COMMISSION DECISION

of 4 May 1999

on the granting by Spain of aid to the coal industry in 1999

(notified under document number C(1999) 1379)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(1999/451/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

(1) By letters of 16 October 1998, 6 January 1999, 19 January 1999 and 16 April 1999, Spain notified the Commission, pursuant to Article 9(1) of Decision No 3632/93/ECSC, of the financial support it intended to grant to the coal industry in 1999.

(2) Spain also notified the Commission, by letter of 25 September 1998, of the production costs per undertaking for 1997.

(3) By letter of 9 March 1999, Spain provided the information requested in the Commission's letter of 15 January 1999 concerning its proposals for the implementation in 1999 of the 1999-2002 modernisation, rationalisation, restructuring and activity-reduction plan for the coal industry.

(4) By letter of 16 April 1999 Spain notified the Commission, pursuant to Article 9(2) of Decision No 3632/93/ECSC, of the amount of aid actually paid to the coal industry during the coal production year 1998.

(5) Pursuant to Decision No 3632/93/ECSC, the Commission must rule on the following financial measures relating to 1999:

(a) aid of ESP 121 030 million (EUR 727 404 949,94) to cover operating losses by coal undertakings;

(b) aid of ESP 44 141 million (EUR 265 292 753) 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;

(c) aid of ESP 13 079 million (EUR 78 606 373,13) 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.

(6) The financial measures proposed by Spain for the coal industry fall within the provisions of Article 1 of Decision No 3632/93/ECSC. The Commission must therefore take a decision on such measures in accordance with Article 9(4) of the Decision. The Commission's assessment will depend on the compliance of the measures with the general criteria and objectives laid down in Article 2 and the specific criteria established by Articles 3 and 4 of the Decision, and on their compatibility with the proper functioning of the common market. Additionally, in accordance with Article 9(6) of the Decision, the Commission when conducting its assessment must check whether the measures conform with the modernisation, rationalisation, restructuring and activity-reduction plan which the Commission approved in its Decision 98/637/ECSC [2]).

II

(7) By Decision 98/637/ECSC the Commission gave an opinion as to the conformity of the 1998-2002 phase of the plan notified by Spain for the modernisation, rationalisation, restructuring and activity reduction of the coal industry with the general and specific objectives of Decision No 3632/93/ECSC.

(8) The Commission has verified that the measures taken to modernise, rationalise, restructure and reduce activity in the coal industry during 1998, and those notified for 1999, correspond to the plans which the Commission had approved.

(9) Spain's coal production of 1 625 000 tonnes in 1998 is 6,7 % lower than that shown in the plans for 1998 and 6,2 % lower than that which obtained in 1997. The production figure notified by Spain for 1999 is 16 300 000 tonnes, lower by 6,8 % and 3,3 % than that shown in the plans for 1998 and 1999 respectively.

[1] OJ L 329, 30.12.1993, p. 12.

[2] OJ L 303, 13.11.1998, p. 57.

(10) The number of workers in the undertakings has fallen, from 22 840 at the end of 1997 to 18 498 at the end of 1998. A further reduction of 1 320 workers is forecast for 1999.

(11) During 1998 the definitive closure of mines with a production capacity of 1 103 000 tonnes was begun, and other mines with a total capacity of 700 000 tonnes have already announced their closure in 1999.

(12) These reductions, which are larger than those initially envisaged, are due to the inclusion in the closure plans, in conformity with Article 4 of Decision No 3632/93/ECSC, of undertakings which were unable to meet the conditions which would entitle them to operating aid under Article 3 of the Decision.

(13) By letter of 25 September 1998 Spain notified the Commission, as required by Commission Decision 98/637/ECSC, of the undertakings' production costs in 1997. The Commission's analysis of the production costs of the undertakings or production units in receipt of operating aid (Article 3 of Decision No 3632/93/ECSC) revealed a mean reduction in the cost of production, at 1992 prices, from 109,2 ECU/tce in 1994 to 81,02 ECU/tce in 1997. This mean reduction of 25,8 % between 1992 and 1997 breaks down into a reduction of more than 30 % for 30,3 % of production, between 30 % and 20 % for 42,5 % of production, between 20 % and 10 % for 16,6 % of production and between 10 % and 0 % for 8,5 % of production. The remaining 2,1 % increased their cost of production.

(14) The following undertakings or production units: Antracitas de Guillón S.A., Antracitas de Rengos S.A., ENCASUR (underground mines component only), Inversiones Terrales S.A., Minas de Escucha S.A., Ramiro Genuario y otras S.A., Antracitas de Rodrigatos, S.A., with a total annual production of 675 800 tonnes, have been included by Spain, according to its notification of 16 October 1998, in a closure plan with a deadline occurring before the date of expiry of Decision No 3632/93/ECSC. The Commission has checked that the conditions laid down in Article 3(2) of Decision No 3632/93/ECSC cannot be achieved by these undertakings, so they do indeed qualify for activity-reduction aid in accordance with Article 4 of the Decision.

(15) If Spain finds that other undertakings are experiencing difficulties in making further progress towards economic viability it will inform the Commission and, if so, propose activity-reduction measures as provided for in Article 4 of Decision No 3632/93/ECSC.

(16) Throughout the period from 1999 to 2002 Spain will continue to monitor production cost trends at each of the coal undertakings and, should the undertakings prove unable to achieve the trend downwards in production costs provided for in Article 3(2) of Decision No 3632/93/ECSC, will propose the necessary corrective measures to the Commission.

(17) One of the conditions laid down by the Commission in its Decision 98/637/ECSC on the conformity of the Spanish coal industry's modernisation, rationalisation, restructuring and activity-reduction plan with the general and specific objectives of Decision No 3632/93/ECSC, is that Spain must ensure that, between 1 January 1998 and the date of closure, no aid is granted to cover the production costs of the mines formerly belonging to Minas de Lieres SA, which were put back into production by Hunosa. The Commission notes that for 1998 and 1999 the mines in question experienced or are set to experience production losses valued respectively at ESP 193 300 000 (EUR 1 161 756,40) and ESP 169 000 000 (EUR 1 015 710,46). On the basis of the information in the letter of 16 April 1999 from Spain, the Commission notes that the operating losses of the old Minas de Lieres mines were not covered by aid during 1998 and that no aid has been set aside for them for 1999. These mines must close down definitively by 31 December 1999.

(18) The aid notified by Spain to cover operating losses in 1999 provides for a reduction in production aid compared with 1998, at current currency values, of 4 % for underground mines and 6 % for open-cast mines. The total amount of aid, i.e. aid for current production plus aid to cover exceptional restructuring costs, fell by 8 %. These reductions 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 Articles 3 and 4 of the Decision, is intended to cover all or part of the difference between the production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

(19) The reduction in the aid notified for 1999 compared with 1998 is still more notable when the fall in the selling price of coal on the world market is taken into consideration.

(20) 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 the said Decision in 1999 has been entered in national, regional or local public budgets. Part of this aid to Hunosa could be channelled via SEPI (Sociedad Estatal de Participaciones Industriales).

(21) In view of the above, the measures notified by Spain for 1999 are deemed to be in line with the modernisation, rationalisation, restructuring and activity-reduction plans approved by the Commission in its Decision 98/637/ECSC, provided all the conditions laid down in the Decision are complied with, particularly those relating to non-discrimination between producers, between purchasers or between users of coal in the Community.

III

(22) The aid of ESP 121 030 million (EUR 727 404 949,94) which Spain plans to grant the coal industry in 1999 is intended to compensate in full or in part for operating losses suffered by coal undertakings.

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

(24) The sum notified subdivides into operating aid of ESP 54 544 million (EUR 327 816 042,22) under Article 3 of Decision No 3632/93/ECSC, and activity-reduction aid of ESP 66 486 million (EUR 399 588 907,72) under Article 4 thereof.

(25) The operating aid of ESP 54 544 million (EUR 327 816 042,22) is intended to cover the operating losses of 57 undertakings with a combined envisaged production of 13 335 million tonnes in 1999.

(26) The Commission notes, after verifying the production costs of these undertakings, at 1992 prices, that the downward trend of production costs observed in the period 1994-1997 will continue in 1999. The reduction envisaged for 1999, compared with 1997, will be 7,2 %.

(27) In 1997 the mean production cost, at 1992 prices, of the undertakings receiving aid under Article 3 of Decision No 3632/93/ECSC is 81,02 ECU/tce, broken down as follows:

— 10 % of production at costs between 42 and 57 ECU/tce;

— 10 % of production at costs between 59 and 62 ECU/tce;

— 10 % of production at costs between 63 and 71 ECU/tce;

— 10 % of production at costs between 72 and 81 ECU/tce;

— 10 % of production at costs between 82 and 85 ECU/tce;

— 10 % of production at costs between 86 and 87 ECU/tce;

— 10 % of production at costs between 88 and 90 ECU/tce;

— 10 % of production at costs between 91 and 92 ECU/tce;

— 10 % of production at costs between 93 and 95 ECU/tce;

— 10 % of production at costs between 96 and 129 ECU/tce.

(28) Spain will notify the Commission, by no later than 30 September 1999, of the undertakings' production costs for 1998, to enable the Commission to verify the downward trend of these costs over the period 1994 to 1998.

(29) The mean selling price to the thermal power stations of the 13 335 000 tonnes (8 476 700 tce) of production envisaged in 1999 by the undertakings in receipt of operating aid is ESP 5 955/tonne (EUR 35,79/tonne). In the light of the envisaged mean cost of this production in 1999, namely ESP 10 046/tonne (EUR 60,38/tonne), the Commission notes that the aid notified corresponds to the difference between the cost of production and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

(30) Of the aid of ESP 66 486 million (EUR 399 588 907,72) to reduce activity, ESP 58 442 million (EUR 351 243 494,04) is intended to cover the operating losses of Hunosa; ESP 5 147 million (EUR 30 934 093,01) the operating losses of Mina la Camocha; ESP 624 million (EUR 3 750 315,53) the operating losses of the underground workings of Endesa; ESP 533 million (EUR 3 203 394,52) the operating losses of the Encasur underground workings; ESP 1 115 million (EUR 6 701 284,96) the operating losses of Antracitas de Guillón; ESP 271 million (EUR 1 628 742,80) the operating losses of Antracitas de Rengos; and ESP 354 million (EUR 2 127 582,85) the operating losses of Minas de Escucha, with the combined production of these undertakings totalling an envisaged 3 million tonnes in 1999.

(31) Of the aid of ESP 58 442 million (EUR 351 243 494,04) to Hunosa, ESP 39 555 million (EUR 237 730 337,89) will be granted via SEPI.

(32) The mean selling price to the thermal power stations of the 3 000 million tonnes (2 350 000 tce) of production envisaged in 1999 by the undertakings in receipt of aid to reduce activity is ESP 5 350/tonne (EUR 3 215/tonne). In the light of the envisaged mean cost of this production in 1999, namely ESP 27 550/tonne (EUR 165,58/tonne), the Commission notes that that the aid notified corresponds to the difference between the cost of production and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

(33) The aid to cover the operating losses suffered by coal undertakings has been entered in the general State budgets for 1999. It is 5 % lower than the aid authorised by the Commission for 1998. Spain sent notification of the Spanish Council of Ministers' decision on the company-by-company allocation of this aid. This decision has been published in Spain's Boletin Official del Estado ([1]).

(34) The inclusion of this measure in the modernisation, rationalisation, restructuring and activity-reduction plan notified by Spain, and the reduction in the aid and quantities envisaged for 1999, are in line with the objectives of the first and second indents of Article 2(1) of Decision No 3632/93/ECSC, and in particular the objective to solve the social and regional problems created by developments in the coal industry.

(35) In view of the above, and on the basis of the information provided by Spain, this aid is compatible with Articles 3 and 4 of Decision No 3632/93/ECSC and with the proper functioning of the common market.

IV

(36) The aid of ESP 44 141 million (EUR 265 292 753) which Spain is proposing to grant is intended to cover, with the exception of the costs for the payment of social-welfare benefits borne by the State as a special contribution pursuant to Article 56 of the Treaty, compensation paid to workers in Spanish coal undertakings who have lost their jobs or have had to or will have to take early retirement under the modernisation, rationalisation, restructuring and activity-reduction plan for the Spanish coal industry.

(37) Part of this aid, totalling ESP 34 046 million (EUR 204 620 581,06), is to be granted to Hunosa to cover the costs for the workers who took early retirement before 1 January 1999 and the 536 workers who will retire in 1999. This part of the aid will be granted to Hunosa via SEPI.

(38) The remaining ESP 10 095 million (EUR 60 672 171,94) is intended to cover compensation for the approximately 1 000 workers who will lose their jobs in 1999 in the other undertakings affected by modernisation, rationalisation, restructuring and activity-reduction measures.

(39) This aid, designed to cover exceptional costs that have arisen or are due to arise from restructuring, has been entered in the general State budgets for 1999.

(40) 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).

(41) 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.

(42) In view of the above and on the basis of the information provided by Spain, this aid is compatible with Article 5 of Decision No 3632/93/ECSC and with the proper functioning of the common market.

V

(43) The aid of ESP 13 079 million (EUR 78 606 373,13) 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 to enable undertakings to cover the costs that have arisen or are due to arise from the progressive closures connected with the restructuring of the coal industry.

([1]) BOE No 46, 23.2.1999, p. 7570.

(44) Part of this aid, totalling ESP 2 754 million (EUR 16 551 873,35), will be granted to Hunosa via SEPI. Since Minas de Lieres S.A. received closure aid in Spain's 1991 to 1993 restructuring plan it is not therefore entitled to receive any other aid to cover the costs of closure, which must be completed by no later than 31 December 1999. The remaining sum, totalling ESP 10 325 million (EUR 62 054 499,78), will be granted to the other undertakings that are restructuring or reducing their activity.

(45) The aid to cover exceptional costs arising or due to arise from restructuring has been entered in the general State budgets for 1999.

(46) 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).

(47) 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) and other additional work and residual costs arising from closures of installations, can be considered compatible with the common market provided that the amount paid does not exceed such costs.

(48) Spain must ensure that the aid granted to undertakings to cover exceptional costs is in line with the categories of costs specified in the Annex to Decision No 3632/93/ECSC.

(49) In view of the above, and on the basis of the information provided by Spain, this aid is compatible with Article 5 of Decision No 3632/93/ECSC and with the proper functioning of the common market.

VI

(50) The aid granted by Spain to the coal industry is restricted to coal production destined to be used for electricity production. Spain undertakes to ensure that the coal sold to the industrial and domestic sectors is sold at prices (exempt from compensation) that cover the costs of production.

(51) Spain must ensure that the aid granted to current production under this Decision does not give rise to any discrimination between coal producers, between purchasers or between users on the Community coal market.

(52) Spain undertakes to ensure that, within the framework of the provisions of Article 86 of the Treaty, the aid is limited to that which is strictly necessary in the light of the social and regional considerations which characterise the decline of the Community's coal industry. The aid may not give any economic advantage, whether directly or indirectly, to productions for which no aid is authorised or to other activities distinct from coal production.

(53) 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 authorised for current production responds exclusively to the objectives stated in Articles 3 and 4 of the Decision. Spain must notify the Commission, by no later than 30 June 2000, of the amount of aid actually paid during 1999, and declare any corrections made to the amounts originally notified. When submitting this annual statement of aid paid, Spain must also supply the Commission with all the information necessary for verification of the criteria set out in the Articles in question.

(54) In approving the aid, the Commission has recognised the need to soften, as far as possible, the social and regional impact of the restructuring of the coal industry, given the economic and social situation surrounding the mines affected.

(55) In view of the above, and on the basis of the information provided by Spain, the measures and the aid proposed for the coal industry are deemed to be compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

HAS ADOPTED THIS DECISION:

Article 1

Spain is hereby authorised to pay the following aid in respect of 1999:

(a) operating aid of ESP 54 544 million (EUR 327 816 042,22) under Article 3 of Decision No 3632/93/ECSC;

(b) aid for the reduction of activity of ESP 66 486 million (EUR 399 588 971,72) under Article 4 of Decision No 3632/93/ECSC;

(c) aid of ESP 44 141 million (EUR 265 292 753), under Article 5 of Decision No 3632/93/ECSC, to cover exceptional welfare aid for workers who lose their jobs as a result of the measures to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry;

(d) aid of ESP 13 079 million (EUR 78 606 373,13), under Article 5 of Decision No 3632/93/ECSC, 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.

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 resulting from 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 2000 at the latest, of the amount of aid actually paid in respect of 1999.

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 4 May 1999.

For the Commission

Christos PAPOUTSIS

Member of the Commission