COMMISSION DECISION

of 3 November 1994

ruling on financial measures by the United Kingdom in respect of the coal industry in the 1994/95 and 1995/96 financial years

(Only the English text is authentic)

(Text with EEA relevance)

(94/995/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 2 (1) and 9 thereof,

Whereas:

I

In a letter dated 5 September 1994 the United Kingdom notified the Commission, pursuant to Article 9 (1) of Decision No 3632/93/ECSC, of the financial measures which it intends to take in respect of the coal industry in the 1994/95 and 1995/96 financial years. In a letter dated 29 September 1994 the United Kingdom also sent the additional information requested by the Commission.

In accordance with Decision No 3632/93/ECSC, the Commission must give a ruling on the following financial measures:

— aid not exceeding £ 40 million in the 1994/95 financial year and £ 130 million in the 1995/96 financial year to the Coal Authority, a public-sector body, to cover liabilities for the environmental and physical damage caused by the production activities of the coal industry before the privatization of the British Coal Corporation,

— aid not exceeding £ 2 million for the 1995/96 financial year to cover compensation for workers and former workers of the British Coal Corporation for hearing loss during that part of their employment in the Corporation falling between 26 March 1989 and the date of privatization of the Corporation and aid not exceeding £ 30 million for 1995/96 to cover compensation for other industrial injury and damage to health suffered by workers and former workers of the British Coal Corporation during that part of their employment in the Corporation falling between 1947 and the date of privatization of the Corporation,

— aid not exceeding £ 1 million for the 1995/96 financial year for concessionary fuel entitlement to coal or smokeless fuel or, in certain cases, cash-in-lieu to British Coal Corporation workers who have retired or been made redundant as a result of the restructuring, rationalization and modernization of the coal industry in the United Kingdom, and their dependants, for that part of their employment in the Corporation falling between 31 March 1990 and the date of privatization of the Corporation,

— aid not exceeding £ 183 million for the 1995/96 financial year for contributions to pension schemes for former British Coal Corporation workers including workers granted early retirement as a result of the restructuring, rationalization and modernization of the coal industry in the United Kingdom,

— aid not exceeding £ 635 million for the 1994/95 financial year and £ 26 million for the 1995/96 financial year to the British Coal Corporation to cover exceptional social-welfare payments to or in respect of workers who have been made redundant or been transferred to other production units as a result of the restructuring, rationalization and modernization of the coal industry in the United Kingdom,

— aid not exceeding £ 70 million for the 1995/96 financial year to the British Coal Corporation to cover the costs arising from residual activities prior to dissolution of the Corporation following privatization,

— a financial measure for the 1994/95 and 1995/96 financial years to the British Coal Corporation to

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

reflect the heavy burden of restructuring costs funded by loans and the fall in the value of the Corporation's assets in recent years, not exceeding the difference between the loans on the balance sheet at the end of the 1994/95 financial year, expected to be approximately £ 1 700 million, and the eventual proceeds of the sale of the regional coal companies and the mines under care and maintenance.

The financial measures which the United Kingdom intends to take fall within the scope of Article 1 (1) of Decision No 3632/93/ECSC.

The Commission must therefore give a ruling pursuant to Article 9 (4) of the Decision on whether these measures comply with the objectives and implementing criteria set out in the Decision and are compatible with the proper functioning of the common market.

II

By Decision 94/574/ECSC [1] the Commission approved the modernization, rationalization and restructuring plan notified by the United Kingdom as complying with the general objectives and with the specific criteria and objectives set out in Decision No 3632/93/ECSC.

The priority objectives set by the plan notified are to make the United Kingdom coal industry fully competitive on the world market and to privatize the British Coal Corporation in the near future.

Over the last 10 years the United Kingdom coal industry has undergone extensive restructuring, rationalization and modernization. In the first phase of the restructuring, the number of underground mines operated by the British Coal Corporation was cut from 169 in March 1985 to 75 in March 1990, while the workforce was reduced from 171 000 to 66 000 miners.

Aid for the financial restructuring of the Corporation was authorized by Commission Decisions 90/634/ECSC [2] and 91/221/ECSC [3].

The lack of markets for British coal in the Community made it necessary to start a second phase of restructuring at the end of 1992. As a result, by September 1994 the number of underground mines operated by the British Coal Corporation had fallen to 16 and their workforce to under 8 000.

On 5 July 1994, the Coal Industry Act 1994 received royal assent. The Act defines a new legal framework for the British coal industry, enabling British Coal to be fully privatized.

The British Coal Corporation's mining activities will be split and sold as a maximum of five regional coal companies, each with the mines and coal resources needed to ensure the continuity of the successor company's activities. In addition, the mines recently mothballed are being offered for sale.

The Coal Industry Act 1994 provides for the establishment of a public-sector body, designated 'The Coal Authority', on which will be conferred rights over unworked coal and over coal mines in the United Kingdom owned hitherto by the British Coal Corporation, together with other responsibilities for the environmental impact of the intensive coalmining pursued in the United Kingdom over the last 200 years. The Coal Authority may engage in no commercial mining activities. Mine operators must have a lease or other property interest in the coal and the associated mines. They must also hold an operating licence which, in future, will be granted by The Coal Authority.

III

The aid which the United Kingdom intends to grant to The Coal Authority covers liabilities for the environmental and physical damage caused by underground production activities before privatization of the British Coal Corporation, which are to be transferred to the Authority. Part of these liabilities — not exceeding £ 35 million in the 1994/95 financial year and £ 60 million in the 1995/96 financial year — are for damage caused on the surface by subsidence. The other liabilities, not exceeding £ 5 million for the 1994/95 financial year and £ 70 million for the 1995/96 financial year, include the rehabilitation of abandoned mine sites and tips, methane venting and water pumping from old workings.

The successor companies will assume responsibility for the obligations connected with the working of the resources or mines transferred to them. The operating licences granted to the successor companies will define areas of responsibility within which companies will be liable for subsidence claims after privatization. The Coal Authority will be responsible only for subsidence damage outside these areas; such damage will be the result of past

(1) OJ No L 220, 25. 8. 1994, p. 12.
(2) OJ No L 346, 11. 12. 1990, p. 22.
(3) OJ No L 98, 19. 4. 1991, p. 16.

mining activities in abandoned zones of working, and hence is not related to current production.

This aid is designed to cover the costs arising from, or having arisen from, the modernization, rationalization or restructuring of the coal industry which are not related to current production (inherited liabilities). In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely additional underground safety work resulting from restructuring, mining damage provided that it has been caused by zones of working previously in service; and residual costs resulting from contributions to bodies responsible for water supplies and for the removal of waste water, may be considered compatible with the common market provided the amount paid does not exceed the costs.

IV

The aid not exceeding £ 32 million to cover compensation for workers and former workers of the British Coal Corporation in the 1995/96 financial year is designed to cover payments for hearing loss, industrial injury and damage to health in the course of their employment in the Corporation before privatization. The United Kingdom Government will assume responsibility for these liabilities. After the date of privatization, the successor companies will have to assume all the liabilities relating to hearing loss, industrial injury and damage to health suffered by the workers which they employ for that part of their employment falling after privatization.

To compensate workers and former workers of the British Coal Corporation for hearing loss arising from employment between 26 March 1989 and privatization of the Corporation, the United Kingdom proposes to pay aid not exceeding £ 2 million for the 1995/96 financial year. As regards compensation for hearing loss arising from employment prior to 26 March 1989, Commission Decision 90/634/ECSC authorized the United Kingdom to grant aid totalling £ 500 million to the British Coal Corporation to constitute a provision to cover this. The Commission takes note of the fact that from the 1995/96 financial year, the Department of Trade and Industry will replace the British Coal Corporation, in anticipation of its dissolution, for the payment of the aid, direct to the beneficiaries.

To compensate workers and former workers of the British Coal Corporation for industrial injury and damage to health suffered in the course of employment between 1947 and privatization of the Corporation, the United Kingdom proposes to pay aid not exceeding £ 30 million for the 1995/96 financial year.

These financial measures are for compensation for workers who have been made redundant, have retired or who will be transferred to the successor companies.

This aid is intended to cover the costs arising from or having arisen from the modernization, rationalization or restructuring of the coal industry which are not related to current production (inherited liabilities). In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely residual costs to cover former miners' health insurance, may be considered compatible with the common market provided that the amount paid does not exceed the costs.

V

The aid for concessionary fuel entitlement to coal or smokeless fuel or, in certain cases, cash-in-lieu to former workers or their dependants meets the British Coal Corporation's obligations under the agreements signed with the mining trade unions. The responsibility for these entitlements for the Corporation's former workers or their dependants will be transferred to the United Kingdom Government.

In the future, the successor companies will have to bear the cost of the obligation to supply fuel to British Coal Corporation workers transferred to them, including the obligation to supply them after they leave the industry. To cover the obligations to supply former workers who left the industry before privatization, or their dependants, stemming from employment before 31 March 1990, Decision 90/634/ECSC authorized the United Kingdom to grant aid not exceeding £ 2 000 million to the British Coal Corporation for constitution of a provision. The Commission takes note of the fact that from the 1995/96 financial year, the Department of Trade and Industry will replace the British Coal Corporation, in anticipation of its dissolution, for the payment of the aid, direct to the beneficiaries.

To cover the obligations to supply fuel to British Coal Corporation workers who have retired or been made redundant, or to their dependants, for that part of their employment running from 31 March 1990 to privatization of the Corporation, the United Kingdom intends to pay aid not exceeding £ 1 million for the 1995/96 financial year.

These financial measures meet the obligations to supply workers who retired or were made redundant in the

process of restructuring, rationalization and modernization of the United Kingdom coal industry or their dependants and cannot therefore be considered as related to current production (inherited liabilities).

In accordance with Article 5 of Decision No 3632/93/ECSC this aid, which is explicitly mentioned in the Annex to the Decision, namely the supply of free coal to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such supplies before the restructuring, may be considered compatible with the common market provided that the amount paid does not exceed the costs.

VI

The aid for pension schemes for British Coal Corporation workers meets the Corporation's obligations with regard to the pensions of some 600 000 members for the part of their employment spent with the Corporation. From privatization, the United Kingdom Government will act as guarantor.

In the future the pension entitlements for British Coal Corporation workers who continue to work for the successor companies will be incorporated in similar new industry-wide schemes.

To cover the unexpectedly large numbers of early retirement payments to workers made redundant as a result of the restructuring, rationalization and modernization of the coal industry, the United Kingdom intends to pay £ 180 million to the pension schemes for the 1995/96 financial year. In addition, the United Kingdom Government intends to pay a total of £ 3 million for the 1995/96 financial year to cover contractual obligations *vis-à-vis* former British Coal Corporation workers not covered by the main pension schemes.

These financial measures meet obligations made necessary by the restructuring, rationalization and modernization of the United Kingdom coal industry and cannot therefore be considered to be related to current production (inherited liabilities).

In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned 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, the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such payments before the restructuring, can be considered compatible with the common market provided that the amount paid does not exceed the costs.

VII

The aid to cover exceptional costs arising from the closure of British Coal Corporation mines meets the Corporation's obligation to pay compensation to workers who have been made redundant or been transferred to other mines as a result of the restructuring, rationalization and modernization of the United Kingdom coal industry.

To cover these costs, the United Kingdom Government intends to grant the British Coal Corporation aid not exceeding £ 635 million for the 1994/95 financial year and £ 26 million for 1995/96.

These financial measures meet obligations entailed by the restructuring, rationalization and modernization of the United Kingdom coal industry and cannot therefore be considered related to current production (inherited liabilities).

In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned 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, other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalization, and the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such payments before the restructuring, can be considered compatible with the common market provided that the amount paid does not exceed the costs.

VIII

The aid to cover the costs arising from the British Coal Corporation's residual activities between privatization and the dissolution of the Corporation meets the Corporation's obligation to cover certain residual activities not related to current production, such as the closure of mines neither included in the regional coal companies nor sold.

To cover the costs of those residual activities, the United Kingdom Government intends to grant the British Coal Corporation aid not exceeding £ 70 million for the 1995/96 financial year.

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

In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely residual costs resulting from administrative, legal or tax provisions and additional underground safety work resulting from restructuring, may be considered compatible with the common market provided that the amount paid does not exceed the costs.

IX

The British Coal Corporation's restructuring and rationalization programme has been necessary to bring the Corporation's production capacity into line with the continuous contraction of the market and to take account of the falling prices on the world market, but has given rise to substantial costs in terms of loss in the value of fixed assets and closure costs and social measures uncompensated by aid. Restructuring costs — mainly redundancy payments — borne by the British Coal Corporation since 1990 but not covered by Government grant have totalled about £ 500 million and have been funded by loans. These costs and the fall in the earning power of the Corporations's assets have added to its debt burden to such an extent that, even without privatization, further financial restructuring would be essential in order to restore a balance between the Corporation's debts and its earnings potential, taking into account that the activities of the British Coal Corporation are financed exclusively through loans.

As loans from the United Kingdom Exchequer to the public sector cannot be transferred to private-sector companies, the successor companies will have to arrange other forms of funding through own resources and/or loans. It is estimated that, by the end of the 1994/95 financial year, the United Kingdom Exchequer will have granted the British Coal Corporation loans totalling £ 1 700 million, which will have to be extinguished. The proceeds from the sale of the British Coal Corporation will partially offset the amount extinguished.

The sale of British Coal's colliery and opencast mining operations is being conducted by competitive tender. It is expected that the sale will be completed in December 1994 and will realize proceeds amounting to hundreds of millions of pounds. The method of this operation guarantees that the assets will be sold at their market price.

The sale will not entirely cover the extinguishment of debt, since the contraction of the British Coal Corporation's production activities, combined with the prospects as regards the United Kingdom coal's market share and coal price trends, suggest that the book value of the Corporation's assets is significantly higher than their market value. In the financial years 1992/93 and 1993/94 the assets of the Corporation were written down, net overall, by £ 617 million. Following a detailed analysis of the prospects for the United Kingdom coal industry, it must be concluded that British Coal Corporation's assets must still be considered overvalued and a further write down can be anticipated this year. The procedure of this operation ensures that the assets will be sold at their market value.

The aid planned by the United Kingdom covers the difference between the total loans which will be extinguished and the proceeds from the sale of the British Coal Corporation's regional coal companies and the mines under care and maintenance.

The aid reflects the heavy burden of restructuring costs funded by loans and the fall in the Corporation's asset values over recent years, both as described above.

The aid foreseen in the framework of the privatization of the British Coal Corporation will facilitate restructuring, rationalization and modernization of the United Kingdom coal industry.

The aim to make coal produced in the United Kingdom fully competitive with imported coal and hence to abolish all aid to current production meets the objective of the first indent of Article 1 of Decision No 3632/93/ECSC, namely to make, in the light of coal prices in international markets, further progress towards economic viability with the aim of achieving degression of aids.

The extinguishment of the debts, partially compensated by the proceeds of the sale by auction of the mining activities of the company, represents an aid which corresponds to an exceptional intrinsic depreciation of the assets of the company resulting from its restructuring, as well as the exceptional expenditure on workers who lose their jobs, which are covered by Decision No 3632/93/ECSC.

In accordance with Article 5 of Decision No 3632/93/ECSC these measures may be considered compatible with the common market provided that the amount paid does not exceed the costs.

X

With respect to the new legal and regulatory framework established for the United Kingdom coal industry by the Coal Industry Act 1994, the United Kingdom Government will ensure that the aid granted pursuant to this Decision gives rise to no discrimination between producers, purchasers or users on the Community coal market.

In the light of foregoing and based on the information supplied by the United Kingdom, the aid and measures proposed in respect of 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 shall apply without prejudice to the compatibility with the Treaties of any contracts which could be concluded between coal producers and electricity generators,

HAS ADOPTED THIS DECISION:

Article 1

The United Kingdom is hereby authorized to grant to the coal industry for the 1994/95 financial year:

— aid not exceeding £ 40 million to the Coal Authority, a public-sector body, to cover liabilities for environmental and physical damage caused by coal production activities before the privatization of the British Coal Corporation,

— aid not exceeding £ 635 million for the 1994/95 financial year to the British Coal Corporation to cover exceptional social-welfare payments to or in respect of workers who have been made redundant or been transferred to other production units as a result of the restructuring, rationalization and modernization of the coal industry in the United Kingdom.

Article 2

The United Kingdom is hereby authorized to grant to the coal industry for the 1995/96 financial year:

— aid not exceeding £ 130 million to The Coal Authority, a public-sector body, to cover liabilities for environmental and physical damage caused by coal production activities before the privatization of the British Coal Corporation,

— aid not exceeding £ 2 million to cover compensation for workers and former workers of the British Coal Corporation for hearing loss arising from that part of their employment in the Corporation running from 26 March 1989 to the date of privatization of the Corporation and aid not exceeding £ 30 million to cover compensation for other industrial injury and damage to health suffered by workers and former workers of the British Coal Corporation during that part of their employment in the Corporation falling between 1947 and the date of privatization of the Corporation,

— aid not exceeding £ 1 million for concessionary fuel entitlement to coal or smokeless fuel or, in certain cases, cash-in-lieu to British Coal Corporation workers who have retired or have been made redundant as a result of the modernization, rationalization and restructuring of the coal industry in the United Kingdom, and their dependants, for that part of their employment in the Corporation running from 31 March 1990 to the date of privatization of the Corporation,

— aid not exceeding £ 183 million for contributions to pension schemes for British Coal Corporation workers, including those granted early retirement as a result of the restructuring, rationalization and modernization of the coal industry in the United Kingdom,

— aid not exceeding £ 25 million to the British Coal Corporation to cover exceptional social-welfare payments to workers who have been made redundant or who have been transferred to other production units as a result of the restructuring, rationalization and modernization of the coal industry in the United Kingdom,

— aid not exceeding £ 70 million to the British Coal Corporation to cover the costs arising from residual activities prior to dissolution of the Corporation following privatization.

Article 3

The United Kingdom is hereby authorized to take, for the 1994/95 and 1995/96 financial years, a financial measure in favour of the British Coal Corporation to reflect restructuring costs funded by loans and the fall in the Corporation's assets value in recent years, not exceeding the difference between the loans on the balance sheet at

the end of the 1994/95 financial year, expected to be approximately £ 1 700 million, and the eventual proceeds of the sale of the regional coal companies and the mines under care and maintenance, carried out in accordance with the modernization, rationalization and restructuring plan approved by the Commission.

Article 4

The United Kingdom shall ensure that it is reimbursed for any overestimated expenditure or cancelled expenditure on any of the items covered by this Decision.

Article 5

The United Kingdom shall inform the Commission by 30 September 1995 at the latest of the amount of aid actually paid in the 1994/95 financial year and by 30 September 1996 of the amount of aid actually paid in the 1995/96 financial year.

Article 6

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 3 November 1994.

For the Commission

Marcelino OREJA

Member of the Commission