II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 April 2001

authorising the United Kingdom to grant aid to nine coal production units for the period from 17 April to 31 December 2000, and to amend the restructuring plan for the coal industry

(notified under document number C(2001) 1089)

(Only the English text is authentic)

(Text with EEA relevance)

(2001/597/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 8 and 9 thereof,

Whereas:

I

(1) By letter of 12 January 2001, the United Kingdom notified the Commission, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of financial aid which it proposed to grant to a coal production unit for the year 2000, and more specifically for the period from 17 April to 31 December 2000. Following a request from the Commission, the United Kingdom further notified additional information on 19 February 2001.

(2) By letter of 19 February 2001, the United Kingdom notified the Commission, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of financial aid which it proposed to grant to eight coal production units for the year 2000, and more specifically for the period from 17 April to 31 December 2000.

(3) In its notification of 19 February 2001 the United Kingdom also informed the Commission, in accordance with Article 8(4) of Decision No 3632/93/ECSC, of an amendment to the modernisation, rationalisation and restructuring plan for the period from 17 April 2000 to 23 July 2002 (hereinafter referred to as 'the restructuring plan'). This restructuring plan had been approved by the Commission in its Decision 2001/114/ECSC [2].

(4) Once the Commission has delivered a favourable opinion on the conformity of the proposed amendment with the general and specific objectives of the Decision, it is required, in accordance with Decision No 3632/93/ECSC, to take a decision on the aid amounting to GBP 10 402 000 to cover operating losses for the period from 17 April to 31 December 2000, incurred at nine production units.

(5) The financial measures are covered by Article 1 of Decision 3632/93/ECSC, and the Commission must therefore take a decision on the measures pursuant to Article 9(4) of that Decision. The Commission's approval is subject to the general objectives and criteria laid down in Article 2 of Decision No 3632/93/ECSC and to the specific criteria set out in Article 3 thereof, and must be compatible with the proper functioning of the common market. In addition, in its assessment the Commission checks, in accordance with Article 9(6) of that Decision, whether the measures are in conformity with the coal industry restructuring plan as amended by the United Kingdom.

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

[2] OJ L 43, 14.2.2001, p. 27.

II

(6) The restructuring plan approved by the Commission by its Decision 2001/114/ECSC provides for the granting of operating aid to the coal industry for the period from 17 April 2000 to 23 July 2002. The plan provides that the total amount of aid over the whole period is not to exceed GBP 110 000 000 (see recital 6 of the Decision). At the time, the United Kingdom had considered this amount to be sufficient for temporarily maintaining production units which would be economically and financially viable in the long term and should become competitive with imported coal after 2002.

(7) In the light of the amount of aid to be granted for 2000, however, the United Kingdom authorities consider the estimated GBP 110 million to be insufficient to cover all the requests for aid which might be submitted during the period covered by the restructuring plan, namely 17 April 2000 to 23 July 2002. By its Decisions 2001/217/ECSC [1] and 2001/340/ECSC [2] the Commission has already authorised the granting of State aid amounting to GBP 76 540 000. Also, according to the notifications of 12 January and 19 February 2001 which are the subject of this Decision, an additional GBP 10 402 000 should be granted to cover all of the aid requests for the year 2000 which the United Kingdom authorities consider eligible.

(8) The amount which the United Kingdom should grant to the coal industry is therefore GBP 86 942 000 for the year 2000 alone. This is far in excess of the estimates made by the United Kingdom authorities when they were drawing up the restructuring plan, the reason being that a very large number of firms have submitted aid requests and that the amount of aid granted to certain production units has been higher than planned.

(9) According to the United Kingdom authorities it was not possible to work out the exact amount of aid necessary at the time when the restructuring plan was being prepared. The data then available to the United Kingdom authorities as to the number and size of production units, and the levels of their operating losses likely to meet the restructuring plan criteria for the granting of aid, allowed only a rough estimate to be made of how much aid the United Kingdom might be called on to grant during the period from 17 April 2000 to 23 July 2002.

(10) In the dossiers which they submitted to the United Kingdom authorities with a view to receiving aid for the year 2000, the coal producers sent precise details of production costs and revenue from coal production. This information includes data relating to the year 2000 itself but also to subsequent years. The United Kingdom authorities therefore now have at their disposal precise estimates by firms which are likely to be submitting new aid requests for 2001 and 2002. On the basis of these data the United Kingdom considers that the amount of aid which could be granted during the period from 17 April 2000 to 23 July 2002 should not exceed GBP 170 million, instead of the GBP 110 million in the original restructuring plan.

(11) The Commission considers that increasing the maximum amount of aid which can be granted during the period covered by the restructuring plan, from GBP 110 000 000 to GBP 170 000 000, will not call into question the terms of Decision 2001/114/ECSC. The amendment does not change the basic factors which led to the adoption of that Decision and, more precisely, the objective of the restructuring plan. That objective is to re-establish, before the expiry on 23 July 2002 of the State aid regime provided for in Decision No 3632/93/ECSC, a coal industry which is totally competitive with imported coal, that is to say, competitive without State aid. Moreover, the significance of the change of the maximum amount of aid which can be granted, covering the period from 17 April 2000 to 23 July 2002, must be examined in the light of the above objective. Accordingly, the Commission takes the view that the amended restructuring plan is in conformity with the objectives and criteria laid down in Decision No 3632/93/ECSC.

III

(12) The sum of GBP 10,402 million which the United Kingdom is proposing to grant to the coal industry under Article 3 of Decision No 3632/93/ECSC is intended to cover the difference between the production cost and the selling price of coal freely agreed between the contracting parties in the light of the prevailing conditions on the world market for coal of similar quality from non-member countries.

(13) The amount of aid proposed is intended for the following nine units:

(a) GBP 870 000 for the Betws colliery production unit of Betws Anthracite Ltd;

(b) GBP 661 000 for the central surface mines production unit of H.J. Banks & Company Ltd;

(c) GBP 703 000 for the north-east surface mines production unit of H.J. Banks & Company Ltd;

(d) GBP 2 978 000 for the east pit extension production unit of Celtic Energy Ltd;

(e) GBP 113 000 for the Blaentillery No 2 production unit of Flynonau Duon Mines Ltd;

[1] OJ L 81, 21.3.2001, p. 31.
[2] OJ L 122, 3.5.2001, p. 23.

(f) GBP 79 000 for the Hay Royds Colliery production unit of J. Flack & Sons Ltd;

(g) GBP 88 000 for the Eckington Colliery production unit of Moorside Mining Company Ltd;

(h) GBP 3 589 000 for the Tower colliery production unit of Tower Colliery Ltd;

(i) GBP 1 321 000 for the Elwyn Complex production unit of South Wales Anthracite Ltd/Ward Brothers Ltd.

(14) The aid proposed is intended to allow the production units which receive it to improve their economic viability by reducing their production costs. In accordance with the restructuring plans adopted by the United Kingdom, the effort made towards reducing production costs should be evaluated over a reference period of three consecutive years. This method should ensure that the development of production costs is not evaluated by reference to a period of activity that is not representative of the operating conditions of the production units concerned. In order to prevent any discrimination among coal producers, they may fix for themselves any reference period falling between 1 January 1994 and 31 December 2000.

(15) According to the restructuring plan, the production units have prospects for improving their economic viability if it can be estimated that their production costs will not exceed a threshold of GBP 1,15/GJ [1] in 2002. This cost level should enable the companies concerned to continue operating without the need for any financial support beyond 2002.

(16) It appears from the data communicated by the United Kingdom authorities that the development of production costs between the reference period determined in accordance with point 14 and the year 2002 is as follows, at constant 1999 prices: Betws colliery [...] (*); central surface mines [...]; north-east surface mines [...]; East Pit Extension [...]; Hay Royds colliery [...]; Eckington colliery [...]; Tower colliery [...]; Elwyn complex [...]. Moreover, the production costs, at constant 1999 prices, should in 2002 be at a level equal to or below GBP 1,15/GJ as referred to in recital 15.

(17) Moreover, according to estimates for the period up to 2004 inclusive, the above production units should continue to improve their economic viability through new reductions in production costs. In this regard, the Commission notes that the costs of several production units should by 2004 be less than GBP 1/GJ.

(18) Production Costs at Blaentillery No 2 should be around GBP [...]GJ in 2002; these costs are [...] % higher than those calculated for the reference period. Certain financial difficulties have not allowed this production unit to make the investments necessary to replace some of its production capacities in time. The resulting drop in production has meant an increase in production cost per unit of coal extracted. Given their current state of development, the new capacities should be going into production during 2002. There should therefore be a very significant reduction in production costs in subsequent years. According to the United Kingdom authorities, costs should fall by [...] % between 2002 and 2004 and by about [...] % between the reference period and 2004. The production costs should therefore be below the GBP 1,15/GJ threshold referred to in recital 15 as from 2003, with a cost level of about GBP [...]GJ.

(19) At the request of the United Kingdom authorities, a technical report was drawn up by an independent expert to assess whether the modernisation, rationalisation and restructuring measures envisaged for the various production units would enable them to improve their economic viability and, specifically, to achieve the objectives set out in recital 15. In drawing up this report, the expert took into account the geological and technical conditions in which the units operate and the quality of the coal which they produce. The report concluded that the various measures envisaged are consistent and realistic enough to achieve the estimated production costs worked out for each of the production units referred to in recitals 16 to 18.

(20) For these reasons, the United Kingdom considers that the modernisation, rationalisation and restructuring measures of the various production units will lead to an improvement of their economic viability. It contends that the units should be able to continue their activities beyond 2002 without any further public subsidy.

IV

(21) In accordance with Article 3(2) of Decision No 3632/93/ECSC, the aid which the United Kingdom proposes to grant is intended to improve the economic viability of the production units concerned by reducing their production costs.

(22) The Commission considers the reductions in production costs as set out in points 16 to 18 to be significant. In order to assess the extent of these reductions, the Commission has taken account of the difference between average production cost calculated for the reference period (see recital 14) and the target cost for 2002, determined at GBP 1.15/GJ. While the cost reductions calculated for the central surface mines and north-east surface mines units ([...] % and [...] % respectively) are less than the very large reductions recorded by other production units, the absolute cost level of central surface mines and north-east surface mines during the reference period was already very close to the threshold of competitiveness with imported coal.

[1] 1 tonne of coal equivalent (tce) = 29,302 gigajoules (GJ).
(*) Confidential information.

(23) The aid should help to improve the viability of the production units to enable them to continue their activities beyond 2002 without further public subsidy. In accordance with the restructuring plan approved by the Commission in Decision 2001/114/ECSC, the production costs of the Betws colliery, central surface mines, north-east surface mines, East Pit extension, Hay Royds Colliery, Eckington Colliery, Tower Colliery and Elwyn complex units should in 2002 not exceed the GBP 1,15/GJ threshold. The extent to which Blaentillery No 2 exceeded this threshold in 2000 is not enough to jeopardise the economic viability of that production unit. In fact the temporary operating difficulties which have led to the high production costs at Blaentillery No 2 should be resolved some time in 2002, bringing production costs down to below GBP 1,15/GJ from 2003 onwards.

(24) In accordance with the first indent of Article 3(1) of Decision No 3632/93/ECSC, the aid per tonne as notified does not exceed, for each production unit, the difference between production costs and foreseeable revenue, as calculated on the basis of the financial information for the period covered by the aid, namely from 17 April to 31 December 2000.

(25) The modernisation, rationalisation and restructuring measures implemented by each production unit, and in particular the temporary nature of the financial support necessary to achieve these measures, will allow the aid to be degressive, in accordance with the first indent of Article 2(1) of Decision No 3632/93/ECSC.

(26) The Commission notes that for each production unit an auditor has stated that the financial data notified by the United Kingdom accurately depict the company's accounts. The auditor also stated that the forecasts had been drawn up using the accounting standards that were in use before the period covered by the aid.

(27) In the light of the above, and on the basis of the information provided by the United Kingdom, the aid proposed for the period from 17 April to 31 December 2000 for the production units listed in recital 13 is compatible with Decision No 3632/93/ECSC, and in particular with Articles 2 and 3 of that Decision.

V

(28) The United Kingdom is required to ensure that this aid does not cause any distortion of competition and does not discriminate between coal producers, purchasers or consumers in the Community.

(29) In accordance with the third indent of Article 3(1) of Decision No 3632/93/ECSC and with the provisions relating thereto of Commission Decision 2001/114/ECSC, the United Kingdom will take all the necessary measures to ensure that the amount of the aid granted to each production unit does not cause delivered prices for Community coal to be lower than those for coal of a similar quality from non-member countries.

(30) Moreover, in accordance with Article 2(2) of Decision No 3632/93/ECSC, the aid must be entered in the United Kingdom's national, regional or local public budgets and must comply with strictly equivalent mechanisms.

(31) 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 has to check that the aid authorised is used only for the purposes stipulated in Article 3 of that Decision. At the latest by 30 September 2001, the United Kingdom shall send notification of the amounts of aid actually paid during the year 2000 and shall declare any corrections made to the amounts originally notified. Any information required to ascertain that the criteria laid down in Article 3 of the Decision have been complied with shall be provided along with this annual breakdown.

(32) The United Kingdom is required to justify any deviations from the restructuring plan as modified by the United Kingdom, and from the economic and financial forecasts notified to the Commission on 12 January and 19 February 2001, to which points 1 and 2 refer. In particular, should it turn out that the conditions laid down in Article 3(2) of Decision No 3632/93/ECSC cannot be satisfied, the United Kingdom will be responsible for proposing to the Commission the corrective measures required,

HAS ADOPTED THIS DECISION:

Article 1

The amendment proposed by the United Kingdom, to the modernisation, rationalisation and restructuring plan as approved by the Commission in its Decision 2001/114/ECSC is in conformity with the objectives and criteria laid down in Decision No 3632/93/ECSC.

Article 2

The United Kingdom is authorised, subject to the conditions set out in Article 3 of Decision No 3632/93/ECSC, to grant operating aid amounting to GBP 10 402 000 for Betws colliery, central surface mines, north-east surface mines, East Pit extension, Hay Royds colliery, Eckington colliery, Tower colliery, Elwyn complex and Blaentillery No 2 production units for the period from 17 April to 31 December 2000.

Article 3

The United Kingdom shall ensure that the authorised aid is used only for the purposes which it has declared in its notifications of 12 January and 19 February 2001, and that any expenditure relating to any of the items covered by this Decision which is cancelled, overestimated or misused, is reimbursed.

Article 4

Without prejudice to its obligations under Article 9(1), (2) and (3) of Decision No 3632/93/ECSC, the United Kingdom shall, at the latest by 30 September 2001, communicate the amounts of aid actually paid during the financial year 2000.

Article 5

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 11 April 2001.

For the Commission
Loyola DE PALACIO
Vice-President