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 1995 and additional financial measures in respect of the coal industry in 1994

(Only the Spanish text is authentic)

(Text with EEA relevance)

(96/591/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 17 November 1995, Spain notified the Commission of the additional aid which it had granted to the coal industry for 1994.

By letters of 14 September 1995, 17 November 1995 and 6 February 1996, Spain notified the Commission of the financial measures which it had taken in respect of the coal industry in 1995.

The Commission regrets that this aid was not notified in accordance with Article 9 (1) and (2) of Decision No 3632/93/ECSC.

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

— aid of Pta 10 362 million to cover operating losses in 1994,

— aid of Pta 120 698 million to cover operating losses in 1995,

— aid of Pta 14 723 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 in 1995,

— aid of Pta 7 140 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 in 1995,

— aid of Pta 50 million for research and development projects in 1995,

— aid of Pta 100 million for environmental protection in 1995.

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 set out in

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

Articles 3 and 4 of the Decision. In accordance with Article 9 (6) of the Decision, the Commission must assess the conformity of the measures with the plans to modernize, rationalize, restructure and reduce the activity of the Spanish coal industry, as provided for in Commission Decision 94/1072/ECSC [1].

II

By Decision 94/1072/ECSC the Commission authorized aid totalling Pta 107 426 million to cover, in full or in part, operating losses suffered by coal undertakings in 1994.

Of the operating aid of Pta 107 426 million, Pta 42 830 million was covered by the electricity producers in accordance with provisions related to the new system of public contracts for coal used in power stations (NSCCT) to cover the difference between the coal undertakings' production costs and the selling price envisaged for the coal in Spain.

In accordance with the second indent of Article 3 (1) of Decision No 3632/93/ECSC, Spain intends to carry out annual correction of the aid actually paid, based on the actual costs and revenue, for a total of Pta 10 362 million. This correction is warranted by the fact that the selling price of the coal produced in Spain was lower than estimated at the time of the notification, partly because the quality obtained was lower than expected and partly because of the fall in the price, in pesetas, of imported coal, which was taken as the reference value for establishing the selling price for Spanish coal in 1994.

This aid is in conformity with the measures proposed in the plans to modernize, rationalize, restructure or reduce activity notified by Spain. It is in line with the objectives of the first and second 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 of the undertakings by reducing operating costs and to solve the social and regional problems created by developments in the coal industry.

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 120 698 million which Spain proposes to grant the coal industry in 1995 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 48 380 million in accordance with Article 3 of Decision No 3632/93/ECSC and aid of Pta 72 318 million to reduce activity in accordance with Article 4 thereof.

Of the operating aid of Pta 48 380 million, Pta 41 834 million will be covered by the electricity generators, while the remaining Pta 6 546 million will come from State budgets.

On 30 December 1994 Spain approved Law 40/1994 [2] governing the national electricity system. This stipulated that the payment for the activities included in the national electricity system shall include any specific costs which the electricity undertakings must cover for specific purposes. To this end, in 1995 electricity generators were under an obligation to cover aid to compensate for the operating losses suffered by coal producers.

This aid is not 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 1995 before expiry, on 31 December 1996, of the transitional period not exceeding three years under Article 2 (2) of Decision No 3632/93/ECSC, so as to make it compatible with the rules in the Decision.

Those Spanish coal producers which receive operating aids may raise their production costs up to 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 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 1995 are in line with the objectives of the first and second indents of Article 2 (1) of the Decision, namely, in the light of coal prices on international markets, to make further progress towards 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.

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

[2] Boletín Oficial del Estado No 313, 31. 12. 1994, p. 39362.

Of the aid of Pta 72 318 million to reduce activity, Pta 21 590 million will be covered by the electricity generators, while Pta 50 728 million will come from State budgets.

Of the Pta 50 728 million from the general State budget for 1995, Pta 42 884 million is intended for Hunosa, Pta 4 859 million for Minas de Figaredo SA and Pta 2 985 million for Mina de la Camocha SA, all of which lie in the central Asturian coalfield.

The remaining Pta 21 590 million of this aid 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 in line with the provisions of Article 4 of Decision No 3632/93/ECSC.

The Commission finds that a sum of Pta 1 395 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 1995 must be compared with the aid approved by the Commission for 1994, which totalled Pta 115 284 million.

The 3,5 % increase in 1995, as compared with 1994, reflects the step-by-step reduction in the price which coal producers charge electricity generators, which is considerably higher than the world market price, thereby allowing a gradual switch to prices aligned on imported coal. This realignment, with the concomitant increase in aid, is designed to produce a more transparent aid system, as provided for in Decision No 3632/93/ECSC.

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.

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 14 723 million which Spain is proposing to grant for 1995 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 in the years covered by the modernization, rationalization, restructuring and activity-reduction plan for the Spanish coal industry.

Part of this aid, amounting to Pta 6 745 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 7 978 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). In 1995 this public body was financed by a levy on electricity prices charged to consumers.

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 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, 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.

V

The aid of Pta 7 140 million which Spain proposes to grant for 1995 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 as part of the modernization, rationalization and restructuring plan. 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 1 574 million, is to be granted to Hunosa and covered by the general State budget. The remaining Pta 5 566 million is intended for the other undertakings reducing their activity and will be covered by financial support from Ofico.

These 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 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.

VI

The aid of Pta 50 million which Spain proposes to grant to certain coal undertakings and mining research organizations for 1995 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.

The 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, the aid proposed for 1995 is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

VII

The aid of Pta 100 million which Spain proposes to grant to certain coal undertakings for 1995 is intended to support their efforts on environmental protection.

The 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 restoration work which the undertakings must undertake 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 the measures planned are compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

VIII

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 1996, 30 September 1996, 30 March 1997 and 30 September 1997, giving details of the progress made with the restructuring plan of 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 grant additional aid totalling Pta 10 362 million to cover operating losses by coal undertakings in 1994.

Article 2

Spain is hereby authorized to pay the following aid for 1995:

— aid of Pta 119 303 million to cover operating losses by coal undertakings,

— aid of Pta 14 723 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 7 140 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 3

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

Article 4

Spain shall notify the Commission, by 30 June 1996 at the latest, of the amount of aid actually paid in respect of the 1995 financial year.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 30 April 1996.

For the Commission

Christos PAPOUTSIS

Member of the Commission