

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COMMISSION DECISION

of 21 December 2005

concerning a restructuring plan for the Spanish coal industry and State aid for the years 2003-2005, implemented by Spain for 2003 and 2004

(notified under document C(2005) 5410)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2011/693/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 aforementioned Article ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) By letter of 19 December 2002, Spain notified the Commission, in accordance with Article 88(3) of the Treaty, under the terms of Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry ⁽²⁾, of a restructuring plan concerning the Spanish coal industry.
- (2) By letters of 19 February 2003, and 31 July 2003, the Commission requested additional information. Spain submitted additional information by letters of 18 April 2003 and 3 October 2003.
- (3) By letter of 16 June 2003, Spain submitted the Ministerial Order ECO 768/2003 of 17 March 2003 concerning the granting of financial support to the coal undertakings for 2003.

- (4) By letter of 8 August 2003, Spain submitted, under the terms of Regulation (EC) No 1407/2002, the amounts of aid per coal-mining company to be granted for 2003.
- (5) By letters of 18 August 2003 and 18 September 2003 Spain submitted information concerning the production cost of the production units, under the terms of the Commission Decision 2002/871/EC of 17 October 2002 establishing a joint framework for the communication of information needed for the application of Council Regulation (EC) No 1407/2002 on State aid to the coal industry ⁽³⁾.
- (6) By letter of 10 February 2004 Spain submitted the Ministerial Order concerning the granting of financial support to the coal undertakings for the year 2004.
- (7) By letter of 30 March 2004 the Commission informed Spain that, having examined the information supplied by the Spanish authorities, it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty. The decision was published in the *Official Journal of the European Union* ⁽⁴⁾.
- (8) By letters of 30 June 2004 and 16 July 2004 Spain provided additional information about the restructuring plan.
- (9) By letter of 19 February 2005 Spain submitted the Ministerial Order concerning the granting of financial support to the coal undertakings for the year 2005.
- (10) By letter of 7 September 2005 the Commission requested additional information. Spain replied by letter of 20 October 2005 and provided additional information about the restructuring plan.

⁽¹⁾ OJ C 182, 15.7.2004, p. 3.

⁽²⁾ OJ L 205, 2.8.2002, p. 1. Regulation as amended by the 2003 Act of Accession.

⁽³⁾ OJ L 300, 5.11.2002, p. 42.

⁽⁴⁾ See footnote 1.

- (11) In the light of the information submitted by Spain, the Commission is required to take a decision on the restructuring plan for the Spanish coal industry and, should the Commission deliver a favourable opinion on the plan, on the annual aid concerning the years 2003, 2004 and 2005.
- (12) The restructuring plan and the financial measures are covered by Regulation (EC) No 1407/2002. The Commission must take a decision on the restructuring plan pursuant to Article 10 of the Regulation, to determine whether it is in conformity with the conditions and criteria set out in Articles 4-8, and whether it complies with the objectives of this Regulation. In addition, should the Commission deliver a favourable opinion on this plan, it is also required to verify, in accordance with Article 10(2) of the Regulation, whether the measures notified for the years 2003-2005 are in conformity with the restructuring plan and, more generally, on the compatibility of the aid with the proper functioning of the common market.

2. DETAILED DESCRIPTION OF THE MEASURE

- (13) On 3 June 1998, by Commission Decision 98/637/ECSC of 3 June 1998 on the granting by Spain of aid to the coal industry in 1998 ⁽⁵⁾, the Commission approved a restructuring plan for the Spanish coal industry for the period 1998-2002. This plan was based on the Plan for the Restructuring of the Coal-Mining Industry and the Alternative Development of Mining Areas 1998-2005 which was signed on 15 July 1997. This Plan was the result of an agreement between the Spanish authorities and the interested parties in the coal sector and contained provisions for undertakings that received aid. The Commission gave a favourable opinion on the 1998-2002 restructuring plan after analysing its conformity with the general and specific objectives of Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry ⁽⁶⁾.
- (14) In view of the Spanish government's intention to grant aid to the coal industry after the expiry of the ECSC Treaty on 23 July 2002, and in accordance with Regulation (EC) No 1407/2002, in particular Article 9(10) thereof, on 19 December 2002 the Spanish authorities notified to the Commission a provisional plan for accessing coal reserves and for the closure of production units for the period 2003-2005.
- (15) This restructuring plan concerns the intention of the Spanish authorities to continue supporting the coal industry for the period 2003-2005 by means of granting production aid and aid to cover the exceptional costs of the restructuring process. This proposal for the

period until 2005 assumes that the effort made by firms and workers to restructure the sector during the period 1998-2002 will continue on the grounds of the 1998-2005 Spanish plan for the restructuring of the coal-mining industry, taking account of the objectives of Regulation (EC) No 1407/2002, i.e. a smaller volume produced with less aid and smaller workforces, permitting a reduction in production costs.

- (16) The Spanish authorities have indicated that the social reality must be one of the criteria to be taken into account when deciding which production units will be maintained at a minimum level of activity guaranteeing access to coal resources. Other criteria will be the existing coal market and the implementation of environmental legislation. These will determine which power stations will be able to continue in operation.
- (17) In addition to these criteria, the Spanish authorities considered that the overall reduction in aid proposed in its 2003-2005 plan will lead to firms requesting voluntary capacity reductions. The possibility of granting aid for production unit closures will automatically mean a reduction in capacity. Consequently, by the end of 2005 this reduction will be around the 12 million tonnes proposed as the target. The Spanish authorities guaranteed to the Commission that aid for capacity closures under the terms of Article 7 of Regulation (EC) No 1407/2002 will be used solely for covering the costs of such unit closures.
- (18) The economy and employment in the mining districts are still far below the level that existed before the restructuring of the industry. For this reason, the Spanish authorities have indicated that they need more time to apply economic development and alternative employment policies to coal mining. It is not possible to speed up the processes for the reconversion of the coal industry beyond what is proposed in the plans. The Spanish authorities argue that the process of restructuring has been going on for only 5 years, much less than in other countries which had a substantial coal industry.
- (19) The Spanish authorities have made use of the right provided for in Article 9(8) of Regulation (EC) No 1407/2002, which states that Member States may, on duly substantiated grounds, notify the Commission of the identity of each of the production units forming part of the plans referred to in paragraphs 4 and 6 of the aforementioned Article by June 2004 at the latest.
- (20) The Spanish authorities have also informed the Commission, on the basis of Decision 2002/871/EC, of the production costs of the production units with regard to the reference year 2001/2002 and the period 2003-2005.

⁽⁵⁾ OJ L 303, 13.11.1998, p. 57.

⁽⁶⁾ OJ L 329, 30.12.1993, p. 12.

- (21) Under the terms of the definition of 'production unit' in Article 2 of Decision 2002/871/EC, all the coal-mining companies, except Hunosa, have defined their underground workings and related infrastructure as a single 'underground production unit', and all their opencast workings and related infrastructure on a single 'opencast production unit'.

The notified production units and the production of the reference year (2001/2002) are the following:

Production Unit	U: Underground O: Opencast	Production capacity of the reference year (tce: ton coal equivalent)
Alto Bierzo, S.A.	U	104 405
Antracitasde Arlanza, S.L.	U	10 360
Antracitas de Gillon, S.A.	U	57 100
Antracitas la Granja, S.A.	U O	51 550 8 930
Antracitas de Tineo, S.A.	S	50 100
Campomanes Hermanos, S.A.	S	43 320
CARBONAR, S.A.	U	320 000
Carbones de Arlanza, S.A.	U	25 332
Carbones de Linares, S.L.	U	12 817
Carbones del Puerto. S.A.	U	3 400
Carbones el Tunel, S.L.	U	17 420
Carbones de Pedraforca, S.A.	U	75 110
Carbones San Isidro y María, S.L.	U	31 920
Compañía General Minera de Teruel, S.A.	U O	21 000 71 000
Coto Minero del Narcea, S.A.		
— Monasterio	U	9 000
— Brañas	U	69 000
Coto Minero Jove, S.A.	U	82 334
E.N. Carbonifera del Sur, S.A.		
— Pozo María	U	18 210
— Peñarroya	O	381 240
— Emma, Puerto llano	O	464 040
ENDESA, S.A. (TERUEL)		
— Andorra	U	55 070
— Andorra	O	354 310
Gonzalez y Diez, S.A.		
— Tineo	U	113 098
— Buseiro	O	16 605

Production Unit	U: Underground O: Opencast	Production capacity of the reference year (tce: ton coal equivalent)
Hijos de Baldomero Garcia, S.A.	U	60 340
Hullas de Coto Cortes, S.A.	U	282 120
	O	48 340
Hueller Vasco-Leonesa, S.A.	U	713 533
	O	320 882
INCOMISA, S.A.	U	9 370
La Carbonifera del Ebro, S.A.	U	38 426
MALABA, S.A.	U	26 310
Mina Adelina, S.A.	U	8 200
Mina Escobal, S.L.	U	3 079
Mina la Sierra, S.A.	U	5 560
Mina los Compadres, S.L.	U	5 610
Minas de Navaleo, S.L.	U	19 636
Minas de Valdeloso, S.L.	U	9 870
Minas del Principado, S.A.	U	16 903
MINEX, S.A.	U	59 520
Minera del Bajo Segre, S.A.	U	25 164
Minero Siderurgia de. Ponferrada S.A.	U	643 000
	O	154 000
Munoz Solé Hermanos, S.A.	U	23 141
Promotora de Minas del Carbon	O	50 580
S.A. Catalano-Aragonesa	U	324 550
	O	504 800
Union Minera del Norte, S.A. (UMINSA)	U	736 430
	O	86 850
Union Minera Ebro-Segre, S.A. (UMESA)	U	14 090
Viloria Hermanos, SA.	U	73 964
	O	29 844
Virgilio Riesco S.A.	U	24 680
Mina La Camocha	U	
HUNOSA — Aller	U	314 000
HUNOSA — Figaredo	U	89 000

Production Unit	U: Underground O: Opencast	Production capacity of the reference year (tce: ton coal equivalent)
HUNOSA — San Nicolas	U	110 000
HUNOSA — Montsacro	U	107 000
HUNOSA — Carrio	U	105 000
HUNOSA — Sotón	U	86 000
HUNOSA — Maria Luisa	U	172 000
HUNOSA — Candil	U	94 000
HUNOSA — Pumarabule	U	73 000
Total (Tec)		8 023 203

(22) By letter of 3 October 2003 the Spanish authorities notified the Commission that the underground production units of Endesa, Encasur and Antracitas de Gillon S.A. would close in 2005 and that the company Promotora de Minas de Carbon S.A. (PMC) would close its opencast unit.

2.1. Reduction in operating aid

(23) For the coal-mining companies, the proposed reduction in aid to cover operating deficits is 4 % annually for the years 2003, 2004 and 2005, except for HUNOSA, for which the reduction will be 5,75 % annually on average.

2.2. Production capacity

(24) With regard to the production capacity, the Spanish government proposed granting aid to a production capacity of approximately 12 million tonnes in 2005. In 2002 production was approximately 13 400 000 tonnes.

2.3. Budget

(25) The total amounts of operating aid, technical and social costs that are notified are the following:

(in EUR)

Year	Operating aid ⁽¹⁾	Technical costs ⁽²⁾	Social costs ⁽³⁾
2003	568 647 000	81 299 000	469 072 000
2004	539 854 000	82 987 000	490 112 000
2005	513 046 000	96 739 000	484 866 000

⁽¹⁾ Articles 4 and 5(3) of Regulation (EC) No 1407/2002.

⁽²⁾ Article 7 of Regulation (EC) No 1407/2002.

⁽³⁾ Article 7 of Regulation (EC) No 1407/2002.

(26) With regard to the years 2006-2007, the Spanish authorities have notified that it is not possible at present to set specific objectives for this period. The Spanish authorities are proposing to continue to reduce the aid by 4 % annually. Once the Plan for accessing coal reserves has been agreed, the details of the allocation of the aid and of the distribution of production (in tonnes) will be communicated to the Commission.

2.4. Plan concerning the coal-mining company Hunosa

(27) The Spanish authorities have notified in greater detail the plan for the publicly-owned coal-mining company Hunosa. Over the 2002-2005 period the capacity is forecast to fall from 1 800 000 tonnes in 2001 to 1 340 000 tonnes in 2005. Aid to cover operating deficits is being cut from EUR 321 091 000 in 2001 to EUR 239 281 000 in 2005.

(28) The basic aims of the 2002-2005 Hunosa Plan were, firstly, to restructure the undertaking and to reduce losses in such a way that the activity-reduction measures required under the national mining plan and Community legislation took due account of Hunosa's social and economic importance in the central Asturian coalfield. Furthermore, the aim was to lay the foundations for the future development of the area in which the central Asturian coalfield is located by creating the conditions needed to create alternative employment to coal mining. Lastly, the plan entails cutting Hunosa's operating losses by over 30 % and a 33,6 % reduction in its workforce, thus increasing its productivity by 21,4 %.

(29) The Hunosa Plan envisaged the implementation of a set of measures designed to ensure that production levels were scaled down. First, two of the existing nine

production units were closed. Added to this was the closure of the washery. The closure of these three sites represents a 25 % reduction in productive capacity. Secondly, action was taken to optimise productivity, the focus being on measures concerning the selection of deposits, the degree of modernisation and washing processes. Efforts were concentrated on those pits which offered the highest productivity, the lowest overall costs and the best quality. In principle, part of the production was to be reserved for the nearby power plant and Hunosa had to deliver annually coal for 100 days' consumption. Thirdly, the planned reduction in activity makes it necessary to reduce the undertaking's workforce. Lastly, as a result of the measures taken, production during the lifetime of the plan will fall by 26,1 % overall from 1 800 000 tonnes in 2001 to 1 340 000 tonnes in 2005.

- (30) The Hunosa Plan envisaged the hiring of 550 new workers during the period 2002-2005. The Spanish authorities guaranteed that these new workers should they have to be hired, would be selected from among workers from other mining undertakings who had lost their jobs following mine closures, with two very specific exceptions, the hiring of specialised technicians and of lineal descendants of workers who had died in accidents at work.
- (31) The Spanish authorities have communicated that the costs per tce of the production units of HUNOSA that they propose to keep open during the restructuring period are the following:

Production Unit	Average cost (EUR/tce)		Reduction (%)
	2001	2005	
Aller	271	237	12,5
San Nicolás	429	317	26,1
Montsacro	342	251	26,6
Carrio	261	223	14,5
Sotón	376	304	19,1
M ^o Luisa	371	331	10,8
Candil	411	340	17,3
Average	344	278	19,2

- (32) The Spanish authorities considered that this reduction in production costs of approximately 20 % in the period 2002-2005 demonstrates the possibilities of a reduction in Hunosa's production costs and that this

trend could be reinforced in the future. According to the Spanish authorities, this reduction of production costs means a 25 % reduction of aid to the company and that this trend could be reinforced in the future.

- (33) In accordance with the objectives set out in the plan, it is proposed to launch a set of measures to encourage the creation of an economic structure providing an alternative to coal mining in the geographical area in which Hunosa operates. A commitment has therefore been made, by the Spanish authorities and the trade unions, to encourage the creation of 650 jobs during the 2002-2005 period in the central Asturian coalfield with the aid of the various measures under this Plan.
- (34) Concerning the aid to cover the exceptional costs of the restructuring process and inherited liabilities, which accompany the application of the technical measures regarding concentration and selection of deposits and the corresponding capacity adjustments, the Spanish authorities explained that social measures are needed, in particular to finance the early-retirement scheme. The aid that will cover these measures and other proposed measures will decrease gradually.
- (35) The following table shows the reduction in workforce and the total amounts of aid to be granted according to the Hunosa Plan, as proposed in the restructuring plan.

Year	Workforce at year end	Aid reduction activity ⁽¹⁾ (in EUR)	Aid for exceptional costs ⁽²⁾ (in EUR)
2003	4 902	271 593 000	302 557 000
2004	4 437	254 682 000	298 983 000
2005	4 079	239 281 000	286 203 000

⁽¹⁾ Article 4 of Regulation (EC) No 1407/2002.

⁽²⁾ Article 7 of Regulation (EC) No 1407/2002.

- (36) By letter of 22 April 2003, the Spanish authorities notified the Commission that the aim of the Hunosa Plan, among other objectives, as a precautionary measure, was the maintenance of a minimum quantity of coal production in order to guarantee access to reserves.
- (37) In the same letter the Spanish authorities explained that the minimum production of Hunosa for 2005 would be 1 340 000 tonnes, in order to guarantee that 30 % of the needs (100 days) of the power plants near Hunosa's mines could be met by this company. The Spanish authorities proposed applying the same criterion after 2005. The Spanish authorities considered that the maintenance of strategic production close to the power plants was a priority objective of the plan for accessing reserves.

2.5. Duration of the scheme

- (38) The aid will be available in the period 2003-2005.

2.6. Form of the aid

- (39) The aid will take the form of grants.

2.7. Beneficiaries

- (40) Production units of Spanish coal-mining companies referred to in paragraph 21.

2.8. Legal basis

- (41) Orden ministerial ECO/2731/2003, Orden ministerial ECO/768/2003, Orden ministerial ECO/180/2004 and Orden ministerial ITC/626/2005.

2.9. Energy and environmental situation in Spain

- (42) According to electricity production forecasts prepared by Spain for the period 2000-2011, the share of coal in electricity production will be reduced from 35,9 % in 2000 to 15 % in 2011. Electricity produced from natural gas will increase from 9,7 % to 33,1 % over the same period. Renewable energies will increase from 16,9 % of electricity production in 2000 to 28,4 % in 2011. Electricity generation is responsible for only 28 % of total CO₂ emissions. Spain does not consider it logical to make the link between aid given to national coal production and CO₂ emissions. The correlation should instead be between power generation and emissions. Power stations will operate as long as technically and economically viable irrespective of the fact whether the coal consumed is nationally produced or imported.

2.10. Grounds for initiating the procedure

- (43) On 30 March 2004, the Commission initiated the formal investigation procedure. The Commission expressed doubts whether the notified plan is in conformity with the conditions and criteria set out in Regulation (EC) No 1407/2002 and whether it complies with the objectives of this Regulation. The Commission considered that the plan had not been explained in sufficient detail. Therefore, in a letter of 30 March 2004 the Commission asked the Spanish authorities:

- (a) To submit the total amount of the estimated coal production per coal year and the estimated amount of aid for the reduction of activity per coal year as required by Article 9(4) of Regulation (EC) No 1407/2002.
- (b) To clarify the selection criteria to be met by the production units in order to be included in the

plan for accessing coal reserves and to submit the total amounts of the estimated coal production per coal year and the estimated amount of aid for accessing coal reserves as required by Article 9(6) of Regulation (EC) No 1407/2002.

- (c) To clarify whether the aid for the reduction of activity per coal year as required by Article 9(4) of Regulation (EC) No 1407/2002 should be as a minimum the aid that Spain intended to grant to the companies/production units referred to in paragraph 18 of Commission Decision 2002/826/ECSC 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 (7).
- (d) To submit all the available information on the application of the principle of degressivity of aid and to answer the questions of whether competitiveness factors such as the evolution of the production costs would be taken into account and whether the inclusion of the production unit in a closure plan would be considered a factor for higher reduction of aid.
- (e) To clarify whether production units amounting to a capacity of 1 660 000 tonnes will be closed before 31 December 2005.
- (f) To clarify whether the production units Antracitas de Gillon, ENDESA (underground) and ENCASUR (underground) received operating aid in 2003; to report whether the aid received by these production units from 1998 to 2002 to cover exceptional costs under Article 5 of Decision No 3632/93/ECSC did not exceed such costs; to clarify whether, in the event the aid exceeded the costs, Spain would recover the difference.
- (g) To submit the total amount of the aid to Hunosa in 2003, 2004 and 2005, taking into account the reductions of production costs notified by the company.
- (h) To clarify the maximum number of jobs at Hunosa that are necessary for workers with a specific technical background.
- (i) To explain in detail the amendments to the Ministerial Order ECO/2771/2003 to guarantee the correct application of Article 7 of Regulation (EC) No 1407/2002, and to confirm that only production units notified under the terms of Decision 2002/871/EC will be eligible for aid.

(7) OJ L 296, 30.10.2002, p. 73.

3. COMMENTS FROM SPAIN

- (44) The comments sent by the Spanish authorities after the Commission opened the procedure are the following. Third parties did not submit comments of Regulation (EC) No 1407/2002.

3.1. Aid for the reduction of activity (Article 4 of Regulation (EC) No 1407/2002) and aid for accessing coal reserves (Article 5(3) of the aforementioned Regulation)

- (45) The Spanish authorities submitted reports of the aid paid in 2003 and 2004 and the payment forecast for 2005, which classify the aid according to whether it was granted under Articles 4 and 5 of Regulation (EC) No 1407/2002. The aid granted and to be granted to Hunosa is classified according to whether it is financed out of the State general budgets or SEPI⁽⁸⁾.

3.1.1. Production in the period 2003-2005

- (46) The production trend resulting from the production capacity closures which the industry undertook to carry out is as follows:

	(Kilotonnes)				
	2001	2002	2003	2004	2005
Production	13 993	13 372	12 576	12 400	12 000

3.1.2. Criteria

- (47) The Spanish authorities submitted the criteria which have been used when categorising production units as aid beneficiaries under Article 4 or Article 5(3) of Regulation (EC) No 1407/2002. As the main criterion, the cost of production per ton coal equivalent (tce) was fixed, and the following were established as secondary criteria:

- (a) existence of a market, i.e. there should be an operating power station within a 100 kilometre radius;
- (b) solvency of the undertaking which owns the production unit; in this regard, there should be a minimum proportion between the undertaking's capital and liabilities.

- (48) Finally, the social and regional conditions in the area where the production unit is located must be taken into consideration. The Spanish government feels that these social and regional criteria cannot be ignored. However, it is willing to consider any terms which the Commission might suggest.

⁽⁸⁾ Sociedad Estatal de Economía y Hacienda, created in 1996 under the responsibility of the Ministry for Economic Affairs and Finance.

- (49) The definition of 'production unit' has been checked with those undertakings which have the largest production capacity and which might therefore have more than one production unit. Up until now, except in respect of Hunosa, analysis of the aid was carried out at undertaking level and underground coal workings were calculated together with opencast workings.

3.1.3. Aid for the reduction of activity

- (50) The Spanish authorities explained that, as may be seen from the report, all the undertakings which in 2002 were classified as being in receipt of aid under Article 4 of Decision No 3632/93/ECSC are currently classified as undertakings receiving aid under Article 4 of Regulation (EC) No 1407/2002.

3.1.4. Degression of aid

- (51) The Spanish authorities have explained that, until the end of 2005, aid reduction should be global and at a rate of 4 % per year.

3.2. Aid to cover exceptional costs

- (52) The Spanish authorities have informed the Commission that Order ECO/2731/2003 has been amended in order to bring it into line with the requirements of Article 7 of Regulation (EC) No 1407/2002. The order will only apply to production units which actually close before 31 December 2005 and it will not be applied to closure programmes which expire after that date. Furthermore, the compensation of EUR 13 per 1 000 therms for coal contracts cancelled as a result of closure of the production unit which supplied the fuel has been fixed as the maximum aid to provide financial support for the types of cost contained in Annex to Regulation (EC) No 1407/2002. Only duly substantiated actual costs of closure will be paid for.

3.3. Previous Commission decisions

3.3.1. Closures until 31 December 2005

- (53) The Spanish Government will comply with paragraph 18 of Decision 2002/826/ECSC by definitively closing production capacity of 1 660 000 tonnes at the undertakings mentioned in the aforementioned paragraph by 31 December 2005. Some of those undertakings already began to reduce production capacities in 2002.

3.3.2. Production units which received aid to cover exceptional costs of closure

- (54) As stated in the 2003, 2004 and 2005 aid reports, the aid granted in 2003 to Antracitas de Gillón, ENCASUR, ENDESA and PMC (before closure in 2004) and that planned for 2004 and 2005 is aid for reduction of activity. The aid granted to provide financial support

for exceptional closure costs between 1998 and 2002 to ENDESA and ENCASUR was justified at the time as aid to cover differences between general early retirement payments and the 100 % paid by those undertakings. The Spanish authorities provided letters of commitment to confirm the closure of the production units committed for closure by the undertakings at the end of 2005.

3.4. The Hunosa plan

3.4.1. Observations on the HUNOSA restructuring effort

- (55) The Spanish authorities provided details of the significant level of restructuring undertaken in recent years and the degree of compliance with the 2002-2005 plan. The plan involves the closure of two production units, which entails a reduction of 700 000 tonnes in terms of extraction capacity.

3.4.2. Aid granted to HUNOSA in 2003-2005

- (56) The Spanish authorities explained that the volume of restructuring aid will be kept strictly within the limits of the costs arising from the outsourcing of social obligations and provided the appropriate explanations.
- (57) The apparent contradiction between the significant effort made in reduction of costs and the less significant depression in production aid basically arose from changes in revenues as a result of international prices for imported coal and the US dollar/euro exchange rate. The Spanish authorities provided detailed information with regard to the calculations of the revenues and explained why the revenues are in general lower than the international price of imported coal.
- (58) The Spanish authorities also provided detailed explanations on aid to cover exceptional costs arising from the restructuring process.

3.4.3. Information on the recruitment of specialist technical staff

- (59) The Spanish authorities pointed out that hiring of such staff is strictly subject to the need to cover essential posts, particularly for safety reasons. However, it should be noted that so far, during the first 2 years of implementation of the plan, no new recruitment has taken place. Nevertheless the Spanish authorities have, as a precautionary measure, put forward as a maximum estimated number of such recruitments no more than 100 employees.

4. ASSESSMENT OF THE AID

4.1. Application of Article 87(1) of the Treaty

- (60) To determine whether the scheme's measures constitute aid within the meaning of Article 87(1) of the Treaty, it

must be determined whether the measures are granted by Member States or through state resources, whether they favour certain undertakings, whether they distort or threaten to distort competition and whether they are liable to affect trade between Member States.

- (61) The first condition of Article 87 refers to aid granted by States or through state resources. In this particular case, the existence of state resources is demonstrated by the fact that the measure is effectively financed by the public budget of the State and to a lesser extent, by SEPI, a publicly owned company fully controlled by the State.
- (62) The second condition of Article 87(1) relates to the possibility of the measures favouring specific beneficiaries. It needs to be determined, firstly, whether the beneficiary companies derive an economic benefit and, secondly, whether this benefit is granted to a specific type of company. The aid clearly provides economic benefits for coalmining companies in that there is a direct subsidisation which covers current expenses that these companies would normally have to bear themselves. These expenses consist of the difference between the production costs and the foreseeable revenue plus the costs arising from the restructuring, and the coalmining companies benefit from the fact that they are partly compensated for these costs. Moreover, the measures in question are aimed solely at coalmining companies in Spain. They therefore favour certain companies over their competitors, i.e. they are selective.
- (63) Pursuant to the third and fourth conditions of Article 87(1), the aid must not distort or threaten to distort competition or affect or be liable to affect trade between Member States. In the case in hand, the measures do threaten to distort competition as they reinforce the financial position and scope for action of the beneficiary companies compared with their non-beneficiary competitors. Even if intra-Community trade in coal is very limited and the companies in question do not export, companies established in other Member States have less scope for exporting their products to the Spanish market.
- (64) For these reasons, the measures in question fall within the scope of Article 87(1) of the Treaty and may be considered compatible with the common market only if they meet the conditions for qualifying for one of the derogations provided for in the Treaty.

4.2. Application of Regulation (EC) No 1407/2002

- (65) Given that the ECSC Treaty and Decision No 3632/1993/ECSC both expired on 23 July 2002 and having regard to Article 87(3)(e) of the Treaty, the compatibility of the notified measures has to be assessed on the basis of Regulation (EC) No 1407/2002.

- (66) Regulation (EC) No 1407/2002 lays down the rules for the granting of State aid to the coal industry with the aim of contributing to the restructuring of the industry. These rules take account of the social and regional aspects of the sector's restructuring and the need for maintaining a minimum quantity of coal production to guarantee access to coal reserves. The process of restructuring of the coal industry must be continued, given the competitive imbalance between Community coal and imported coal.
- (67) In accordance with the principle of proportionality, the production of subsidised coal must be limited to what is strictly necessary to make an effective contribution to the objective of security of supply of energy. In this context the Commission refers also to its Communication 'A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development', also known as the Gothenburg Sustainable Development Strategy, which aims to 'limit climate change and increase the use of clean energy' ⁽⁹⁾.
- (68) Member States may, in accordance with Article 4 of Regulation (EC) No 1407/2002, grant aid for the reduction of activity. One of the conditions that have to be fulfilled is that the operation of the production units concerned shall form part of a closure plan.
- (69) Member States may, in accordance with Article 5(3) of Regulation (EC) No 1407/2002, grant production aid to an undertaking, intended specifically for production units or to a group of production units. One of the conditions that have to be fulfilled is that the operation of the production units concerned or of the group of the group of production units in the same undertaking forms part of a plan for accessing coal reserves.
- (70) Member States may, in accordance with Article 7 of Regulation (EC) No 1407/2002, grant aid to cover exceptional costs arising from the rationalisation and restructuring of the coal industry that are not related to current production, provided that the amount paid does not exceed such costs. The categories of costs resulting from the rationalisation and restructuring of the coal industry are defined in the Annex to the Regulation.
- (71) In its letter of 30 March 2004 the Commission expressed its doubts as to whether the notified restructuring plan was in conformity with the conditions and criteria set out in Regulation (EC) No 1407/2002 and whether it complied with the objectives of this Regulation. The Commission considered that it needed a more detailed plan. Following this letter Spain provided the Commission on several occasions with detailed information concerning the restructuring plan. On the basis of this new information the Commission will hereinafter assess the restructuring plan and the aid for the years 2003, 2004 and 2005 granted on the basis of the restructuring plan.

4.3. Previous Commission decisions

- (72) In its letter of 30 March 2004 the Commission considered that the Spanish authorities had not clearly stated that the conditions laid down in previous Commission decisions, in particular Decision 2002/826/ECSC, which have been taken on the basis of the ECSC Treaty, would be respected. This Decision authorises the granting of aid on condition that the production units in question are included in a closure plan and that by 2005 they reduce the production capacity by 1 660 000 tonnes. Spain has to respect these conditions. The fact that the ECSC Treaty has expired and Regulation (EC) No 1407/2002 has entered into force does not affect commitments made in the past. These commitments have to be fully respected and the Commission has to ensure the fulfilment of the conditions laid down in decisions taken on the basis of the ECSC Treaty.
- (73) The previous closure/activity-reduction plan based on Decision No 3632/93/ECSC was approved by Decision 2002/826/ECSC. On several occasions, in several letters to the Commission, the Spanish authorities have accepted that past commitments must be fully respected and have explicitly confirmed that the decisions on the closure of the production units listed in paragraph 18 of Decision 2002/826/ECSC will be implemented in accordance with the rules in force. This means the closure, by 2005 at the latest, of a production capacity of 1 660 000 tonnes. Based on the information provided by the Spanish authorities, the Commission has been able to check that the reduction of this production capacity has indeed been achieved.
- (74) The Commission considers that the production units that have reduced their production capacity are the same as those already included in the closure/activity-reduction plan based on Decision No 3632/93/ECSC. These are the production units which are mentioned in paragraph 18 of Decision 2002/826/ECSC.
- (75) According to the previous Spanish closure/activity-reduction plan, the production units Antracitas de Gillon SA, ENDESA underground and ENCASUR underground should have been closed by the end of 2002. However, in 2003 and partially in 2004, these production units were still operating.
- (76) Following several requests by the Commission, the underground units of ENDESA and ENCASUR and the production unit of Antracitas de Gillon were closed down. The opencast production unit of Promotora de Minas de Carbon was also closed, on 31 March 2004. The Commission has received letters of commitment confirming the closure of the production units committed for closure by these undertakings in 2005.

⁽⁹⁾ COM(2001)264 final, p. 11.

- (77) On the basis of the information provided by Spain, the Commission has verified that the aid granted to these companies under Article 5 of Decision No 3632/93/ECSC in order to cover the exceptional costs of closure of these production units does not exceed the costs.
- (78) Since the required reduction of production capacity has been achieved by the production units listed in paragraph 18 of Decision 2002/826/ECSC and since the production units that were supposed to close down according to that Decision, have finally been closed down, the Commission concludes that Spain has respected the previous Commission decisions.

4.4. Aid for reduction of activity (Article 4) of Regulation (EC) No 1407/2002 and aid for accessing coal reserves (Article 5(3) of the Regulation)

- (79) In its letter of 30 March 2004 the Commission stated that the Spanish authorities had notified the overall amount of operating aid to be granted. However, the Spanish authorities have neither notified the total amount of aid to the reduction of activity as referred to in Article 4 of Regulation (EC) No 1407/2002 nor the total amount of aid for accessing coal reserves as referred to in Article 5(3) of that Regulation. In addition the Spanish authorities did not shed any light on the criteria to be fulfilled by the production units in order to be able to apply for aid.
- (80) Another of the Commission's doubts concerned the fact that the Spanish authorities had not defined the total production capacity that should be closed neither by 31 December 2005 or by 31 December 2007 as a result of the closure plan, as required by Articles 4(a) and 9(4) of Regulation (EC) No 1407/2002 as one of the conditions to be fulfilled in order to qualify for aid to the reduction of activity. The estimated amount of aid can only be granted if the total reduction of capacity is notified.
- (81) With respect to the production capacity and minimum production level to guarantee access to coal resources, in its letter to Spain of 30 March 2004, the Commission considered that the justification did not seem to comply with the purpose of Article 1 of Regulation (EC) No 1407/2002. The plan for accessing coal reserves and aid for accession coal reserves should be justified on the grounds of the need to maintain a minimum quantity of coal production to guarantee access to reserves. The social and regional aspects of the restructuring of the sector can only be used as justification for the closure plan and for the aid for the reduction of activity.
- (82) The Spanish authorities have provided information concerning the costs of production units. For each company, except Hunosa, Spain has defined the underground workings and related infrastructure of each

company as a single underground production unit, and followed a similar approach with regard to opencast workings. The application of Regulation (EC) No 1407/2002 is based on the concept of 'production unit'. On 30 March 2004 the Commission expressed doubts as to whether this information was detailed enough in view of the conditions laid down in Article 9 of Regulation (EC) No 1407/2002.

4.4.1. Distinction between aid for the reduction of activity and aid for accessing coal reserves

- (83) Following the opening of the procedure, Spain has classified the aid according to whether it was granted under Articles 4 or 5(3) of Regulation (EC) No 1407/2002. During the period 2003-2005, the following production units received aid under Article 4: Antracitas de Gillon S.A., Coto Minera Jove S.A., the underground production unit of Endesa, the underground production unit of Encasur, González y Díez S.A., Industria y Comercial Minera S.A. (INCOMISA), Mina Escobal S.L., Mina la Camocha, Minas de Valdeloso S.L., Promotora de Minas de Carbón S.A. and Virgilio Riesco S.A. Mina Escobal S.L. closed down in 2004 and Promotora de Minas de Carbón S.A. closed down in 2005. Other production units that received aid for the reduction of activity are the two production units of the publicly owned coal-mining company Hunosa that have been closed down, i.e. Pumarabule and Figaredo. Other production units received aid for accessing coal reserves. These production units are mentioned in paragraph 21.
- (84) On the basis of the latest information received, the Commission therefore comes to the conclusion that the Spanish authorities have correctly divided the production aid in aid for the reduction of activity and aid for accessing coal reserves. In addition, the Spanish authorities have confirmed that the condition laid down in Article 4(a) of Regulation (EC) No 1407/2002, which states that production units that receive aid for the reduction of activity will close down by 2007 at the latest, will be fulfilled.
- 4.4.2. Criteria to be applied*
- (85) The Commission takes note of the fact that concerning the criteria for eligibility for production aid, the Spanish authorities have informed the Commission that the main criterion that they will apply is the cost of production per tce. This criterion is in line with Article 5 of Regulation (EC) No 1407/2002, as it can be considered as a clear indication that the aid will be granted to the units with the best economic prospects.
- (86) As supplementary criteria, the Spanish authorities apply the criterion of the existence of a market, i.e. that there should be a functioning power station within a 100 km radius, and the solvency of the undertaking which owns the production unit. In this regard, a minimum proportion between the undertaking's capital and total liabilities could be required. The latter criterion will

contribute to the granting of aid to the units with the best economic prospects. The former has to be used purely as a supplementary criterion. Because of considerations of security of energy supply and also for financial reasons, as there is a link with the transport costs, the location can be taken into account, but must not be the main factor to be taken into consideration. Overall, the Commission considers that the criteria being applied by the Spanish authorities are in line with Regulation (EC) No 1407/2002.

(87) Based on the information provided by the Spanish authorities, the Commission has checked the definition of 'production unit' as used in the restructuring plan. In the past, Spain carried out the analysis of the aid at undertaking level, and underground coal workings were calculated together with opencast workings. Spain has now changed this analysis and it checked the aid per production unit as defined in Regulation (EC) No 1407/2002. Furthermore, in this respect, Spain has provided the Commission in this respect with the information required by Decision 2002/871/EC. Therefore, the Commission considers that the definition of 'production unit' which Spain has used in its restructuring plan is in accordance with the Regulation.

(88) The Commission takes note of the fact that the restructuring plan will result in a production capacity of 12 million tonnes. In view of the overall energy situation in Spain, in particular the intention of the Spanish authorities to reduce the share of coal in electricity production from 35,9 % to 15 % in 2011, the reduction of capacity to 12 million tonnes appears to be an appropriate measure which will help to reach that target. Therefore, this level of production capacity, to be achieved by the end of 2005, can be considered as a strategic reserve in accordance with Regulation (EC) No 1407/2002. Consequently, the production units that fall under the part of the restructuring plan that concerns access to coal reserves are presumably eligible for aid for accessing coal reserves, provided that the conditions in Article 4 and 5 of the Regulation are fulfilled.

(89) Furthermore, the main criterion and the cornerstone of the Regulation, that the aid has to be digressive, has been complied with. The aid, granted under Articles 4 and 5 of Regulation (EC) No 1407/2002, has been reduced by 4 % annually. The Commission considers that such a reduction can be accepted. The Commission has taken into account that the Spanish authorities have announced that it is intended to continue reducing the aid by 4 % annually for the years 2006 and 2007.

(90) In view of the above, the Commission considers that the Spanish authorities have sufficiently clarified the criteria applicable to the production units for them to be eligible either for aid for the reduction of activity or aid for

accessing coal reserves. These criteria are in accordance with Regulation (EC) No 1407/2002, in particular with Articles 4(a) and 9(6)(a) thereof.

(91) In this respect, the Commission would remind the Spanish authorities that the social and regional situation cannot be taken into account when deciding on the strategic reserve to be maintained. Social and region conditions can only be taken into account when applying the conditions linked to the granting of aid for the reduction of activity and aid to cover the exceptional costs of the restructuring process.

4.4.3. Calculation of the revenues

(92) The Spanish authorities have provided detailed information on coal prices. In the additional information provided by the Spanish government, it was explained that the State aid paid by the Spanish government was in fact the difference between the production costs and the average sales price of Spanish coal, which was lower than the average price of coal imported from third countries. This is mainly due to the lower quality of Spanish coal and to a lesser extent also to the fact that the prices are determined in long-term contracts while the price of imported coal is a spot price of coal on a given day.

(93) The Spanish authorities have explained that in practice the influence of the variation between the international price and the price of national coal is delayed by approximately 9 months. On the other hand, the quality of the coal appears to be substantially lower than that of the coal being traded on the international market. This results in a much lower price for national coal. The price paid differs per power plant, because coal mined at different units differs in quality. For example, the calorific value of coal can vary between 7 % and 35 % depending on the site where it has been extracted.

(94) In general Spanish coal is of inferior quality, because of high ash and water contents and/or due to a low volatile content. There is no world market for low-quality coal, as all coal-producing countries use their low-quality coal close to the mining site. The use of these types of coal in power plants generates higher investment and maintenance costs for the power plant owners, as not only do they have to install special burners, which are more expensive to maintain and use, but the efficiency of these power plants is also lower than the efficiency of plants using normal coal.

(95) The Spanish authorities have explained that it is not economically viable to improve the quality of the coal so much that it would become comparable to imported coal, as the production process would become much more expensive and less competitive.

- (96) Since 1998, the selling price of coal has been determined via direct negotiations between the coal-producing production units and the coal-fired power plants, without any intervention by the administration. The administration can intervene only in case of serious conflicts. As evidence of the price paid to the coalmining companies, the Spanish authorities have provided the contracts between some electricity companies that have power plants fuelled with coal. The calculation of the price of coal includes a formula with regard to the quality of coal in which, among others factors, content of volatile materials, ash, moisture and sulphur and the calorific value are taken into account.
- (97) Coal prices in Spain are based on long-term contracts between the coalmining companies and their clients. The contracts currently in force are valid up to 31 December 2005. Prices are based on the following parameters:
- Prices CIF⁽¹⁰⁾ in US dollars for each period of coal imports from third countries to the EU, expressed in US dollars/tce and published by the EU.
 - The exchange rate between the US dollar and the euro in the same period in order to establish the price CIF in US dollars in its equivalent in euro. The dollar/euro exchange rate rose from 0,8955 in 2001 to 1,25 in 2005.
 - In order to determine the price at the power plant, the costs of transport between port and power plant is deducted from the resulting price in euro since the CIF price is the price to be paid for delivery in ports.
 - Finally, a quality correction, which is explained below, is applied.
- (98) Spain calculates the average prices for imports of hard coal to Spain. The calculation of these average import prices is based on statistic data provided by coal-importing companies in Spain and coal exporting companies from third countries.
- (99) In order for this system to function properly, it is crucial that the prices calculated for hard coal do indeed reflect the world market price for coal. In order to verify this, the Commission compared this price to the MCIS Steam Coal Marker Prices, which is the standard reference index for the spot market prices for coal.
- (100) The Spanish authorities explained the differences between the MCIS Steam Coal Marker Price and the average price as calculated by them by pointing out that the former is based solely on the contracts concluded on a given day in the spot market, whereas the price calculated by the authorities is based on all the contracts that are in force on a given day, including long-term contracts. As a result, the Spanish price tends to be lower than the spot price in periods of increasing spot prices and higher than the spot market price in periods of decreasing spot market prices. The long-term average of the two indices is roughly equal: for the years 1996 to 2004, the average MCIS Steam Coal Marker Price was 43,3 euro/tce. The Commission thus considers that the Spanish calculation of the price of hard coal does indeed accurately reflect the world market price for steam coal.
- (101) Based on the above-mentioned parameters, in 2001 the average price was EUR 45,85 and the forecast for 2005 was EUR 36. Revenues in 2001 were exceptionally high, mainly due to the gross accounting of some exceptional and atypical revenues for that year. As a consequence, a reduction of 20 % in production costs has not resulted in an equal reduction of the total amount of production aid to be granted for the period 2003-2005.
- (102) The total aid is established after presentation by each production unit of its audit report, which contains the figures of the production costs and the revenues. When afterwards at the end of a coal year it appears that the difference between production costs and revenues has been lower than forecasted, the total amount of aid will be reduced and the excessive aid will have to be reimbursed.
- (103) In the light of the foregoing, the Commission considers that Spain has explained in a detailed way how the revenues of the coalmining companies have been calculated. The information provided has convinced the Commission that the right prices of coal have been used in the calculation of the revenues. On the basis of the information provided, in particular the contracts between power plants and coalmining companies, the Commission has come to the conclusion that Article 4(b) and (c) of Regulation (EC) No 1407/2002 have been respected in the sense that the production aid has not exceeded the difference between the production costs and the revenue for the respective years and the aid will not cause the prices of Community coal delivered to be lower than those for coal of a similar quality from third countries. The Commission will monitor closely to ensure that in the new contracts to be negotiated between power plants and coal-mining companies from 1 January 2006, the currently high world market price of coal will be duly taken into account in the calculation. Finally, the Commission notes that the conditions laid down in Article 4(d) and (e) have also been respected.

4.5. Aid to cover exceptional costs (Article 7 of Regulation (EC) No 1407/2002)

- (104) In its letter of 30 March 2004, the Commission considered that the Spanish authorities had not clarified the criteria to be taken into account when granting aid on the basis of Article 7 of Regulation (EC) No 1407/2002 to cover exceptional costs that are not

⁽¹⁰⁾ Cost, insurance and freight.

related to current production (inherited liabilities). By letter of 3 October 2003 Spain notified the Commission that these aids would be granted exclusively to production units which were to close in the period 2003-2005 and that the amount of aid would not exceed the costs. However, Ministerial Order ECO/2731/2003 of 24 September 2003 did not explicitly contain these conditions. The aforementioned Order did not contain sufficient guarantees to ensure that the aid to cover the costs of the closure of production units would not exceed these costs and that the production units concerned would be closed before 31 December 2005. The Commission considered that the criteria laid down by Spain to calculate the aid to cover the costs of closure of production units, based on the reduction of the provisioning of coal as laid down in the contracts with the power plants and on aid of EUR 13 for each thousand therms reduced, was not a sufficient guarantee for compliance with the conditions of Article 7 of Regulation (EC) No 1407/2002. The Commission also noted that the amounts of aid based on this Article seemed to be very high and the question arose whether the proposed aid in this respect was not too high in relation to the intensity of the restructuring process.

(105) On the basis of the newly received information, the Commission notes that Ministerial Order ECO/2731/2003 has been amended in order to bring it into line with the requirements of Article 7 of Regulation (EC) No 1407/2002. Now the order only applies to production units which close before 31 December 2005. Concerning the compensation of EUR 13 per thousand therms for coal contracts cancelled as a result of closure of the production units, the order has made it clear that that amount is a maximum and that only duly substantiated actual costs of closure will be paid for. In this respect, the Spanish authorities have declared that over 2004 they have granted less aid. Concerning 2004, the aid to cover exceptional costs actually granted amounted to EUR 518 986 instead of the forecasted EUR 555 227.

(106) The Commission considers that Spain has given a sufficient explanation of the exceptional costs linked to the restructuring process to be covered. Spain has specified the amounts to be granted per category as mentioned in the Annex to Regulation (EC) No 1407/2002. Therefore, the Commission has been able to check that the amounts, which are mainly linked to pre-retirement schemes, do not exceed the costs and the aid to cover the exceptional costs of the restructuring can be approved. Seen against the background of the reduction in workforce, the closure of mining capacity and the digressive trend of granting of production aid, the information provided by the Spanish authorities has convinced the Commission that the costs to be covered are not too high in relation to the intensity of the restructuring process. In the following chapter, a separate assessment will be made of the aid to cover the exceptional costs of the restructuring process granted to the publicly owned company Hunosa.

4.6. Hunosa plan

(107) With regard to Hunosa the Commission underlined in its letter of 30 March 2004 that this company formed part of the closure plan that was based on Decision No 3632/93/ECSC. Due to social and regional reasons, however, the closure would take place after 2002. The production costs of this company are very high compared with those of other coalmining companies in the Community. The Commission considered that the reduction in workforce and in production were below the European average. The Plan provides for the closure of two of the nine production units. In its letter of 3 October 2003, Spain announced a further reduction in production costs of 20 % amounting to a 25 % reduction of aid in 2005. The reduction of production costs announced by Spain in its letter of 3 October 2003 would result in a further reduction of aid to Hunosa of EUR 179 460 750 in 2005.

(108) In its letter of 30 March 2004, the Commission considered that the proposal to reserve 30 % of the coal consumption (equivalent to approximately 100 days of consumption) for the power plants in the region, might be considered as incompatible with the common market with regard to Hunosa.

4.6.1. The restructuring process of Hunosa

(109) The Spanish authorities have confirmed their intention of continuing the restructuring process of Hunosa in line with Regulation (EC) No 1407/2002 in order to reduce significantly the aid amounts, the production capacity and the workforce as required. These restructuring measures have to be assessed against the background of the social and regional importance of Hunosa in the Autonomous Community of Asturias.

(110) The Spanish authorities have provided the Commission with detailed information concerning the restructuring process of Hunosa, the costs and revenues, the prospects and the amounts of aid to be granted.

(111) The plan contains the following elements:

- reduction of the workforce by 33,6 %;
- reduction of the production capacity by 25 % and the closure of two production units; Pumarabule and Figaredo (a reduction of 700 000 tonnes);
- closing of a washery;
- increase of productivity by 21,4 %;
- reduction of production by 26,1 %;
- reduction of the production costs by 20 %;

- reduction of total aid by 25 % during the period 2003-2005, compared to a reduction of 12 % in the 4 previous years.
- (112) Since 1986, the date of accession of Spain to the Community, the data concerning the restructuring process are as follows:
- 71,9 % reduction in the workforce of the companies Hunosa and Minas de Figaredo, from 21 911 workers in 1986 to 6 151 in 2001;
 - 47,3 % reduction in production capacity with regard to underground mines;
 - 53,3 % reduction in production;
 - 40 % reduction of the total amount of production aid since 1992 in current terms and 56 % in constant value;
- (113) During the period 1998-2004, the aid to Hunosa was reduced by 32 % (adjusted value), which is above average in the Spanish mining sector, where the overall reduction was 25,7 %. Since 1992, the total amounts of aid to Hunosa have been reduced by 54 % in adjusted value and 69 % in constant value.
- (114) Furthermore, it appears that the Spanish authorities have continued the restructuring process of Hunosa beyond the restructuring plan for 2003-2005. In 2003, the production aid actually granted was EUR 264 480 000, while that forecast was EUR 271 593 000, which means an additional reduction of 2,6 %. The aid to cover exceptional costs of restructuring amounted to EUR 240 689 000, while the forecast was EUR 302 557 000, which means a reduction of 20,4 %.
- (115) With regard to the year 2004, production fell to 1 070 000 million tonnes, which is a further reduction of 20 % with respect to the plan. By the end of 2004, the number of workers had fallen to 4 137. The total amount of production aid actually granted in 2004 was EUR 254 682, instead of the forecasted EUR 247 483, a further reduction of 2,8 %.
- (116) At the end of 2005, a workforce of 3 500 is expected. This is a reduction of 14 %, which goes beyond the plan.
- (117) The fact that the production costs for Hunosa are so high is mainly due to the physical characteristics of the mines. The density of coal is very low, so for mining a large area has to be covered which requires a high level of infrastructure. Because of this low density, which is also irregular, mechanisation is difficult. Moreover, the restructuring process, in particular the significant reduction of the workforce and the large number of workers being retired early does not contribute to the optimisation of production costs. Nevertheless, Hunosa has achieved a reduction in production costs by improving management and focusing production in the units where mechanisation and technical mining were easiest to achieve with the lowest costs. Thanks to the use of other tools, the mechanisation and computerisation currently under way and the modernisation of installations and production processes, productivity has improved. This approach will lead to a further reduction of production costs in the future.
- (118) The Commission however notes that the 20 % reduction in production costs during the period 2001-2005 has not resulted in a 20 % reduction in production aid. According to the Spanish authorities, this is due to the differences in revenue between 2001 and 2005. In 2001 the average revenue was much higher than the average revenue in 2005, which was EUR 37/tec.
- (119) The Spanish authorities have provided detailed explanations with regard to these revenues of Hunosa. The price is established in long-term contracts, to a large extent freely negotiated between Hunosa and its clients, in a liberalised market.
- (120) On the basis of the newly-received information, the Commission considers that the apparent contradiction between the significant efforts made to reduce costs and the less significant degression in production aid basically arose from changes in income as a result of international prices for imported coal and the dollar/euro exchange rate. As explained in Chapter 4.4.3 on the calculation of the revenues, the revenues for the period 2003-2005 were lower than for 2001. Based on the information provided in this respect by the Spanish authorities, in particular in the contracts between Hunosa and the five power plants that are fuelled with coal from Hunosa, the Commission has been able to check that the right figures have been used in the calculation of Hunosa's revenues.
- 4.6.2. *Aid to Hunosa for reduction of activity*
- (121) The aid granted in the past for the reduction of activity concerns the production units of Hunosa that have been closed. In this respect, the Commission considers that, also as regards Hunosa, previous Commission decisions have been respected.
- 4.6.3. *Aid to Hunosa for accessing coal reserves*
- (122) The Hunosa Plan provides for the closure of the Pumarabule and Figaredo mines, which means an irreversible reduction of capacity by 700 000 tonnes. The Commission understands that the other production plans can be assumed to form part of the plan for accessing coal reserves. However, the Spanish authorities

have indicated that this might be subject to changes in the period after 2005. The Commission can accept this view, because this leaves a margin for a further reduction in the total amounts of aid granted in the years after 2005.

- (123) In order to explain why the production of Hunosa forms part of the plan for accessing coal reserves, the Spanish authorities refer to the accessibility of the reserves from a technical viewpoint, the demand of the power plants located nearby, the quality of the coal and the needs of power plants equipped with technical installations suited to the quality of the coal produced at Hunosa. The Commission notes that Spain has abandoned the criterion of a 100-day supply for the nearest power plant. As explained by the Spanish authorities, this was merely a hypothetical example and was never meant to be used as a criterion. However, the fact that it is an example does not detract from the fact that the Spanish authorities have taken the decision that Hunosa's reserves should cover a certain percentage of the demand of the power plants located in the same area. In view of the flexibility of this criterion, the Commission notes that the Spanish authorities can be expected not to infringe the free movement of goods.

- (124) Following the reasoning of the Spanish authorities, the Commission considers that the production of approximately 1 million tonnes in 2005 can be considered to form part of the strategic reserve of coal production the Spanish authorities would like to maintain. The Commission agrees with the Spanish analysis that the 2003-2005 Hunosa Plan constitutes a transitional but essential means of determining at a later stage the production units which will be included in the new plan for the period 2006-2010 concerning accessing coal reserves. In view of the significant reduction of both production and amount of aid, the plan is in accordance with the conditions laid down in Regulation (EC) No 1407/2002 and constitutes a useful basis for continuing the restructuring process. As Hunosa's reserves are needed to achieve a total coal production of 12 million tonnes in 2005, the Commission can accept that the reserves from Hunosa will, during the period 2003-2005, form part of the plan for accessing coal reserves. However, the Commission reminds the Spanish authorities that the plan for accessing coal reserves, in particular Hunosa's place in this plan in view of its high production costs, will have to be reviewed for the period 2006-2010. Hunosa's production and possible subsidies will have to be reduced substantially during this period.

4.6.4. Aid to cover exceptional costs of the restructuring process to Hunosa

- (125) The Spanish authorities have provided detailed information concerning the aid to cover the exceptional costs of the restructuring process, referred to Article 7 of Regulation (EC) No 1407/2002, and have broken down the costs into technical and social costs as shown in the table below.

(EUR thousand)

	2003	2004	2005
Safety work, costs related to the rehabilitation of former coal mining sites	11 684	11 984	13 766
Exceptional intrinsic depreciation	9 514	10 902	22 905
Total technical costs	21 198	22 886	36 638
Costs of pre-retirement	277 969	273 019	247 300
Indemnities	3 005	2 705	2 404
Supply of coal	385	373	361
Total social costs	281 359	276 097	250 065
Total	302 557	298 983	286 203

- (126) Hunosa's forecasts concerning pre-retirements for the period 2002-2005 are for 2 622 workers with a cost of approximately EUR 417 000 each. These costs can vary, as has been shown with regard to the year 2003. The aid actually granted was 20 % less than that forecasted.
- (127) In accordance with Article 1 of Regulation (EC) No 1407/2002, the Commission has taken account of the fact that in the affected area, Hunosa provides 20 % of direct employment and that it is difficult to create alternative employment as 18 000 jobs have already been created since 1986. Hunosa is economically and socially very important for the Autonomous Community of Asturias. The Commission understands that Spain needs time to develop other alternative economic activities in the region.
- (128) On the basis of the information provided by the Spanish authorities, the Commission considers that this aid fulfils the conditions of Article 7 of Regulation (EC) No 1407/2002. The aid covers the measures mentioned in the Annex to the Regulation and does not exceed the costs.

4.6.5. Hiring new employees

- (129) According to the information provided by Spain, it appears that in the period 2003-2005 no new recruitment of miners took place. The Commission is satisfied with this approach and reminds the Spanish authorities that this is an important factor when assessing the compatibility of the restructuring measures, both now and in the future.

4.6.6. Conclusion on Hunosa's restructuring plan

- (130) The Commission considers that Hunosa has made significant efforts to restructure and that, in this stage, in view of its social and regional importance, it would not be reasonable to ask for stricter measures. Therefore, the Commission concludes that the restructuring plan for Hunosa is in accordance with the purpose and provisions of Regulation (EC) No 1407/2002. The aid was granted with a view to contributing to the restructuring process and took account of the social and regional aspects of Hunosa's position in the Autonomous Community of Asturias. The doubts expressed by the Commission when the procedure was opened, in particular concerning the calculation of the amounts of aid granted and the criteria to be taken into account, were dispelled by the Spanish authorities, since the authorities provided additional detailed information and took additional restructuring measures which go beyond the restructuring plan initially notified. However, the Commission would remind the Spanish authorities that Hunosa's position in the light of the new restructuring measures and the plan for accessing coal reserves for the period 2006-2010 should be reconsidered and that new restructuring measures are necessary.

4.7. General assessment of 2003-2005 restructuring plan

- (131) The restructuring plan contains the elements of the plan for accessing coal reserves referred to in Article 9(6) of Regulation (EC) No 1407/2002 and the closure plan referred to in Article 9(4) of that Regulation. The Commission can therefore take a favourable decision on the proposed plans pursuant to Article 10(1) of the Regulation. At the same time, on the basis of Article 10(2) of the Regulation, the Commission can take decisions on the annual aid which the Spanish authorities have granted or intend to grant to the coal industry for the years 2003, 2004 and 2005. When deciding on the conformity of this aid, the Commission has to take into account the conditions and criteria set out in Articles 4 to 8 and the compliance with the objectives of this Regulation.
- (132) The Commission considers that, in accordance with the restructuring measures notified by Spain, the reduction in State aid will lead to a further permanent reduction in coal production. In accordance with Article 6 of Regulation (EC) No 1407/2002, the overall amount of aid is following a downward trend and does not exceed, for any year after 2003, the amount of aid authorised by the Commission for the year 2001. Regarding the access to coal reserves, as laid down in Article 5(3) of the Regulation, Spain proposes that, in 2005, access to coal reserves should be guaranteed with a total capacity of 12 million tce. To achieve this goal, the production capacity has been reduced by 1 600 000 tonnes.
- (133) Although the average production costs in the Spanish coal industry have fallen slightly, production costs

remain very high. Even though world market prices have risen, the unfavourable economic position of Spanish coal compared to imported coal will not significantly change over the coming years.

- (134) The Commission considers that the data submitted and framework outlined for 2006 and 2007 constitute a good approach containing all the necessary conditions. Spain has guaranteed that it will continue to reduce both production and the total amount of aid for these years at the same pace as for the years 2003-2005. The Commission therefore accepts the current level and relevance of the information provided by Spain for 2006 and 2007. The detailed data concerning the total volume of aid in accordance with Articles 4 and 5 of Regulation (EC) No 1407/2002 for the period from 2006 to 2007 will be submitted by Spain at a later stage, together with the restructuring measures for the period up to 2010. The Commission considers that this timetable is justified in view of the social and regional implications of the closure of the production units, taking into account the fact that Spain has explicitly stated that it will meet the condition that the aid must also follow a downward trend in the period after 2005. This last element is crucial to the Commission's assessment, since the ultimate purpose of the framework established by the aforementioned Regulation is to guarantee a final significant reduction of the aid granted to the coal industry.
- (135) Spain has chosen to continue the system of granting aid used in the past. On the one hand, the restructuring measures are in the interest of the security of supply of energy and on the other hand these measures allow a continuation of the restructuring process. The notified amount of the aid is necessary, because it ensures access to coal reserves and the reduction of the coal-mining activity, which is considered essential. Without aid, production would have to be stopped in Spain as coal mining is not competitive.
- (136) The Commission considers that the estimated volume of production capacity, fixed at 12 million tce for 2005 in Spanish energy supply, can be justified in the light of its security of supply policy and its overall energy policy. In this assessment, the Commission has taken account of the fact that Spain will increase the percentage of renewable energies in its energy mix for the period up to 2010.
- (137) Given that the restructuring measures notified will have important consequences for the job market, in assessing the plan the Commission has taken into account the need to minimise, as far as possible, the social and regional effects of the restructuring of the Spanish coal industry.

- (138) On the basis of the notification, the Commission considers that the planning for the Spanish coal industry is based on the following objectives: degressivity of the financial aid required, reduction of production and production costs, ensuring supplies to customers of appropriate quality and in good time, a socially acceptable reduction in employment and consideration of the regional effect of the measures.
- (139) The Commission therefore concludes that the Spanish restructuring plan for 2003-2005 is detailed and offers a good approach, with the necessary conditions in place, for 2006 and 2007. In addition, the plan offers an accurate overview of the role of coal in energy policy and environmental policy in the context of the supply of primary energy until 2010.
- (140) In the light of the above and taking into account that measures have been taken which go beyond the restructuring plan as initially notified, the Commission takes the view that the plan submitted by Spain is compatible with the objectives and criteria of Regulation (EC) No 1407/2002, in particular with the criteria laid down in Article 9(4) and (6) thereof. As the aid for the years 2003, 2004 and 2005 has been granted or will be granted on the basis of and in line with the restructuring plan, the Commission concludes on the basis of Article 10(2) of the aforementioned Regulation that this aid has been granted in accordance with the Regulation.

5. CONCLUSION

- (141) The Commission finds that Spain has unlawfully granted State aid to the coal industry for the years 2003 and

2004 in breach of Article 88(3) of the Treaty. However, after analysing the measures and the information submitted by Spain on the basis of Article 10 of Regulation (EC) No 1407/2002, the Commission finds the restructuring plan for the coal industry for the period 2003-2005 and the State aid for the years 2003-2005 based on the restructuring plan to be compatible with the common market. Spain is therefore authorised to pay the aid,

HAS ADOPTED THIS DECISION:

Article 1

The restructuring plan for the coal industry and the State aid for the years 2003-2005 applied by Spain for the years 2003 and 2004 are compatible with the common market within the meaning of Article 87(3) of the EC Treaty. Spain is therefore hereby authorised to pay the aid.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 21 December 2005.

For the Commission

Andris PIEBALGS

Member of the Commission
