

Proposal for a Council Regulation on State aid to the coal industry

(2001/C 304 E/11)

(Text with EEA relevance)

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(Submitted by the Commission on 26 July 2001)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, in particular Articles 87(3)(e) and 89 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Consultative Committee set up in accordance with the Treaty establishing the European Coal and Steel Community,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Whereas:

- (1) The ECSC Treaty and the rules adopted for its application, in particular Decision No 3632/93/ECSC establishing Community rules for State aid to the coal industry⁽¹⁾, expire on 23 July 2002.
- (2) The European Community has become increasingly dependent on external supplies of primary energy sources. As stated in the Green Paper on a European strategy for the security of energy supply adopted by the Commission on 29 November 2000⁽²⁾, the diversification of energy sources, both by geographical areas and in products, will make it possible to create the conditions for greater security of supply. Such a strategy includes the development of indigenous sources of primary energy, more especially sources of energy used in the production of electricity.
- (3) The disappearance of Community coal is likely to have an impact on the European Union's security of energy supply. The world market in coal is currently stable and competitive, characterised by an abundance of resources and great geopolitical diversity of supply. However, certain factors which characterise the present energy situation might, if associated with total dependence on coal imported from third countries, increase the risks and uncertainty as regards the European Union's long-term security of energy supply. This concerns more particularly the important position still held by solid fuels as energy

sources, the recent trend in the prices of oil products and natural gas and the gradual exhaustion of these two energy resources, and the still marginal share of renewable energy sources in energy supply. In addition, several Member States have decided to close down their nuclear power plants gradually or to freeze investment in this sector, which makes a significant contribution to electricity generation.

- (4) It is therefore necessary, on the basis of the current energy situation, to take measures to guarantee the availability of certain Community coal producing capacity, which will help to cover any possible risks that might affect the energy market in the long term. For that purpose, a minimum quantity of coal should be produced to keep the equipment in an operating condition and to retain the professional qualifications of a nucleus of miners and technological expertise. As indicated in the Green Paper on a European strategy for the security of energy supply, such measures would make it possible to guarantee the maintenance of access to reserves.
- (5) In view of geological constraints and production costs, coal mined in the Member States is not able to compete with coal imported from third countries. The closure of coal mines might make it technically very difficult, if not impossible, to make any further use of these reserves. Strengthening the European Union's long-term security of energy supply, which underpins the general precautionary principle, therefore justifies the maintenance of a minimum coal-producing capability supported by State aid. This will ensure that equipment remains operational and that there is a potential availability of Community coal.
- (6) Minimum coal production capacities, together with other measures, in particular to promote renewable energy sources, will help to create a platform of indigenous primary energy sources that receive various forms of public support, which will significantly boost the European Union's security of energy supply. Furthermore, the creation of a platform of indigenous primary energy sources will also serve to promote environmental objectives within the framework of sustainable development.
- (7) The indigenous primary energy base referred to in this Regulation does not affect the Member States' freedom to choose what energy sources will make up their supply. Aid, and the amount of it, will be granted in accordance with the rules applying to each category of energy source and on the merits of each of the sources.

⁽¹⁾ OJ L 329, 30.12.1993, p. 12.

⁽²⁾ COM(2000) 769 final.

- (8) A minimum amount of subsidised coal will also help to maintain the prominent position of European mining and clean coal technology, enabling it in particular to be transferred to the major coal-producing areas outside the European Union. Such a policy will contribute to a significant global reduction in pollutant and greenhouse gas emissions.
- (9) 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 strengthening the security of energy supply. The aid given by Member States will therefore be limited to the production of coal where mining is part of a plan to safeguard resources in order to maintain access to reserves.
- (10) Only production units which have made significant progress in the past to improve their economic viability will remain active. State aid to help maintain access to coal reserves to ensure security of energy supply should therefore be set aside for these units. The application of these principles will help to contribute to the degression of aid to the coal industry.
- (11) The restructuring of the coal industry has major social and regional repercussions as a result of the reduction in activity. Production units which are not eligible for aid as part of the objective of ensuring security of energy supply must therefore be able to benefit, temporarily, from aid to alleviate the social and regional consequences of their closure. This aid will in particular enable the Member States to implement adequate measures for the social and economic development of the areas affected by the restructuring.
- (12) Undertakings will also be eligible for aid to cover costs which, in accordance with normal accounting practice, do not affect the cost of production. This aid is intended to cover exceptional costs, inherited liabilities in particular.
- (13) The degression of aid to the coal industry will enable the Member States, in accordance with their budgetary constraints, to reallocate the aid granted to the energy sector on the basis of the principle of a gradual transfer of aid normally given to conventional forms of energy, in particular the coal sector, to renewable energy sources. Aid for renewable energy sources will be granted in accordance with the rules and criteria set out in the Community guidelines on State aid for environmental protection⁽¹⁾.
- (14) In accomplishing its task, the Community must ensure that normal conditions of competition are established, maintained and complied with. With regard more especially to the electricity market, aid to the coal industry must not be such as to affect electricity producers' choice of sources of primary energy supply. Consequently, the prices and quantities of coal must be freely agreed between the contracting parties in the light of prevailing conditions on the world market.
- (15) The Commission's authorising power must be exercised on the basis of precise and full knowledge of the measures which governments plan to take. Member States should therefore regularly provide the Commission with a consolidated report showing the full details of the direct or indirect aid which they plan to grant to the coal industry, specifying the reasons for and scope of the proposed aid, its relationship with a plan to safeguard coal resources and, where appropriate, any activity-reduction plan submitted.
- (16) Provided that they are compatible with the present scheme, categories of aid other than those provided for may be granted, in particular the allocation to the coal industry of aid for research and development and aid for environmental protection and training. The aid must be granted in compliance with the requirements and criteria laid down by the Commission for these categories of aid.
- (17) The implementation of the provisions of this Regulation on the expiry of the ECSC Treaty and Decision No 3632/93/ECSC may give rise to difficulties for undertakings due to the fact that two aid schemes will apply during the same calendar year. It is therefore necessary to provide for a transitional period up to 31 December 2002.
- (18) The proposed State aid scheme takes account of very diverse factors which characterise the present mining industry and the Community energy market as a whole. These factors, which may change to a lesser or greater extent, some of them unexpectedly, particularly the ability of Community coal to help strengthen the European Union's security of energy supply, need to be re-evaluated during the course of the scheme in the context of sustainable development by way of a report. On the basis of this report, the Commission will present proposals to the Council which will take account of the development and long-term prospects of the scheme, in particular the social and regional aspects of the restructuring of the coal industry,

⁽¹⁾ OJ C 37, 3.2.2001, p. 3.

HAS ADOPTED THIS REGULATION:

CHAPTER 1

GENERAL PROVISIONS AND DEFINITIONS

Article 1

Aim

This Regulation lays down rules for the granting of State aid to the coal industry with the aim of contributing to the creation by the Member States of a base of indigenous primary energy sources to strengthen the security of energy supply. The rules laid down take account of the social and regional aspects of the restructuring of the coal industry.

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'coal' means high-grade, medium-grade and low-grade category A and B coal within the meaning of the International Codification System for coal laid down by the United Nations Economic Commission for Europe ⁽¹⁾;
- (b) 'indigenous base of primary energy sources' means a Member State's strategic supply of energy sources that contributes to the objective of security of energy supply within the framework of sustainable development;
- (c) 'production costs' means costs related to current production, calculated in accordance with the three-monthly outline statements of costs sent to the Commission by the associations of coal undertakings. These cover, apart from mining operations, operations for the dressing of coal, in particular washing, sizing, and sorting, and the costs of transport to the place of use. Furthermore, the Commission includes normal depreciation and actual interest charges on borrowed capital in its calculation of production costs;
- (d) 'current production losses' means the positive difference between the cost of producing coal and the delivered selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market;
- (e) 'subsidised coal production' means the quantity of coal, expressed in tonnes coal equivalent, whose production-related costs are covered by aid.

Article 3

Aid

1. Aid to the coal industry may be considered compatible with the proper functioning of the common market only if it complies with the provisions of Chapter 2, without prejudice

⁽¹⁾ International system for the codification of medium-grade and high-grade coal (1998); International classification of coal in seam (1998) and International system of codification for low-grade coal (1999).

to State aid schemes, concerning research and technological development, the environment and training.

2. Aid covers only costs in connection with coal for the production of electricity, the combined production of heat and electricity, the production of coke and the fuelling of blast furnaces in the steel industry where such use takes place in the Community.

CHAPTER 2

CATEGORIES OF AID

Article 4

Aid to safeguard resources

- 1. Aid to production units may be declared to be compatible with the common market where their operation forms part of a plan to safeguard coal resources which provides for measures to maintain access to these reserves.
- 2. Aid to safeguard resources is intended to cover current production losses. It may be considered compatible with the common market only if it satisfies the following conditions:
 - (a) the aid notified per tonne coal equivalent shall not exceed, for each production unit, the difference between production costs and the foreseeable revenue for a coal year. The aid actually paid shall be subject to annual correction, based on the actual costs and revenue, at the latest by the end of the coal production year following the year for which the aid was granted;
 - (b) the amount of operating aid per tonne coal equivalent may not cause delivered prices for Community coal to be lower than those for coal of a similar quality from third countries;
 - (c) aid must not lead to any distortion of competition between coal buyers and users in the Community.

Article 5

Aid for the reduction of activity

Aid intended to cover the current production losses of production units whose operation does not form part of a plan to safeguard oil resources, as under Article 4(1), may be considered compatible with the common market provided that it satisfies the conditions laid down in Article 4(2) and that the production units concerned are the subject of a closure plan with a deadline of no later than 31 December 2007.

Article 6

Degression of aid

1. Aid to the coal industry granted in accordance with Article 4 shall be reduced in a continuous and significant manner.

2. Aid for the reduce of activity granted in accordance with Article 5 shall be reduced in a continuous and significant manner. No aid for the reduction of activity may be granted beyond 31 December 2007.

Article 7

Aid to cover exceptional costs

1. State aid granted to undertakings which carry out or have carried out an activity in connection with coal production to enable them to cover the costs arising from or having arisen from the rationalisation and restructuring of the coal industry that are not related to current production (inherited liabilities) may be considered compatible with the common market provided that the amount paid does not exceed such costs. Such aid may be used to cover:

- (a) the costs incurred only by undertakings which are carrying out or have carried out restructuring,
- (b) the costs incurred by several undertakings.

2. The categories of costs resulting from the rationalisation and restructuring of the coal industry are defined in the Annex.

Article 8

Common provisions

1. The authorised amount of aid granted in accordance with any provision of this Regulation shall be calculated taking account of the aid granted for the same purposes, in whatever form, by virtue of any other national resource.

2. All aid received by undertakings shall be shown in the profit-and-loss accounts as a separate item of revenue distinct from turnover. Where an undertaking receiving aid granted pursuant to this Regulation is engaged not only in mining but also in another economic activity, the funds granted shall be the subject of separate accounts and managed in such a way that there is no possibility of their being transferred to the other activity concerned.

CHAPTER 3

NOTIFICATION, APPRAISAL AND AUTHORISATION PROCEDURES

Article 9

Notification

1. In addition to the provisions of Article 88 of the Treaty and Council Regulation (EC) No 659/1999 ⁽¹⁾, aid as referred to in this Regulation shall be subject to the special rules laid down in paragraphs 2 to 9.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

2. Member States shall provide the Commission with all the information needed, given the objective of creating an indigenous base of primary energy sources for the purposes of security of energy supply, to justify the estimated production capacity to which access will be maintained as part of the plan to safeguard coal resources as well as the minimum production level needed to guarantee this access. In order to determine which production units will make up this production capacity, Member States shall take account of the economic prospects of the production units in question, and in particular of the level and trend of production costs.

3. Member States which intend to grant the aid as referred to in Article 4 shall beforehand submit to the Commission a plan for the safeguarding of resources providing for measures to maintain access to coal reserves. This plan shall provide for the following minimum elements:

- (a) objective selection criteria to be met by the production units in order to be included in the plan to safeguard the Member State's oil resources,
- (b) identification of production units meeting such selection criteria,
- (c) the real or estimated production costs for each production unit per coal year,
- (d) the estimated production capacity to which access will be maintained,
- (e) the estimated amount of aid to safeguard resources for coal year,
- (f) the respective shares of indigenous coal and renewable energy sources, and their expected upward or downward trend is, in the indigenous base of primary energy sources.

4. Member States which intend to grant aid for the reduction of activity as referred to in Article 5 shall beforehand submit to the Commission a closure plan for the production units concerned. This plan shall provide for the following minimum elements:

- (a) identification of the production units,
- (b) the real or estimated production costs for each production unit per coal year,
- (c) the estimated amount of aid for the reduction of activity per coal year.

5. As part of the notification of the plans referred to in paragraphs 3 and 4, Member States shall provide the Commission with all the information regarding reductions in greenhouse gas emissions. They shall refer in particular to reductions in emissions resulting from efforts made to use clean coal combustion technologies.

6. Member States shall inform the Commission of any amendments to the plan initially submitted in accordance with paragraph 3 and/or to the plan initially submitted in accordance with paragraph 4.

7. Member States shall send notification of all the financial support which they intend to grant to the coal industry during a coal year, specifying the nature of the support with reference to the forms of aid provided for in Articles 4, 5 and 7. They shall submit to the Commission all details relevant to the calculation of the foreseeable production costs and their relationship to the plans notified to the Commission in accordance with paragraphs 3 and/or 4.

8. Member States shall send notification of the amount and full information about the calculation of the aid actually paid during a coal year no later than six months after the end of that year. Before the end of the following coal year, they shall also declare any corrections made to the amounts originally paid.

9. When notifying aid as referred to in Articles 4, 5 and 7 and making the statement of aid actually paid, Member States shall supply all the information necessary for verification of the conditions and criteria set out in these provisions.

Article 10

Appraisal and authorisation

1. The Commission shall appraise the plan(s) notified in accordance with Article 9. The Commission shall take a decision on their conformity with the objectives and criteria set out in Articles 4 and 5 and on their compliance with the objectives of this Regulation, in accordance with the rules of procedure laid down in Regulation (EC) No 659/1999.

2. The Commission shall examine the measures notified in accordance with Article 9(7) in the light of the plans submitted in the framework of Article 9(3) and (4). It shall take a decision in accordance with the requirements of Regulation (EC) No 659/1999.

CHAPTER 4

TRANSITIONAL AND FINAL PROVISIONS

Article 11

Commission reports

1. By 31 December 2006, the Commission shall report to Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, covering in particular its experience and any problems encountered in the application of this Regulation since its entry into force.

2. It shall present a balance of the respective share of the different indigenous sources of primary energy in each Member

State. It shall evaluate the effectiveness of the indigenous base of primary energy sources, and in particular the actual contribution of indigenous coal to strengthening the European Community's long-term security of energy supply as part of a strategy of sustainable development.

3. In the light of the development of renewable sources of energy, this information will help to determine how much coal is needed in this indigenous primary energy sources base.

Article 12

Implementing measures

The Commission shall take all necessary measures for the implementation of this Regulation. It shall establish a joint framework for communication of the information which will enable it to evaluate compliance with the conditions and criteria laid down for the granting of aid.

Article 13

Review measures

1. On the basis of the report produced in accordance with Article 11, the Commission shall submit to the Council proposals for the amendment of this Regulation as regards its application to aid for the period from 1 January 2008. In keeping with the principle of a continuous and significant reduction in aid to the coal industry, as referred to in Article 6, the proposed amendments shall establish the criteria for calculating the amounts of aid which might be granted to cover current production losses during the abovementioned period.

2. The Commission shall evaluate the impact of proposals drawn up in accordance with paragraph 1 on the level of coal production likely to be subsidised. It shall put forward appropriate proposals providing, where necessary, for the measures necessary if further reductions in activity have to be considered. It shall also take account in this context of the social and regional consequences of such measures.

Article 14

Entry into force

1. This Regulation shall enter into force on 24 July 2002.

2. Aid covering costs for the period from 24 July 2002 to 31 December 2002 shall, however, be subject to the rules and principles laid down in Decision No 3632/93/ECSC.

3. It shall apply until 31 December 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

Definition of costs referred to in Article 7

1. Costs incurred only by undertakings which are carrying out or have carried out restructuring and rationalisation

Exclusively:

- (a) the cost of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age;
- (b) other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalisation;
- (c) the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalisation and to workers entitled to such payments before the restructuring;
- (d) the cost covered by the undertakings for the retraining of workers in order to help them find new jobs outside the coal industry;
- (e) the supply of free coal to workers who lose their jobs as a result of restructuring and rationalisation and to workers entitled to such supply before the restructuring;
- (f) residual costs resulting from administrative, legal or tax provisions;
- (g) additional underground safety work resulting from the closure of production units;
- (h) mining damage provided that it has been caused by production units subject to closure due to restructuring;
- (i) residual costs resting from contributions to bodies responsible for water supplies and for the removal of waste water;
- (j) other residual costs resulting from water supplies and the removal of waste water;
- (k) residual costs to cover former miners' health insurance;
- (l) exceptional intrinsic depreciation provided that it results from the closure of production units (without taking account of any revaluation which has occurred since 1 January 1986 and which exceeds the rate of inflation).

2. Costs incurred by several undertakings

- (a) increase in the contributions, outside the statutory system, to cover social-security costs as a result of the drop, following restructuring, in the number of contributors;
 - (b) expenditure, resulting from restructuring, on the supply of water and the removal of waste water;
 - (c) increase in contributions to bodies responsible for supplying water and removing waste water, provided that this increase is the result of a reduction, following restructuring, in the coal production subject to levy.
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