II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 April 1996

on financial measures by Spain in respect of the coal industry in 1996

(Only the Spanish text is authentic)

(Text with EEA relevance)

(96/575/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

By letter of 6 February 1996, pursuant to Article 9 (1) of Decision No 3632/93/ECSC, Spain notified the Commission of the financial measures which it intended to take in respect of the coal industry in 1996.

Under Decision No 3632/93/ECSC, the Commission must rule on the following financial measures relating to 1996:

— aid of Pta 118 678 million to cover operating losses,

— aid of Pta 17 159 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 6 587 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,

— aid of Pta 50 million for research and development projects,

— aid of Pta 100 million for environmental protection.

The financial measures proposed by Spain for the coal industry fall within 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, in particular, 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) of the Decision, the Commission must assess whether the measures are in conformity with the plans to modernize, rationalize, restructure and reduce the activity of the Spanish coal industry, as provided for in Commission Decision No 94/1072/ECSC [2].

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

[2] OJ No L 385, 31. 12. 1994, p. 31.

II

The aid of Pta 118 678 million which Spain proposes to grant the coal industry is intended to compensate in full or in part for operating losses suffered by coal producers.

The sum notified is divisible into operating aid of Pta 49 882 million in accordance with Article 3 of Decision No 3632/93/ECSC and aid of Pta 68 796 million to reduce activity in accordance with Article 4 thereof.

Of the operating aid of Pta 49 882 million, Pta 43 836 million will be covered by financial support from the Electricity Compensation Office (Ofico), while the remaining Pta 6 046 million will come from State budgets.

On 28 December 1995 Spain adopted Royal Decree No 2203/1995 (1) on the specific costs covered by the procedures for granting aid to coalmining. This Royal Decree defines the aid to cover operating losses, the aid to cover exceptional costs and the other aid associated with coalmining available to Spanish coal undertakings supplying fuel to electricity generators.

This aid will be financed by levying a percentage on electricity prices charged to consumers, which will be administered by Ofico. In 1996 this aid will not be entered in the State budgets or included in any strictly equivalent mechanisms. The Commission notes the undertaking given by Spain to amend the aid mechanism in force in 1996 before the transitional period not exceeding three years, as provided for by Article 2 (2) of Decision No 3632/93/ECSC, expires on 31 December 1996 to make it compatible with the rules in the Decision.

Those Spanish coal producers which receive operating aid may raise their production costs by a maximum of two points below the consumer price index per year. This reduction, in real terms, will contribute to improving the economic viability of the coal-producing undertakings, as provided for by Article 3 (2) of Decision No 3632/93/ECSC, with the objective of progressively reducing the aid.

The inclusion of these measures in the notified modernization, rationalization, restructuring and activity-reduction plan and the progressive reduction of production costs and quantities planned for 1996 meet the objectives of the first and second indents of Article 2 (1) of Decision No 3632/93/ECSC, namely, in the light of coal prices on international markets, to make further progress towards the economic viability of the 65 undertakings receiving operating aid, with the aim of tapering off the aids and of solving the social and regional problems created by developments in the coal industry.

Of the aid of Pta 68 796 million to reduce activity, Pta 21 687 million will be covered by financial support from Ofico, while Pta 47 109 million will come from State budgets.

Of the Pta 47 109 million from the general State budget, Pta 39 433 million is intended for Hunosa, Pta 4 800 million for Minas de Figaredo SA and Pta 2 876 million for Mina de la Camocha SA, all of which lie in the central Asturian coalfield.

The remaining Pta 21 687 million is intended for the same undertakings and for others in the coalfields in north-west, north-east and southern Spain, which must close before Decision No 3632/93/ECSC expires.

This aid will help to solve the social and regional problems created by developments in the coal industry. It forms part of a closure plan and is therefore in line with the provisions of Article 4 of Decision No 3632/93/ECSC.

The Commission finds that a sum of Pta 1 197 million covering part of the operating losses of Hunosa relates to activities other than coal production, and on this the Commission must give an opinion following a separate procedure based on Article 92 of the EC Treaty.

In its notification, Spain found that the aid to be granted will not exceed, for each undertaking or production unit, the difference between production costs and foreseeable revenue.

The amount of aid notified by Spain for 1996 is 1,5 % lower than the aid approved by the Commission for 1995, while coal producers' prices to electricity generators have remained more or less stable.

The Commission notes Spain's undertaking to take the necessary measures to ensure that by 31 December 1996 at the latest the selling price of Spanish coal will be agreed freely between the contracting parties, taking account of conditions on the world market.

(1) *Boletín Oficial del Estado, No 311,* 29. 12. 1995, p. 37447.

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.

III

The aid of Pta 17 159 million which Spain proposes to grant will cover compensation for those of 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.

Part of this aid, amounting to Pta 6 075 million, is to be granted to Hunosa, Minas de Figaredo SA and Mina de la Camocha SA and covered by the general State budget.

The remaining Pta 11 084 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 Ofico.

This 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 any 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.

These financial measures relate to obligations imposed 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, may be considered compatible with the common market provided that the amount paid does not exceed such costs.

The Commission notes Spain's undertaking to take the measures necessary to bring this aid mechanism into line with the provisions of Article 2 (2) of Decision No 3632/93/ECSC by 31 December 1996 at the latest.

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.

IV

The aid of Pta 6 587 million which Spain proposes to grant is intended to cover part of the loss of value of the fixed assets of coal undertakings which have to close down totally or partially. Furthermore, those undertakings will 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 2 244 million, is to be granted to Hunosa and covered by the general State budget. The remaining Pta 4 343 million is intended for the other undertakings reducing their activity and will be covered by financial support from Ofico.

These financial measures relate to obligations imposed 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 occurred 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.

The Commission notes Spain's undertaking to take the measures necessary to bring this aid mechanism into line with the provisions of Article 2 (2) of Decision No 3632/93/ECSC by 31 December 1996 at the latest.

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 50 million which Spain proposes to grant to certain coal undertakings and mining research organizations is intended to support their research and development efforts. This aid, not exceeding 20 % of the undertakings' total expenditure on research and technological development, is intended to solve the specific problems created by the unique nature of Spain's coal deposits and to improve the technologies for using coal, with a favourable impact on the environment.

This aid, which is explicitly mentioned in Article 6 of Decision No 3632/93/ECSC, helps to improve coal-mining technology and is intended to reduce production costs, which will help progressively to reduce the aid. The Commission's evaluation found that this aid complies with the rules laid down in the Community framework for State aid for research and development.

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 100 million which Spain proposes to grant to certain coal undertakings is intended to support their efforts on environmental protection.

This aid, which is explicitly mentioned in Article 7 of Decision No 3632/93/ECSC, is intended to facilitate the adjustment of coal undertakings to new environmental protection standards and is in no way related to the adjustments which the undertakings would have to make as a consequence of their mining activities themselves. The Commission's evaluation found that this aid complies with the rules laid down in the Community framework for State aid for the environment.

In view of the above and on the basis of the information provided by Spain, the aid and measures planned are 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 aid covered by this Decision gives rise to no discrimination between producers, purchasers and consumers in the Community coal market.

The Commission reiterates that in its decision approving the plan to modernize, rationalize, restructure and reduce the activity of the Spanish coal industry, it requested Spain to report by 30 March 1997 and 30 September 1997 at the latest, giving details of the level of compliance with the restructuring plan by Minero Siderúrgica de Ponferrada.

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

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 involved and the distribution of payments,

HAS ADOPTED THIS DECISION:

Article 1

Spain is hereby authorized to pay the following aid in 1996:

— aid of Pta 117 481 million to cover operating losses by coal undertakings,

— aid of Pta 17 159 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 6 587 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,

— aid of Pta 50 million for research and development projects,

— aid of Pta 100 million for environmental protection.

Article 2

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

Article 3

Spain shall notify the Commission, by 30 June 1997 at the latest, of the amount of aid actually paid in respect of 1996.

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 30 April 1996.

For the Commission

Christos PAPOUTSIS

Member of the Commission