

## COMMISSION DECISION

of 2 July 2002

**on financial measures by Spain in respect of the coal industry in 2001 and in the period 1 January 2002 to 23 July 2002**

(notified under document number C(2002) 2438)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2002/826/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 9(4) thereof,

Whereas:

**I**

(1) By letter of 7 November 2001, Spain notified the Commission, pursuant to Article 9(1) of Decision No 3632/93/ECSC, of the financial measures which it intended to take in respect of the coal industry in 2002.

(2) Decision No 3632/93/ECSC expires on 23 July 2002; the Commission may therefore authorise, under that Decision, only aid to the coal industry for a period extending not beyond that date. By letter of 10 December 2001, the Commission therefore requested the Spanish authorities to indicate the amounts of aid of each type for the period 1 January 2002 to 23 July 2002.

(3) By letters of 13 May 2002 and 10 June 2002, Spain sent the Commission the information requested. The Spanish authorities calculated the amounts of aid for the period 1 January 2002 to 23 July 2002 on the basis of a theoretical model taking account of the number of days of production during the abovementioned period in relation to the number of days of production in the whole of 2002.

(4) By letter of 15 May 2002, the Commission requested information from Spain on repayment by the undertaking Minas de la Camocha SA of part of the aid not authorised by the Commission by Decision 98/635/ECSC<sup>(2)</sup>. Spain replied to the Commission by two letters of 28 May 2002.

(5) Spain also notified the Commission, by letter of 25 September 2001, of the production costs per undertaking for 2000.

(6) In a further letter of 13 May 2002, Spain notified the Commission, pursuant to Article 9(2) of Decision No 3632/93/ECSC, of the amount of aid actually paid during the 2001 coal production year.

(7) Pursuant to Decision No 3632/93/ECSC, the Commission must take a decision on the following financial measures relating to the period 1 January 2002 to 23 July 2002:

(a) aid of EUR 374 631 976 to cover operating losses by coal undertakings;

(b) aid of EUR 268 196 000 to cover exceptional welfare aid paid to workers who lose their jobs as a result of the measures to modernise, rationalise, restructure and reduce the activity of the coal industry;

(c) aid of EUR 8 950 000 to cover the technical costs of closing down mining installations as a result of the measures to modernise, rationalise, restructure and reduce the activity of the coal industry.

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

<sup>(2)</sup> OJ L 303, 13.11.1998, p. 47.

- (8) The Commission must also take a decision on aid of EUR 1 724 904,74 (ESP 287 million) which Spain plans to grant to Minas de la Camocha SA for 2001 and which was not authorised by the Commission in Decision 2002/241/ECSC<sup>(3)</sup>.
- (9) The financial measures proposed by Spain for the coal industry fall within the provisions of Article 1 of Decision No 3632/93/ECSC. The Commission must therefore take a decision on such measures in accordance with Article 9(4) of the Decision. The Commission's assessment will depend on the compliance of the measures with the general criteria and objectives laid down in Article 2 and the specific criteria established by Articles 3 and 4 of the Decision, and on their compatibility with the proper functioning of the common market. Additionally, in accordance with Article 9(6) of the Decision, the Commission when conducting its assessment must check whether the measures conform with the modernisation, rationalisation, restructuring and activity-reduction plan which the Commission approved in its Decision 98/637/ECSC<sup>(4)</sup>.
- (10) By Decision 98/637/ECSC, the Commission recognised the conformity of the 1998 to 2002 phase of the plan notified by Spain for modernisation, rationalisation, restructuring and activity-reduction in the coal industry with the general and specific objectives of Decision No 3632/93/ECSC.
- (11) In Decision 2002/241/ECSC, the Commission withheld authorisation for aid of EUR 1 724 904,74 (ESP 287 million) for Minas de la Camocha SA for 2001, due to the failure to repay a sum equivalent to the amount not authorised by the Commission in Decision 98/635/ECSC plus interest at the market rate. By letter of 28 May 2002, Spain notified the Commission that Minas de la Camocha SA had not repaid the aid of EUR 1 724 904,74 not authorised by Decision 98/635/ECSC and that Spain had paid the undertaking an advance equivalent to the amount not authorised by the Commission for 2001.
- (12) The Commission has analysed the measures taken to modernise, rationalise, restructure and reduce activity in other Spanish coal undertakings during 2001 and the measures notified for the period 1 January 2002 to 23 July 2002 and has found that, except for the analysis which has to be made of the measure referred to in recital 11, they correspond to the plans which it declared, by Decision 98/637/ECSC, to be in conformity with Decision No 3632/93/ECSC.
- (13) Coal production in Spain in 2001 totalled 13 821 227 tonnes (8 720 603 tonnes coal equivalent or tce), 20,60 % lower than in 1997. The production forecast for 2002 is 12 955 508 tonnes (8 174 371 tce), i.e. 6,62 % lower than in 2001.
- (14) The number of workers in the undertakings fell from 22 840 at the end of 1997 to 14 159 at the end of 2001. A net reduction of 1 000 workers is forecast for 2002.
- (15) Installations with a total production capacity of 4 million tonnes per year closed down or reduced their activity during the 1998 to 2002 phase of Spain's modernisation, rationalisation, restructuring and activity-reduction plan.
- (16) These reductions, which are larger than those initially envisaged, are due to the inclusion in activity-reduction plans, in conformity with Article 4 of Decision No 3632/93/ECSC, of undertakings which were unable to meet the conditions which would entitle them to operating aid under Article 3 of the Decision.
- (17) By letter of 25 September 2001, Spain notified the Commission of the undertakings' production costs in 2000. The Commission's analysis of the trend in the production costs of the undertakings or production units in receipt of operating aid in 2000 (Article 3 of Decision No 3632/93/ECSC) revealed a mean reduction in the cost of production, at 1992 prices, from ECU 92,62/tce in 1994 to EUR 72,30/tce in 2000. This mean reduction of 21,94 % between 1994 and 2000 breaks down into a reduction of more than 30 % for 27,60 % of production, between 20 % and 30 % for 28,30 % of production, between 10 % and 20 % for 22,80 % of production and between 0 % and 10 % for 21,30 % of production.

<sup>(3)</sup> OJ L 82, 26.3.2002, p. 11.

<sup>(4)</sup> OJ L 303, 13.11.1998, p. 57.

- (18) The production units in the María Group of Minero Siderúrgica de Ponferrada SA, the Escandal Group of Coto Minero del Sil SA, the Tres Amigos and Samuño pits and the opencast mines of Hunosa closed down in 2001. The undertakings Antracitas de Gillón SA, Coto Minero Jove SA (Jovesa), Industrial y Comercial Minera SA (Incomisa), Minas de la Camocha SA, González y Díez SA, Hulleras del Norte SA, Minas de Escucha SA, Promotora de Minas de Carbón SA, Mina Escobal SL, Minas de Valdeloso SL and Virgilio Riesco SA plus the underground production units of Endesa and Encasur are included in closure/activity-reduction plans which provide for the closure, by 2005 at the latest, of production capacity of 1 660 000 tonnes per year. The Commission has checked that the conditions laid down in Article 3(2) of Decision No 3632/93/ECSC cannot be achieved by these undertakings or production units, which do, however, qualify for activity-reduction aid in accordance with Article 4 of the Decision. Following expiry of the Treaty, Spain will meet the undertakings to close production units, given when Decision No 3632/93/ECSC was in force.
- (19) The aid notified by Spain to cover operating losses for the period 1 January 2002 to 23 July 2002 provides for a reduction in production aid, compared with the same period in 2001, of 4 % at current currency values, in line with the objective of degression of aid. The aid under Articles 3 and 4 of Decision No 3632/93/ECSC is intended to cover all or part of the difference between the production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.
- (20) In accordance with Article 2(2) of Decision No 3632/93/ECSC, all the aid which Spain plans to grant to the coal industry for the period 1 January 2002 to 23 July 2002 has been entered in national, regional or local public budgets. Part of this aid to Hunosa could be channelled via SEPI (Sociedad Estatal de Participaciones Industriales), a public group of which Hunosa is part.
- (21) In view of the above, the Commission must examine whether the failure by Minas de la Camocha SA to comply with the conditions laid down in Decisions 98/635/ECSC and 2002/241/ECSC implies that the Commission cannot authorise the aid not authorised in Decision 2002/241/ECSC or the aid to this undertaking notified by Spain for the period 1 January 2002 to 23 July 2002. The other measures notified by Spain for the period from 1 January 2002 to 23 July 2002 are deemed to be in line with the general objectives of the modernisation, rationalisation, restructuring and activity-reduction plans approved by the Commission in Decision 98/637/ECSC.
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- (22) The aid of EUR 374 631 976 which Spain plans to grant the coal industry for the period 1 January 2002 to 23 July 2002 is intended to compensate in full or in part for operating losses sustained by coal undertakings.
- (23) It is intended to cover the difference between the production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.
- (24) The sum notified subdivides into operating aid of EUR 162 840 571 under Article 3 of Decision No 3632/93/ECSC and activity-reduction aid of EUR 211 791 406 under Article 4 of the same Decision.
- (25) The operating aid of EUR 162 840 571 is intended to cover the operating losses of 37 undertakings with a combined forecast production of 6 004 365 tonnes in the period 1 January 2002 to 23 July 2002.
- (26) The Commission notes, after verifying the production costs of the undertakings receiving operating aid, that the downward trend of production costs at 1992 prices observed in the period 1994 to 2000 will continue in 2002. A reduction of 3,40 % is forecast for 2002, compared with 2001.
- (27) The mean production cost in 2000, at 1992 prices, of the undertakings receiving aid under Article 3 of Decision No 3632/93/ECSC is EUR 72,30/tce, equivalent to EUR 102,50 at current prices. This production cost, at 1992 prices, breaks down as follows:
- 25,70 % of production at costs below EUR 60/tce,
  - 29,60 % of production at costs between EUR 60 and 79/tce,
  - 43,10 % of production at costs between EUR 80 and 99/tce,
  - 1,60 % of production at costs between EUR 100 and 119/tce.

(28) The mean selling price to thermal power stations of the 6 004 365 tonnes (3 757 853 tce) of production forecast in the period 1 January 2002 to 23 July 2002 by the undertakings receiving operating aid (Article 3 of Decision No 3632/93/ECSC) is EUR 58/tce. Given that the forecast mean production cost in 2002 is EUR 99,21/tce, the Commission notes that the aid notified corresponds to 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.

(29) The aid of EUR 211 791 406 to reduce activity is intended to cover the operating losses of the following undertakings which have been included in closure and/or activity-reduction plans in conformity with Article 4 of Decision No 3632/93/ECSC:

- Hunosa (EUR 186 609 403),
- Minas de la Camocha SA (EUR 9 561 097),
- the underground workings of Endesa (EUR 2 397 850),
- the underground workings of Encasur (EUR 1 175 001),
- Antracitas de Guillón (EUR 2 307 971),
- Coto Minero Jove SA (EUR 2 385 577),
- Industrial y Comercial Minera SA (Incomisa) (EUR 516 506),
- Mina Escobal SL (EUR 177 154),
- Minas de Escucha SA (EUR 1 034 911),
- Minas de Valdeloso SL (EUR 339 383),
- Promotora de Minas de Carbón SA (EUR 1 001 670), and
- Virgilio Riesco SA (EUR 658 577).

The total annual production capacity of these production units is 1 553 015 tonnes.

(30) Part (EUR 128 024 167) of the aid of EUR 186 609 403 to Hunosa will be granted via SEPI. However, following the consolidation of the balance

sheets of the undertakings which form part of SEPI, Hunosa could be compensated by that group through any tax credit it might receive as a result of lower company tax. In such a case, the aid authorised for Hunosa for the period 1 January 2002 to 23 July 2002 under this Decision will be reduced by any compensation Hunosa may receive as a tax credit on company tax following the consolidation of the balance sheets of the undertakings which are part of SEPI.

(31) By letter of 14 August 2001, Spain informed the Commission that Minas de la Camocha SA had not repaid ESP 226 million out of the total of ESP 665 million which had not been authorised by the Commission for that undertaking in Decision 98/635/ECSC but had been paid in anticipation of authorisation from the Commission. In its letter dated 14 August 2001, Spain informed the Commission that it was still taking action to obtain repayment of the aid. On the basis of this information, in Decision 2002/241/ECSC the Commission withheld authorisation for EUR 1 724 904,74 (ESP 287 million) of the aid notified by Spain for 2001, equivalent to the amount not repaid by Minas de la Camocha SA. This sum of EUR 1 724 904,74 (ESP 287 million) represents the original amount to be repaid (ESP 226 million), plus interest at the market rate from 1996 to 2001. By letter of 15 May 2002, the Commission requested Spain for information about repayment of this sum of EUR 1 724 904,74. By letter of 28 May 2002, Spain replied that Minas de la Camocha SA had not repaid it and that Spain had decided to reduce the aid intended for this undertaking in 2002, to bring the aid into line with actual production. Spain also notified the Commission that Minas de la Camocha SA had initiated proceedings before the competent courts in Spain against the decision by the Spanish authorities to reduce the aid granted to it in 2002. By letter of 28 May 2002, Spain notified the Commission that it had paid a cash advance of EUR 1 724 904,74 (ESP 287 million) for 2001 which had not been authorised by the Commission in Decision 2002/241/ECSC.

(32) Minas de la Camocha SA has failed to comply with Decision 98/635/ECSC. The Commission has repeatedly asked Spain to submit its comments. The reason given by Spain for its plans to reduce the aid for 2002 is the need to bring the aid into line with actual production at the mine. The Commission considers that this adjustment by no means exempts Minas de la Camocha SA from its obligation to repay the unauthorised aid. The Commission cannot authorise the aid of EUR 1 724 904,74 for Minas de la Camocha SA in

2001, for which it withheld authorisation in Decision 2002/241/ECSC, nor the aid of EUR 9 561 097 which Spain plans to grant to the undertaking for the period 1 January 2002 to 23 July 2002. Spain must adopt all the measures necessary in order to recover from Minas de la Camocha SA the EUR 1 724 904,74 (ESP 287 million) not authorised by the Commission by Decision 98/635/ECSC.

for the period 1 January 2002 to 23 July 2002 is compatible with Articles 3 and 4 of Decision No 3632/93/ECSC and with the proper functioning of the common market.

#### IV

(33) The mean selling price to thermal power stations of the 1 553 015 tonnes (997 923 tce) of production forecast in the period 1 January 2002 to 23 July 2002 by undertakings in receipt of aid to reduce activity pursuant to Article 4 of Decision No 3632/93/ECSC is EUR 54/tce. Given that the forecast mean cost of this production in 2002 is EUR 265,46/tce, the Commission notes that the aid notified corresponds to 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.

(37) The aid of EUR 268 196 000 which Spain proposes to grant is intended to cover, with the exception of the costs for the payment of social welfare benefits borne by the State as a special contribution pursuant to Article 56 of the Treaty, compensation paid to workers in Spanish coal undertakings who have lost their jobs or have had or will have to take early retirement under the modernisation, rationalisation, restructuring and activity-reduction plan for the Spanish coal industry.

(34) The aid to cover the operating losses sustained by coal undertakings has been entered in the general State budget for 2002. It is 4 % lower than the aid authorised by the Commission for the equivalent period of 2001. Spain notified the Commission of Resolution 9567 of 11 April 2002 containing the agreement by the Spanish Council of Ministers on the company-by-company allocation of this aid. This Resolution has been published in Spain's *Boletín Oficial del Estado* <sup>(5)</sup>.

(38) Part of this aid, totalling EUR 190 666 000, will be granted to Hunosa to cover the cost of the 475 workers who will take early retirement in the period 1 January 2002 to 23 July 2002. This amount corresponds to payment of an insurance premium to cover the cost of early retirement until the recipients reach statutory retirement age. Part of the aid will be granted to Hunosa via SEPI.

(35) The inclusion of this measure in the modernisation, rationalisation, restructuring and activity-reduction plan notified by Spain, and the reduction in the aid and quantities envisaged for 2002, are in line with the objectives of the first and second indents of Article 2(1) of Decision No 3632/93/ECSC, and in particular the objective of solving the social and regional problems created by developments in the coal industry.

(39) The remaining EUR 77 530 000 is intended to cover compensation for some 7 000 workers from other undertakings in early retirement by 23 July 2002 as a result of the modernisation, rationalisation, restructuring and activity-reduction measures for the Spanish coal industry.

(36) Except for aid to Minas de la Camocha SA of EUR 1 724 904,74 for 2001 and of EUR 9 561 097 for the period 1 January 2002 to 23 July 2002, on the basis of the information provided by Spain the aid proposed

(40) This aid, designed to cover exceptional costs arising from modernisation, rationalisation, restructuring and activity-reduction measures in the Spanish coal industry, has been entered in the general State budgets for 2002.

(41) These financial measures relate to action made necessary by the modernisation, rationalisation and restructuring of the Spanish coal industry and cannot therefore be considered to be related to current production (inherited liabilities).

(42) 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 and other exceptional

<sup>(5)</sup> BOE No 118, 17.5.2002, p. 17878.

expenditure on 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 the costs.

- (43) In view of the above and on the basis of the information provided by Spain, the Commission considers that this aid is compatible with Article 5 of Decision No 3632/93/ECSC and with the proper functioning of the common market.

#### V

- (44) The aid of EUR 8 950 000 which Spain proposes to grant to Hunosa is intended to cover exceptional costs that have arisen from the progressive closures connected with the restructuring of the Spanish coal industry. This aid is granted via SEPI.
- (45) These financial measures relate to action made necessary by the modernisation, rationalisation and restructuring of the Spanish coal industry and cannot therefore be considered to be related to current production (inherited liabilities).
- (46) Pursuant to Article 5 of Decision No 3632/93/ECSC, the aid mentioned explicitly in the Annex to the Decision, namely exceptional intrinsic depreciation provided that it results from the restructuring of the industry (without taking account of any revaluation which has occurred since 1 January 1986 and which exceeds the rate of inflation) and other additional work and residual costs arising from closures of installations, can be considered compatible with the common market provided that the amount paid does not exceed the costs.
- (47) Spain must ensure that the aid granted to Hunosa to cover exceptional costs is in line with the categories of costs specified in the Annex to Decision No 3632/93/ECSC.
- (48) On the basis of the information provided by Spain, this aid is compatible with Article 5 of Decision No 3632/93/ECSC and with the proper functioning of the common market.

#### VI

- (49) The aid granted by Spain to the coal industry is restricted to coal production destined to be used for electricity production. Spain undertakes to ensure that coal sold to the industrial and domestic sectors is sold at prices (without compensation) that cover the costs of production.
- (50) 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.
- (51) 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.
- (52) Spain must ensure that, within the framework of the provisions of Article 86 of the Treaty, 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 for current production (Articles 3 and 4 of the Decision) and 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.
- (53) 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 responds exclusively to the objectives stated in Articles 3 and 4 of the Decision. Spain must notify the Commission, no later than 30 September 2003, of the amount of aid actually paid for the period 1 January 2002 to 23 July 2002 and declare any corrections made to the amounts originally notified. When submitting this statement, Spain must also supply all the information necessary for verification of compliance with the criteria set out in the Articles in question.

(54) 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 in the regions surrounding the mines affected.

(55) 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*

Spain is hereby authorised to pay the following aid in respect of the period from 1 January 2002 to 23 July 2002:

- (a) operating aid of EUR 162 840 571 under Article 3 of Decision No 3632/93/ECSC;
- (b) aid for the reduction of activity of EUR 202 230 309 under Article 4 of Decision No 3632/93/ECSC; this amount will be deducted from any compensation that Hunosa may receive as tax credit on company tax following the consolidation of the balance sheets of the undertakings incorporated in SEPI;
- (c) aid of EUR 268 196 000 under Article 5 of Decision No 3632/93/ECSC to cover exceptional welfare aid for workers who lose their jobs as a result of the measures to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry;
- (d) aid of EUR 8 950 000 under Article 5 of Decision No 3632/93/ECSC to cover the technical costs of closing down mining installations as a result of the measures to modernise, rationalise, restructure and reduce the activity of the Spanish coal industry.

*Article 2*

The Commission cannot authorise the State aid notified by Spain for Minas de la Camocha SA of EUR 1 724 904,74 for

2001 and EUR 9 561 097 for the period 1 January 2002 to 23 July 2002, under Article 4 of Decision No 3632/93/ECSC.

*Article 3*

1. Spain shall adopt all necessary measures to recover from Minas de la Camocha SA the amount of EUR 1 364 267,11, which was not authorised by the Commission in its Decision 98/635/ECSC.

2. Recovery shall take place without delay, 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 payable at the market rates from the date on which it was placed at the disposal of the recipient to the date of recovery thereof.

*Article 4*

Spain shall ensure that the aid authorised is used exclusively 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*

Spain shall notify the Commission, by 30 September 2003 at the latest, of the amount of aid actually paid in respect of the period 1 January 2002 to 23 July 2002.

*Article 6*

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 2 July 2002.

*For the Commission*

Loyola DE PALACIO

*Vice-president*