COMMISSION DECISION

of 19 June 2002

on State aid which Spain is planning to grant to BBE and BBG for the construction of a power and heat supply station (Bahía de Bizcaia Electricidad – BBE) and a regasification plant (Bahía de Bizcaia Gas – BBG) in the port of Bilbao

(notified under document number C(2002) 2146)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2002/936/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments pursuant to the said Article [1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 26 January 2001, registered on 29 January 2001, the Spanish Permanent Representation notified, pursuant to Article 88(3) of the Treaty and in accordance with the multisectoral framework on regional aid for large investment projects [2] (the multisectoral framework or the framework), the proposed aid for the construction of a combined cycle thermal power station and a regasification plant in Bilbao. By letter dated 30 March 2001, registered on 4 April 2001, Spain sent additional information to the Commission.

(2) By letter dated 6 June 2001, the Commission informed Spain of its decision to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the proposed aid.

(3) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* [3]. The Commission invited interested parties to submit their comments on the aid.

(4) By letter dated 14 September 2001, registered on the same day, BBE and BBG sent their comments to the Commission.

(5) By letter dated 25 October 2001, registered on 30 October 2001, the Spanish authorities sent their comments to the Commission.

(6) By letter dated 19 December 2001, the Commission asked the Spanish authorities for additional information. This was sent by letter dated 1 February 2002, registered on 4 February 2002.

2. DETAILED DESCRIPTION OF THE AID

(7) The notification covers two projects: a combined cycle thermal power station (Bahía de Bizcaia Electricidad), and a regasification plant (Bahía de Bizcaia Gas). The two facilities will be built near the port of Bilbao (Basque Country, Spain). The authority granting the aid is the Basque Government (an autonomous authority). According to the information provided by the Spanish authorities, the proposal is not part of any current regional aid scheme authorised by the Commission. Furthermore, it should be pointed out that the Bizcaia Provincial Council (Diputación Foral de Bizcaia) was intending to grant a tax credit of 45 % of the basis of assessment, amounting to ESP 54 149 million (EUR 325 442 040) for the BBE project and ESP 43 486 million (EUR 261 360 000) for the BBG project. However, the Spanish authorities informed the Commission, by letter dated 23 May 2000, registered on 24 May 2000, that both undertakings had refused the said tax concessions.

(8) The recipient undertakings for the projects are, respectively, the recently formed companies BBE and BBG, of whose capital BP-Amoco, Repsol, Iberdrola and EVE (*Ente Vasco de la Energía*, a public sector undertaking owned by the Basque Government) each hold 25 %. All the shareholders in the new firms can be considered to be large firms.

[1] OJ C 231, 17.8.2001, p. 2.
[2] OJ C 107, 7.4.1998, p. 7.
[3] See footnote 1.

A. **Combined cycle thermal power station (BBE)**

(9) This investment is for the construction of a combined cycle thermal power station of 800 MW, which will use as fuel natural gas supplied by BBG (see recitals 15 to 21), and will produce electricity for the Spanish market (pool).

(10) The investment project will begin in September 2000. The station should be operational in March 2003.

(11) The total investment will be EUR 300 035 000 over the period 2000—2003, which represents a total of EUR 282 547 000 discounted to 31 December 2000 ([4]).

(12) According to the Spanish authorities, the investment will create 33 direct jobs, broken down as follows: two managerial posts (one plant manager and one secretary), 16 operational posts (one manager of operations, five supervisors and ten operatives), 12 maintenance posts (one maintenance manager, nine skilled workers and two operatives) and three engineering posts (one engineering manager and two technicians). There will be a further 13 direct jobs common to both the BBE and BBG projects and assigned on a 50:50 basis between them: two managerial posts (one general manager and one secretary), five administrative posts (one administrative manager and four administrative staff) and six general engineering posts (one engineering manager and five technicians). The total number of direct jobs which the Spanish authorities expect to be created is therefore 39,5 (33 + 6,5).

(13) The Spanish authorities also anticipate the creation of 23,2 indirect jobs, broken down as follows: security (9,7), cleaning (2,0), unskilled workers (2,0), warranty engineering work on main components (0,2), maintenance of main components (0,7), operational maintenance (subcontractors) (2,6), canteen and services (4,0) and administration (2). This calculation is based on an estimated average of 1 800 working hours per year.

(14) The aid to the BBE project is to take the form of a non-repayable grant totalling a nominal EUR 30 004 000 gross, payable in several instalments between 2000 and 2003. Payment is conditional on completion of the investment, after inspection by the Basque Government. The total amount of aid discounted to 31 December 2000 works out at EUR 28 255 000, giving an aid intensity of 7,49 % gge and 7,57 % nge.

([4]) In the text below, reference and discount rate: 5,7 %; tax rate: 32,5 %. Straight-line depreciation over a period of 20 years.

B. **Regasification plant (BBG)**

(15) This investment involves the construction of a liquefied natural gas (LNG) regasification plant. The plant will take delivery of, store and vaporise the LNG. It will produce a total of some 3 000 million Nm^3 of natural gas per year, or 9,6 million Nm^3 per day. Around 40 % of output is earmarked for the BBE power station. The LNG is to be imported mainly from Trinidad and Tobago and Nigeria and shipped to the plant by two methane carriers which will make the journey regularly.

(16) The investment project began in September 2000. The plant is scheduled to be put into operation in June 2003.

(17) The investment will cost a total of EUR 232 116 000 over the period 2000-2003, or a total of EUR 217 392 000 discounted to 31 December 2000 ([5]).

(18) According to the Spanish authorities, the investment will create 33 direct jobs, broken down as follows: two managerial posts (one plant manager and one secretary), 16 operational posts (one manager of operations, five supervisors and ten operatives), 12 maintenance posts (one maintenance manager, nine skilled workers and two operatives) and three engineering posts (one engineering manager and two technicians). In addition, half the jobs common to both the BBE and BBG projects and assigned to the BBG project must also be counted (see recital 12). The total number of direct jobs which the Spanish authorities expect to be created is therefore 39,5 (33 + 6,5).

(19) The Spanish authorities also anticipate the creation of 84,05 indirect jobs, broken down as follows: gas transport (50), port services (5,6), mechanical maintenance (3), insulation (1), instrumentation (1), electrical maintenance (2), civil engineering (0,75), painting (2), analysis of plant components (1), security (9,7), cleaning (2,0), unskilled workers (2) and canteen and services (4). This calculation is based on an estimated average of 1 800 working hours per year.

(20) The aid to the BBG project is to take the form of a non-repayable grant totalling a nominal EUR 23 212 000 gross, payable in several instalments between 2000 and 2003. Payment is conditional on completion of the investment, after inspection by the

([5]) In the text below, reference and discount rate: 5,7 %; tax rate: 32,5 %. Straight-line depreciation over a period of 20 years.

Basque Government. This gives a total amount of aid discounted to 31 December 2000 of EUR 21 740 000, giving an aid intensity of 9,53 % gge and 7,61 % nge.

(21) For a more detailed description of the two projects, please consult the decision to initiate the procedure.

3. REASONS FOR INITIATING THE PROCEDURE

(22) In its decision to initiate the procedure, the Commission expressed doubts over various aspects of the aid project:

(a) justification for the project from the standpoint of regional development, given that the aid in question is *ad hoc* aid;

(b) the situation of the electricity market (relevant product market) in Spain (relevant geographic market) for the BBE project, and specifically whether or not it is in decline;

(c) the justification of certain eligible costs, and in particular the classification of intangible assets as eligible expenditure and the justification for including certain costs under the heading 'buildings';

(d) the justification for certain jobs presented by the Spanish authorities as indirect jobs created by the project. In particular, the Spanish authorities are requested to explain or justify certain jobs which appear in both projects (security, cleaning, canteen and services), 50 indirect jobs for the transport of gas (BBG) and two indirect jobs in administration (BBE).

(23) Should the Commission's doubts prove well-founded, the maximum intensities allowed by the multisectoral framework ([6]) for these projects will have to be reviewed.

4. COMMENTS FROM INTERESTED PARTIES

(24) BBE and BBG, the beneficiaries of the aid, have jointly submitted comments to the Commission. The comments from BBE/BBG are identical to those of the Spanish authorities which are examined below, although they were submitted before the latter. Consequently, reference will be made below solely to the comments of the Spanish authorities although it is understood that such references also apply to the comments made by BBE/BBG.

5. COMMENTS FROM SPAIN

Regarding the justification of the project from a regional point of view.

(25) The Spanish authorities feel that this project is of strategic importance with regard to the energy policy of the Basque Country, since it will help guarantee electricity and natural gas supplies to the region.

(26) As regards electricity, the Spanish authorities have indicated that the electricity produced in the region satisfies only 20 % of demand. The project will also help to reduce the cost of transport of electricity and gas and the loss of energy en route.

(27) With regard to gas, the Spanish authorities emphasise that the Basque Country is far from the main entry points for gas, even though practically all the gas consumed in the Basque Country is imported. They also point out that the demand forecasts for gas in the Basque Country show a constant increase.

(28) Furthermore, the Spanish authorities feel that the regional impact of the two projects should be considered jointly, as they are so closely linked, in that the electricity plant would not have been built without the regasification plant and vice versa. In this connection, the Spanish authorities indicate that the electricity plant will consume only 40 % of the gas production of the regasification plant, while the remaining 60 % is destined for the market, thereby helping to improve the supply of gas to the Basque Country.

(29) The Spanish authorities have submitted a study on the effect of the project on GNP and employment in the region. According to this study, which was carried out by the University of Deusto (University-firm collaboration — Deiker), the contribution of these projects to the GNP of the region would be 0,188 % (BBE) and 0,202 % (BBG), and the projects would help create 39,5 direct jobs, 23,2 indirect jobs and 452,6 spin-off jobs (BBE), and 39,5 direct jobs, 34,05 indirect jobs and 552 spin-off jobs (BBG), i.e., 515,3 jobs from the BBE project and 625,55 jobs from the BBG project.

([6]) The maximum allowable intensity for a large investment project under the multisectoral framework is calculated according to the formula set out in point 3,10 of the framework. It is obtained by multiplying the regional ceiling (R) by the coefficients resulting from the competition factor (T), the capital-labour factor (I) and the regional impact factor (M) (R × T × I × M, where the result may not exceed R).

(30) Finally, the Spanish authorities allude to the construction, as part of this project, of two liquid natural gas transport ships, each at a cost of EUR 210 350 000, which would create 1 000 jobs for one year.

Regarding the situation of the electricity market in Spain

(31) The Spanish authorities do not share the Commission's view that the electricity market in Spain is in decline. The data on consumption in the period 1995-2000 shows that the market turnover is positive, as illustrated by the table below:

Apparent consumption (*)

Year	Production (GWh)	Imports (GWh)	Exports (GWh)	Consumption (GWw)	Variation (%)
1995	169 094	7 633	3 147	173 581	—
1996	176 510	6 750	5 691	177 569	2,3
1997	189 381	4 597	7 670	186 308	4,9
1998	196 046	8 694	5 562	199 448	7,1
1999	208 258	11 951	6 233	213 976	7,3
2000	223 944	12 265	7 833	228 376	6,7

(*) Source: Spanish Electric Industry Association, UNESA. The differences between apparent consumption and net national consumption are due to self-supply, pumping and losses in transport and distribution.

(32) Furthermore, according to the provisional data in the 2001 Red Eléctrica de España (Spanish electricity grid) report, there was a 5,4 % increase in demand in 2001 (first 10 months) by comparison with the previous year.

(33) As regards the evolution of the market in terms of value, the available data also shows, according to the Spanish authorities, that the electricity market is not in decline, as illustrated by the table below:

Value of electricity sold (million ESP) (*)

Year	Basic	Discount	Total	Variation (%)
1995	2 198 876	87 671	2 111 259	—
1996	2 225 438	88 314	2 170 124	2,8
1997	2 262 476	82 414	2 180 062	0,5
1998	2 178 514	71 577	2 106 937	−3,3
1999	2 161 676	60 356	2 101 323	−0,27
2000	2 249 889	58 592	2 191 297	4,28

(*) Source: UNESA.

(34) The Spanish authorities emphasise in this regard that the decrease in 1997, 1998 and 1999 was due more to the dropping of prices set by the government following the progressive opening up of the electricity market than to a drop in demand.

(35) Furthermore, the Spanish authorities point out that the project will be profitable because of the reasonable price forecasts and the situation of the electricity market. The firms calculate that at a rate of EUR 0,03/Kwh, the project could produce an internal rate of return of between 8,5 % and 10,5 %. They also point to the existence of several similar projects in Spain, undertaken by Spanish and foreign firms.

(36) The Spanish authorities also point out that the Spanish electricity market is far from a situation of excess capacity. On the contrary, they estimate that in the absence of new investment, the current generation capability may not be sufficient to satisfy growing demand. Current demand is only being met because coal plants have been brought into service, since hydroelectric plants are too climate-dependent. The Spanish authorities consequently emphasise the need to avoid supply problems like the ones which occurred in California.

Regarding the situation of the market in gas

(37) The Spanish authorities consider that the market in gas is in expansion. Volume has indeed increased by 12,1 % between 1997 and 2000 ([7]). Value has also increased, as the table below shows:

Value of consumption of natural gas by type of user (*)

(ESP million)

	1993	1994	1995	1996	1997	1998	1999
Domestic – commercial	97 103	102 187	131 743	160 087	171 095	209 358	240 677
Industrial	72 962	91 737	120 194	141 560	183 106	188 078	217 251
Electric plants	615	1 038	1 397	3 859	35 800	11 169	12 355
Total	170 680	194 962	253 334	305 506	390 001	408 605	470 283

(*) Source: BBG.

(38) The Spanish authorities also note that the estimates for the following years indicate a continuing increase in the demand for natural gas and, in particular, an increase in the demand for natural gas used for the generation of electricity.

Regarding eligible investments

(39) The Spanish authorities accept the Commission's view on the inappropriateness of classifying part of the costs as 'intangible assets'. Consequently, eligible investments have been modified as follows:

([7]) Source: Eurogas.

BBG project

(EUR 1 000)

	2000	2001	2002	2003	Total
Buildings	12 704	25 983	16 000	3 336	58 023
Equipment	29 014	81 745	46 908	7 272	164 939
Furniture			60	282	342
Spare parts			433	2 145	2 578
Construction fee	175	1 050	1 050	525	2 800
Construction insurance	307	307			614
Construction taxes	2 820				2 820
Total	45 020	109 085	64 451	13 560	232 116

BBE project

(EUR 1 000)

	2000	2001	2002	2003	Total
Buildings	7 563	17 702	9 355	1 391	36 012
Equipment	51 157	131 919	50 051	9 584	242 710
Furniture			517		517
Spare parts			9 454		9 454
Construction fee	98	591	591		1 280
Construction insurance	724	724			1 448
Water supply	10	41	41		92
Electricity substation	501	2 003	2 003		4 507
Construction taxes	4 015				4 015
Total	64 068	152 980	72 012	10 975	300 035

(40) The Spanish authorities explain the various headings as follows:

— buildings: control building, workshops, warehouses and office buildings. Also covers earth moving (levelling) and civil engineering (installations necessary for the operation of the plants),

— equipment: also covers machine assembly,

— furniture: furniture and other equipment for offices and industrial buildings which cannot be considered industrial equipment,

— spare parts: selected spare parts of strategic importance which must be available at the production centre, required by the suppliers of the equipment to guarantee the operation of the plants,

— water supply: since the plant sites have no source of drinking water, construction of a new 7 km pipeline to provide drinking water, mainly for the electricity plant,

— electricity substation: part of the necessary infrastructure for the electricity plant. Its purpose is

to bring the generation voltage (15,4 kW) up to the transport voltage (400 kW),

— construction fee: this is the fee for occupation of the publicly owned seafront which must be paid to the Bilbao Port Authority, for the period of construction and operation of the plants,

— construction insurance: covers possible damage to equipment during transport and assembly, plus civil liability,

— construction taxes: local taxes on construction, installations and works.

Regarding the indirect jobs

(41) The Spanish authorities say that there is no duplication of indirect jobs between the two projects, since the cleaning staff (2), unskilled workers (2), security (9,7) and canteen staff (4) are actually assigned to each of the two projects.

(42) As regards the jobs defined as 'administration' (BBE), these posts are a consequence of the administrative work generated by the other indirect jobs.

(43) Finally, the Spanish authorities have agreed not to count as indirect jobs the 50 jobs for the BBG project relating to transport activities (crews for the two methane carriers which supply the gas plant).

(44) Consequently, the Spanish authorities now consider the number of indirect jobs as 23,2 for the BBE project and 34,05 for the BBG project. They confirm the number of direct jobs (39,5 jobs for each of the two projects), which was not called into question in the decision to initiate the procedure.

Regarding the maximum allowable intensity

(45) In view of the above, the Spanish authorities conclude that the intensities envisaged by the Basque Government are in line with the limits laid down in the multisectoral framework, taking into account the value attributed to the various parameters provided for in the framework.

(46) The maximum allowable intensity for the BBE project (R × T × I × M) is therefore 20 × 1 × 0,6 × 1,1 = 13,2 % nge, and for the BBG project 20 × 1 × 0,6 × 1,2 = 14,4 % nge.

6. ASSESSMENT OF THE AID

(47) The grants provided by the Spanish authorities give an advantage to both the beneficiaries, by freeing them from part of the cost of investment they would otherwise bear. As these are two individual projects, it is evident that this advantage is of a selective nature in relation to other firms which would like to make such investments. Moreover, the measures in question could affect intra-Community trade, with particular regard to the progressive opening up of the electricity and gas markets. Finally, the grants are awarded directly by the Basque Government and, as a consequence, should be considered as coming from state resources. They must therefore be considered State aid within the meaning of Article 87(1) of the Treaty.

(48) Furthermore, the notification submitted by the Spanish authorities provides for a nominal grant of EUR 30 million for the BBE project and EUR 23 200 000 for the BBG project, which is a total of EUR 53 200 000. In these circumstances, in accordance with point 2.1 (ii) of the multisectoral framework, this project falls within the scope of the latter. Moreover, in accordance with the second paragraph of point 7.2 of the multisectoral framework, and taking account the envisaged synergy between the two projects (the two projects would not have been carried out independently of each other, BBE using 40 % of BBG production capacity), the two projects should be considered, as the Spanish authorities have requested, as a single project for the purposes of the application of the multisectoral framework.

(49) As indicated in recital 22, the Commission expressed doubts over the project. The questions arising from these doubts are examined below.

As regards the regional justification of the project

(50) As indicated in the decision to initiate the procedure, the Commission has established that the project does not fall within the scope of a Commission-approved aid scheme, and is consequently an ad hoc aid measure. The Spanish authorities have not contested this. The Commission must therefore check, in accordance with the second paragraph of point 2 of the Guidelines on national regional aid ([8]) whether the advantages for the region offset the distortions of competition which the ad hoc aid can cause. The Commission would also point

([8]) OJ C 74, 10.3.1998, p. 9.

out that the whole of the Basque Country is an assisted area, in accordance with Article 87(3)(c) of the Treaty.

(51) The Commission notes in this regard that, in this case, the provisions of the second paragraph of point 2 of the guidelines on national regional aid have already been largely taken into account through the application to this project of the multisectoral framework on regional aid for large investment projects, which apply to ad hoc aid in accordance with point 3.1 of that instrument and the footnote on page 7. Indeed, in Section 1 of the framework, entitled 'Need for and scope of the measure', point 1.1 provides that '[…] it is important to strike an appropriate balance between three core objectives of EU policy, namely undistorted competition in the internal market, economic and social cohesion and industrial competitiveness', and point 1.2 that '[…] The Commission is therefore introducing this framework […] with the aim of limiting aid for large-scale projects to a level which avoids as much as possible adverse effects on competition but which at the same time maintains the attraction of the assisted area. […]'. Nevertheless, in view of the wording of the second paragraph of point 2 of the Guidelines on national regional aid, the Commission considers that a brief analysis is required in addition to that which is provided for by the multisectoral framework.

(52) In this regard, the Spanish authorities have indicated firstly that this project will help to improve the Basque Country's level of self-sufficiency in electricity. However, the Commission considers that the objective of self-sufficiency in a particular region, while a legitimate aim, does not in itself meet the requirements of the second paragraph of point 2 of the Guidelines on national regional aid.

(53) On the other hand, an important point to remember is that the project will help to improve the production and distribution of energy in areas which are currently lacking in this respect.

(54) As the Spanish authorities have indicated, the Commission considers that the BBG project will make a decisive contribution to the improvement of the distribution system in the region, in view of the fact that the Basque Country is far from the main entry points for gas in the Iberian Peninsula. It is to be hoped, therefore, that by bringing the point of entry of the gas closer to the consumer, distribution of natural gas in the region will increase and the cost of transport will decrease substantially. The Commission notes in particular in this regard that 60 % of the regasification plant's production is intended for the market. Consequently, the contribution made by the BBG project to the development of the Basque Country can be regarded as compensating to a certain extent for the distortion of competition which may result from the aid.

(55) The BBE project, on the other hand, is a major project which, according to the University of Deusto study carried out by the Spanish authorities, could alone represent 0,188 % of the GNP of the region.

(56) The Commission therefore concluded that, on this point, the doubts it had expressed in its decision to initiate the procedure regarding the justification of the project from a regional development point of view had been resolved, except for the application of the multisectoral framework, which is examined below. Furthermore, the Commission notes that the total current capacity of the Spanish electricity system may sometimes be insufficient at peak times to satisfy demand, as was patently obvious in December 2001, when there were power cuts in Spain, and that the need for new investment in electricity plants to avoid such cuts has been unanimously recognised by all those involved in the Spanish electricity system.

Regarding the situation of the electricity market in Spain

(57) In its decision to institute proceedings, the Commission expressed doubts over the possibility that the Spanish electricity market (the relevant geographic market for the BBE project) was in decline, in the light of the available data on the evolution of the market in value terms.

(58) The data submitted by the Spanish authorities on the evolution of the electricity market in Spain in value terms (see table in recital 33) shows that there was a decrease in the value of electricity consumption in 1997 (increase of only 0,5 % compared with the previous year in which there was an increase of 2,8 %), 1998 (net decrease of 3,3 %) and 1999 (net decrease of 0,27 %). On the other hand, there was an increase of 4,28 % in 2000.

(59) In the light of these figures, the Commission notes that the apparent consumption of electricity in Spain increases on average by 0,7 % per year, which is more than 10 % lower than the annual average growth rate for the manufacturing sector of the EEA as a whole. Moreover, the increase in 2000 (+ 4,28 %) relates to a single year and the data available to the Commission shows no such increase for 2001. This shows that there is no sharp upward trend within the meaning of point

7,8 of the multisectoral framework. The Spanish electricity market must therefore be considered as being in decline within the meaning of point 7,8 of the framework ([9]).

(60) Consequently, the Commission concludes that the doubts which it expressed in its decision to initiate the procedure regarding the situation of the Spanish electricity market were well-founded.

Regarding the justification of certain eligible expenditure

(61) In its decision to initiate the procedure, the Commission expressed doubts regarding the justification of certain eligible expenditure and, in particular, the classification of 'intangible assets' as eligible expenditure and the inclusion of certain expenditure under the heading 'buildings'.

(62) The Spanish authorities have submitted a new breakdown of eligible expenditure (see recitals 39 and 40), including explanations of the various sections.

(63) The Spanish authorities quote a total figure of EUR 232 116 000 for the BBG project.

(64) The Commission notes firstly that the Spanish authorities have removed the 'intangible assets' section, which the Commission had questioned in its decision to initiate the procedure on the grounds that it did not appear to correspond to the definition of such assets as set out in point 4.6 of the Guidelines on national regional aid. The Spanish authorities have explained that the costs included under this heading are actually engineering costs which they have, therefore, included under the heading 'buildings'. The Commission feels that engineering costs form an integral part of construction costs for buildings and can therefore accept the amended section on buildings.

(65) The Commission also considers that the 'equipment', 'furniture' and 'construction taxes' sections constitute eligible expenditure within the meaning of point 4.5 of the Guidelines on national regional aid.

(66) However, the Commission is still sceptical that the 'spare parts', 'construction fee' and 'construction insurance' sections constitute eligible expenditure within the meaning of point 4.5 of the Guidelines on national regional aid. Such costs would seem rather to be operating costs. According to the explanations provided by the Spanish authorities, the spare parts are items which must be available to allow the plant to operate (so after construction of the plant), and the construction fee is to be paid to the Bilbao Port Authority both during the construction and operation of the plant. As regards construction insurance, it has not been demonstrated that it should be classified as a fixed asset.

(67) The Commission therefore considers that the total eligible expenditure figure for the BBG project is EUR 226 124 000, which represents a total of EUR 212 038 000 discounted to 31 December 2000.

(68) As regards the BBE project, the Spanish authorities quote a total figure of EUR 300 038 000.

(69) As with the BBG project, the Commission notes that the Spanish authorities have removed the 'intangible assets' section, which the Commission had questioned in its decision to initiate the procedure on the grounds that it did not appear to correspond to the definition of such assets as set out in point 4.6 of the Guidelines on national regional aid. The Spanish authorities explained that the costs included under this heading are actually engineering costs which they have, therefore, included under the heading 'buildings'. The Commission feels that engineering costs form an integral part of construction costs for buildings and can therefore accept the amended section on buildings.

(70) The Commission also considers that the 'equipment', 'furniture' and 'construction taxes' sections constitute eligible expenditure within the meaning of point 4.5 of the Guidelines on national regional aid.

(71) However, for the reasons set out in recital 66, the Commission considers that the 'spare parts', 'construction fee' and 'construction insurance' sections are not justified.

(72) The Commission therefore considers that the total eligible expenditure figure for the BBE project is EUR 287 853 000, which represents a total of EUR 271 490 000 discounted to 31 December 2000.

([9]) The Commission considers that it cannot base its deliberations on the volume figures communicated by the Spanish authorities, since these do not allow a comparison with manufacturing industry as a whole, as required by point 7.8 of the multisectoral framework.

Justification of certain indirect jobs

(73) In its decision to initiate the procedure, the Commission expressed doubts about the justification for certain indirect jobs provided for by the Spanish authorities. In particular, the Commission had established that certain jobs appeared in both projects (jobs relating to security, cleaning, unskilled workers and canteen and other staff). Nor did the Commission consider justified the jobs pertaining to the transport of gas (crews of methane carriers). Finally, the Commission considered that the two jobs for the BBE project relating to 'administration' were not justified.

(74) Firstly, the Commission notes that the Spanish authorities have withdrawn the 50 indirect jobs relating to the transport of gas (BBG project).

(75) The Commission also notes that the Spanish authorities have confirmed that jobs relating to security (9,7 jobs), cleaning (2 jobs), unskilled workers (2 jobs) and cafeteria and other services (4 jobs) are in fact assigned to each project and that there is no duplication. The Commission therefore accepts these jobs.

(76) However, the Commission considers that the jobs relating to administration have not been sufficiently justified by the Spanish authorities. The latter have said only that the jobs are the consequence of the administrative work generated by the other indirect jobs. The Commission is at a loss to see what connection there is between these jobs and the other indirect jobs, nor why the indirect jobs generate this administrative work only for the BBE project and not the BBG project.

(77) In view of the above, the Commission considers that the number of indirect jobs is 21,2 for the BBE project and 34,05 for the BBG project.

Assessment of the maximum allowable intensity

(78) In accordance with point 3.1 of the multisectoral framework, the Commission will determine, using the formula set out in point 3.10 of the framework, the maximum allowable intensity for a notified project. This formulais obtained by multiplying the coefficients resulting from the competition factor (T), the capital-labour factor (I) and the regional impact factor (M) (R × T × I × M, where the result may not exceed R, in accordance with the note in point 3.10).

Maximum regional aid ceiling (R)

(79) According to point 3.1 of the multisectoral framework, the regional aid ceiling is the maximum aid intensity which a large company could obtain in the assisted area concerned within the context of the authorised regional aid system valid at the moment of notification (unless it is ad hoc aid in which case the aid ceiling fixed for the region concerned will be applied). In accordance with the Spanish regional aid map, the maximum aid intensity for the Basque Country, all of which is considered an assisted area under Article 87(c) of the Treaty, is 20 % nge.

The 'competition' factor (T)

(80) As regards the BBE project, as indicated in recital 60, the Commission has concluded that the doubts which it expressed in its decision to initiate the procedure regarding the situation of the Spanish electricity market were well-founded, and considers that this market is in decline within the meaning of point 7.8 of the multisectoral framework. Consequently, a value of 0,75 should be attributed to factor (T).

(81) As regards the BBG project, the Commission had already concluded in its decision to initiate the procedure that the Spanish gas market was neither in a situation of structural overcapacity or decline. Consequently, the value to be attributed to factor (T) is 1,00.

The 'capital-labour' factor (I)

(82) In accordance with recital 72, the total eligible expenditure figure for the BBE project is EUR 287 853 000. The number of direct jobs envisaged by the Spanish authorities is 39,5. The capital-labour factor is therefore 7,297. In these circumstances, a value of 0,6 should be attributed to factor (I), in accordance with point 3.10.2 of the multisectoral framework.

(83) As regards the BBG project, the total eligible expenditure figure for the BBE project is EUR 226 124 000. The number of direct jobs envisaged by the Spanish authorities is 39,5. The capital-labour factor

is therefore 5,725. In these circumstances, a value of 0,6 should be attributed to factor (I), in accordance with point 3.10.2 of the multisectoral framework.

The 'regional impact' factor (M)

(84) As regards the BBE project, the Commission estimated in recital 77 that this project will result in 21.2 indirect jobs. Taking into account the number of direct jobs (39,5), this gives an average of rate of indirect job creation of 54 % of the figure for direct jobs created by the recipient of the aid. Consequently, the value to be attributed to factor (M) is 1.1 in accordance with point 3.10.3(ii) of the multisectoral framework.

(85) Regarding the BBG project, the Commission estimated in recital 77 that this project will 34,05 indirect jobs. Taking into account the number of direct jobs (39,5), this gives an average of rate of indirect job creation of 86 % of the figure for direct jobs created by the recipient of the aid. Consequently, the value to be attributed to factor (M) is 1,1 in accordance with point 3.10.3(ii) of the multisectoral framework.

Maximum allowable intensity

(86) In view of the above, the maximum allowable intensity for each of the two projects (R × T × I × M) is 20 × 0,75 × 0,6 × 1,1 = 9,9 % nge for the BBE project, and 20 × 1 × 0,6 × 1,1 = 13,2 % nge for the BBG project, both of which are well below 20 % nge.

(87) For the BBE project, as indicated in recital 72, the amount of eligible expenditure is EUR 287 853 000, which represents a total of EUR 271 490 000 discounted to 31 December 2000. Since the nominal amount of the aid is EUR 30 004 000, with a reference and discount rate of 5,7 % and a tax rate of 32,5 %, the intensity for the BBE project is 7,88 % nge.

(88) As regards the BBG project, as indicated in recital 67, the amount of eligible expenditure is EUR 226 124 000, which represents a total of EUR 212 038 000 discounted to 31 December 2000. Since the nominal amount of the aid is EUR 23 212 000, with a reference and discount rate of 5,7 % and a tax rate of 32,5 %, the intensity for the BBG project is 7,80 % nge.

(89) The Commission therefore finds that the subsidies envisaged by the Spanish authorities do not exceed, in net grant equivalent, the maximum allowable intensity under point 3.1 of the multisectoral framework, as calculated in recital 86.

7. **EX-POST MONITORING**

(90) The Spanish authorities have agreed to incorporate a reimbursement clause in the contract with the beneficiaries in the event of failure to complete the contract.

(91) The Spanish authorities have also undertaken to send the Commission a copy of the contract with the beneficiaries regarding the aid.

(92) Finally, the Spanish authorities have undertaken to send the Commission an annual report on the project, containing in particular information on subsidies already paid, intermediate reports on the implementation of the aid contract and a final report outlining progress towards objectives (timetable, investments and fulfilment of specific conditions in the contract drawn up by the granting authority) and detailing progress.

(93) These undertakings are in line with point 6 of the multisectoral framework.

8. **CONCLUSIONS**

(94) The Commission reminded the Spanish authorities of the need to respect the rules on the cumulation of aid for identical purposes granted under schemes approved by one or more authorities (at central, regional or local level). Subject to observance of these rules, the Commission concludes that the aid envisaged for the two projects may be granted. In this regard, the Commission has noted that the Spanish authorities indicated by letter dated 23 May 2000 that both undertakings had waived the opportunity to benefit from a tax credit of 45 % on the basis of assessment totalling ESP 54 149 million (EUR 325 442 040) for the BBE project and ESP 43 486 million (EUR 261 360 000) for the BBG project.

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Spain plans to grant to BBE and BBG, totalling EUR 30 004 000 and EUR 23 212 000 respectively, is

compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

The granting of such aid is therefore authorised.

Article 2

The Spanish authorities shall take the necessary steps to ensure that should other regional aid be granted to these projects, the total should not exceed 9,9 % for the BBE project and 13,2 % nge for the BBG project.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 19 June 2002.

For the Commission

Mario MONTI

Member of the Commission