COMMISSION

COMMISSION DECISION
of 13 December 2000
on the granting by Spain of aid to the coal industry in 2000

(notified under document number C(2000) 4190)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2001/162/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 letter of 5 October 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 2000. Following Commission requests in letters dated 11 November 1999 and 7 September 2000, Spain provided additional information in letters dated 24 July 2000 and 8 November 2000, respectively.

(2) Spain also notified the Commission, by letter dated 7 October 1999, of the production costs per undertaking for 1998.

(3) In a second letter dated 24 July 2000, Spain notified the Commission, pursuant to Article 9(2) of Decision No 3632/93/ECSC, of the amount of aid actually paid during the 1999 coal production year.

(4) Pursuant to Decision No 3632/93/ECSC, the Commission must rule on the following financial measures relating to 2000:

(a) aid of ESP 116 180 million (EUR 698 255 862,87) to cover operating losses by coal undertakings;

(b) aid of ESP 55 209 million (EUR 331 812 772,71) 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 15 152 million (EUR 91 065 354,06) 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.

(5) 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 No 98/637/ECSC [2].

II

(6) By Decision 98/637/ECSC the Commission gave an opinion as to the conformity of the 1998 to 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.

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

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

(7) The Commission has verified that the measures taken to modernise, rationalise, restructure and reduce activity in the Spanish coal industry during 1999, and those notified for 2000, correspond to the plans which it approved in Decision No 98/637/ECSC.

(8) Spain's coal production of 15 418 272 tonnes in 1999 is 5,5 % lower than the figure for 1998. The forecast production figure notified by Spain for 2000 is 14 611 728 tonnes, i.e. 5,25 % lower than that for 1999. These production figures are lower than those shown in the Plan.

(9) The number of workers in the undertakings fell from 18 140 at the end of 1998 to 17 345 at the end of 1999. A further reduction of 1 500 workers is forecast for 2000.

(10) Installations with a total production capacity of 3 521 121 tonnes per year are in the process of closing down or reducing their activity, which must take place before the expiry of Decision No 3632/93/ECSC.

(11) 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.

(12) By letter of 7 October 1999 Spain notified the Commission, as required by Commission Decision 1999/451/ECSC [1] of the undertakings' production costs in 1998. The Commission's analysis of the trend in 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 ECU 102,5/tce in 1994 to ECU 87,7/tce in 1998. This mean reduction of 16,4 % between 1994 and 1998 breaks down into a reduction of more than 30 % for 22 % of production, between 30 % and 20 % for 7 % of production, between 20 % and 10 % for 39 % of production and between 10 % and 0 % for 33 % of production.

(13) The Antracitas de Rengos SA and Inversiones Terrales SA undertakings, with a total annual production of 90 000 tonnes, closed down their production installations definitively. The following undertakings or production units: Promotora de Minas de Carbón SA, UTE Terrales-Ubeda, Incomisa, Coto Minero Jove SA, Mina Escobal SL, Minas de Valdeloso SL, Virgilio Riesco SA, the María Group of Minero Siderúrgica de Ponferrada SA, the Escandal Group of Coto Minero del Sil SA, and the Picardín, Pontedo and Arbas Groups of Uminsa, with a total annual production capacity of 955 611 tonnes, have been included by Spain in a closure/activity reduction plan which provides for a reduction in annual capacity of 800 000 tonnes in 2000. 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, which do however qualify for activity reduction aid in accordance with Article 4 of the Decision.

(14) During the period 2000 to 2002, Spain will continue to monitor production cost trends at all coal undertakings receiving operating aid. Should the latter prove unable to achieve the downward trend in production costs stipulated in Article 3(2) of Decision No 3632/93/ECSC, Spain will propose the requisite corrective measures to the Commission.

(15) The aid notified by Spain to cover operating losses in 2000 provides for a reduction in production aid compared with 1999, at current currency values, of 4 % for underground mines and 6 % for open-cast mines. These reductions will help achieve the objective of degression of aid. The aid under Articles 3 and 4 of Decision No 3632/93/ECSC 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.

(16) 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 2000 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).

(17) In view of the above, the measures notified by Spain for 2000 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 nondiscrimination between producers, between purchasers or between users of coal in the Community.

III

(18) The aid of ESP 116 180 million (EUR 698 255 862,87) which Spain plans to grant the coal industry in 2000 is intended to compensate in full or in part for operating losses sustained by coal undertakings.

(19) 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.

[1] OJ L 177, 13.7.1999, p. 27.

(20) The sum notified subdivides into operating aid of ESP 48 696 million (EUR 292 668 864,35) under Article 3 of Decision No 3632/93/ECSC, and activity reduction aid of ESP 67 484 million (EUR 405 587 008,52) under Article 4 thereof.

(21) The operating aid of ESP 48 696 million (EUR 292 668 864,35) is intended to cover the operating losses of 42 undertakings with a combined envisaged production of 11 088 607 tonnes in 2000.

(22) The Commission notes, after verifying the production costs of these undertakings, that the downward trend of production costs at 1992 prices observed in the period 1994-1997 will continue in 2000. The reduction envisaged for 2000, compared with 1998, will be 11,23 %.

(23) The mean production cost in 1998, at 1992 prices, of the undertakings receiving aid under Article 3 of Decision No 3632/93/ECSC is ECU 87,7/tce, broken down as follows:

— 10 % of production at costs between ECU 20 and 60/tce,

— 50 % of production at costs between ECU 60 and 80/tce,

— 30 % of production at costs between ECU 80 and 95/tce,

— 10 % of production at costs between ECU 95 and 199/tce.

(24) The mean selling price to thermal power stations of the 11 088 607 tonnes (6 939 844 tce) of production envisaged in 2000 by the undertakings in receipt of operating aid is ESP 8 902/tce (EUR 53,5/tce). In the light of the envisaged mean cost of this production in 2000, namely ESP 16 620/tce (EUR 100/tce), 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.

(25) Of the aid of ESP 67 487 million (EUR 405 605 038,88) to reduce activity, ESP 56 121 million (EUR 337 294 003,1) is intended to cover the operating losses of Hunosa, ESP 4 940 million (EUR 29 689 997,96) the operating losses of Mina la Camocha, ESP 636 million (EUR 3 822 436,98) the operating losses of the underground workings of Endesa, ESP 322 million (EUR 1 935 258,98) the operating losses of the underground workings of Encasur, ESP 903 million (EUR 5 427 139,3) the operating losses of Antracitas de Guillón, ESP 681 million (EUR 4 092 892,43) the operating losses of Coto Minero Jove SA, ESP 83 million (EUR 498 840,05) the operating losses of Inversiones Terrales-Plácido Ubeda, ESP 154 million (EUR 925 558,64) the operating losses of Industrial y Comercial Minera (Incomisa), ESP 52 million (EUR 312 526,29) the operating losses of Mina Escobal, ESP 356 million (EUR 2 139 603,09) the operating losses of Minas de Escucha, ESP 118 million (EUR 709 194,28) the operating losses of Minas de Valdeloso SL, ESP 445 million (EUR 2 674 503,86) the operating losses of Promotora de Minas de Carbón SA, ESP 189 million (EUR 1 135 912,88) the operating losses of Virgilio Riesco SA, ESP 600 million (EUR 3 606 072,27) the operating losses of the Picadin, Pontedo and Arbas Groups of Uminsa, ESP 853 million (EUR 5 126 633,25) the operating losses of the María Group of Minero Siderúrgica de Ponferrada SA and ESP million (EUR 6 184 414,55) the operating losses of the Escandal Group of Coto Minero del Sil SA. The total production to be covered by this aid to reduce activity is 3 523 121 tonnes annual capacity.

(26) Of the aid of ESP 56 121 million (EUR 337 294 003,1) to Hunosa, ESP 37 989 million (EUR 228 318 488,3) will be granted via SEPI.

(27) The mean selling price to thermal power stations of the 3 523 121 tonnes (2 263 857 tce) of production envisaged in 2000 by the undertakings in receipt of aid to reduce activity is ESP 9 167/tce (EUR 55,1/tce). In the light of the envisaged mean cost of this production in 2000, namely ESP 39 100/tce (EUR 235/tce), 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.

(28) The aid to cover the operating losses sustained by coal undertakings has been entered in the general State budgets for 2000. It is 4 % lower than the aid authorised by the Commission for 1999. 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 Oficial del Estado* [1].

(29) 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 2000, 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.

(30) 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.

[1] BOE No 226, 20.9.2000, p. 32254.

IV

(31) The aid of ESP 55 209 million (EUR 331 812 772,71) 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.

(32) Part of this aid, totalling ESP 36 634 million (EUR 220 174 774,3), is to be granted to Hunosa to cover the cost of workers who took early retirement before 1 January 2000 and the 500 workers who will retire in 2000. This part of the aid will be granted to Hunosa via SEPI.

(33) The remaining ESP 18 575 million (EUR 111 637 998,4) is intended to cover compensation for the 5 806 workers in other undertakings in early retirement at the end of 2000 as a result of the modernisation, rationalisation, restructuring and activity reduction measures.

(34) 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 2000.

(35) 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).

(36) 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 cost.

(37) 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

(38) The aid of ESP 15 152 million (EUR 91 065 354,06) which Spain proposes to grant is intended to cover 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.

(39) Part of this aid, totalling ESP 5 193 million (EUR 31 210 558,58), will be granted to Hunosa via SEPI. The remaining sum, totalling ESP 9 959 million (EUR 59 854 795,48), will be granted to the other undertakings that are restructuring or reducing their activity.

(40) The aid to cover exceptional costs arising or due to arise from restructuring has been entered in the general State budgets for 2000.

(41) 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).

(42) 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.

(43) 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.

(44) 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

(45) 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 coal sold to the industrial and domestic sectors is sold at prices (exempt from compensation) that cover the costs of production.

(46) 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.

(47) Spain must ensure that, in accordance with the third indent of Article 3(1) of Decision No 3632/93/ECSC, aid to cover the difference between the cost of production and the selling price per tonne does not cause selling prices for Community coal to be lower than those for coal of a similar quality from non-member countries.

(48) Spain must 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. In particular, Spain must ensure that aid granted to undertakings under Article 5 of Decision No 3632/93/ECSC to cover the technical costs of closure is not used by the undertakings as aid for current production (Articles 3 and 4 of the Decision) and that the closure of capacity for which the aid is intended is definitive and that it is carried out in optimum conditions of safety and environmental protection.

(49) 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, no later than 30 June 2001, of the amount of aid actually paid during 2000, 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.

(50) 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.

(51) 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 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 2000:

(a) operating aid of ESP 48 696 million (EUR 292 668 854,35) under Article 3 of Decision No 3632/93/ECSC;

(b) aid for the reduction of activity of ESP 67 484 million (EUR 405 587 008,52) under Article 4 of Decision No 3632/93/ECSC;

(c) aid of ESP 55 209 million (EUR 331 812 772,71) 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 15 152 million (EUR 91 065 354,06), 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 2001 at the latest, of the amount of aid actually paid in respect of 2000.

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 13 December 2000.

For the Commission

Philippe BUSQUIN

Member of the Commission