COMMISSION DECISION

of 3 June 1998

on the granting by Spain of aid to the coal industry in 1998

(notified under document number C(1998) 2045)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(98/637/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 Article 2(1), and Articles 8 and 9 thereof,

Whereas:

I

By Decision 94/1072/ECSC [2] the Commission gave an opinion as to the conformity of the 1994-1997 phase of the modernisation, rationalisation, restructuring and activity-reduction plan for the coal industry notified by Spain with the general and specific objectives of Decision No 3632/93/ECSC.

By letter of 15 October 1997, Spain notified the Commission of the second phase (1998-2002) of the modernisation, rationalisation, restructuring and activity-reduction plan for the coal industry.

By letters of 17 December 1997, 20 February 1998 and 31 March 1998 Spain provided additional information, in response to the requests contained in the Commission's letters of 14 November and 22 December 1997.

By letter of 31 March 1998, pursuant to Article 9(1) of Decision No 3632/93/ECSC, Spain notified the Commission of the financial measures it intended to take in respect of the coal industry in 1998.

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

(a) give an opinion as to the conformity of the 1998-2002 phase of the modernisation, rationalisation, restructuring and activity-reduction plan for the Spanish coal industry with the general and specific objectives of the Decision;

(b) rule on the following financial measures relating to 1998:

— aid of ESP 126 855 million to cover operating losses by coal undertakings,

— aid of ESP 54 967 million to cover exceptional welfare aid paid to workers who lose their jobs as a result of the measures to modernise, rationalise, restructure and reduce the activity of the coal industry,

— aid of ESP 11 995 million to cover the technical costs of closing down mining installations as a result of the measures to modernise, rationalise, restructure and reduce the activity of the coal industry.

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 that Decision. In accordance with Article 9(6) of the Decision, the Commission must assess whether the measures are in conformity with the plans notified.

II

The measures taken to implement the 1994-1997 phase of Spain's modernisation, rationalisation, restructuring and activity-reduction plan deviated from the plans notified to and approved by the Commission.

In its evaluation of this phase of the plan the Commission found that the undertakings or production units granted operating aid under Article 3 had made limited progress towards improving their economic viability, relative to coal prices on international markets. Broadly speaking, those undertakings had not made all the efforts

[1] OJ L 329, 30. 12. 1993, p. 12.
[2] OJ L 385, 31. 12. 1994, p. 31.

announced on modernisation, rationalisation and restructuring. When approving the aid, the Commission recognised 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. Nevertheless, those undertakings will have to step up their restructuring efforts in the next phase, from 1998 to 2002.

The undertakings or production units receiving aid for the reduction of activity under Article 4 adopted a series of measures over this period, conflicting with the obligation progressively to reduce their production capacity by means of total or partial closures. Those measures resulted in a significant increase in aid. In accordance with Article 9(6) of Decision No 3632/93/ECSC the Commission requested Spain to explain these deviations and to propose the necessary corrective measures.

Between 1 January 1994 and 31 December 1997 Spain gradually brought the aid arrangements for the coal industry, particularly the contracts between coal and electricity producers, into line with Decision No 3632/93/ECSC, as provided for by Article 9(7).

In response to the Commission's letter dated 14 November 1997 Spain made amendments to the modernisation, rationalisation, restructuring and activity-reduction plans for 1998 to 2002 originally notified in its letter of 15 October 1997.

The 1998-2002 phase of the definitive plan, notified by Spain by letter dated 31 March 1998, aims at stepping up the modernisation, rationalisation and restructuring measures which coal undertakings must implement to reduce their production costs 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, would still be far from achieving economic viability will have to step up their activity-reduction plan, as provided for by Article 4 of Decision No 3632/93/ECSC.

For the undertakings receiving operating aid under Article 3, Spain has set a target of a minimum net reduction in production of 1,9 million tonnes between 1 January 1998 and 23 July 2002, which by the time that the plan is completed will take their maximum production level down to 12,7 million tonnes, compared with 14,6 million tonnes in 1997.

In order to confirm the trend towards a reduction in those undertakings' production costs at 1992 prices, Spain must notify the Commission of 1997 production by 30 September 1998 at the latest. If production cost trends over the period 1994 to 1997 show that certain undertakings or production units fail to meet the conditions laid down in Article 3(2) of Decision No 3632/93/ECSC, Spain will submit proposals to the Commission to subject them to a closure plan before 23 July 2002 or, where appropriate, to a progressive and continuous activity-reduction plan, as provided for by Article 4 of the same Decision.

Throughout the period from 1998 to 2002 Spain must monitor production cost trends at each of the coal undertakings and, should they prove unable to generate a downward trend, will propose the necessary corrective measures to the Commission.

In view of the difficult geological conditions in Spain's coalfields, certain undertakings or production units must be subject to a closure plan before 23 July 2002 or, where appropriate, a progressive and continuous activity-reduction plan in order to qualify for the aid for the reduction of activity (Article 4 of Decision No 3632/93/ECSC).

The company Endesa's underground production capacity of 0,315 million tonnes will be subject to a closure plan to be completed before 23 July 2002.

Given the exceptional social and regional conditions in the Asturias coalfields, Hunosa, Minas de Figaredo SA and Mina de la Camocha SA will be subject to a progressive and continuous activity-reduction plan.

Production by Hunosa and Minas de Figaredo SA fell from a combined total of 3,12 million tonnes in 1993 to 2,66 million tonnes in 1996 and 2,42 million tonnes in 1997. Further reductions will have to be made to take production down to a maximum of 1,8 million tonnes in 2001, representing a 42 % reduction since 1993. The number of mineworkers will have to be reduced from 9 337 on 1 January 1998 to 6 500 by 31 December 2001 - 51 % down on 1 January 1994.

The mines taken over by Hunosa from Minas de Lieres SA will have to close down definitively by 31 December 1999. Hunosa has given a commitment to make no further investment in preparing new reserves from this mine, and Spain will undertake to grant no aid to cover production costs between 1 January 1998 and the closure date.

Mina de la Camocha reduced production from 0,278 million tonnes in 1993 to 0,248 million tonnes in 1997. Further reductions will have to be made to take produc-

tion down to a maximum of 0,183 million tonnes in 2001, down by 34 % since 1993. The number of mineworkers fell from 1 091 on 1 January 1994 to 754 on 31 December 1997 and should be no more than 400 by 31 December 2001.

The 1998-2002 plan for the modernisation, rationalisation, restructuring and activity-reduction of the coal industry, notified by Spain, is in line with Article 2(1) of Decision No 3632/93/ECSC, particularly with the objective of solving the regional and social problems created by total or partial reductions in the activity of production units. In view of its social and regional aspects, the plan notified to the Commission will be accompanied by conversion programmes for the mining regions, entailing aid to restore industrial activity in the region wherever this is compatible with the Treaties.

The plan notified by Spain for 1998 to 2002 provides for an annual reduction in aid to current production of 4 % for underground mines and 6 % for open-cast mines. This will help to achieve the objective of degression of aid. The aid to cover the production costs of the undertakings or production units, i.e. the aid under Article 3 and/or Article 4, is intended to cover all or part of the difference between production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

In accordance with Article 2(2) of Decision No 3632/93/ ECSC, all the aid which Spain plans to grant to the coal industry under that Decision for the period 1998 to 2002 will be entered in national, regional or local public budgets. Part of the aid to Hunosa and Minas de Figaredo SA could be channelled via SEPI (Sociedad Estatal de Participaciones Industriales), a public undertaking for which the expenditure and revenue estimates are entered in the general State budgets.

In view of the above, the plan submitted by Spain is in line with the general objectives laid down in Article 2 and with the specific objectives established in Articles 3 and 4 of Decision No 3632/93/ECSC, provided that all the conditions laid down in that Decision are complied with, and particularly the condition relating to non-discrimination between producers, purchasers and users of coal in the Community.

III

The aid of ESP 126 855 million which Spain plans to grant the coal industry in 1998 is intended to compensate in full or in part for operating losses suffered by coal undertakings.

It is intended to cover the difference between production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

The sum notified subdivides into operating aid of ESP 59 443 million under Article 3 of Decision No 3632/93/ ECSC and aid of ESP 67 412 million to reduce activity under Article 4 of that Decision.

The operating aid of ESP 59 443 million is intended to cover the operating losses suffered by 73 undertakings producing a total of 14,5 million tonnes in 1998. Spain will send notification of those undertakings' 1997 production costs by 30 September 1998 at the latest, to show trends between 1994 and 1997.

Of the aid of ESP 67 412 million to reduce activity, ESP 61 054 million is intended to cover the operating losses of Hunosa and Minas de Figaredo SA, ESP 5 361 million the operating losses of Mina de la Camocha SA and ESP 997 million the operating losses of the underground workings of Endesa on production totalling 3 million tonnes.

Of the aid of ESP 61 054 million to Hunosa and Minas de Figaredo SA, ESP 44 429 million will be granted via SEPI.

The amount of aid notified by Spain for 1998 is 3 % lower than the aid authorised by the Commission for 1997, after comparison with the selling prices in the light of the conditions prevailing on the world market. Spain sent notification of the Council of Ministers' decision on the company-by-company allocation of this aid.

The aid to cover the operating losses suffered by coal undertakings is entered in the general State budgets for 1998.

The inclusion of those measures in the modernisation, rationalisation, restructuring and activity-reduction plan notified by Spain and the degression of the aid and quantities planned for 1998 are in line with the objectives of the first and second indents of Article 2(1) of the Decision, particularly the objective of solving 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.

IV

The aid of ESP 54 967 million which Spain is proposing to grant will cover compensation for workers who will lose their jobs or have to take early retirement under the modernisation, rationalisation, restructuring and activity-reduction plan for the Spanish coal industry.

Part of this aid, amounting to ESP 44 872 million, will be granted to Hunosa and Minas de Figaredo SA to cover the costs for the workers who took early retirement before 1 January 1998 or will take early retirement in 1998. This part of the aid will be granted to Hunosa and Minas de Figaredo via SEPI.

The remaining ESP 10 095 million of aid is intended to cover compensation for workers from the other undertakings affected by modernisation, rationalisation and restructuring measures who will lose their jobs in 1998.

The aid to cover exceptional costs arising from restructuring is entered in the general State budgets for 1998.

The financial measures relate to action necessitated by the modernisation, rationalisation 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 rationalisation, may be considered compatible with the common market, provided that the amount paid does not exceed such costs.

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 ESP 11 995 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 and other exceptional costs resulting from the progressive closures connected with the restructuring of the coal industry.

Part of this aid, totalling ESP 1 670 million, is to be granted to Hunosa and Minas de Figaredo SA via SEPI. The remaining ESP 10 325 million of aid is intended for the other undertakings restructuring or reducing their activity.

The aid to cover exceptional costs arising from restructuring is entered in the general State budgets for 1998.

These financial measures relate to action made necessary by the modernisation, rationalisation 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, may, 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) and other additional work and residual costs arising from closures of installations, be considered compatible with the common market on condition that the amount paid does not exceed such costs.

Spain must ensure that the aid granted to undertaking to cover exceptional costs is in line with the categories of costs defined in the Annex to 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

Spain must ensure that the aid to current production granted under this Decision gives rise to no discrimination between producers, purchasers and users on the Community coal market.

In view of the above and on the basis of the information provided by Spain, the aid and measures planned for 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 applies without prejudice to the compatibility with the Treaties of any contracts concluded between Spanish 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 the aid relates solely to the purposes set out in Articles 3, 4 and 5 of the Decision. To this end, it must be informed of the amounts involved and the distribution of payments,

HAS ADOPTED THIS DECISION:

Article 1

Spain is hereby authorised to pay the following aid in respect of 1998:

(a) operating aid of ESP 59 443 million under Article 3 of Decision No 3632/93/ECSC;

(b) aid for the reduction of activity of ESP 67 412 million under Article 4 of Decision No 3632/93/ECSC;

(c) aid of ESP 54 967 million to cover exceptional welfare aid paid to workers who lose their jobs as a result of the measures to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry under Article 5 of Decision No 3632/93/ECSC;

(d) aid of ESP 11 995 million to cover the exceptional technical costs of closing down mining installations as a result of the measures to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry under Article 5 of Decision No 3632/93/ECSC.

Article 2

In accordance with Article 86 of the ECSC Treaty, Spain shall adopt all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising under this Decision. It shall ensure that the aid authorised is used for the purposes intended and that any unspent, overestimated or incorrectly used aid for any item covered by this Decision is repaid to it.

Article 3

Spain shall notify the Commission, by 30 June 1999 at the latest, of the amount of aid actually paid in respect of 1998.

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 3 June 1998.

For the Commission

Christos PAPOUTSIS

Member of the Commission