

COMMISSION DECISION

of 2 July 2002

on the granting by Spain of aid to the undertaking González y Díez SA in 1998, 2000 and 2001

(notified under document number C(2002) 2441)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2002/827/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 2(1) and 9 thereof,

Whereas:

I

(1) By Decision 2002/241/ECSC of 11 December 2001 on the granting by Spain of aid to the coal industry in 2001 ⁽²⁾, the Commission authorised part of the proposed aid to González y Díez SA and announced that it would decide on the balance once it received the additional information requested from Spain.

(2) By letter of 13 December 2001 the Commission invited Spain, pursuant to Article 88 of the Treaty, to submit its comments on the use of the aid granted to González y Díez SA in 1998, 2000 and 2001 to cover exceptional costs of restructuring in conformity with Article 5 of Decision No 3632/93/ECSC. Spain replied to the Commission by letters of 28 February 2002 and 24 April 2002.

(3) The Commission must analyse whether the aid of EUR 3 918 049,35 (ESP 651 908 560) and EUR 2 786 246,34 (ESP 463 592 384) granted by Spain to González y Díez SA in 1998 and 2000 respectively under Article 5 of Decision No 3632/93/ECSC was used by that undertaking for the purposes authorised by the

Commission. Furthermore, in conformity with Decision No 3632/93/ECSC, the Commission must decide on the following aid granted to González y Díez SA in respect of 2001:

(a) operating aid of EUR 6 704 295,70 (ESP 1 115 500 944) for 2001 under Article 3 of Decision No 3632/93/ECSC;

(b) aid of EUR 2 367 817,00 (ESP 393 971 600) for 2001 to cover exceptional costs under Article 3 of Decision No 3632/93/ECSC.

(4) The financial measures proposed by Spain for González y Díez SA fall within the scope of Article 1 of Decision No 3632/93/ECSC. The Commission must therefore decide on these measures in accordance with Article 9(4) of the Decision. The Commission's assessment will be based on the compliance of the measures with the general criteria and objectives laid down in Article 2 and with the specific criteria established by Articles 3, 4 and 5 of the Decision, and on their compatibility with the proper functioning of the common market. In addition, in accordance with Article 9(6) of the Decision, the Commission must check whether the measures notified conform with Spain's modernisation, rationalisation, restructuring and activity-reduction plan which the Commission approved in Decision 98/637/ECSC ⁽³⁾.

II

(5) On 11 June 1999, Minas la Camocha SA published its annual report for 1998. As reported in the press on 12 June 1999, the company board referred to 'the purchase in 1998 of a 100 % stake in González y Díez SA for a total of ESP 784 million, financed by a bank

⁽¹⁾ OJ L 329, 30.12.1993, p. 12.

⁽²⁾ OJ L 82, 26.3.2002, p. 11.

⁽³⁾ OJ L 303, 13.11.1998, p. 57.

- loan'. The press also reported that, in 1998, González y Díez SA achieved profits of ESP 700 million through cutting coal production by 48 000 tonnes, for which the company had received aid totalling ESP 652 million. Moreover, at the end of December 1998, González y Díez SA transferred funds amounting to ESP 700 million to Minas la Camocha SA.
- (6) By letter of 15 July 1999, the Commission asked Minas la Camocha SA and González y Díez SA to forward their annual reports for 1998. The Commission received the reports on 26 July 1999. It examined Minas la Camocha SA's annual report for 1998 and concluded that the undertaking had acquired 100 % of the shares in González y Díez SA on 23 July 1998 at a cost of ESP 784 439 000 pesetas. The balance sheet of Minas la Camocha SA showed financial assets on 31 December 1998 amounting to ESP 784 439 000 in the form of 'holdings in associated companies'. Its liabilities include ESP 700 million in 'debts with associated companies'. Note 15 in the report states that González y Díez SA transferred funds totalling ESP 600 million and ESP 100 million on 29 December 1998 and 30 December 1998 respectively to Minas la Camocha SA.
- (7) The annual report of González y Díez SA for 1998 shows that the company received State aid of ESP 651 908 560 as compensation for reducing coal production by 48 000 tonnes per annum. The operating account for 1998 shows exceptional operating profits of ESP 700 015 591. The report also shows that, on 29 December 1998 and 30 December 1998, funds totalling ESP 600 million and ESP 100 million respectively were transferred to Minas la Camocha SA.
- (8) According to its annual report, on 11 November 1998 González y Díez SA signed a rider to the contract of 13 March 1998 with Unión Eléctrica Fenosa SA reducing by 48 000 tonnes the quantity of coal it had to supply to Térmica de Soto de la Barca, which thus amounts to 238 000 tonnes per annum for the period 1999–2000. The report makes no reference to closure of installations as a consequence of this cut in production and mentions changes made to the exploitation systems which had resulted in a reduction in the activities of open-cast subcontractors, with González y Díez SA itself having carried out virtually all the coal extraction activities.
- (9) Having examined the accounts of González y Díez SA for 1998, the Commission considers that the aid totalling ESP 651 908 560 granted to the company to cover the technical costs of closing down extraction installations corresponding to an annual production capacity of 48 000 tonnes was not used to cover the costs that have resulted or result from the restructuring of the coal industry, defined in the Annex to Decision No 3632/93/ECSC.
- (10) The Commission considers that the gross profits from González y Díez SA's current operations in 1998 amounting to ESP 932 911 952 and the net profits for the year amounting to ESP 700 015 591 are the result of using aid destined to cover exceptional restructuring costs (Article 5 of Decision No 3632/93/ECSC) as operating aid (Article 3 of Decision No 3632/93/ECSC). The use of this aid as operating aid is incompatible with the first indent of Article 3(1) of Decision No 3632/93/ECSC, which provides that the aid per tonne may not exceed, for each undertaking or production unit, the difference between the production cost and the selling price. The company generated abnormally high profits of ESP 700 015 591. The profits for 1998 are much higher than those for the preceding years, which amounted to ESP 141 084 825 in 1997 and ESP 65 722 182 in 1996. The profits for 1998 amounted to ESP 50 420 961 on 30 June 1998, i.e. before the acquisition by Minas la Camocha SA of 100 % of the shares of González y Díez SA. Moreover, account must be taken of the fact that these operating profits result from the grant of operating aid authorised by the Commission under Article 3 of Decision No 3632/93/ECSC totalling ESP 1 366 000 000 in 1998.
- (11) The Commission considers that the transfer of ESP 600 million and ESP 100 million by González y Díez SA to Minas la Camocha SA on 29 and 30 December 1998 respectively was made possible by the profits González y Díez SA earned in 1998 from the aid to cover exceptional costs of closure. Consequently, the Commission considers that the aid of ESP 651 908 560 was used for the purchase of González y Díez SA by Minas la Camocha SA.
- (12) The Commission considers that the acquisition by Minas la Camocha SA of González y Díez SA would not have taken place on 23 July 1998 if there had not been the prospect of receiving extraordinary income. According to the annual reports, the value of the company acquired (González y Díez SA) is twice that of the purchasing

company (Minas la Camocha SA). Furthermore, Minas la Camocha SA's financial structure is very weak: its assets totalling ESP 22 443 136 000 on 31 December 1998 are 46 times greater than its equity on the same date totalling ESP 481 403 000. Moreover, Minas la Camocha SA is covered by a closure plan and receives aid for the reduction of activity under Article 4 of Decision No 3632/93/ECSC.

- (13) By letter of 25 October 1999, the Commission asked Spain to provide additional information on the measures taken by González y Díez SA in 1998 to close down installations together with a justification of the costs of such measures. It also requested information on the utilisation of aid totalling ESP 651 908 560 to cover exceptional costs of closure and on the possible utilisation of such aid for the acquisition by Minas la Camocha SA of González y Díez SA. The information in question had to be audited by an external firm.
- (14) By letter of 2 December 1999, Spain forwarded to the Commission the information provided by González y Díez SA and stated that it would examine the issues raised by the Commission. González y Díez SA, for its part, acknowledges the accuracy of the Commission's information and accepts that the operating profits for 1998 included aid of ESP 651 908 560 destined to cover exceptional costs of closure. However, González y Díez SA stresses that it does not share the Commission's interpretation as to the use of the aid. With regard to the transfer of ESP 600 million and ESP 100 million to Minas la Camocha SA at the end of 1998, González y Díez SA explained that this concerned two loans which were repaid with interest before 2 August 1999. As to the exceptional costs of closure, the company report does not provide an explanation of the exceptional costs resulting from the restructuring of González y Díez SA. On the contrary, it refers to expenditure of ESP 319 896 354 for the repayment of loans and subsidies not related to restructuring, expenditure of ESP 232 589 000 by way of investment in equipment for open-cast working, and expenditure of ESP 158 973 459 in investment for the modernisation of underground workings, none of which are related to the closure of the installations.
- (15) Spain continues to grant González y Díez SA aid of ESP 463 592 000 in respect of 2000 and ESP 393 971 600 in respect of 2001 to cover exceptional costs of reducing production by 38 000 tonnes in 2000 and 34 000 tonnes in 2001. By letter of 17 July 2001, the Commission asked Spain to refrain from paying the aid scheduled for 2001. In spite of this request, Spain proceeded with payment.
- (16) By letters of 7 September 2000 and 24 April 2001, the Commission asked Spain for additional information about the aid it had granted in 1998 and 2000 or planned to grant in 2001 to González y Díez SA destined to cover exceptional closure costs. Spain replied by letter of 29 June 2001 and also provided the Commission with a technical and financial report prepared by González y Díez SA. The Commission, considering this report to be unsatisfactory, questioned several aspects of the justification of these costs by letter of 17 July 2001.
- (17) Following Decision 2002/241/ECSC the Commission invited Spain to comment in accordance with Article 88 of the Treaty on the utilisation of the aid granted in 1998, 2000 and 2001 to González y Díez SA to cover the exceptional costs of closure. By letter of 13 December 2001, it set a deadline of 15 working days for a reply. By letter of 9 January 2002, Spain asked for an extension of this deadline, to which the Commission agreed by letter of 18 January 2002.
- (18) By letters of 28 February 2002 and 24 April 2002, Spain forwarded to the Commission the technical reports from González y Díez SA dated 13 February 2002 and 26 February 2002 respectively. These reports were accompanied by a technical and financial audit of plant closure costs totalling ESP 658 700 000 (EUR 3 958 866,73) in connection with an annual reduction in production capacity of 120 000 tonnes in 1998, 2000 and 2001.
- (19) The Commission's analysis of the data notified by Spain shows that the costs of closing down production installations equivalent to an annual capacity reduction of 120 000 tonnes in 1998, 2000 and 2001 amount to EUR 3 958 866,73 (ESP 658 700 000). The aid of EUR 9 072 112,69 (ESP 1 509 472 542) granted in 1998, 2000 and 2001 exceeds the costs of plant closure totalling EUR 5 113 245,96 (ESP 850 772 542,30).

- (20) In view of the above and on the basis of the information provided by Spain, the aid totalling EUR 5 113 245,96 (ESP 850 772 542,30) is not compatible with Article 5 of Decision No 3632/93/ECSC and consequently is not compatible with the proper functioning of the common market.
- (21) Part of the aid, amounting to EUR 2 745 428,96 (ESP 456 800 942,90), was granted for 1998 and 2000 and must be repaid to Spain by González y Díez SA.
- (22) The balance of EUR 2 367 817,00 (ESP 393 971 600) which Spain notified to the Commission in respect of 2001 is not consistent with Article 5 of Decision No 3632/93/ECSC. The payment by Spain of this amount in anticipation of a Commission decision must be seen as an unjustified cash advance under Article 9(5) of Decision No 3632/93/ECSC. Consequently, the aid to be refunded must include interest charged at the market rate.
- (28) González y Díez SA has set an average selling price for 2001 of approximately EUR 51/tce (ESP 8 480/tce) for the sale of 200 000 tonnes of its coal production (147 400 tce) to power stations. Compared with the average production cost of EUR 92/tce (ESP 15 307/tce) envisaged for 2001, the Commission notes that the notified aid corresponds to the difference between the cost of production and the selling price freely agreed by the contracting parties in the light of the conditions prevailing on the world market.
- (29) In Decision 2002/241/ECSC the Commission did not rule on aid totalling EUR 6 704 295,70 (ESP 1 115 500 944), pending the communication to it by Spain of information on the utilisation by González y Díez SA of the sum of EUR 9 072 112,70 (ESP 1 509 472 544) granted by Spain to cover exceptional costs of restructuring. Spain communicated this information to the Commission by letters of 28 February 2002 and 24 April 2002, so that the Commission can now decide on the aid to current production totalling EUR 6 704 295,70 (ESP 1 115 500 944) in respect of 2001 (Articles 3 and 4 of Decision No 3632/93/ECSC).

III

- (23) The aid of EUR 6 704 295,70 (ESP 1 115 500 944) which Spain plans to grant González y Díez SA for 2001 is intended to offset all or part of the operating losses of its production units.
- (24) This aid is intended to cover the difference between the cost of production and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.
- (25) The amount notified comprises operating aid of EUR 5 850 488,28 (ESP 973 439 343) under Article 3 of Decision No 3632/93/ECSC and aid for the reduction of activity of EUR 853 807,42 (ESP 142 061 601) under Article 4 of the Decision.
- (26) The operating aid of EUR 5 850 488,28 (ESP 973 439 343) is intended to cover operating losses in respect of planned total production of 166 000 tonnes for 2001.
- (27) The aid for reduction of activity amounting to EUR 853 807,42 (ESP 142 061 601) is intended to cover operating losses in respect of planned production of 34 000 tonnes in 2001. Spain indicated that the undertaking would close this production capacity before the end of 2001.
- (30) The aid to cover González y Díez SA's operating losses has been included in the general State budget for 2001. Spain notified the Commission of its Council of Ministers' approval of the allocation of this aid to individual undertakings. The approval was published in the Boletín Oficial del Estado ⁽⁴⁾.
- (31) The inclusion of this measure in the modernisation, rationalisation, restructuring and activity-reduction plan notified by Spain and the degressive nature of the aid and the sums scheduled for 2001 are in line with the objectives laid down in the first and second indent of Article 2(1) of Decision No 3632/93/ECSC and, more specifically, contribute to resolving the social and regional problems relating to the development of the coal industry.
- (32) On the basis of the information provided by Spain, the aid amounting to EUR 6 704 295,70 (ESP 1 115 500 944) which Spain has planned to grant González y Díez SA in respect of 2001 is compatible with Articles 3 and 4 of Decision No 3632/93/ECSC and with the proper functioning of the common market.

⁽⁴⁾ BOE No 83, 6.4.2001, p. 13055.

IV

- (33) The aid granted by Spain to the coal industry is restricted to the production of coal for use in electricity generation. Spain is committed to ensuring that coal sold to the industrial and domestic sectors by González y Díez SA is sold at prices (without compensation) that cover the costs of production.
- (34) Spain must ensure that the aid granted to current production under this Decision does not give rise to any discrimination between coal producers, between purchasers or between users on the Community coal market.
- (35) Spain must ensure that, in accordance with the third indent of Article 3(1) of Decision No 3632/93/ECSC, aid to cover the difference between the cost of production and the selling price per tonne does not cause selling prices for Community coal to be lower than those for coal of a similar quality from non-member countries.
- (36) Within the framework of Article 86 of the Treaty, Spain must ensure that the aid is limited to that which is strictly necessary in the light of the social and regional considerations which characterise the decline of the Community's coal industry. The aid may not give any economic advantage, whether directly or indirectly, to production for which no aid is authorised or to other activities distinct from coal production. In particular, Spain must ensure that aid granted to undertakings under Article 5 of Decision No 3632/93/ECSC to cover the technical costs of closure is not used by the undertakings as aid to current production (Articles 3 and 4 of the Decision), that the closure of capacity for which the aid is intended is definitive and that it is carried out in optimum conditions of safety and environmental protection.
- (37) 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 the aid authorised for current production is used exclusively for the purposes laid down in Articles 3 and 4 of the Decision. Spain must notify the Commission, no later than 30 September 2002, of the amount of aid actually paid to González y Díez SA during 1998, 2000 and 2001, and declare any corrections made to the amounts originally notified. When submitting this annual statement of aid paid, Spain must also supply the Commission with all the information necessary for verification of the criteria set out in the Articles in question.

- (38) In approving the aid, the Commission has recognised the need to soften, as far as possible, the social and regional impact of the restructuring of the coal industry, given the economic and social situation relating to the mines affected.
- (39) In view of the above, and on the basis of the information provided by Spain, the aid and the measures proposed for the coal industry are compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid totalling EUR 5 113 245,96 (ESP 850 772 542) granted by Spain to González y Díez SA to cover exceptional restructuring costs in 1998, 2000 and 2001 pursuant to Article 5 of Decision No 3632/93/ECSC is incompatible with the common market.

Article 2

1. Spain shall adopt all necessary measures to recover from González y Díez SA the aid for 1998 and 2000 mentioned in Article 1, totalling EUR 2 745 428,96 (ESP 456 800 943).
2. Recovery shall take place within two months, in accordance with the procedures laid down by national law, provided they allow immediate, effective implementation of this Decision. The aid to be recovered shall be liable to interest charges at the market rate payable from the date on which it was placed at the disposal of the recipient to the date of recovery thereof.
3. The aid totalling EUR 2 367 817 (ESP 393 971 600) which Spain granted to González y Díez SA in respect of 2001 to cover exceptional restructuring costs in accordance with Article 5 of Decision No 3632/93/ECSC is not authorised.

Article 3

Spain is hereby authorised to pay the following aid to González y Díez SA in respect of 2001:

- (a) operating aid of EUR 5 850 488,28 (ESP 973 439 343) under Article 3 of Decision No 3632/93/ECSC;

(b) aid for the reduction of activity of EUR 853 807,42 (ESP 142 061 601) under Article 4 of Decision No 3632/93/ECSC.

Article 4

In accordance with Article 86 of the ECSC Treaty, Spain shall adopt all appropriate measures, whether general or particular, to ensure fulfilment of the obligations resulting from this Decision. It shall ensure that the aid authorised is used for the purposes intended and that any unspent, overestimated or incorrectly used aid for any item covered by this Decision is repaid to it.

Article 5

In accordance with Article 9(5) of Decision No 3632/93/ECSC, any payment made by Spain to González y Díez SA in anticipation of authorisation by the Commission in excess of the aid authorised for this undertaking in 2001 shall be repaid

in full, by the undertaking which received it, within one month of notification of this Decision to Spain. González y Díez SA shall pay interest charges at the market rate on this amount.

Article 6

Spain shall notify the Commission, by 30 September 2002 at the latest, of the amount of aid actually paid to González y Díez SA in respect of 2001.

Article 7

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 2 July 2002.

For the Commission

Loyola DE PALACIO

Vice-president
