expense of its unaided competitors. In cases where certain companies still have excess capacity, it may require reductions in capacity as a contribution to overall recovery of the sector.

The Commission has examined the business plan and financial forecasts of SAB and is satisfied that they reflect a sound approach towards re-establishing the economic viability of the former Trabant plants. It is to be noted that the financial implications of former Trabant factories operating as suppliers to Mosel I fell on SAB. The joint venture has invested or will invest more than DM 414 million in the modernization of the existing facility, in particular to replace equipment not suitable for the production of steel-pressed cars, to complete the construction of the paint shop, and for vendor tooling. It has thereby transformed Mosel I into a State-of-the-art painting and assembly facility.

The Commission appreciates that in the early years of operation, the only possible mode of production at the plant has been the assembly of SKD and CKD kits, which was *a priori* uneconomic when compared with standard FBU production. This certainly applies to the production of Polos and the Golf A2 until July 1992. It therefore led to losses resulting from the uneconomic way in which production was organized from the beginning. For both models the car bodies could not be assembled on site. The Polo bodies were assembled and painted in

(1) Case 77/72 *Capolongo v. Maya*, [1973] ECR 611.

(2) Aid No NN 11/91, Commission Decision of 31 July 1991.

Wolfsburg and then shipped to Mosel. Golf A 2 bodies were assembled at SAZ in Zwickau and painted first in Ingolstadt, and later in the new paint shop of Mosel I. Since final assembly for all of them took place in Mosel I, the resultant transport and logistics needs rendered this production mode highly inefficient. Body-in-white assembly in the old SAZ plant in Zwickau was done in a very labour-intensive way, while the resultant losses were transferred through pricing arrangements to SAB. On the other hand, the CKD production mode implied the shipping of complete component sets from Wolfsburg to Mosel. This was necessary because of the absence of local suppliers in the new *Länder* that could deliver just-in-time and because of the absence of logistics capabilities in terms of modern warehouse facilities, quality control equipment, hard- and software and a workforce trained for supplier logistics on-site that could handle direct deliveries from suppliers. This shipment involved additional costs at Wolfsburg for packaging, unpacking, quality control, administration and transport. Given these two important cost penalties, no private investor would have undertaken such an arrangement on such a scale and for such a long time, the main reason for which was to safeguard jobs in the region.

As the establishment of local suppliers in the region progressed and the share of local content of materials increased, the cost disavantage of Mosel I associated with CKD production has been diminishing since 1992. The introduction of the Golf A3 in July 1992, the body of which is being assembled at the adjacent Mosel II factory, has given a further impetus to local suppliers. And yet, the component logistics were only transferred from Wolfsburg to Mosel in January 1993. At the beginning of 1993 a share of local supply of 36,5 % had been reached and productivity as well as value-added in the plant had risen significantly, so that it can be considered to have become a well-established FBU plant by that time. Furthermore, from 1993 onwards, Mosel I has been capable of producing at full capacity. Consequently, a crucial objective of the restructuring plan was achieved by the beginning of 1993, while the restructuring process will have terminated completely by the end of 1993, as originally planned. As a result, it can be expected that production at Mosel I will be economically viable and profitable by the end of 1994, as shown by the financial projections presented to the Commission. The Commission is therefore satisfied that there is a true link between the proposed aid and the restructuring plan, which appears to have a solid basis.

The rationale behind the interim project was to maintain and train a workforce for automobile production at the location until the new plant Mosel II comes on stream, as well as to absorb additional demand for Western-style cars in the East German and Eastern European market. The plant has created 700 jobs and saved another 1 250 in an area suffering from low productivity and high unemployment. With regard to the difficult social consequences that a closure of the plant would entail for the region, and the aim of socio-economic cohesion, the Commission agrees with the German Government that keeping Mosel I in business is in the best interest of the Community.

This assessment takes into account the fact that the modernization has involved a scaling down of the assembly facility from a capacity of 200 000 cars per year (910 cars per day) to 92 000 per year (400 cars per day). The calculation of former capacity takes into account Trabant production capacity at Zwickau since, like Mosel I, it could have been converted to produce other cars. Instead these plants were converted as much as possible into component production. Generally, restructuring aid will be allowed under the Community framework only if it does not contribute to the creation of overcapacity, but rather contributes to the overall recovery of the sector by capacity reductions. The Commission accepts that this condition has been fulfilled.

With regard to the amount of aid, the Community framework provides that aid must be in proportion to the problems it seeks to redress. As regards the investment aid of DM 113,2 million in direct grants (Investitionszuschüsse) and of DM 28,4 million in the form of tax breaks (Investitionszulagen), the Commission notes that they relate to investments for the transformation of the plant into a modern car assembly facility which forms a necessary element of the restructuring plan. This applies to all investment expenditure up to and including 1993, as this was the original timeframe of the restructuring plan which lasted until the planned sale of THA's participation (1 January 1994). The investment undertaken thereafter until 1997, however, is not linked to the restructuring plan and has to be assessed according to the Community framework on innovation, modernization and rationalization. Since the investments constitute normal modernization and replacement investment, according to the Community framework they cannot be supported by State aid. This concerns an eligible investment volume of DM 77,4 million and an aid amount of DM 21,6 million (DM 17,8 million of direct grants and DM 3,8 million of tax breaks). Therefore, investment aid of DM 95,4 million in direct grants and DM 24,6 million in the form of tax breaks can be accepted as restructuring aid.

The Commission recognizes that even the newest Trabant equipment of the plant was far from the standard required for modern car production. Other equipment was technologically outdated and had to be replaced in its entirety. As a result, THA's and Volkswagen's investments for the restructuring of the plant totalled DM 519,3 million (of which DM 64,9 million constitutes the 12,5 % Volkswagen share). The acquisition costs for the remaining 87,5 % share by Volkswagen are DM 250 million.

As regards the loss coverage by THA, the Commission agrees with the position of the German Government that no private investor would have invested in the small Mosel plant at the time of the formation of the joint venture without the participation of THA and an undertaking by it to cover operating losses arising from the inevitably uneconomic CKD assembly in the early years of production. The undertaking to cover losses must consequently be seen as an integral part of THA's scheme for a socially viable privatization of the plant. In this context, the Commission would point out that it

acknowledges the exceptional nature of THA's task of supporting the transformation of a planned economy into a market economy ([1]).

However, from the exceptional nature of these measures it follows that they must be strictly limited to the requirements of the individual case. Particular vigilance is necessary where support is granted to a company which is only partially privatized, as in the case SAB (Mosel I). In view of the justification given for THA's undertaking to cover operating losses, this means that such coverage can be approved only up to an amount compensating for losses attributable to the uneconomic CKD production mode or to other regional disadvantages linked to producing in the new *Länder*.

On the basis of material cost data for Mosel I and other information supplied by Volkswagen, the Commission has analysed the operating performance of the joint venture with a view to quantifying the share of losses arising from the cost disadvantage associated with CKD production or other regional disadvantages. It has accepted that all losses incurred by the assembly of Polo cars until 1991 and the production of the Golf A2, which was discontinued in July 1992, are indeed attributable to genuine cost disadvantages. The total amount of those losses is DM 235 million, of which THA carries 87,5 %, i.e. DM 205,6 million. The Commission can therefore accept the compensation of those losses to the amount of DM 205,6 million as restructuring aid.

As explained above, production of the Polo and the Golf A2 at Mosel I took place in *a priori* uneconomic circumstances that no rational private investor would have taken over on its own. With the changeover to Golf A3 production in July 1992, body assembly was transferred to Mosel II, so that one of the abovementioned structural disadvantages ceased to play a role. The additional CKD costs continued, however, until the end of 1992 because of a slow changeover from Wolfsburg suppliers to local suppliers and the delayed transfer from Wolfsburg of the local suppliers' logistics, which only took place in January 1993. As regards the losses arising from the production of the current Golf A3 between August and December 1992, the Commission has found that, while DM 111 million (THA share DM 97,1 million) has been clearly shown by the company to be attributable to continuing CKD costs associated with the production of the new model, Volkswagen has been unable to fully explain the unforeseen increase in Golf A3 material costs during the last quarter of 1992, which amounts to DM 69 million (THA share DM 60,4 million). While the Commission can see the commercial reasons why such a cost increase could have happened, it has doubts whether they can be entirely attributed to the regional disadvantages of CKD production which made the restructuring effort more costly. Nevertheless, in view of the fact that the different regional disadvantages did not stop abruptly at the end of 1992, the Commission is willing to accept the compensation of those losses in order to offset any remaining regional or structual disadvantages during the third year of production (1993). Accordingly, the compensation of the remaining losses for 1992 by THA in proportion to its shareholding to the amount of DM 157,5 million can be accepted as restructuring aid.

In total, the Commission can authorize DM 481,3 million restructuring aid which is justified by the reduction in capacity from 910 cars per day at the time of the aid award to the current level of 400 cars per day, which constitutes a sufficient contribution to the solution of the structural problems of the sector as a whole. This result is in line with the approach the Commission has taken in other cases of restructuring aid, such as the Renault, Rover and ENASA cases ([2]), where restructuring aid was considered to be in proportion to the restructuring effort if the share of the aid in the total financial needs of the company during the restructuring plan (DM 806,1 million over the period 1991 to 1993) was approximately equivalent to the share of capacity reduction undertaken as part of this restructuring process. In this case the share of the aid at 59,7 % only slightly exceeds the relative capacity reduction of SAB of 56 %. This slight overcompensation is in the Commissioin's opinion justified by the particularly difficult economic and social conditions in the new *Länder*, a region which in the meantime has been recognized as an Objective 1 area.

When the Commission approved rescue aid in the form of bank loan guarantees to SAB of up to DM 150 million, it made clear that any loss coverage payments approved in a final decision on the present case would have to be used to help repay the loans, and that THA should to that extent be released from its guarantee obligations. The loss coverage payments approved by this Decision exceed the amount of the guaranteed loans, so the loans will have to be repaid in full by SAB.

Chemnitz I

With regard to the old engine plant Chemnitz I, the Commission acknowledges that that plant was technologically outdated and thus did not meet Western European standards of quality and productivity, and that even after substantial investment it could be used for only a limited time. In order to safeguard engine production at the traditional location, THA thus undertook to restructure the plant as an interim solution until the planned future engine plant came on stream. It was clear from the outset that this restructuring would entail substantial investment and involve operating losses during an initial period which no private investor would be willing to absorb. The Commission therefore views the direct investment and the loss compensation by THA in 1991 as part of a single effort to secure the long-term viability of engine production at Chemnitz and consequently concludes that they must be considered as restructuring aid.

Furthermore, as the company was producing short engines (Rumpfmotoren) based on Volkswagen technology, it could be of interest only to Volkswagen. Because of the quality and productivity problems

([1]) See, for example, Commission Decision NN 108/91 of 26 September 1991, SG(91) D/17825, concerning certain financing and other measures within the area of activities of THA.

([2]) OJ No L 367, 16. 12. 1989, p. 62, OJ No L 25, 28. 1. 1989, p. 92, and OJ No L 220, 11. 8. 1988, p. 30.

mentioned above, Volkswagen was, however, willing to buy MWC only if THA could ensure its adaptation to Western European standards. Furthermore, as confirmed by the independent valuers, Volkswagen possessed sufficient engine capacity in its Salzgitter plant, so that Chemnitz I was not needed by the company.

The rationale behind the interim project was the need to maintain and train a workforce for engine production at the location until the new plant Chemnitz II was to come on stream. The plant has created or saved 540 jobs in an area suffering from low productivity and high unemployment. In view both of the difficult social consequences that closure of the plant would entail for the regioin and of the aim of socio-economic cohesion, the Commission agrees with the German Government that keeping Chemnitz I in business is in the best interest of the Community.

Investment aid amounting to DM 7,8 million in the form of direct investment grants and tax breaks for the investments decided on under THA ownership and executed in 1992 and 1993 has been awarded to support the restructuring process. As the company has returned to profitability, the process can be judged a success. However, the aid can be accepted only if the relevant clause of the sales contract, which stipulates that the aid is to be transferred back to THA, which paid for these investments, is complied with.

The investment undertaken by Volkswagen in Chemnitz I after 1993 and hence after the end of the restructuring plan has to be assessed, however, under the Community framework on innovation, modernization and rationalization. Since the investments constitute normal modernization and replacement investment, according to the Community framework they can in principle not be supported by State aid. Consequently, only those investments in Chemnitz I paid for by Volkswagen Sachsen which are transferred to the new plant Chemnitz II may be eligible for regional aid, and this only to the amount of their book value at the time of transfer.

Consequently, the Commission can accept restructuring aid by THA to Barkas in the form of loss compensation of up to DM 59 million and to MWC in the form of loss compensation and investment aid to the amount of DM 18 Million and DM 7,8 million respectively. This amount of restructuring aid to MWC is considered by the Commission as necessary but also as sufficient for the plant restructuring plan executed by THA and Volkswagen in the period from 1991 to 1993. This restructuring was not accompanied by a reduction in capacity. As explained above, Chemnitz I contributed to the temporary overcapacity of engines in Volkswagen, which required a new split of engine production between the Salzgitter and Chemnitz plants, as a result of which both plants worked below capacity. In this case the Commission considers it technically impossible to demand a compensating reduction of capacity, as Chemnitz I had only one production line. Demanding the closure of Chemnitz I would also have run counter to the regional development objective pursued by the plant, as explained above. Finally, the Commission's concern has always been about car production capacity, which is not affected by this plant.

As the restructuring aid to the plant is considered by the Commission to be sufficient for the restructuring process, it follows that no more aid can be granted through the sales price paid by Volkswagen for Chemnitz I. This requires the inclusion of a clause in the contract which ensures that the sales price will rise by DM 1 million for every month of continued engine production after June 1994, less the monthly depreciation of the investment necessary to continue production of the 1,05 l engine.

Eisenach

With regard to the restructuring aid of DM 10,55 million for cylinder head production at Eisenach, the Commission notes that, although the facility was relatively new when taken over by Volkswagen in March 1992, additional investments were necessary for modernization and to enlarge the product range of the facility to achieve an economically viable degree of capacity utilization. In the light of the information available to it, the Commission is satisfied that these investments are linked to a sound restructuring plan. Given that the facility currently employs around 200 people and that it will be in operation only until 1996 (when it will be closed down), and in view of the relatively small magnitude of the aid and the fact that Volkswagen has an existing cylinder head production capacity at its Salzgitter plant, the Commission concludes that maintaining the plant in operation until 1996 is in the best interest of the Community and that the aid does not allow Volkswagen to expand its market share at the expense of its competitors.

X

As explained above, the Commission considers the restructuring of Mosel I to have attained its objectives by the end of 1993. Nevertheless, the aid proposal by the German authorities provides for a continuation of the loss compensation to the plant in 1993 and of the investment aid until 1997.

As regards the proposed compensation of SAB's losses to the amount of DM 66,9 million, this would be out of proportion to the restructuring costs and would have no regional justification. Such aid would therefore be in the nature of an operating aid which, under the rules of the Community framework, can under no circumstances be allowed.

As regards the claim made by Volkswagen and SAB that THA has to pay DM 20,5 million in interest on its purported arrears in loss compensation payments to SAB, it was explained above that such payments would constitute additional State aid. As indicated, such payments would also be in excess of the amount of aid that can be accepted for the restructuring of Mosel I. Consequently, these interest payments cannot be allowed.

As regards the proposed investment aid for the period 1994 to 1997 of DM 21,6 million in the form of direct

grants (DM 17,8 million) and tax breaks (DM 3,8 million), this has to be viewed as aid for replacement and modernization investments which, under the rules of the Community framework, can under no circumstances be allowed,

HAS ADOPTED THIS DECISION:

Article 1

The following aid to the various investment projects of Volkswagen AG in the new *Länder* awarded by Germany are compatible with Article 92 (3) (c) of the EC Treaty and Article 61 (3) (c) of the EEA Agreement:

— aid granted to Sächsische Automobilbau GmbH (Mosel I) in the form of direct investment grants (Investitionszuschüsse) of up to DM 95,4 million, all of which was granted unlawfully before the payment stop, and tax breaks (Investitionszulagen) of up to DM 24,2 million, of which DM 19,0 million was granted unlawfully before the payment stop,

— further aid in the form of loss coverage for Mosel I to be provided by the Treuhandanstalt up to an amount of DM 363,1 million, of which DM 145,7 million was already paid unlawfully before the payment stop,

— aid in the form of loss coverage to Barkas (Chemnitz I) provided by the Treuhandanstalt up to an amount of DM 59 million, which was granted unlawfully before the payment stop,

— aid in the form of loss coverage by the Treuhandanstalt in Motorenwerke Chemnitz (Chemnitz I) up to an amount of DM 18 million, which was granted unlawfully before the payment stop,

— aid in the form of direct investment grants (Investitionszuschüsse) of up to DM 5,8 million and tax breaks (Investitionszulagen) of up to DM 2 million to Motorenwerke Chemnitz or Volkswagen Sachsen (Chemnitz I),

— aid proposed for Volkswagen Sachsen GmbH for its cylinder head facility at Eisenach in the form of direct grants (Investitionszuschüsse), tax breaks (Investitionszulagen) and special depreciation (Sonderabschreibungen) of up to DM 10,55 million in total.

Article 2

The purchase price of DM 68 million to be paid by Volkswagen to the Treuhandanstalt for Motorenwerk Chemnitz (Chemnitz I) under Articles VI and VII of the basic agreement of 18 October 1990 between the Treuhandanstalt and Volkswagen shall be deemed not to contain any State aid provided the basic agreement is amended as follows; the purchase price will be increased by DM 1 million for each month of continued engine production after June 1994, payable monthly in advance; from this increase a deduction may be made for the cost of the investment made in order to keep the factory operational, taking the form of normal depreciation of the equipment until the end of 1995; the increase in the purchase price shall not be payable if the plant produces only spare parts for engines or the new 1,4/1,6 l engine after 1994.

Article 3

Germany shall recover from Sächsische Automobilbau GmbH DM 16 173 000 in direct grants (Investitionszuschüsse), being the difference between the amount of direct grants for Mosel I declared in the first indent of Article 1 to be compatible with the common market and the amount of aid already paid to the company, and shall charge interest on this amount from 28 October 1991 (date of payment of the aid) at the percentage value on that date of the reference rate used for the calculation of the net grant equivalent of the various types of aid in the Federal Republic of Germany.

Article 4

The following aid to the various investment projects of Volkswagen AG in the new *Länder* awarded by Germany are incompatible with the common market within the meaning of Article 92 of the EC Treaty and Article 61 (1) of the EEA Agreement and may not be granted:

— the proposed loss coverage for Mosel I in excess of the figure referred to in Article 1, amounting to an additional DM 66,9 million,

— the proposed investment aid for Mosel I in excess of the figure referred to in Article 1, amounting to an additional DM 17,8 million in the form of direct investment grants (Investitionszuschüsse) and DM 3,8 million in the form of tax breaks (Investitionszulagen);

— the proposed aid to Mosel I in the form of interest payments by the Treuhandanstalt for the outstanding loss compensation payments to the amount of DM 20,5 million.

Article 5

Germany shall inform the Commission within one month of the date of notification of this Decision of the measures taken to comply therewith.

Article 6

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 27 July 1994.

For the Commission

Hans VAN DEN BROEK

Member of the Commission

COMMISSION RECOMMENDATION

of 7 December 1994

on the transfer of small and medium-sized enterprises (*)

(Text with EEA relevance)

(94/1069/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas the Council adopted Decision 89/490/EEC [1] relating *inter alia* to the improvement of the business environment; whereas the programme of support for small and medium-sized enterprises set up by that Decision was revised by Council Decision 91/319/EEC [2]; whereas the Council reaffirmed its commitment to supporting the consolidation of measures for enterprises by adopting the resolution of 17 June 1992 [3];

Whereas, in its Decision 93/379/EEC [4], the Council adopted, with effect from 1 July 1993, a programme of measures to intensify the priority areas and to ensure the continuity of policy for enterprise; whereas this programme is concerned first and foremost with improving the legal, fiscal and administrative environment of enterprises and makes specific provision for examining the transfer of enterprises;

Whereas the *White Paper on Growth, Competitiveness and Employment* mentioned the transfer of businesses as a priority area requiring measures to improve the situation [5];

Whereas the integrated programme in favour of SMEs and the craft sector of 3 June 1994 [6] announced a Commission recommendation on the transfer of businesses, as part of the Community contribution towards improving the business environment;

Whereas the Commission in its communication on the improvement of the tax environment for small and medium-sized enterprises [7] announced an initiative aiming to limit the fiscal charges on succession or donation;

Whereas in its resolution of 10 October 1994 the Council [8] invited the Member States and the Commission to examine those measures in existence which caused difficulties for the creation, growth and transmission of enterprises;

Whereas the Commission has now conducted this examination and ascertained that several thousand enterprises are obliged to cease trading every year because of insuperable difficulties affecting their transfer; whereas the winding-up of these enterprises has negative repercussions on the economic fabric of businesses and on their creditors and employees;

Whereas this loss of jobs and economic activity is all the more regrettable for not being caused by market forces, but by insufficient preparation for succession and the inadequacy of certain aspects of Member States' law, especially concerning company law, inheritance law and fiscal law;

Whereas the chances of a successful transfer will be improved by efforts to enhance the awareness of entrepreneurs and to inform and educate them in such a way that they can effectively prepare the succession of their enterprises in their own lifetime;

Whereas, nevertheless, certain changes to the national law of the Member States would greatly increase the number of successful business transfers;

Whereas one of the obstacles to a successful transfer is the difficulty experienced by the successors in financing compensation for their co-heirs who do not wish to participate in the enterprise, and whereas adequate financial instruments should be available in all Member States;

Whereas it may be necessary to change the enterprise's legal form in order to prepare the transfer, giving the enterprise the legal form which is most conducive to the success of the operation; whereas not all Member States have legal provisions which allow changes to be made to an enterprise's legal form without first winding up the enterprise and creating a new entity; whereas these operations entail costs and administrative procedures and mean a period of uncertainty for partners and third parties;

Whereas public limited company status could be one of the legal forms which best meet the requirements of

(*) The explanatory note of this recommendation is published as a communication in OJ No C 400, 31. 12. 1994, p. 1.

[1] OJ No L 239, 16. 8. 1989, p. 33.

[2] OJ No L 175, 4. 7. 1991, p. 32.

[3] OJ No C 178, 15. 7. 1992, p. 8.

[4] OJ No L 161, 2. 7. 1993, p. 68.

[5] White Paper, Part A, 'A more competitive economy', p. 14, and Part B, Section 2.8, 'Proposals and Remedies', p. 86.

[6] COM(94) 207 final of 3 June 1994.

[7] OJ No C 187, 9. 7. 1994, p. 5.

[8] OJ No C 296, 22. 10. 1994, p. 6.

transfer operations; whereas however public limited company status imposes demanding conditions on its creation and day-to-day management; whereas these conditions are generally geared to the needs of limited companies with a broad shareholder base, with a view to protecting the members and third parties; whereas these particular conditions do not appear necessary in cases where an entrepreneur seeks to create a public limited company with other members of his family so as to facilitate its transfer;

Whereas certain methods or legal forms facilitate transfers because the management responsibility and ownership are separated;

Whereas the adoption by an enterprise of the legal form most appropriate to its transfer should not be hampered by fiscal procedures; whereas the same consideration applies to all other operations involved in preparing the transfer, such as transfers of assets, mergers, divisions and exchanges of shares;

Whereas, in most Member States, a partnership is wound up on the death of one of the partners unless the partnership agreement states otherwise; whereas, moreover, unilateral acts of one partner may conflict with the partnership agreement, and the relevant legislation may not indicate which provision takes precedence; whereas, on the death of such a partner, this discrepancy may give rise to a conflict which jeopardizes the continued viability of the firm and may even cause it to go into liquidation;

Whereas, on the death of a partner or sole proprietor, the co-heirs are, in most Member States, required to make a unanimous decision on the continuation of the firm; whereas, as a result, the survival of the firm may be jeopardized if one of the heirs wishes the firm to cease trading;

Whereas one of the main obstacles preventing the successful transfer of a family business is the associated fiscal burden; whereas payment of inheritance or gift tax may threaten the financial equilibrium of the enterprise, and therefore also its survival; whereas this tax regime places European enterprises at a disadvantage *vis-à-vis* their international competitors;

Whereas the requirement of immediate payment of inheritance tax or gift tax may force the heirs of the enterprise to sell some of their shares, sell the enterprise *in toto* or even wind it up;

Whereas the assessment of the value of the enterprise should take into account the possible loss in the value of the enterprise as a result of its transfer;

Whereas it has become more difficult to find a successor within the familiy; whereas sale of the enterprise is a form of transfer which should be made easier, with a view to guaranteeing its survival, especially where this is not possible under family ownership; whereas it is essential to encourage the entrepreneur to make arrangements, in his own lifetime, for transfer of the enterprise;

Whereas the employee buy-out is a form of transfer which should be encouraged; whereas such a buy-out safeguards the existence of the entreprise and the transfer of know-how and previously acquired experience;

Whereas some Member States have already taken measures to facilitate transfers of enterprises; whereas certain practices can be adopted by other Member States,

HEREBY FORMULATES THIS RECOMMENDATION:

Article 1

Objectives

Member States are invited to take the necessary measures to facilitate the transfer of small and medium-sized enterprises in order to ensure their survival and to safeguard the jobs which depend upon them.

In particular, they are invited to take the most appropriate measures to extend their own legal, fiscal and administrative systems, in order to:

— make the business owner aware of the problems of transfer and thus encourage him to prepare for such an event within his lifetime,

— provide a financial environment which helps towards successful transfers,

— permit the businessman to prepare effectively for the transfer by offering suitable procedures,

— ensure the continuity of partnerships and sole proprietorships in the event of the death of a partner or the business owner,

— ensure the successful transfer within a family by seeing that inheritance or gift taxes do not endanger the survival of the business,

— encourage the owner, through taxation measures, to pass on his business by selling it or by transferring it to the employees, particularly when there is no successor in the family.

Article 2

Information

Public or private initiatives aimed at stimulating increased awareness, information and training of businessmen should be encouraged in order to ensure the right preparation for the successful transfer of small and medium-sized enterprises.

Article 3

Financial environment

Small and medium-sized enterprises should be provided with a financial environment which is conducive to successful transfers.

Article 4

Preparation for transfer

Businessmen should be provided with appropriate instruments which will allow the best preparation of the transfer. To this end, Member States are requested to:

(a) provide for a right of transformation for enterprises which allows them, whilst taking the rights of third parties and members into account, to change from one legal form to another without the need to wind up the firm or create a new legal entity;

(b) allow small and medium-sized enterprises to establish themselves in the form of public limited companies, with a very small number of shareholders, the establishment and management of which would be simplified in comparison to that of public limited companies whose shares are owned by large sections of the public;

(c) allow the creation of a public limited company with only one partner in accordance with Article 6 of the Twelfth Council Directive 89/667/EEC ([1]);

(d) when taxing any transactions designed to separate management powers and ownership, recognize the economic need for such legal operations in those cases where the objective is to facilitate transfers and, if necessary, take steps to authorize them and promote them;

(e) independently of the obligations stemming from Community law, apply the principle of fiscal neutrality to operations for the preparation of transfers such as transfers of assets, mergers, divisions and exchanges of shares; the principle of fiscal neutrality shall also apply to stamp duties, registration fees and other similar taxes.

Article 5

Continuity of partnerships and sole proprietorships

The continuity of partnerships and sole proprietorships should be ensured in the event of the death of one of the partners or the owner. To this end, Member States are requested to:

(a) provide for the principle that, in the event of the death of one of the partners, a partnership should be kept as a going concern, allowing the remaining partners to decide on the continuation of the business with or without the participation of the deceased partner's heirs, with reimbursement of the share of the deceased; the partnership agreement may derogate from the principle as to the continuation of the business;

(b) when the possible contradiction between the partnership agreement and the terms of the will or gift is not resolved, introduce a provision in their national legislation to the effect that the partnership agreement shall take precedence over the unilateral actions of one of the partners;

(c) in the event of the death of a member of a partnership or a sole proprietor, ensure that family law and inheritance law, and in particular the unanimity rule for decisions taken within the framework of joint ownership, do not prevent the enterprise from being kept as a going concern;

(d) ensure that the reimbursement of the share of the deceased, provided for in point (a), as well as the payment of financial compensation to minority heirs, following on from point (c), do not jeopardize the survival of the enterprise. To this end, if the parties choose payment in instalments, it should be possible for the compensation to be calculated on the basis of the market value of the enterprise, including goodwill, whereas, should a party demand immediate payment, compensation should be calculated strictly on the basis of the book value.

Article 6

Inheritance and gift taxes

The survival of the enterprise should be ensured through appropriate fiscal treatment of succession and gifts. To this end, Member States are invited to take one or more of the following measures:

(a) reduce the taxes on assets exclusively used for the business in the case of transfer by gift or succession, including inheritance tax, gift tax and registration fees, provided that the business is genuinely kept as a going concern for a minimum period;

(b) offer the heirs the possibility of spreading or deferring payment of the gift or inheritance taxes, provided that they keep the business as a going concern, and shall grant interest exemptions;

([1]) OJ No L 395, 30. 12. 1989, p. 40.

(c) ensure that the tax assessment of the business can take account of how the value of the business changes some months after the death of the owner.

Article 7

Transfer to third parties

The businessman should be encouraged to consider a transfer before death to third parties, where this cannot be done within the family. To this end, Member States are invited to:

(a) waive taxation on at least part of the revenue from the added value or capital gains arising on the assets of a business in the event of sale, in particular when the businessman has reached the age of 55; provide tax incentives for the reinvestment of the profits made on the sale of a business in another enterprise not quoted on the stock exchange and actively engaged in the production or sale of goods and services;

(b) promote the transfer of the enterprise to the employees, by reducing the taxation on the capital gain realized on the transfer of the shares to the employees, by waiving the registration fees, or through tax advantages for the granting of resources to employees for acquiring the enterprise, or by deferring taxation until the employee sells his shares. These measures should be applied equally to an enterprise or to a workers' cooperative set up by the employees.

Article 8

Concerted action

Member States are invited to inform and consult one another, in liaison with the Commission, with a view to benefiting from exchanges of experience and best practice as regards the transfer of small and medium-sized enterprises, and in particular with a view to implementing the measures provided for in this recommendation.

Article 9

Report

To enable the Commission to evaluate what progress has been made, the Member States are invited to communicate, at the latest by 31 December 1996, the text of any legislation, regulations or administrative provisions which have been adopted in order to put this recommendation into effect, and to inform the Commission of all future proposals in this area.

Article 10

Addressees

This recommendation is addressed to the Member States.

Done at Brussels, 7 December 1994.

For the Commission

Raniero VANNI d'ARCHIRAFI

Member of the Commission

COMMISSION DECISION

of 13 December 1994

on German aid to the coal industry for 1994

(Only the German text is authentic)

(Text with EEA relevance)

(94/1070/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry [1], and in particular Articles 8 and 9 thereof,

I

Whereas, by letter of 28 December 1993, Germany notified the Commission, in accordance with Article 9 (1) of Decision No 3632/93/ECSC, of the aid it intended to grant to the coal industry in 1994;

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

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

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

— aid totalling DM 2 853 million for the sale of coal and coke to the Community steel industry,

— aid totalling DM 110 million for maintaining the underground labour force (*'Bergmannsprämie'*),

— aid totalling DM 127,8 million for compensation between coalfields and DM 57,9 million for compensation for coal with a low volatile matter content,

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

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

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

II

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

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

[1] OJ No L 329, 30. 12. 1993, p. 12.

[2] German Law Gazette, 17. 12. 1974, p. 3473.

[3] German Law Gazette, 28. 7. 1994, p. 1618.

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

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

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

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

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

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

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

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

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

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

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

III

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

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

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

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

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

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

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

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

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

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

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

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

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

IV

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

Whereas the aid contributes to the maximization of productivity and therefore helps in the restructuring and rationalization of the coal industry; whereas it therefore also helps to achieve the objectives referred to in the first indent of Article 2 (1), namely to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving the degression of aids;

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

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

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

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

V

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

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

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

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

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

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

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

VI

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

Whereas this measure constitutes aid within the meaning of Article 1 (3) of Decision No 3632/93/ECSC, according to which the term 'aid' also covers the allocation, for the direct or indirect benefit of the coal industry, of the charges rendered compulsory as a result of State intervention, without any distinction being drawn between aid granted by the State and aid granted by public or private bodies appointed by the State to administer such aid; whereas the Commission must therefore take a decision on this measure in accordance with Article 9 of the Decision;

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

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

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

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

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

VII

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

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

[1] OJ No L 177, 1. 7. 1986, p. 1.

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

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

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

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

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

VIII

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

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

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

HAS ADOPTED THIS DECISION:

Article 1

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

— aid totalling DM 2 853 million for the supply of coal and coke to the Community steel industry,

— aid totalling DM 110 million to maintain underground mine workers ('*Bergmannsprämie*'),

— aid totalling DM 127,8 million for compensation between coalfields and DM 57,9 million for compensation for coal with a low volatile matter content,

— aid totalling DM 5 800 million in connection with the Third Electricity-from-Coal Law as revenue from the compensation fund ('*Ausgleichsfonds*') for 1994, corresponding to a levy rate ('*Kohlepfennig*') of 8,5 %,

— activation of DM 5 350 million, out of a credit line totalling DM 6 000 million, in the context of Article 3 of the Law of 19 July 1994 guaranteeing Coal Supplies for Power Stations and amending the Law on Nuclear Energy and Law on Electricity Supply for the purpose of clearing debts as at 31 December 1993 from the compensation fund entered under the Third Electricity-from-Coal Law.

Article 2

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

Article 3

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

Article 4

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

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 13 December 1994.

For the Commission

Marcelino OREJA

Member of the Commission

COMMISSION DECISION

of 13 December 1994

on the proposal of the United Kingdom to award aid to Carpets International (UK) plc (formerly Abingdon Carpets plc), Gwent

(Only the English text is authentic)

(Text with EEA relevance)

(94/1071/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community and, in particular, the first subparagraph of Article 93 (2) thereof,

Having regard to the Agreement establishing the European Economic Area and, in particular, subparagraph (a) of Article 62 (1) thereof,

Having, in acordance with the abovementioned Articles, given notice to the parties concerned to submit their comments to it,

Whereas:

I

By letter dated 23 September 1993, pursuant to Article 93 (3) of the EC Treaty and the Code on aid to the synthetic fibres industry [1], the United Kingdom authorities notified the Commission of a proposal to award aid retrospectively to Abingdon Carpets plc in support of a completed investment programme costing approximately £ 4 900 000 (ECU 6,39 million) in a new facility for the production of polypropylene bulked continuous filament (hereinafter PP-BCF) yarn on the company's site in Crumlin, Gwent. The yarn is processed by the company to produce carpets. The company was acquired by Shaw Industries Inc in September 1993 and, on 1 January 1994, the business together with that of Kosset Carpets Ltd was transferred to Carpets International (UK) plc (hereinafter CIP), a new wholly owned subsidiary of Shaw Industries Inc.

The proposed aid would be awarded in the form of a grant of £ 750 000 (ECU 0,98 million) under the *Regional Development Grant* (hereinafter RDG) scheme which was approved by the Commission in 1984.

It should be noted that the company applied for assistance on 29 March 1988 and that, under the terms of the RDG scheme, applicants could undertake the investments for which they had applied for aid before receiving approval from the UK authorities. The proposal was the subject of correspondence between the Commission and the UK authorities in September 1990 and, in December 1991, between the Commission and the company. However, as noted above, the UK authorities did not formally notify a proposal to award aid to the company until 23 September 1993.

The Commission decided on 14 December 1993 to open the procedure provided for in Article 93 (2) in respect of the proposed aid.

In taking this decision, the Commission considered that, on the information provided by the UK authorities, the proposed aid would be likely to distort competition and affect trade among Member States to an extent contrary to the common interest because it would result in an increase in the production capacity of the aid beneficiary and, therefore, could not conform with the Code under which aid could be authorized only if it would lead to a significant reduction in the production capacity of the aid beneficiary. Accordingly, the proposed aid appeared to be incompatible with the common market.

By letter dated 27 January 1994, the Commission informed the United Kingdom that it had decided to open the procedure provided for under Article 93 (2) in respect of the proposal to award aid to CIP. Other Member States and interested parties were informed by publication of the letter in the *Official Journal of the European Communities* [2].

II

By letter dated 7 March 1994, the United Kingdom submitted comments under the procedure.

The UK authorities argued that the Commission should assess the proposed aid against the terms of the version of the Code in force at the time the investment was undertaken, i.e. the 1987 to 1989 Code [3], because the investment was carried out in 1988, and not against the

(1) OJ No C 346, 30. 12. 1992, p. 2 and OJ No C 224, 12. 8. 1994, p. 4.

(2) OJ No C 79, 16. 3. 1994, p. 8.

(3) OJ No C 183, 11. 7. 1987, p. 4.

terms of the current version of the Code, which came into effect on 1 January 1993. In support of this contention, the UK authorities cited the Commission's decision to authorize a proposal to award aid to Crimpfil plc.

Moreover, the UK authorities stated that it would be technically very difficult and uneconomic to adapt the equipment concerned to produce anything other than PP-BCF yarn, and explained the problems that would be encountered if it were attempted to produce polypropylene staple fibre on the machinery or to convert to the production of polyester or nylon yarn. Furthermore, they stated that the company had no intention of producing anything other than PP-BCF yarn and that it was prepared to give an undertaking to that effect, which the UK authorities would in turn be willing to monitor.

The UK authorities stated that statistics on the market for PP-BCF yarn were not available but pointed to evidence of rapid growth in both this market and the market for polypropylene staple fibre with PP-BCF production within Western Europe forecast to grow by 6 % annually over the period to 1996.

Production of PP-BCF yarn in Western Europe

1993 to 1996

('000 tonnes)

1993	1994	1995	1996
175	186	197	209

Source: ICI 'Propathene' Business Plan, 1994.

The UK authorities also recalled that they had previously supplied the Commission with statistics showing that in 1989, when the company had started to produce PP-BCF yarn as a result of the investment in question, demand in Western Europe for PP-BCF for the production of tufted carpets exceeded production capacity by 11 400 tonnes. The UK authorities quoted sources indicating that there would be continuing undercapacity for the production of PP-BCF yarn within Europe, and they noted that there had recently been extensive investment in PP-BCF yarn conversion equipment especially in Belgium and the other Benelux countries. Furthermore, they argued that, as the Code existed primarily to address problems of overcapacity, it should not be applicable to proposals to award aid in sub-sectors of the synthetic fibres industry where demand exceeded capacity and where the balance was satisfied by imports.

By investing to enable it to produce PP-BCF yarn with the required characteristics, CIP had been able progressively to reduce its imports of the yarn from the United States of America, previously the only source of the required type of PP-BCF yarn which was not available from any Community supplier. As the capacity resulting from the investment in question had replaced imports, the proposed aid would not have any adverse effect on intra-EEA trade in PP-BCF and, in any case, the UK authorities considered that CIP's share of the market was insufficiently large to affect intra-EEA trade significantly.

The UK authorities further stated that there were environmental advantages as a result of greater use of polypropylene filament yarn in 'all-in-one' carpet production, for example, whereas the coloration of some fibres consumed significant quantities of energy and resulted in heavy discharge of aqueous effluent, no such effluent was generated in the coloration of polypropylene filament yarn. Furthermore, by enabling the company to optimize colours and exploit the yarn's blending potential, the investment had brought about a significant amount of innovative product development and 'contributed to R&D in Europe'.

To date, the investment had created 122 new jobs (50 directly and 72 indirectly), as opposed to the 97 new jobs (33 directly and 64 indirectly) that had been created when the UK authorities notified the proposed aid to the Commission. A further 11 new jobs would be created during 1994. The investment was located in Crumlin, Gwent, within the Merthyr and Rhymney travel-to-work area, an area defined as a Development Area under the terms of the RDG scheme which was authorized by the Commission as compatible with the common market under Article 92 (3) (c). The area is also eligible for support under Objective II of the Structural Funds and has one of the worst records for employment in Wales and in the United Kingdom as a whole, having suffered significantly from the run-down of the coal and steel industries of South Wales which were once the main employers in the area. Taking account of the investment in question, the level of unemployment in the travel-to-work area had improved to 14 % from 17,1 % in March 1988 when the company applied for the aid, compared with the most recent estimates for Wales, 10,1 %, and the United Kingdom as a whole, 9,9 %.

The UK authorities stated that the project had therefore had a 'significant impact' on the area, and commented that diversification and investment in other industries had been essential in helping the area to recover and in building a self-sustaining economy.

III

In commenting under the Article 93 (2) procedure, the International Rayon & Synthetic Fibres Committee (hereinafter CIRFS) opposed the aid on the grounds that it would not conform to the Code and that, because PP-BCF yarn and polyamide bulked continuous filament (hereinafter PA-BCF) yarn were in competition in certain markets, the creation of new capacity for the production

of PP-BCF yarn would have an impact not simply on other producers of the yarn, but also on producers of PA-BCF for which the average capacity utilization rate of existing EEA producers in 1993 was approximately 76 %. CIRFS also commented that, although CIP's product was an improvement on earlier generations of PP-CF, the technical characteristics of CIP's product and production processes could not be regarded as unique. Finally, CIRFS commented that there had been recently a significant increase in capacity within the EEA to produce PP-BCF yarn with further increases under way and planned that would result in 'substantial overcapacity'.

The Federation of Danish Textile and Clothing Industries (hereinafter FDTCI) also opposed the proposed aid and claimed that, as it would not be difficult to adapt the machinery concerned to produce ordinary polypropylene filament yarn, the investment would in effect result in an increase in capacity within the EEA for the production of such yarn, for which there was in their opinion already overcapacity. FDTCI claimed that the proposed aid would therefore have an adverse effect on other producers of polypropylene filament yarn and on Danish carpet manufacturers with whom CIP competed in the tufted carpets market.

The European Association for Textile Polyolefins (hereinafter EATP) stated that, in their opinion, there was undercapacity for the production of PP-BCF while demand was high, mainly because of the Russian market for carpets, although it was not certain that this demand would continue at its present high level. This had resulted in significant levels of investment in PP-BCF within the Community, which were being or had been undertaken without State aid and would increase capacity and result in overcapacity before the end of 1994.

However, the British Polyolefin Textiles Association supported authorization of the proposed aid and, in particular, the view expressed by the UK authorities that it should be assessed against the terms of the 1987 to 1989 Code as in force when the company made the investment for which it had sought retrospective assistance.

By letter dated 3 May 1994, the comments submitted under the procedure were sent to the UK authorities, which replied by letter dated 19 July 1994. The UK authorities repeated the regional benefits of the investment in question. They also emphasized that, in their opinion, it was not currently economically feasible to convert the equipment to produce PA-BCF and reiterated the readiness of the company to give an undertaking to that effect and the UK authorities' readiness to monitor such an undertaking. Furthermore, they dismissed the view that PP-BCF and PA-BCF were in competition for certain end-uses and explained why the two types of fibre should be considered complementary in terms of styling. Finally, they noted that CIRFS and EATP had confirmed the current undercapacity for the production of PP-BCF within Europe and remarked that this undercapacity had been even more marked at the time CIP carried out the investment in question.

IV

In opening the Article 93 (2) procedure on the proposed aid to CIP, the Commission stated that it accepted 'that, without the necessary technical specifications having been made before the manufacture of the equipment, equipment used to produce PP-BCF yarn could not be used to produce polyamide or polyester yarn'. In commenting under the procedure, the UK authorities described in detail why the equipment concerned could not easily be adapted to produce polypropylene staple fibre or converted to produce polyester or polyamide, but did not offer any evidence to refute the Commission's view that the machinery concerned could be adapted relatively easily to produce polypropylene filament yarn generally, stating only that there were 'marked differences' between PP-BCF and other types of polypropylene filament yarn.

The Commission has never asserted that the machinery concerned could be used to produce PA-BCF or polyester BCF yarn or polypropylene staple fibre, nor has it ever doubted that there are 'differences' between PP-BCF and other types of polypropylene filament yarn. Accordingly, and in the absence of any evidence or arguments to the contrary, the Commission remains of the opinion that, as stated in the opening of the procedure, 'it is relatively easy to adapt such equipment, without the need for prior specifications, to produce polypropylene filament yarn'. However, given that the company would be prepared to give an undertaking that it will only produce PP-BCF on the machinery concerned, and that the UK authorities would be prepared to monitor such an undertaking, the Commission is prepared to assess the proposed aid as being in support of capacity to produce PP-BCF yarn only. As PP-BCF has other end-uses than in the production of tufted carpets, it would be wrong solely to focus on trade in PP-BCF for use in that sector.

There is trade in PP-BCF yarn between Member States and within the EEA (approximately 45 000 tonnes in 1992) so that, by favouring CIP, the proposed aid would strengthen its position compared with other producers that have to adapt to change either without aid or with aid that has been authorized as compatible with the common market and, since 1 January 1994, the functioning of the EEA Agreement. The size of CIP's share of the market for PP-BCF and the extent to which they export to other countries within the EEA is irrelevant to the question of whether or not any aid to the company would have an effect on intra-EEA trade. Because the proposed aid would mean that CIP had been able to carry out the investment in question without

having to bear the full cost and because more than one company is active in the relevant market, it undoubtedly constitutes aid within the meaning of Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement, and threatens to distort competition and affect trade among the Member States.

The proposed aid was properly notified to the Commission in accordance with Article 93 (3) and the current version of the Code on aid to the synthetic fibres industry.

The Commission was thus able to formulate its views and assess the proposed aid.

Article 92 (1) lays down the principle that, except where otherwise allowable, aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade among Member States, incompatible with the common market. However, Article 92 (2) and Article 92 (3) describe the circumstances in which such aid is or may be allowed.

Article 92 (2) specifies certain types of aid that are compatible with the common market. Because of the character, location and purpose of the aid in question, none is applicable.

Article 92 (3) specifies aid that may be compatible with the common market. Compatibility must be determined in the context of the Community and not of a single Member State. In order to safeguard the proper functioning of the common market and, taking into account the principles of Article 3 (g), the exceptions to the principle of Article 92 (1) set out in Article 92 (3) must be construed narrowly when scrutinizing any aid scheme or individual award.

In particular, they may be applied only when the Commission is satisfied that the free play of market forces alone, without the aid, would not induce the prospective aid recipient to adopt a course of action contributing to attainment of one of the said objectives.

To apply the exceptions to cases not contributing to such an objective or where aid was not necessary to that end would give an unfair advantage to certain Member States' industries or undertakings, whose financial positions would merely be bolstered, thereby affecting trading conditions among Member States and distorting competition.

The exception provided for in Article 92 (3) (a) relates to aid intended to promote the economic development of certain areas. As the standard of living in the Merthyr and Rhymney travel-to-work-area is not abnormally low nor is there serious underemployment within the meaning of Article 92 (3) (a), it is not applicable in this case.

The exception provided for in Article 92 (3) (b) relates to aid intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of any Member State. The UK authorities have not put forward any substantive arguments to this effect, or argued that the aid should be considered compatible with the common market by virtue of this exception, other than to assert, without reference to Article 92 (3) (b), that the project 'contributed to R&D in Europe' because it had enabled CIP to optimize the use of colour and exploit the potential for blending yarns, resulting in two of its products becoming market leaders. This is not sufficient justification for the Commission to conclude that the project is 'an important project of common European interest'. Furthermore, there is not 'a serious disturbance in the economy' of the United Kingdom. Therefore, the exception provided in Article 92 (3) (b) is not applicable.

The exception provided for in Article 92 (3) (c) relates to aid intended to facilitate the development of certain economic areas or activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

By creating at least 122 jobs, the investment in question has facilitated the development of the Merthyr and Rhymney travel-to-work area, an area eligible for regional aid by virtue of Article 92 (3) (c). The intensity and other aspects of the proposal to award aid retrospectively to CIP under the RDG scheme in the form of a grant of approximately £ 750 000 (ECU 0,98 million), calculated as 15 % of the capital expenditure on new assets, are in accordance with the terms on which the scheme was approved by the Commission in 1984.

However, the sectoral effects of regional aid to the synthetic fibres industry have to be controlled even for the most underdeveloped areas of the Community — which do not include the Merthyr and Rhymney travel-to-work area — and the aid in question has therefore to be examined in the framework of the Community interest.

Since 1977, the conditions under which aid may be awarded to the synthetic fibres industry have been prescribed by a Code whose terms and scope are periodically revised, most recently in 1992.

The UK authorities have asserted that the proposed aid should be assessed against the 1987 to 1989 Code, which was in force on the date that company made the

investment in question. In making this assertion, they cited the Commission's decision to authorize a notified proposal to award aid retrospectively under the RDG scheme in support of investments by Crimpfil Ltd, a synthetic fibres producer located in the same area as CIP.

In assessing the proposal to award aid retrospectively to Crimpfil Ltd, the Commission decided that on the date the company carried out the investments in question — and, by doing so, became entitled to the aid subject to authorization by the Commission — none of the investments came within the scope of the version of the Code then in force.

In the current case, it has never been suggested that the proposed aid to CIP does not come within the scope of the current Code nor even that it did not come within the scope of the 1987 to 1989 Code as in force on the date that the company made the investment in question. Therefore, the investment programme concerned did and does come within the scope of the Code and the UK authorities were required to seek authorization. However, although there were informal contacts with the Commission in 1990 and 1991, the UK authorities did not notify the proposed aid until 23 September 1993. The proposal has therefore to be assessed in the light of the current Code which has been in force since 31 December 1992.

The current Code requires the notification of any proposal to award aid, in whatever form, to synthetic fibres producers by way of support for such activities and, since the introduction of the Code, it has been interpreted consistently as applying to all proposals to award such aid regardless of whether the support for production would be direct or indirect, i. e. of activities downstream of production such as the processing or commercialization of fibres and yarns produced within the EEA by the aid beneficiary or an affiliated company in order to produce secondary or final products. However, the Code states that 'In the case of aid coming under the frameworks on State aid for research and development and in environmental matters, the substantive examination of the aid schemes notified will be carried out applying the provisions of those frameworks'.

The UK authorities stated that there were environmental advantages in the increased use of PP-BCF, mainly resulting from the 'concepts of "all-in-one" material carpet production. Mechanical recycling, without segregation, into secondary converted products is much easier and energy recovery through combustion would help in the incineration of hazardous materials. In addition, no aqueous effluent is generated in producing coloured polypropylene yarn which is achieved by the direct addition of encapsulated pigments'. However, the UK authorities have never asserted that the proposed aid should be assessed against the terms of the Community Guidelines on State aid for environmental protection (1), nor have they asserted that the availability or amount of the proposed aid was in any way determined by the environmental characteristics of either the product or the production process.

Similarly, and as noted above, the UK authorities stated that the project 'contributed to R&D in Europe' because it had enabled CIP to optimize the use of colour and exploit the potential for blending yarns, resulting in two of its products becoming market leaders. Accordingly, an integral part of the project was the 'significant amount of product development' involved. However, the UK authorities have never asserted that the proposed aid should have been assessed against the terms of the Community Framework for State Aids for research and development (2), nor, on the evidence submitted by the UK authorities, would the Commission be justified in concluding that the proposed aid should be assessed against the Framework.

Therefore, the proposed aid in support of the investment programme by CIP must be assessed against the current version of the Code on aid to the synthetic fibres industry.

The Code sets out the criteria to be applied when the Commission scrutinizes such proposals and, among other matters, specifies that the authorization of investment aid is in all cases conditional on a significant reduction in the production capacity of the prospective recipient, and that companies should finance from internal resources any investments in expanding or maintaining capacity that they consider necessary to adapt their production to market trends and technological developments. The investment in question concerns the installation of new production capacity, and the UK authorities informed the Commission that the consequent increase in capacity would not be more than offset by any contemporaneous reductions in capacity within the EEA by either CIP or the group to which the company now belongs. Therefore, the proposed aid does not fulfil the fundamental requirement of the Code that it must lead to a net reduction in capacity.

As the Commission stated in opening the Article 93 (2) procedure on the proposed aid to CIP, the Code states that, while the Commission is generally sympathetic to investment aid awarded to overcome the structural handicaps of the Community's less-favoured regions, the requirement of a significant reduction is absolute and paramount to all other considerations. Accordingly, when the Commission assesses whether or not a proposal to award investment aid to a company would lead to a significant reduction in production capacity, it takes account of the specifics of the proposal, including the

(1) OJ No C 72, 10. 3. 1994, p. 3.
(2) OJ No C 83, 11. 4. 1986, p. 2.

volume and location of the investment in question. However, the Code states clearly that where, as in the current case, a company would increase or maintain its capacity, the Commission will take an unfavourable view of the proposal.

Similarly, in assessing whether or not a significant reduction in production capacity would be made in the production capacity of the prospective aid beneficiary, the Commission will consider the trend of the average rate of capacity utilization for the specific fibre or fibres concerned and the state of the market for the final product in question; but such consideration of these aspects of the case is without prejudice to the requirement in the Code that there must be a reduction.

Therefore, as the Code does not allow aid in support of the production of fibres covered by the Code to be exempted from the need to conform to the Code on the grounds that current or future demand for a specific fibre exceeds current supply, the Commission does not, in assessing the proposed aid to CIP, need to take a view on whether demand for PP-BCF exceeds production capacity within the EEA and is likely to continue to do so for some time, or if it is likely that capacity will soon exceed demand.

It should be noted that, if the Code were to allow aid in support of the production of fibres on the grounds that there was or was likely to be undercapacity within the EEA, that situation would be likely to be transformed rapidly into one of overcapacity. This is why the Code requires that producers of synthetic fibres producers adapt to change in demand either without the benefit of aid or with aid that has been authorized by the Commission as compatible with the common market and the functioning of the EEA Agreement. In this context, the Commission notes that the UK authorities and two of the interested parties that commented under the Article 93 (2) procedure stated that there had recently been numerous investments in new capacity for the production of PP-BCF yarn, all of which have to proceed either without aid or with aid authorized by the Commission.

Futhermore, as noted in the notice of the opening of the Article 93 (2) procedure, the Commission's decision to authorize a proposal to award aid to Filature du Hainaut on the grounds that the final product would result in the creation of entirely new markets is irrelevant to the assessment of the proposed aid to CIP because, in the earlier case, the proposed aid was assessed against an earlier version of the Code which, unlike the current Code, did not expressly limit authorization to proposals that would lead, *inter alia,* to a significant reduction in capacity of the aid beneficiary. Therefore, although the UK authorities have asserted that CIP's final product, a carpet produced from PP-BCF yarn with particular qualities of stain-resistance and wool-like appearance, is 'an innovative new product', the Commission does not need to take a view on whether or not CIP would compete exclusively with other manufacturers of carpets produced from PP-BCF or with manufacturers of carpets made from any other fibre whose production comes within the scope of the Code such as PA-BCF. In any case, on the evidence presented to the Commission by the UK authorities, it is evident that CIP is not the only EEA-based manufacturer of carpets produced from PP-BCF nor was it so at the time the investment was carried out. Therefore, there can be no question of an entirely new market's having been created as was so in the case of the proposed aid to Filature du Hainaut.

By favouring CIP so that its market position was no longer determined by its own efficiency, financial strength and power and, thereby, increasing the difficulties of other synthetic fibres producers that adapt to change without aid or with aid authorized as compatible with the common market, the proposal to award aid in support of the production of PP-BCF cannot be regarded as likely to facilitate a development that, from the Community's perspective, would be sufficient to counteract the resulting distortion of trade.

Therefore, while the proposed aid would, within the meaning of Article 92 (3) (c), facilitate the development of the Merthyr and Rhymney travel-to-work area, it would adversely affect trading conditions to an extent contrary to the common interest and the conditions which have to be fulfilled in order to apply the exception provided in Article 92 (3) (c) are not fulfilled.

The exception provided for in Article 92 (3) (d) relates to aid intended to promote culture or heritage conservation. Because of the nature of the project, this exception is not applicable.

In view of all the foregoing considerations, the proposed aid in support of the investment by CIP in new capacity for the production of PP-BCF does not meet the conditions which must be fulfilled in order to apply any of the exceptions set out in Article 92.

The aid is therefore incompatible with the common market and incompatible with the functioning of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The proposed aid, totalling approximately £ 750 000, which the United Kingdom authorities propose to award Carpets International (UK) plc (formerly Abingdon Carpets plc) under the *Regional Development Grant* scheme in support of the production of polypropylene

bulked continuous filament yarn at its site in the Merthyr and Rhymney travel-to-work area, Gwent, is incompatible with the common market within the meaning of Article 92 of the EC Treaty and with the functioning of the EEA Agreement, and cannot, therefore, be paid.

Article 2

The United Kingdom shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply therewith.

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels, 13 December 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 13 December 1994

authorizing the granting by Spain of aid to the coal industry in respect of 1994

(Only the Spanish text is authentic)

(Text with EEA relevance)

(94/1072/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry [1], and in particular Articles 8 and 9 thereof,

Whereas:

I

By letter of 30 May 1994, pursuant to Article 8 (1) of Decision No 3632/93/ECSC, Spain notified the Commission of its guidelines for a plan to reduce costs and/or activity in the coal industry.

By letter of 7 November 1994, Spain notified the Commission of a modernization, rationalization, restructuring and activity-reduction plan for the coal industry covering the period from 1 January 1994 to 31 December 1997.

By letter of 29 November 1994, Spain forwarded further information.

By letters of 7 and 29 November 1994, pursuant to Article 9 (1) of Decision No 3632/93/ECSC, Spain notified the Commission of the financial support it intended to grant to the coal industry in the 1994 financial year.

Under Decision No 3632/93/ECSC, the Commission must:

— give an opinion as to the conformity of the modernization, rationalization, restructuring and activity-reduction plan for the Spanish coal industry with the general and specific objectives of the Decision,

— rule on the following financial measures relating to 1994:

  — aid of Pta 107 426 million to cover operating losses,

  — aid of Pta 14 715 million to cover exceptional welfare aid paid to workers who lose their jobs as a result of the measures to modernize, rationalize, restructure and reduce the activity of the Spanish coal industry,

  — aid of Pta 8 374 million to cover the technical costs of closing down extraction installations as a result of measures to modernize, rationalize, restructure and reduce the activity of the Spanish coal industry.

Spain's proposed financial measures for the coal industry conform to the provisions of Article 1 of Decision No 3632/93/ECSC and must be approved by the Commission, in accordance with Article 9, on the basis of the general criteria and objectives laid down in Article 2 and the specific criteria established by Articles 3 and 4 of the Decision. In accordance with Article 9 (6), the Commission must assess the conformity of the measures with the notified plans.

II

Spain's notified plan to modernize, rationalize, restructure and reduce the activity of the coal industry must be examined in the light of the general criteria and objectives laid down in Article 2 (1) and the specific criteria and objectives established by Articles 3 and 4 of Decision No 3632/93/ECSC.

The plan's objectives are based on the guidelines for coal set out in Spain's National Energy Plan for 1991 to 2000. Accordingly, the notified plan is a continuation of the Restructuring, Rationalization and Modernization Plan for the Coal Industry for 1990 to 1993 notified by Spain as requested by the Commission in Decisions

[1] OJ No L 329, 30. 12. 1993, p. 12.

90/198/ECSC [1] and 91/3/ECSC [2]. By letter of 7 March 1994, Spain notified the Commission of the results of its 1990 to 1993 Plan.

III

The 1994 to 1997 Plan is designed to make the coal industry more competitive and thereby lead to the degression of aids.

The Plan lays down modernization, rationalization and restructuring measures which coal undertakings must implement to reduce their production costs over the period from 1994 to 1997 in order to receive the operating aid provided for in Article 3 of Decision No 3632/93/ECSC.

Undertakings which are unable to reduce their production costs or which, despite reducing them, are still far from achieving economic viability, must be included in an activity-reduction plan of the type laid down in Article 4 of Decision No 3632/93/ECSC.

For the period 1994 to 1997, Spain's objective is a 2 % annual reduction in production costs covered by aid, at constant prices, in those undertakings which receive operating aid within the meaning of Article 3. This reduction could be greater for certain open-cast mines, given that aid in such cases must cease by 31 December 1997.

Production units or undertakings which receive aid to reduce activity in accordance with Article 4 will be obliged gradually to reduce their production capacity through total or partial closure.

Spain has informed the Commission of its intention to notify a further plan for the period 1998 to 2002, to be drafted in the light of the progress made, principally with implementation of the social and regional measures accompanying the restructuring of the coal industry.

The notified plan includes the restructuring, rationalization and modernization of 65 undertakings, 50 of which are small with unit production of less than 200 000 tonnes a year, and a reduction in activity together with total or partial closures of underground production units in 38 undertakings. By 31 December 1997 underground production will have been reduced by around 12 % and the workforce by 27 % compared with 1993. In this respect, the Commission must, on the basis of the Spanish Government's notification, pay particular attention to the restructuring of Minero Siderúrgica de Ponferrada SA, which is the largest private undertaking in the sector. This undertaking was declared insolvent on 2 July 1993. Following a major write-off of debts, primarily by the Social Security funds, insolvency proceedings were terminated on 14 July 1994.

In view of the unfavourable geological conditions of Spain's coalfields, which limit the possibility of modernization and rationalization, aid can be significantly reduced only through restructuring, or through the progressive and continuous reduction of mining by the undertakings in question.

The plan notified by Spain conforms to the provisions of the first two indents of Article 2 (1) of Decision No 3632/93/ECSC, namely to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving degression of aids, and to solve the social and regional problems created by total or partial reductions in activity.

In evaluating the plan, and being aware that in the light of coal prices on international markets the undertakings concerned would be able to make only limited progress towards greater economic viability, the Commission recognized the priority need to attenuate as far as possible the social and regional impact of restructuring and to provide coal undertakings with a medium-term outlook so that they could complete their restructuring.

Spain will ensure that the elements of the plan comply with Article 9 (7) of Decision No 3632/93/ECSC. As regards contracts concluded between electricity and coal producers, the Commission reserves the right to decide the consequences of any decision it might adopt in this field, in accordance with Article 65 of the ECSC Treaty or Article 85 (3) of the EC Treaty.

In view of the above, the Commission considers the plan notified by Spain to be in conformity with the specific objectives established in Articles 3 and 4 of Decision No 3632/93/ECSC, provided that all the conditions laid down in the latter are complied with, and in particular the condition relating to discrimination between producers, purchasers and consumers of coal in the Community.

In view of the particular circumstances affecting Minero Siderúrgica de Ponferrada SA, the Commission is giving its opinion, in accordance with Article 8 (3) of the Decision, on the conformity of that undertaking's plan with the general and specific objectives, without prejudging whether the measures planned are capable of attaining those objectives. Accordingly, Spain will report to the Commission, no later than 30 March and 30 September of 1995, 1996 and 1997, giving details of the level of compliance with that undertaking's restructuring plan.

[1] OJ No L 105, 25. 4. 1990, p. 19.
[2] OJ No L 5, 8. 1. 1991, p. 27.

IV

The aid of Pta 107 426 million which Spain plans to grant the coal industry is intended to compensate in full or in part for operating losses.

Spain's coal producers (Carbunion) and electricity producers (Unesa) have agreed, in respect of 1994, to a sales price for Spanish coal under the new system of public contracts for coal used in power stations (NSCCT) which, though still considerably higher than the prices obtaining on the world market, is nonetheless closer to them than the reference price which prevailed up to 31 December 1993.

The notified sum subdivides into operating aid of Pta 29 219 million in accordance with Article 3 of Decision No 3632/93/ECSC and aid of Pta 78 207 million to reduce activity in accordance with Article 4 thereof.

The inclusion of this measure in the notified modernization, rationalization, restructuring and activity-reduction plan, and the degression of aid, quantities and costs planned for 1994 meet the objectives of the first and second indents of Article 2 (1) of the Decision, namely to make, in the light of coal prices on international markets, further progress towards the economic viability of the 65 undertakings concerned with the aim of achieving degression of aids, and to solve the social and regional problems caused by developments in the mining industry.

Of the operating aid of Pta 29 219 million, Pta 22 239 million will be covered by the electricity producers in accordance with NSCCT-related provisions, while the remaining Pta 6 980 million will come from State budgets.

As established in Article 3 of Decision No 3632/93/ECSC, the observed degression of aid is helping to improve the economic viability of the undertakings concerned by reducing production costs.

Of the aid of Pta 78 207 million to reduce activity, Pta 20 591 million will be covered by the electricity producers in accordance with NSCCT-related provisions, while the remaining Pta 57 616 million will come from State budgets.

Of the aid of Pta 57 616 from the general State budget, Pta 49 176 million, Pta 5 438 million and Pta 3 002 million is intended for the Hunosa, Minas de Figaredo SA and Mina de la Camocha SA undertakings of the central Asturias coalfield respectively.

This aid forms part either of a plan for the progressive and continuous reduction of activity or of a closure plan, and therefore complies with Article 4 of Decision No 3632/93/ECSC.

In its notification, Spain guaranteed that for each undertaking or production unit the aid granted would not exceed the difference between production costs and foreseeable revenue from the free agreement between the parties.

The Commission finds that a sum of Pta 1 646 million covering part of the operating losses of Hunosa corresponds to activities other than coal production, on which the Commission cannot give an opinion within the framework of Decision No 3632/93/ECSC.

Spain will ensure that those arrangements comply with Article 9 (7) of Decision No 3632/93/ECSC.

In view of the above and on the basis of the information provided by Spain, this aid is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

V

The aid of Pta 14 715 million which Spain is proposing to grant will cover compensation for the 7 300 workers in Spanish coal undertakings who will lose their jobs or have to take early retirement under the modernization, rationalization, restructuring and activity-reduction plan for the Spanish coal industry.

Parts of this aid, amounting to Pta 3 606 million, Pta 986 million and Pta 248 million, are to be granted to the Hunosa, Minas de Figaredo SA and Mina de la Camocha SA undertakings respectively and are to be covered by the general State budget.

The remaining Pta 9 875 million is intended for the other undertakings affected by modernization, rationalization and restructuring measures or by measures to reduce activity and will be covered by financial support from the Electricity Compensation Office (Ofico). Ofico is a public body financed by contributions from electricity-generating companies through a levy on electricity prices charged to consumers.

The financial support from Ofico is designed to repay to the electricity-generating companies certain amounts they have to pay to the coal-producing undertakings. The Order of the Spanish Ministry of Industry and Energy of 6 July 1994 and the Resolution of the Secretariat General of Energy and Mineral Resources which implements it establish compensatory measures financed by Ofico to assist workers from coal undertakings which have not signed a contract with the State who take early retirement or lose their jobs as a result of the modernization, rationalization, restructuring and activity-reduction plan for the Spanish coal industry.

Ofico's support constitutes 'aid' within the meaning of Article 1 (3) of Decision No 3632/93/ECSC, which refers to 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. Accordingly, the Commission must give an opinion on this measure in accordance with Article 9 of the Decision.

Those financial measures relate to action made necessary by the modernization, rationalization and restructuring of the Spanish coal industry and cannot therefore be considered to be related to current production (inherited liabilities).

Pursuant to Article 5 of Decision No 3632/93/ECSC, the aid mentioned explicitly in the Annex to the Decision, namely the cost of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age and other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalization, can be considered compatible with the common market provided that the amount paid does not exceed such costs.

Spain will ensure that these arrangements comply with Article 9 (7) of Decision No 3632/93/ECSC.

In view of the above and on the basis of the information provided by Spain, this aid is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

VI

The aid of Pta 8 374 million 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. Furthermore, those undertakings have to bear exceptional costs resulting from the progressive closures which will take place, initially, up to 31 December 1997.

Part of this aid, totalling Pta 2 504 million, is to be granted to Hunosa and covered by the general State budget. The remaining Pta 5 870 million is intended for the other undertakings reducing their activity and will be covered by financial support from Ofico.

The purpose of this support is to repay to the electricity-generating companies certain amounts they have to pay to the coal-producing undertakings. The Order of the Spanish Ministry of Industry and Energy of 6 July 1994 and the Resolution of the Secretariat General of Energy and Mineral Resources which implements it establish compensatory measures finaced by Ofico to assist coal undertakings which have not signed a contract with the State and which will have to reduce their production capacity under the plan.

Ofico's support constitutes aid within the meaning of Article 1 (3) of Decision No 3632/93/ECSC, which refers to 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 destinction being drawn between aid granted by the State and aid granted by public or private bodies appointed by the State to administer such aid. Accordingly, the Commission must give an opinion on this measure in accordance with Article 9 of the Decision.

Those financial measures relate to action made necessary by the modernization, rationalization and restructuring of the Spanish coal industry and cannot therefore be considered to be related to current production (inherited liabilities).

Pursuant to Article 5 of Decision No 3632/93/ECSC, the aid mentioned explicitly in the Annex to the Decision, namely exceptional intrinsic depreciation provided that it results from the restructuring of the industry (without taking account of any revaluation which has occured since 1 January 1986 and which exceeds the rate of inflation), can be considered compatible with the common market provided that the amount paid does not exceed such costs.

Spain will ensure that the arrangements comply with Article 9 (7) of Decision No 3632/93/ECSC.

In view of the above and on the basis of the information provided by Spain, this aid is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

VII

The Spanish Government will ensure that the granting of the operating aid covered by this Decision gives rise to no discrimination between producers, purchasers and consumers in the Community coal market.

In view of the above and on the basis of the information provided by Spain, the aid and measures planned to assist the coal industry are compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

This Decision does not prejudge the compatibility with the Treaties of any contracts which may be concluded between coal and electricity producers.

In accordance with the second indent of Article 3 (1) and with Article 9 (2) and (3) of Decision No 3632/93/ECSC,

the Commission must verify that aid authorized for current production relates solely to the purposes set out in Articles 3 and 4 of the Decision. In this respect, it must be informed of the amounts and distribution of payments,

HAS ADOPTED THIS DECISION:

Article 1

Spain is hereby authorized to pay the following aid in respect of the 1994 financial year:

- aid of Pta 105 780 million to cover operating losses by coal undertakings,
- aid of Pta 14 715 million to cover exceptional welfare aid paid to workers who lose their jobs as a result of the measures to modernize, rationalize, restructure and reduce the activity of the Spanish coal industry,
- aid of Pta 8 374 million to cover the technical costs of closing down mining installations as a result of the measures to modernize, rationalize, restructure and reduce the activity of the Spanish coal industry.

Article 2

Spain shall ensure that any unspent or overestimated aid covered by this Decision is repaid to it.

Article 3

Spain shall notify the Commission, by 30 June 1995 at the latest, of the amount of aid actually paid in respect of the 1994 financial year.

Article 4

Spain shall report to the Commission, by 30 March 1995 and 30 September 1995 at the latest, giving details of the level of compliance with the restructuring plan by Minero Siderúrgica de Ponferrada SA.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 13 December 1994.

For the Commission

Marcelino OREJA

Member of the Commission

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