COMMISSION

COMMISSION DECISION
of 20 September 2000
authorising France to grant aid to the coal industry for 1997, 1998 and 1999

(notified under document number C(2000) 2957)

(Only the French text is authentic)

(Text with EEA relevance)

(2001/85/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) thereof,

Having regard to Commission Decision 95/465/ECSC of 19 July 1995 approving the French coal industry's plan for the reduction of activity [2],

Whereas:

I

(1) By letters of 31 July 1997, 13 August 1998 and 10 May 1999, France notified the Commission, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of the financial aid which it proposed to grant to the coal industry for 1997, 1998 and 1999 respectively.

(2) The Commission noted that the aid as notified by France, which consisted of direct subsidies under the general State budget and capital injections from a special Treasury account, did not enable the operating losses for the current production to be covered. The outstanding amount of the losses for the three years has been covered, according to a memorandum from the French authorities of 25 March 1998, by loan issues floated by Charbonnages de France on the financial market.

(3) In its letter of formal notice to France of 26 July 1999 [3], the Commision considered that the conditions under which these loan issues were floated and the close links which exist between Charbonnages de France and the French authorities suggested that the loan issues floated by the company were tacitly guaranteed by the French State. The letter of formal notice in particular stated that the financial position of Charbonnages de France does not allow it to borrow on the financial market on the basis of ordinary law without at least a tacit guarantee from the State. Charbonnages de France has planned to cease all mining activity in 2005. By that date, it is not merely unlikely that it will have repaid the loans currently outstanding, but it may have issued others, both because the mining operations are structurally loss-making and to repay previous loans. The Commission therefore considered that these loans constituted aid within the meaning of Article 1 of Decision No 3632/93/ECSC.

(4) France confirmed the Commission's position in a letter of 26 October 1999 in reply to the letter of formal notice of 26 July 1999 and expressly stated that the loan issues floated by Charbonnages de France could be regarded as issued on behalf of the French State. Several convergent factors also suggest the existence of an implicit guarantee by the French State for the loan issues floated by Charbonnages de France, in particular the fact that, as indicated by the French authorities in their letter of 26 October 1999, the status of CDF (Charbonnages de France) as a public undertaking means its rights and obligations are transferred to the State once it has been wound up and will entail the French State taking over the undertaking's debt when it is wound up after mining activities cease in 2005.

[1] OJ L 329, 30.12.1993, p. 12.
[2] OJ L 267, 9.11.1995, p. 46.
[3] OJ C 280, 2.10.1999, p. 3.

(5) The Commission therefore concludes that the part of the loan issues floated by Charbonnages de France to cover the balance of the operating losses for 1997, 1998 and 1999 which are not covered by direct subsidies and capital injections constitutes aid within the meaning of Article 1 of Decision No 3632/93/ECSC.

(6) In the light of the above and the information communicated by France, the Commission is required to take a decision, pursuant to Decision No 3632/93/ECSC, on the following financial measures:

(a) for 1997:

— aid amounting to FRF 2 489 million for the reduction of activity to cover operating losses,

— aid amounting to FRF 3 869 million to cover exceptional costs;

(b) for 1998:

— aid amounting to FRF 2 578 million for the reduction of activity to cover operating losses,

— aid amounting to FRF 4 059 million to cover exceptional costs;

(c) for 1999:

— aid amounting to FRF 2 369 million for the reduction of activity to cover operating losses,

— aid amounting to FRF 4 135 million to cover exceptional costs.

(7) The financial measures envisaged by France for its coal industry are covered by Article 1 of Decision No 3632/93/ECSC and must therefore be approved by the Commission in accordance with Article 9, which refers in particular to the general objectives and criteria laid down in Article 2 and the specific criteria set out in Articles 4 and 5 of the above Decision. In its assessment, the Commission checks, in accordance with Article 9(6) of the Decision, whether the measures are in conformity with the plans for the reduction of activity which have been approved by the Commission.

II

(8) The sums of FRF 2 489 million, FRF 2 578 million and FRF 2 369 million which France is proposing to grant to the coal industry under Article 4 of Decision No 3632/93/ECSC for the years 1997, 1998 and 1999 respectively are 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 third countries. This aid forms part of the plan for the reduction of activitiy by the company, which plans to cease all mining activities in 2005. In view of the exceptional social and regional consequences of the reduction of activity by the company, the French Government, in agreement with the two sides of industry, has decided to stagger the closures up to 2005.

(9) Although coal production has been reduced from 5,361 million tce [1] in 1997 to 3,673 million tce in 1999, a reduction of 30 %, the Commission notes that the amount af aid has remained relatively stable over this period. The fall in coal prices on the international markets and the rise in the production costs — from FRF 825 per tce in 1997 to FRF 975 per tce in 1999 — have neutralised the effect of reducing the volume of production to the overall amount of aid. This trend in the cost of mining coal merely serves to confirm France's decision to cease all mining by 2005.

(10) In accordance with Article 3(1) of the above Decision, the Commission has checked that, for the coal mining years 1997 and 1998, the aid notified per tonne does not exceed for each production unit the difference between production costs and actual revenue. The Commission has checked for the coal mining year 1999 that the aid notified by tonne does not exceed for each production unit the difference between production costs and foreseeable revenue.

(11) The Commission has furthermore checked whether, in accordance with Article 2(2) of Decision No 3632/93/ECSC, the aid proposed by France has been entered in the Member State's national, regional or local public budgets or channelled through strictly equivalent mechanisms. As the direct subsidies from the general State budget and the capital injections have been entered in the Treasury's special allocation account, these two categories of aid do comply with the requirements of Article 2(2) of Decision No 3632/93/ECSC. For the loan issues floated by Charbonnages de France, France has informed the Commission, in its letter of 26 October 1999, that the French State will accept responsibility for the interest on these loans from 2000 onwards. The interest on these loans due for 1998 and 1999 has been covered by loan issues floated for those years. As the French authorities have provided the Commission with proof, by letter of 3 July 2000, that the interest due for the year 2000 is

[1] tce = tonne coal equivalent.

entered in the State budget for 1999, the Commission considers that the loans meet the requirement of Article 2(2) of Decision No 3632/93/ECSC. In accordance with the seventh recital of point III of the above Decision, the requirement in Article 2(2) is intended to provide the best guarantees of transparency in the aid systems. As the interest due for the year 2000 has been budgeted for, that objective may be regarded as fulfilled in as much as the interest is accessory to the sum of the loans. As the loan interest is budgeted for, the sum itself of the loans complies *ipso facto* with the objective of the transparency of aid in Article 2(2) of Decision No 3632/93/ECSC.

(12) In accordance with Article 2(1), second indent, the aid helps to solve the social and regional problems created by total or partial reductions in the activity of production units.

(13) Except for the sum of FRF 35 million for the year 1997, and the sum of FRF 45 million for each of the years 1998 and 1999, on the basis of the information provided by France, the aid proposed for these three years is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market. The Commission will subsequently take a decision on the balances of FRF 35 million for 1997 and FRF 45 million for the years 1998 and 1999, in particular in the light of France's replies to the questions in the Commission's letter of formal notice of 9 February 1999 in the context of complaint No 97/4717 of 26 August 1997 against Charbonnages de France, which has been lodged by five French undertakings, including the company Thion et Cie.

(14) This Decision is also without prejudice to the decision which the Commission will be required to take after consideration of the complaints submitted against Charbonnages de France, in particular Cokes de Drocourt SA, in the context of the coke market.

III

(15) The sums of FRF 3 869 million, FRF 4 059 million and FRF 4 135 million which France proposes to grant to its coal industry for 1997, 1998 and 1999 respectively are intended to cover exceptional costs due to modernisation, rationalisation and the restructuring of the coal industry which are not related to current production (inherited liabilities).

(16) In accordance with Article 5 of Decision No 3632/93/ECSC, this aid covers costs which are expressly referred to in the Annex to the Decision, namely:

— FRF 631 million, FRF 731 million and FRF 837 million towards the cost of paying social-welfare benefits for 1997, 1998 and 1999 respectively resulting from the pensioning-off of workers before they reach statutory retirement age;

— FRF 154 million, FRF 244 million and FRF 157 million as other exceptional expenditure in 1997, 1998 and 1999 respectively on workers losing their jobs as a result of restructuring and rationalisation;

— FRF 47 million, FRF 67 million and FRF 86 million towards residual costs for 1997, 1998 and 1999 respectively resulting from administrative, legal or tax provisions;

— FRF 143 million, FRF 198 million and FRF 246 million towards additional work in 1997, 1998 and 1999 respectively resulting from restructuring;

— FRF 10 million, FRF 7 million and FRF 12 million towards mining damage in 1997, 1998 and 1999 respectively attributable to pits previously in service;

— FRF 73 million, FRF 45 million and FRF 45 million towards exceptional intrinsic depreciation in 1997, 1998 and 1999 respectively resulting from the restructuring of the industry;

— FRF 2 811 million, FRF 2 767 million and FRF 2 752 million towards the increase in the contributions, outside the statutory system in 1997, 1998 and 1999 respectively to cover social security costs as a result of the drop, following restructuring, in the number of contributors.

(17) In accordance with Article 5(1) of Decision No 3632/93/ECSC, this aid may be regarded as compatible with the common market if it does not exceed the costs arising from or having arisen from the modernisation, rationalisation or restructuring of the coal industry which are not related to current production. Having checked the data communicated, the Commission concludes that this requirement has been fulfilled. In the light of the above and on the basis of the information provided by France, the aid planned for 1997, 1998 and 1999 is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

IV

(18) In accordance with the second indent of Article 3(1) and Article 9(2) and (3) of Decision No 3632/93/ECSC, the Commission has to check that the aid authorised for current production is only for the purposes stipulated in Article 4 of the Decision. To this end, it must be informed of the amounts of such payments and the way they are broken down for 1999,

HAS ADOPTED THIS DECISION:

Article 1

France is authorised to apply the following measures in favour of its coal industry for 1997:

(a) aid for the reduction of activity, amounting to FRF 2 454 million, intended to cover operating losses. The Commission will take a decision on a balance of FRF 35 million at a later date;

(b) aid to cover exceptional costs amounting to FRF 3 869 million.

Article 2

France is authorised to apply the following measures in favour of its coal industry for 1998:

(a) aid for the reduction of activity, amounting to FRF 2 533 million, intended to cover operating losses. The Commission will take a decision on a balance of FRF 45 million at a later date;

(b) aid to cover exceptional costs amounting to FRF 4 059 million.

Article 3

France is authorised to apply the following measures in favour of its coal industry for 1999:

(a) aid for the reduction of activity, amounting to FRF 2 324 million, intended to cover operating losses. The Commission will take a decision on a balance of FRF 45 million at a later date;

(b) aid to cover exceptional costs amounting to FRF 4 135 million.

Article 4

France shall communicate the amounts of aid actually paid under this Decision for 1999 no later than 30 September 2000.

Article 5

This Decision is addressed to the French Republic.

Done at Brussels, 20 September 2000.

For the Commission

Loyola DE PALACIO

Vice-President