II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 17 December 1990

on a financial measure by Spain in respect of the coal industry during 1991

(Only the Spanish text is authentic)

(91/599/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 2064/86/ECSC of 30 June 1986 establishing Community rules for State aid to the coal industry [1],

Whereas :

I

On 17 July 1990, in compliance with the request set out in Decision No 90/198/ECSC [2], the Spanish Government sent the Commission its plan for reducing the compensatory payments made under the Ofico (Electricity Compensation Office) financial measure and an outline plan for the restructuring, modernization and rationalization of the Spanish coal industry undertakings covered by this measure.

By letter dated 8 October 1990, the Spanish Government informed the Commission, pursuant to Article 9 (2) of Decision No 2064/86/ECSC, of the financial measures it intends to take in order to give direct or indirect support to the coal industry in 1991. These financial measures correspond to those contained in the plan for reducing the compensatory payments.

Under Decision No 2064/86/ECSC, the Commission must give a ruling on the following financial measures for 1991 :

— an Ofico financial measure totalling Pta 6 208 million ;

— aid totalling Pta 12 646 million for the constitution of a fund to cover exceptional social expenditure to be paid out to workers made redundant following measures to restructure, rationalize and modernize the industry ;

— aid totalling Pta 18 474 million for the constitution of a fund to defray part of the specific depreciation costs and other exceptional costs arising from measures to restructure, rationalize and modernize the industry ;

— investment aid totalling Pta 7 389 million.

The measures proposed by the Spanish Government to help the coal industry comply with the provisions of Article 1 (1) of Decision No 2064/86/ECSC.

The Commission was able to examine the outline restructuring, rationalization and modernization plan submitted to it on 17 July 1990 to determine whether it satisfied the implementing conditions of Decision No 2064/86/ECSC.

The Commission must therefore give a ruling on whether the aid measures notified pursuant to Article 10 of the Decision comply with the objectives and criteria set out in that Decision and whether they are compatible with the proper functioning of the common market.

[1] OJ No L 177, 1. 7. 1986, p. 1.
[2] OJ No L 105, 25. 4. 1990, p. 19.

II

The aim of the Ofico financial measure is to refund to the electricity-generating companies the price supplements over and above the reference price which those companies have to pay coal-mining undertakings to cover almost the full amount of the latter's operating losses. The system applies to those mining undertakings that have concluded coal supply contracts with the electricity producers under the NSCCT *(Nuevo sistema de contratación de carbones térmicos)* system.

The annual production of that part of the Spanish coal industry which benefits from this measure is in the order of 4,4 million tonnes (3 million tce) and provides employment for 10 500 workers.

This is a measure linked to coal sales which, even if not borne directly by public authority budgets, is nevertheless financed from levies imposed through a measure introduced by the State.

It also gives coal industry undertakings an economic advantage and therefore represents an indirect aid to this industry within the meaning of Article 1 (1) of Decision No 2064/86/ECSC.

The document notified to the Commission on 17 July 1990 contains a plan, running until 31 December 1993, for reducing the compensatory payments made under the Ofico financial measure, together with an outline plan for restructuring, modernizing and rationalizing the part of the Spanish coal industry benefiting from the Ofico measure and an estimate of the costs of the redundancies and reduction in production capacity necessary to achieve the desired objectives. The outline plan is to be implemented over the next few months in the form of individual programmes which, pursuant to the Ministerial Order of 31 October 1990, each of the undertakings concerned is required to submit to the Spanish authorities before 31 December 1990 [1].

The outline plan for restructuring, modernizing and rationalizing the part of the Spanish coal industry benefiting from the Ofico measure provides for a reduction by 1993 in production capacity in the order of 35 %, which is 1,5 million tonnes, and 4 600 redundancies, a reduction in the labour force of 44 %.

This reduction in production capacity will be achieved by the total or partial closure of mines, partial closure being defined as a reduction in production capacity of more than 40 %.

According to the Spanish Government's notification, the production capacity remaining after 31 December 1993, namely 2,9 million tonnes, will have the prospect of long-term economic viability.

Restructuring, modernization and rationalization measures will be concentrated in the western and central Asturiana coalfields, Bierzo Villablino, León-Nord, Palencia, Teruel, Pirenaica and the Balearic Islands.

III

In Decisions Nos 87/454/ECSC [2], 88/505/ECSC [3], 90/198/ECSC and 91/594/ECSC [4], the Commission authorized Ofico financial measures totalling Pta 11 770 million in 1987, Pta 11 182 million in 1988, Pta 12 625 million in 1989 and Pta 12 625 million in 1990.

The indirect financial measure of Pta 6 208 million proposed for 1991 is intended to cover the price supplements which electricity-generating companies have to pay coal-mining undertakings to cover almost the full amount of the latter's operating losses from capacity which has the prospect of becoming economically viable in the long term after implementation of the restructuring, rationalization and modernization measures notified by the Spanish Government.

The amount proposed for 1991 is 47 % down on 1987. It is intended to bring about the rationalization and modernization of production capacity which has the prospect of becoming economically viable in the long term, thus making the Spanish coal industry more competitive. It therefore meets the objectives set out in Article 2 (1) of Decision No 2064/86/ECSC.

IV

The aid totalling Pta 12 646 million for the constitution of a fund to cover exceptional social expenditure is designed to cover part of the cost of redundancy payments to some 4 600 workers who will have to be laid off or forced to take early retirement before 31 December 1993 following the implementation of the plan for the restructuring, modernization and rationalization of the Spanish coal industry.

This measure is not related to current production and should be considered as an inherited liability. According to Article 8 of Decision No 2064/86/ECSC, it may be considered compatible with the common market provided the amount does not exceed the costs.

This measure facilitates the process of restructuring, rationalizing and modernizing the Spanish coal industry by helping to improve its competitiveness by closing down production capacity which has no prospect of becoming economically viable in the long term.

[1] *Boletín Oficial del Estado* (BOE) No 275, 7. 11. 1990, p. 32805.

[2] OJ No L 241, 25. 8. 1987, p. 16.
[3] OJ No L 274, 6. 10. 1988, p. 41.
[4] OJ No L 317, 19. 11. 1991, p. 32.

According to the terms of the Spanish Government's notification, an exact assessment of the social expenditure relating to closures can be made only after detailed study of the strategic plans which, pursuant to the Ministerial Order of 31 October 1990, each undertaking is required to submit to the Spanish Government before 31 December 1990.

Although it approves of the aid in principle, until it receives notification of the above points, the Commission is able to rule only on the amount of Pta 6 323 million which corresponds to social expenditure relating to total or partial closures now considered to be inevitable.

As the aim is to constitute a fund, the Spanish Government will inform the Commission each year of the payments actually made, the amount of aid concerned and the number of beneficiaries.

V

It follows from the plan for total and partial closures submitted by the Spanish authorities that a substantial proportion of the fixed assets of the undertakings concerned will be irrecoverable. Moreover, undertakings will incur exceptional expenditure as capacity is gradually closed down between now and 31 December 1993.

The Spanish Government proposes to constitute a fund which, through a financial measure totalling Pta 18 474 million, will defray part of the specific depreciation costs and other exceptional costs arising from measures to restructure, modernize and rationalize the industry.

According to the terms of the Spanish Government's notification, an exact assessment of the specific depreciation costs and other exceptional costs arising from closures can be made only after detailed study of the strategic plans which, pursuant to the Ministerial Order of 31 October 1990, each undertaking is required to submit to the Spanish Government before 31 December 1990.

Although it approves of the aid in principle, until it receives notification of the above points, the Commission is able to rule only on the amount of Pta 9 237 million which corresponds to specific depreciation costs and other exceptional costs arising from total or partial closures now considered to be inevitable.

This measure facilitates the process of restructuring, rationalizing and modernizing the Spanish coal industry by helping to improve its competitiveness by closing down production capacity which has no prospect of becoming economically viable in the long term.

As the aim is to constitute a fund, the Spanish Government will inform the Commission each year of the aid actually paid out, the mines to which it is paid and the corresponding reductions in capacity.

VI

In 1991 the Spanish Government is planning to grant aid of Pta 7 389 million to mining investment projects proposed by various undertakings to help restructure, modernize and rationalize the Spanish coal industry.

This aid is designed to improve the competitiveness of the production capacity of those undertakings which are required to be competitive after implementation of the plan to restructure, modernize and rationalize the Spanish coal industry.

A total of Pta 1 440 million has been earmarked for investment projects by undertakings which do not currently benefit from the price supplement under the Ofico financial measure. The balance of Pta 5 949 million remains to be confirmed in the light of prospects for improving competitiveness outlined in the strategic plans which each undertaking is required to submit pursuant to the Ministerial Order of 31 October 1990.

This measure complies with Article 5 of Decision No 2064/86/ECSC in so far as it helps to improve the competitiveness of the coal industry or to create new economically viable production capacity.

According to the terms of the Spanish Government's notification, an exact assessment of the investment projects can be made only after detailed study of the strategic plans which, pursuant to the Ministerial Order of 31 October 1990, each undertaking is required to submit to the Spanish Government before 31 December 1990.

Although it approves of the aid in principle, until it receives notification of the above points, the Commission is able to rule only on an amount of Pta 1 440 million.

Since the grant of this aid should improve competitiveness it meets the objectives set out in Article 2 (1) of Decision No 2064/86/ECSC.

VII

The aid measures covered by this Decision are therefore compatible with the proper functioning of the common market.

This Decision does not prejudge the question of the compatibility of the NSCCT system with the provisions of the EEC and ECSC Treaties,

HAS ADOPTED THIS DECISION:

Article 1

The compensatory payment to be made under the Ofico (Oficina de Compensación de la Energía Electrica) financial measure to electricity producers using Spanish coal produced by undertakings that have negotiated contracts with the said electricity producers under the NSCCT system shall be authorized for an amount not exceeding Pta 6 208 million in 1991.

Article 2

Spain is hereby authorized to grant aid totalling Pta 17 000 million in the 1991 calendar year. The total amount shall be made up of the following aid:

— an amount not exceeding Pta 6 323 million in aid for the constitution of a fund to cover exceptional social expenditure to be paid out to workers made redundant following measures to restructure, rationalize and modernize the industry,

— an amount not exceeding Pta 9 237 million in aid for the constitution of a fund to defray part of the specific depreciation costs and other exceptional costs arising from measures to restructure, rationalize and modernize the industry,

— an amount not exceeding Pta 1 440 million in investment aid.

Article 3

Spain shall, by 30 June 1991, provide the Commission with information relating to the strategic plans for each undertaking required by the Ministerial Order of 31 October 1990.

Article 4

Spain shall inform the Commission each year of the payments made to beneficiaries from the funds authorized under Article 2.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 17 December 1990.

For the Commission

António CARDOSO E CUNHA

Member of the Commission