

# COMMISSION

## COMMISSION DECISION

of 15 November 2000

### on the modernisation, rationalisation and restructuring plan for the United Kingdom coal industry, covering the period from 17 April 2000 to 23 July 2002

(notified under document number C(2000) 3709)

(Only the English text is authentic)

(Text with EEA relevance)

(2001/114/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 <sup>(1)</sup>, and in particular Article 2(1) and Article 8 thereof,

Whereas:

#### I

- (1) By letter of 26 July 2000 the United Kingdom sent notification of a modernisation, rationalisation and restructuring plan for the United Kingdom coal industry, together with the 'UK Coal Operating Aid Scheme', covering the period from 17 April 2000 to 23 July 2002 (hereinafter referred to as 'the restructuring plan').
- (2) In accordance with Article 8(3) of Decision No 3632/93/ECSC, the Commission must give an opinion on whether the abovementioned plan is in conformity with the general and specific objectives of the Decision, without prejudging the ability of the measures planned to attain these objectives.

#### II

- (3) The restructuring of the coal industry, which has been under way in the United Kingdom since 1994, has achieved tangible progress in reducing production costs for mining coal. Production costs for deep-mined coal, at constant 1999 prices, have fallen from GBP 49 per

tonne in 1992 to under GBP 32 per tonne in 1999, a reduction of 35 % over the period as a whole. In the case of opencast mines, which produced 15 million tonnes of coal in 1999 out of a total production of 36 million tonnes, production costs at constant prices have likewise been reduced by some 35 %, to GBP 26 per tonne in 1999.

- (4) Despite these efforts, a series of factors could make mine closures inevitable in the very near future, in particular the sharp fall in world market coal prices in 1999 and the lifting of the moratorium imposed by the United Kingdom authorities on the construction of gas-fired generating stations. The conclusion at the end of 2000 of new contracts to supply power stations with coal, which will replace existing contracts, could also put coal producers in difficulty. In fact, the trend in the price of electricity may in future oblige them to make coal deliveries at less advantageous prices. The value of the pound sterling has also contributed to making the price of coal imported into the United Kingdom more attractive and exports of coal mined in the United Kingdom less competitive.

- (5) Consequently, coal mining in the United Kingdom is now in a serious crisis which should, however, be temporary. In particular, the United Kingdom authorities consider that on the one hand world market coal prices have already begun to move upwards noticeably while, on the other hand, the uncertainties created by the conclusion of new supply contracts with power stations and the lifting of the moratorium on the construction of gas-fired generating stations should progressively disappear.

<sup>(1)</sup> OJ L 329, 30.12.1993, p. 12.

Although these problems are temporary, the danger is, however, that in the very near future they could spell the end for several production units which, although viable in the long term, will not be able to survive the current problems without the introduction of proper restructuring measures.

### III

- (6) The restructuring plan notified to the Commission proposes granting aid, spread over three tranches, limited to the period from 17 April 2000 to 23 July 2002, that is until the ECSC Treaty expires. More specifically, aid may be granted only to cover operating losses on coal mined during the abovementioned period. The total amount which may be granted by the United Kingdom over the entire period will not exceed GBP 110 million.
- (7) The objective of the restructuring plan proposed by the United Kingdom is that the production units which can demonstrate that in the years preceding the application for aid they were capable of improving their economic viability by cutting their production costs, should further significantly reduce such costs by 2002. Moreover, the plan which they submit to the United Kingdom authorities must include data on operating conditions until at least mid-2004. During this period of restructuring, the aid proposed by the British authorities should be used to support production units which are economically and financially viable in the long term. The aid granted shall therefore allow these production units to improve their economic viability in order to attain a situation where they can compete with imported coal. It does not, therefore, apply to production units where mining is not economically viable and which will continue to make a loss even after the problems mentioned in recital 4 have been relieved.
- (8) In the light of the foregoing, only operating aid satisfying the conditions laid down in Article 3 of Decision No 3632/93/ECSC in particular may be granted under the restructuring plan.

In particular, the United Kingdom wishes to reserve the aid for production units which will be competitive at world market coal prices when the aid scheme provided for by Decision No 3632/93/ECSC expires on 23 July 2002. After that date, any production units which have

received aid will therefore have to be capable of continuing their activities without any financial support from the public authorities. To reach this level of competitiveness, the United Kingdom considers that production costs should normally be between GBP 25 and GBP 28,75 per tonne.

- (9) The scale of the reduction in production costs demanded before aid will be granted will depend on the current production cost levels, specifically on the gap between current production costs and the target set, of between GBP 25 and GBP 28,75 per tonne. In other words, the further the production unit concerned is from being fully competitive on the world coal market, the bigger the reductions in production costs will have to be.
- (10) The amount of aid is limited to the difference between the cost of producing the coal and the revenue from selling it, without, however, exceeding GBP 75 million per undertaking over the period from 17 April 2000 to 23 July 2002. The restructuring plan notified by the United Kingdom also specifies the methods of calculation to be applied, notably to limit the State aid to the categories of coal eligible. In particular, the aid will be reserved for sales of coal intended exclusively for electricity generation or industrial purposes.
- (11) The subsidies will be available for deliveries of coal under existing or new contracts. An independent panel of experts will be set up to examine contracts entered into after 1 January 2000 and eligible for aid from the public authorities. In particular, it will be responsible for calculating the price which would have been paid had the purchaser imported coal instead of taking supplies mined in the United Kingdom, under the terms of the contract examined (import parity price). To perform this task, the experts will take account of the quality of the coal, transport costs, market conditions at the time of conclusion of the contract, and any other factor which they consider necessary in order to render the reference price which they calculate (import parity price) comparable with the price stated in the contract.

Under the restructuring plan notified by the United Kingdom, if the reference price calculated by the panel of experts for imported coal is higher than the price stated in the supply contract, the amount of aid will be limited to the difference between the production costs and the reference price calculated by the experts.

## IV

- (12) In accordance with Article 3 of Decision No 3632/93/ECSC, Member States which intend to grant operating aid to coal undertakings must submit to the Commission, in advance, a modernisation, rationalisation and restructuring plan designed to improve the economic viability of the undertakings concerned by reducing production costs.

The restructuring plan proposed by the United Kingdom fulfils this condition. As was explained in recitals 7 to 9, the aid is reserved for production units which, in principle, should be viable but, for reasons unconnected with their management or operating conditions, are temporarily incapable of being competitive with imported coal. Production units which wish to receive such aid will be required to make efforts to reduce their production costs, by July 2002, to a level which would enable them to continue their activities with no further intervention by the public authorities.

The objectives of the restructuring plan notified to the Commission — a coal industry fully competitive with imported coal — go beyond the conditions laid down in Decision No 3632/93/ECSC, which requires only an improvement in economic viability if operating aid is granted<sup>(1)</sup>.

- (13) In accordance with the first indent of Article 2(1) of Decision No 3632/93/ECSC, the operating aid must help to achieve further progress towards economic viability with the aim of achieving degression of aids.

The objective of the restructuring plan notified by the United Kingdom, which must remain temporary, is to restore a coal industry which is fully competitive with imported coal and, therefore, free of all State aid, by the end of the aid scheme provided for by Decision No 3632/93/ECSC; this, therefore, meets the condition laid down in the first indent of Article 2(1).

- (14) The introduction of a new aid scheme by the United Kingdom, moreover, in no way conflicts with the objective of degression of aid, which is the cornerstone of the scheme defined in Decision No 3632/93/ECSC. The condition as to degression must be examined in the light of the criteria for deciding the grant of operating aid which are indeed met by the restructuring plan proposed by the United Kingdom, namely, improvement of the economic viability of the coal industry through

the reduction of production costs. Decision No 3632/93/ECSC cannot be interpreted in such a way as, in effect, to penalise States which have made every effort to restructure their coal industry without State aid but which face an economic situation that they could not have predicted and that endangers their industry, albeit temporarily.

- (15) The restructuring plan sets out very precisely the criteria to be taken into account when examining applications for aid. These criteria, the definitions thereof and the procedures for examining applications and monitoring the aid after it is granted confirm the conclusions drawn from examination of the objectives of the plan, namely that the aid planned by the United Kingdom meets all the requirements laid down by Decision No 3632/93/ECSC for granting operating aid. The information required from the undertakings in turn meets the requirements of Commission Decision No 341/94/ECSC of 8 February 1994 implementing Decision No 3632/93/ECSC<sup>(2)</sup>.

- (16) In accordance with Article 3(1) of Decision No 3632/93/ECSC, operating aid is intended to cover the difference between production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

The third indent of Article 3(1) also states that the amount of operating aid per tonne may not cause delivered prices for Community coal to be lower than those of coal of a similar quality from third countries.

The system proposed in the restructuring plan notified by the United Kingdom, in the form of a panel of experts to examine coal supply contracts, particularly the price agreed in such contracts, constitutes an arrangement which should help to ensure compliance with the abovementioned provisions (see recital 11). However, use of the panel of experts does not preclude the adoption of any other measures which the United Kingdom might need to enact in the interests of bringing future aid allocations fully into line with those provisions.

The restructuring plan states that this panel must work openly and transparently, in so far as that is consistent with observance of the commercial confidentiality of parties not applying for aid under the current restructuring plan. The recommendations of the panel in

<sup>(1)</sup> See also the judgment of the Court of First Instance in Case T-110/98, *RJB Mining v Commission*, ECR II-2585, at paragraph 103.

<sup>(2)</sup> OJ L 49, 19.2.1994, p. 1.

particular will have to be made public. The Commission considers that the application of those principles guiding the work of the panel of experts is fundamental, notably to avoid risks of distortion of competition both between producers and between coal users.

The United Kingdom will therefore ensure that all interested parties have an opportunity to make comments and observations on the work of the panel. The panel will take account of any observations submitted to it.

- (17) In accordance with Article 2(2) of Decision No 3632/93/ECSC, the aid will have to be entered in Member States' national, regional or local public budgets of the United Kingdom or channelled through strictly equivalent mechanisms.
- (18) The Commission stresses one of the fundamental aims of the scheme set up by Decision No 3632/93/ECSC, namely that State aid must cause no distortion of competition and must not discriminate between coal producers, purchasers or consumers in the Community.

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- (19) In accordance with Article 9 of Decision No 3632/93/ECSC, the United Kingdom will send notification of all the financial support which it intends to grant to the coal industry in a given year. All the data on these measures, the reasons for them and the extent thereof and their connection with the restructuring plan notified to the Commission on 26 July 2000 will be notified together. In particular, the information submitted will meet all the requirements laid down by Decision No 341/94/ECSC, particularly in form B in Annex 3 to that Decision.

Authorisation of the aid by the Commission, as provided for in Article 9 of Decision No 3632/93/ECSC, therefore means that the coal undertakings submit an application for aid to the competent United Kingdom authorities by a set time so that all the measures proposed over a given period can be notified to the Commission together.

- (20) In accordance with Article 9(5) of Decision No 3632/93/ECSC, in the event of refusal any payment made in anticipation of authorisation from the Commission will have to be repaid in full by the undertaking that received it and will invariably be considered an unfair advantage in the form of an unjustified cash advance and, as such, will be liable to charges at the market rate payable by the recipient.
- (21) By 30 September of each year at the latest, the United Kingdom must also send notification of the amount of aid actually paid in the preceding coal production year and must declare any corrections made to the amounts originally notified,

HAS ADOPTED THIS DECISION:

*Article 1*

The modernisation, rationalisation and restructuring plan, as well as the 'UK Coal Operating Aid Scheme', notified to the Commission by the United Kingdom on 26 July 2000, are in conformity with the objectives and criteria laid down in Decision No 3632/93/ECSC.

*Article 2*

The United Kingdom shall notify to the Commission, in accordance with the provisions of Article 9 of Decision No 3632/93/ECSC, all the financial support which it intends to grant to the coal industry in a given year.

*Article 3*

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

Done at Brussels, 15 November 2000.

*For the Commission*  
Loyola DE PALACIO  
*Vice-President*