

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 June 1998

on additional financial measures by Spain in respect of the coal industry in 1994,
1995 and 1996

(notified under document number C(1998) 2043)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(98/635/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) and Articles 8 and 9 thereof,

Whereas:

I

By letter dated 22 March 1996 the Commission requested Spain to inform it of the State aid elements contained in the contract programme signed on 23 February 1996 with Hunosa and in Royal Decree 12/1995 of 28 December 1995 on urgent budgetary and financial measures⁽²⁾.

By letter of 22 July 1996 Spain notified the Commission, in accordance with Article 8(4) of Decision No 3632/93/ECSC, of its intention to amend the broad objectives, relative to the objectives pursued by Decision No 3632/93/ECSC, of the 1994-97 activity reduction plans for

Hunosa, Minas de Figaredo SA and Mina de la Camocha SA, as approved by Commission Decision 94/1072/ECSC⁽³⁾.

By the same letter Spain also sent notification, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of the additional aid which it proposed to grant to the abovementioned undertakings for 1994, 1995 and 1996.

By letter dated 31 July 1996 the Commission asked Spain to supply information on the proposed amendments to the broad objectives of the plans previously approved and of the aid to be paid under them, so as to enable the Commission to rule on them. By letter dated 7 November 1996 the Commission reminded Spain of this request for further information.

In the absence of any reply to the requests for the further information sought in its letters of 31 July and 7 November 1996, and in order to comply with the rights of defence the Commission sent the Spanish Government a letter of formal notice under reference 97/C137/06 dated 23 April 1997⁽⁴⁾, giving Spain one month from receipt of the letter to submit its observations.

⁽¹⁾ OJ L 329, 30. 12. 1993, p. 12.

⁽²⁾ Boletín Oficial del Estado No 312, p. 37519.

⁽³⁾ OJ L 385, 31. 12. 1994, p. 31.

⁽⁴⁾ OJ C 137, 3. 5. 1997, p. 6.

By letter of 23 May 1997 Spain informed the Commission of the amendments proposed to the broad objectives of the activity reduction plans previously approved and of the deviations occurring in the results for Hunosa, Minas de Figaredo SA and Mina de la Camocha SA in 1994, 1995 and 1996.

By letter of 13 June 1997, Spain proposed to the Commission measures to correct the deviations in the period 1994 to 1996, in accordance with Article 9(6) of Decision No 3632/93/ECSC.

By letter of 8 November 1997, Spain announced that it intended to send the Commission additional information with the aim of reinforcing the corrective measures which it proposed to adopt before Decision No 3632/93/ECSC expired. This information was notified by letter of 20 February 1998.

Under Decision No 3632/93/ECSC, the Commission must:

(a) give an opinion as to the conformity with the general and specific aims of Decision No 3632/93/ECSC of the amendments to the broad objectives of the activity reduction plans for 1994 to 1997 for Hunosa, Minas de Figaredo SA and Mina de la Camocha SA;

(b) rule on the following financial measures:

— additional aid of ESP 3 363 million for 1994, ESP 11 577 million for 1995 and ESP 7 806 million for 1996 to cover operating losses by Hunosa and Minas de Figaredo SA,

— additional aid of ESP 8 441 million for 1994, ESP 18 684 million for 1995 and ESP 16 180 million for 1996 to cover exceptional welfare aid paid to workers leaving Hunosa, Minas de Figaredo SA and Mina de la Camocha SA,

— additional aid of ESP 1 162 million for 1994, ESP 1 241 million for 1995 and ESP 3 441 million for 1996 to cover the additional costs of closing down plants belonging to Hunosa, Minas de Figaredo SA and Mina de la Camocha SA.

The financial measures proposed by Spain for the coal industry fall within the provisions of Article 1 of Decision No 3632/93/ECSC and must be the subject of a Commission Decision, in accordance with Article 9, on the basis, in particular, of the general criteria and objectives laid

down in Article 2 and the specific criteria set out in Articles 3 and 4 of Decision No 3632/93/ECSC. In accordance with Article 9(6) of that Decision, the Commission must assess whether the measures are in conformity with the activity reduction plans for the Spanish coal industry.

II

In Decision 94/1072/ECSC the Commission gave a favourable opinion on the conformity of the 1994-97 phase of the plans notified by Spain for modernisation, rationalisation and restructuring (Article 3 of Decision No 3632/93/ECSC) and activity reduction (Article 4 of Decision No 3632/93/ECSC).

The amendments notified by Spain on 23 May 1997, to the broad objectives of the 1994-97 activity reduction plan for Hunosa, Minas de Figaredo SA and Mina de la Camocha SA relative to the objectives pursued by Decision No 3632/93/ECSC must be measured against the general criteria and aims laid down in Article 2(1) and the specific criteria and aims under Article 4 of Decision No 3632/93/ECSC.

In the light of those aims and criteria, the aid granted to those undertakings must help to solve the social and regional problems created by total or partial reductions in the activity of production units and, pursuant to Article 4 of Decision No 3632/93/ECSC, must form part of a closure plan with a deadline falling before 23 July 2002. The closure may be completed at a later date if the aid is justified on exceptional social and regional grounds, provided that it is part of a progressive and continuous activity reduction plan entailing a significant reduction before the abovementioned date.

According to the Spanish Government, the 1994-97 activity reduction plan notified by Spain in 1994 was intended to 'reduce production capacity, which would mean less activity in future and should lead to closures and mergers of installations, job-shedding and lower investment'. On analysis of the information on the amendments to the broad objectives and the corrective measures proposed by Spain, the Commission confirms that all three companies — Hunosa, Minas de Figaredo SA and Mina de la Camocha SA — have shed staff, from a total of 14 244 workers at the start of 1994 to 10 968 at

the end of 1996, with production falling from 3,4 million tonnes in 1993 to 2,9 million tonnes in 1996. Nevertheless, the Commission finds that those undertakings are proposing to adopt measures contrary to the activity reduction objective set in Decision No 3632/93/ECSC, such as subcontracting production to third parties in order to compensate, at least partly, for the abovementioned job losses or continuing operations beyond the closure date announced for the mines. In its letters of 23 May 1997 and 13 June 1997 Spain announced plans to increase those undertakings' production in 1997, compared with the 1995 and 1996 figures, and declared its intent to continue investments designed to slow down the reduction of activity in future.

The amendments which Spain intends to make to the broad objectives of the plans relative to the objectives of Decision No 3632/93/ECSC aim at scaling down the reduction in the undertakings' production capacity by means of long-term investments in new fields and slowing down the progressive and continuous reduction of activity provided for in the plans approved by the Commission. Consequently, they are contrary to the objectives laid down in Article 4 of Decision 3632/93/ECSC.

In accordance with Article 8(3) and (4) of Decision No 3632/93/ECSC, the Commission is unable to approve the alterations which Spain intends to make to the objectives of the 1994-97 phase of the activity reduction plans for Hunosa, Minas de Figaredo SA and Mina de la Camocha SA. Consequently, Spain must adhere to the broad objectives of the plans approved by the Commission in Decision 94/1072/ECSC.

III

By Decisions 94/1072/ECSC, 96/591/ECSC⁽¹⁾ and 96/575/ECSC⁽²⁾, the Commission authorised, under Article 4 of Decision No 3632/93/ECSC, aid for Hunosa, Minas de Figaredo SA and Mina de la Camocha SA totalling ESP 71 560 million for 1994, ESP 65 997 million for 1995 and ESP 62 802 million for 1996, to cover operating losses on production of 3 187 470 tonnes in 1994, 2 800 100 tonnes in 1995 and 2 919 500 tonnes in 1996, equivalent to an

⁽¹⁾ OJ L 259, 12. 10. 1996, p. 14.

⁽²⁾ OJ L 253, 5. 10. 1996, p. 15.

average aid of ESP 28 891/tce (ECU 180/tce). The objective of this aid was to implement the activity reduction plan for 1994 to 1997 approved by the Commission in Decision 94/1072/ECSC.

The additional aid, amounting to ESP 3 363 million for 1994, ESP 11 577 million for 1995 and ESP 7 806 million for 1996 which Spain plans to grant to Hunosa and Minas de Figaredo SA is intended to compensate fully or partly for operating losses which were higher than expected.

In its assessment of these measures, the Commission must check whether they are in conformity with the activity reduction plan referred to in Article 8 and with the objectives set out in Article 2 of Decision No 3632/93/ECSC.

Hunosa and Minas de Figaredo SA have reduced the workforce as planned, from 13 153 workers at the start of 1994 to 10 146 at the end of 1996 and have been reducing production continuously, from 3 116 500 tonnes in 1993 to 2 661 500 tonnes in 1996.

However, those reductions in production and workforce have not produced the planned reduction in operating losses, owing to the unfavourable productivity trend and the changes which had to be made to operating methods in response to the accidents in 1995.

Beyond those changes, both undertakings have taken measures contrary to the goal of a progressive and continuous reduction in activity as laid down in Article 4 of Decision No 3632/93/ECSC if undertakings are to qualify for aid for the reduction of activity.

Hunosa and Minas de Figaredo SA have subcontracted operations with a view to restoring some of the activity lost with the departure of their permanent staff. They have made heavier infrastructure investment than announced with a view to continuing activities having no prospect of economic viability. In its letter dated 23 May 1997 Spain announced that the closure plan proposed for Hunosa installations in the 1994-97 phase would be extended beyond the approved deadlines.

Moreover, Hunosa has reopened installations closed down by Minas de Lieres SA as part of the 1991-93 restructuring plan — closures for which aid was authorised. Production

at those installations led to operating losses of ESP 487 million in 1994, ESP 791 million in 1995 and ESP 1 016 million in 1996. The Commission cannot approve aid to cover these operating losses.

By letter dated 20 February 1998 in reply to the request from the Commission under Article 9(6) of Decision No 3632/93/ECSC, Spain informed the Commission that it was prepared to abide by the broad objectives of the 1994-97 phase of the activity reduction plans approved by the Commission in Decision 94/1072/ECSC and, consequently, that it would proceed, before Decision No 3632/93/ECSC expired, to correct the measures contrary to the objective of reducing activity.

Following adoption of those measures the Commission confirmed that the additional aid totalling ESP 2 876 million for 1994, ESP 10 786 million for 1995 and ESP 6 790 million for 1996 which Spain proposed to grant to Hunosa and Minas de Figaredo was intended to allow them to continue their activities in the context of the progressive and continuous reduction provided for in the plan approved by the Commission. An immediate end to the companies' activities would have grave social consequences for the mining regions. The aid helps to solve the social and regional problems created by developments in the coal industry and, consequently, is in line with the second indent of Article 2(1) of Decision No 3632/93/ECSC.

In view of the above and on the basis of the information provided by Spain, this aid is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

IV

By Decisions 94/1072/ECSC, 96/591/ECSC and 96/575/ECSC, the Commission authorised aid totalling ESP 4 840 million for 1994, ESP 6 745 million for 1995 and ESP 6 075 million for 1996 intended to cover compensation to be paid to employees of Hunosa, Minas de

Figaredo SA and Mina de la Camocha SA who had to take early retirement or were made redundant and to implement the 1994-97 phase of the activity reduction plans for those companies.

Moreover, by Decision 93/145/ECSC⁽¹⁾, the Commission approved the 1991-93 modernisation, rationalisation and restructuring plan for Hunosa, Minas de Figaredo SA and Mina de la Camocha SA. This provided for aid totalling ESP 77 483 million for accompanying social measures to continue throughout the period from 1994 to 2002. However, Spain has yet to send notification of the aid instalment for 1994, 1995 and 1996.

The notified aid totalling ESP 42 395 million for Hunosa, ESP 102 million for Minas de Figaredo SA and ESP 808 million for Mina de la Camocha SA for 1994, 1995 and 1996 is intended to cover the compensation paid to those of the companies' 6 400 employees who had to take early retirement under the 1991-93 modernisation, rationalisation and restructuring plan and the — higher than expected — compensation for their 4 400 employees who took early retirement or lost their jobs under the 1994-97 phase of the activity reduction plan.

In its assessment of these measures, the Commission must check whether they are in conformity with the activity reduction plan provided for in Article 8 and with the objectives set out in Article 2 of Decision No 3632/93/ECSC.

In view of the information provided by Spain, the Commission has no wish to penalise the workers affected by the restructuring of these companies. The extra cost is attributable to more early retirement than was envisaged and to supplies of free coal to workers affected by restructuring.

The Commission has found that the ESP 1 377,70 million for Hunosa, ESP 155,98 million for Minas de Figaredo SA and ESP 41,1 million for Mina de la Camocha SA authorised by the Commission for 1994, 1995 and 1996 as aid towards the retraining of workers, as provided for in paragraphs 1(c) and 2(b) of Article 56 of the ECSC Treaty, were deducted from the amounts notified by Spain.

This aid covers the costs arising from or having arisen from the modernisation, rationalisation and restructuring of the Spanish coal industry, as provided for by Article 5 of Decision No 3632/93/ECSC, and cannot therefore be considered to be related to current production (inherited liabilities).

⁽¹⁾ OJ L 57, 10. 3. 1993, p. 26.

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, other exceptional expenditure on workers who lose their jobs, and the supply of free coal to 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 costs.

In view of the above and on the basis of the information provided by Spain, this aid is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

V

In Decisions 94/1072/ECSC, 96/591/ECSC and 96/575/ECSC the Commission authorised aid totalling ESP 2 504 million for 1994, ESP 1 574 million for 1995 and ESP 2 244 million for 1996 for Hunosa to cover the depreciation of its fixed assets and the exceptional costs occasioned by the closures planned between 1994 and 1997. The objective was to implement the 1994-97 phase of the activity reduction plan notified to the Commission for this undertaking.

Moreover, by Decision 93/145/ECSC the Commission approved the 1991-93 modernisation, rationalisation and restructuring plan for Hunosa, Minas de Figaredo SA and Mina de la Camocha SA and approved a provision of ESP 8 734 million to cover the costs arising from exceptional intrinsic depreciation and the cost of merging installations closed down during the period 1991 to 1993.

The additional aid totalling ESP 1 162 million for 1994, ESP 1 241 million for 1995 and ESP 3 441 million for 1996 is to compensate for higher closure costs than expected for installations belonging to Hunosa, Minas de Figaredo SA and Mina de la Camocha SA. These costs break down as follows: ESP 4 576 million for Hunosa, ESP 603 million for Minas de Figaredo and ESP 665 million for Mina de la Camocha.

In its assessment of these measures, the Commission must check whether they are in conformity with the activity reduction plan for 1994 to 1997 provided for in

Article 8 and with the objectives set out in Article 2 of Decision No 3632/93/ECSC.

The reductions in activity and the capacity closures made by these undertakings between 1994 and 1996 were smaller than expected. On analysis of the data supplied by Spain, the Commission finds that some of the costs associated with the installations closed down were higher than expected and can be considered compatible with Decision No 3632/93/ECSC but that ESP 1 865 million of the additional aid notified for Hunosa and Minas de Figaredo SA are for depreciation of assets and costs incurred in abandoning installations at mines where normal activities are continuing and, consequently, are not a result of restructuring of the coal industry. This part of the aid cannot be considered an inherited liability.

Mina de la Camocha SA has made investments supported by State aid to prolong operations having no prospect of economic viability. Such investments are contrary to the progressive and continuous activity reduction plan notified by Spain for this company. The aid totalling ESP 665 million notified to cover 'other financial needs' is, consequently, not due to the restructuring of the coal industry and cannot be considered an inherited liability. This aid is not in line with the objectives of Decision No 3632/93/ECSC.

Consequently, the Commission is unable to authorise aid totalling ESP 2 530 million notified by Spain to cover exceptional closure costs.

VI

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 aid authorised for current production relates solely to the purposes set out in Article 4 of that Decision. To this end, it must be informed of the amounts involved and the distribution of payments.

The Commission must remind Spain that it is under an obligation to comply with Article 9(5) of Decision No 3632/93/ECSC concerning the repayment of any amounts in excess of the amounts authorised by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The amendments which Spain proposes to make to the broad objectives of the activity reduction plans for 1994 to 1997 for the companies Hunosa, Minas de Figaredo SA and Mina de la Camocha SA are not in line with the general and specific objectives of Decision No 3632/93/ECSC. Consequently, the Commission issues a negative opinion on those amendments.

Article 2

Spain is hereby authorised to grant to the companies Hunosa, Minas de Figaredo SA and Mina de la Camocha SA the following additional aid for 1994, 1995 and 1996:

- (a) aid for the reduction of activity of ESP 20 452 million to cover the operating losses of Hunosa and Minas de Figaredo SA under Article 4 of Decision No 3632/93/ECSC;
- (b) aid of ESP 43 305 million to cover exceptional welfare aid paid to workers who lose their jobs as a result of the measures to restructure, rationalise, modernise and reduce the activity of the Spanish coal industry, under Article 5 of Decision No 3632/93/ECSC;

- (c) aid of ESP 3 296 million to cover exceptional additional costs of closing installations as a result of the measures to restructure, rationalise, modernise and reduce the activity of the Spanish coal industry, under Article 5 of Decision No 3632/93/ECSC.

Article 3

Spain shall notify the Commission, by 30 September 1998 at the latest, of the amount of aid actually paid to Hunosa, Minas de Figaredo SA and Mina de la Camocha SA in respect of 1994, 1995 and 1996.

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 3 June 1998.

For the Commission

Christos PAPOUTSIS

Member of the Commission