COMMISSION DECISION

of 5 May 2002

authorising the United Kingdom to grant aid to six coal production units for 2001 and for the period from 1 January 2002 to 23 July 2002

(notified under document number C(2002) 2016)

(Only the English text is authentic)

(Text with EEA relevance)

(2002/786/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 9(4) thereof,

Whereas:

I

(1) By letter of 13 March 2002, the United Kingdom notified the Commission, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of financial aid which it intends to grant to the coal industry for 2001 and for the period from 1 January 2002 to 23 July 2002.

(2) In the light of the information submitted by the United Kingdom, the Commission is required to take a decision on operating aid amounting to GBP 5 516 100 to cover the operating losses of three production units for the period from 1 January 2001 to 31 December 2001. It is also required to take a decision on operating aid amounting to GBP 2 915 960 to cover the operating losses of three production units for the period from 1 January 2002 to 23 July 2002. Consequently, the total operating aid on which the Commission is required to take a decision amounts to GBP 8 432 060.

(3) The financial measures are covered by Article 1 of Decision No 3632/93/ECSC. The Commission must therefore take a decision on these 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 and the specific criteria set out in Article 3 of Decision No 3632/93/ECSC and, more generally, to the aid's being compatible with the proper functioning of the common market. In addition, in its assessment, the Commission is required to check, in accordance with Article 9(6) of that Decision, whether the measures notified are in conformity with the plan for modernisation, rationalisation and restructuring of the United Kingdom coal industry approved by the Commission by Decision 2001/114/ECSC [2], and Decision 2001/597/ECSC [3] (hereinafter referred to as the restructuring plan).

II

(4) The sum of GBP 8 432 060 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 conditions prevailing on the world market for coal of similar quality from third countries.

(5) The aid proposed for the period from 1 January 2001 to 31 December 2001 is intended for the following units:

(a) GBP 3 187 100 for the East Pit Extension production unit of Celtic Energy Ltd;

(b) GBP 2 285 000 for the North Lanarkshire Coalfields production unit of L.A.W. Mining Ltd;

(c) GBP 44 000 for the Nant-Hir No 2 production unit of M. W.A. (Anthracite) Ltd.

(6) By Decision 2001/597/ECSC, the Commission has already authorised the United Kingdom to grant operating aid pursuant to Article 3 of Decision No 3632/93/ECSC to East Pit Extension, amounting to

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

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

[3] OJ L 210, 3.8.2001, p. 32.

GBP 2 978 000 for the period from 17 April 2000 to 31 December 2000. The Commission was of the opinion that the aid which the United Kingdom proposed to grant was intended to improve the economic viability of this production unit by reducing its production costs, in accordance with Article 3(2) of Decision No 3632/93/ECSC. Under the restructuring plan, the aid should help to make the mine viable, enabling it to continue its activities beyond 2002 without the need for public subsidy.

(7) The information transmitted by the United Kingdom in its letter of 13 March 2002 confirms the analysis and conclusions set out in Decision 2001/597/ECSC. The reduction in the production costs of East Pit Extension will make it possible to achieve economic viability of that mine in 2002. Production costs in 2002 should be GBP [...] (*) per GJ ([4]).

(8) In the case of North Lanarkshire Coalfields, production costs for 2002 will probably rise by about GBP [...] per GJ on the level of GBP 1,15 per GJ considered to be the economic viability threshold for the United Kingdom coal industry. However, this slight overspend is not enough to jeopardise the viability prospects of this production unit. From 2003, indeed, the production costs of that mine should be GBP [...] per GJ.

(9) As regards Nant-Hir No 2, the aid proposed should also enable that production unit to improve its economic viability by reducing its production costs. According to estimates, production costs should be GBP [...] per GJ in 2002, which is below the level of GBP 1,15 per GJ considered to be the economic viability threshold for the United Kingdom coal industry.

(10) Moreover, according to estimates made for the period up to 2004, the above production units should continue to improve their economic viability. Consequently, production costs should remain below the level of GBP 1,15 per GJ.

(11) The aid proposed for the period from 1 January 2002 to 23 July 2002 is intended for the following units:

(a) GBP 1 240 000 for the Betws Colliery production unit of Betws Anthracite Ltd;

(b) GBP 200 960 for the Hay Royds Colliery production unit of J. Flack Sons Ltd;

(c) GBP 1 475 000 for the Hatfield Colliery production unit of Coalpower Ltd.

(12) By Decisions 2001/597/ECSC and 2001/683/ECSC ([5]), the Commission has already authorised the United Kingdom to grant Betws Colliery operating aid pursuant to Article 3 of Decision No 3632/93/ECSC, amounting to GBP 870 000 and GBP 1 966 000 for the period from 17 April 2000 to 31 December 2000 and the whole of 2001, respectively. By Decisions 2001/597/ECSC and 2001/807/ECSC ([6]), the Commission has already authorised the United Kingdom to grant Hay Royds Colliery operating aid pursuant to Article 3 of Decision No 3632/93/ECSC, amounting to GBP 79 000 and GBP 264 000 for the period from 17 April 2000 to 31 December 2000 and the whole of 2001, respectively. In accordance with Article 3(2) of Decision No 3632/93/ECSC, the Commission was of the opinion that the aid which the United Kingdom proposed to grant was intended to improve the economic viability of the production units concerned by reducing their production costs. In accordance with the restructuring plan, the aid should help to make those production units viable, enabling them to continue their activities beyond 2002 without the need for public subsidy.

(13) The information transmitted by the United Kingdom in its letter of 13 March 2002 confirms the analysis and conclusions set out in Decisions 2001/597/ECSC, 2001/683/ECSC and 2001/807/ECSC. Production costs for the Betws Colliery and Hay Royds Colliery production units in 2002 should come to GBP [...] per GJ and GBP [...] per GJ, respectively, which represents a level close to the economic viability threshold of GBP 1,15 per GJ for the United Kingdom coal industry. According to estimates, production costs should be GBP [...] per GJ and GBP [...] per GJ in 2003.

(14) Moreover, according to estimates made for the period up to 2004, the above production units should continue to improve their economic viability. Consequently, production costs should remain below the level of GBP 1,15 per GJ.

(*) Confidential information.
([4]) 1 tonne coal equivalent (tce) = 29,302 gigajoules (GJ).
([5]) OJ L 241, 11.9.2001, p. 10.
([6]) OJ L 305, 22.11.2001, p. 27.

(15) In the case of Hatfield Colliery, the Commission has already authorised the United Kingdom, by Decision 2002/582/ECSC [7], to grant operating aid pursuant to Article 3 of Decision No 3632/93/ECSC, amounting to GBP 1 157 520 for 2001.The Commission had been of the opinion that the putting of Hatfield Colliery into liquidation in August 2001 as a result of financial difficulties did not call into question the economic viability of the coalfields. The company taking over the mine, Coalpower Ltd, had drawn up a new investment plan for the mine with a view to optimising production, so that once production has been restored to its optimum level, it should be possible to ensure the economic viability of Hatfield Colliery from 2003.

(16) The information transmitted by the United Kingdom in its letter of 13 March 2002 confirms the analysis and conclusions set out in Decision 2002/582/ECSC. Production costs in 2003 should amount to GBP [...] per GJ. Production costs should continue to fall to an estimated level of GBP [...] per GJ in 2004.

III

(17) In accordance with Article 3(2) of Decision No 3632/93/ECSC, the aid which the United Kingdom proposes to grant for 2001 is intended to improve the economic viability of the production units concerned by reducing their production costs.

(18) 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 for 2001 and the period from 1 January 2002 to 23 July 2002, respectively.

(19) The modernisation, rationalisation and restructuring measures carried out at each production unit, and more specifically the temporary nature of the financial aid necessary for such measures, will moreover allow the aid to be degressive, in accordance with the first indent of Article 2(1) of Decision No 3632/93/ECSC.

(20) At the request of the United Kingdom authorities, an independent expert has compiled technical reports examining the potential of the modernisation, rationalisation and restructuring measures planned for the various production units to achieve the objective of economic viability. In drawing up his report, the expert took account of the geological and technical operating conditions and the quality of the coal produced by the production units. The reports conclude that the various measures envisaged were consistent and realistic in terms of attaining economic viability.

(21) An auditor has certified, for each production unit, that the financial data notified by the United Kingdom are an accurate reflection of the accounts of the company. The auditor has also stated that the forecasts were drawn up using the same accounting standards as were in use before the period covered by the aid.

(22) The Commission notes that the aid notified on 13 March 2002, when added to the amounts of aid already authorised by the Commission under the restructuring plan for the United Kingdom coal industry, remains below the ceiling of GBP 170 000 000 laid down by that restructuring plan.

(23) In view of the above and on the basis of the information provided by the United Kingdom, the aid proposed for 2001 and the aid proposed for the period from 1 January 2002 to 23 July 2002 for the six production units referred to in recitals 5 and 11 are compatible with Decision No 3632/93/ECSC, and in particular with Articles 2 and 3 thereof.

IV

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

(25) In accordance with the third indent of Article 3(1) of Decision No 3632/93/ECSC and with the provisions of Decision 2001/114/ECSC, the United Kingdom will take all measures necessary 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 third countries.

(26) 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 or comply with strictly equivalent mechanisms.

[7] OJ L 184, 13.7.2002, p. 37.

(27) In the context of Member States' obligations under 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 of each year, the United Kingdom shall notify the amount of aid actually paid for the previous year and declare any changes 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 together with this annual statement.

(28) The United Kingdom is required to justify any departures from the restructuring plan and from the economic and financial forecasts notified to the Commission on 13 March 2002. In particular, should it turn out that the conditions laid down in Article 3(2) of Decision No 3632/93/ECSC cannot be met, the United Kingdom will be responsible for proposing to the Commission which corrective measures ought to be taken,

HAS ADOPTED THIS DECISION:

Article 1

The United Kingdom is authorised, subject to the conditions set out in Article 3 of Decision No 3632/93/ECSC, to grant operating aid of GBP 5 516 100 to the East Pit Extension, to North Lanarkshire Coalfields and to Nant-Hir No 2 production units for 2001.

The United Kingdom is also authorised, subject to the conditions set out in Article 3 of Decision No 3632/93/ECSC, to grant operating aid of GBP 2 915 960 to the Betws Colliery, Hay Royds Colliery and Hatfield Colliery production units for the period from 1 January 2002 to 23 July 2002.

Article 2

The United Kingdom shall ensure that the authorised aid is used only for the purposes declared in its notification of 13 March 2002 and that any expenditure on items covered by this Decision which is cancelled, overestimated or misused is reimbursed.

Article 3

In addition to the obligations laid down in Article 9(2) and (3) of Decision No 3632/93/ECSC, the United Kingdom shall, by 30 September 2002 at the latest, communicate the amount of aid actually paid for 2001.

In addition to the obligations laid down in Article 9(2) and (3) of Decision No 3632/93/ECSC, the United Kingdom shall, by 30 September 2003 at the latest, communicate the amount of aid actually paid for the period from 1 January 2002 to 23 July 2002.

Article 4

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

Done at Brussels, 5 June 2002.

For the Commission

Loyola de PALACIO

Vice-President