Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the European Parliament[(2)],

Having regard to the opinion of the Consultative Committee set up in accordance with the Treaty establishing the European Coal and Steel Community[(3)],

Having regard to the opinion of the Economic and Social Committee[(4)],

Whereas:

(1) The ECSC Treaty and the rules adopted for its application, in particular Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry[(5)], expire on 23 July 2002.

(2) The competitive imbalance between Community coal and imported coal has forced the coal industry to embark on substantial restructuring measures involving major cutbacks in activity over the past few decades.

(3) The 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, the diversification of energy sources, both by geographical area 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.

(4) In addition, the world political situation brings an entirely new dimension to the assessment of geopolitical risks and security risks in the energy sector and gives a wider meaning to the concept of security of supplies. In this connection a regular assessment must be made of the risks linked to the Union's energy supply structure.

(5) As indicated in the Green Paper on a European strategy for the security of energy supply, it is therefore necessary, on the basis of the current energy situation, to take measures which will make it possible to guarantee access to coal reserves and hence a potential availability of Community coal.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1407/2002. (See end of Document for details)*

(6) In this connection, the European Parliament adopted a Resolution on 16 October 2001 on the Commission Green Paper on a European strategy for the security of energy supply which acknowledges the importance of coal as an indigenous source of energy. The European Parliament said that provision should be made for financial support for coal production, whilst recognising the need for more efficiency in this sector and for cutting back subsidies.

(7) Strengthening the Union's energy security, which underpins the general precautionary principle, therefore justifies the maintenance of coal-producing capability supported by State aid. However implementing this objective does not put into question the need to continue the restructuring process of the coal industry given that, in the future, the bulk of Community coal production is likely to remain uncompetitive vis-à-vis imported coal.

(8) A minimum level of coal production, together with other measures, in particular to promote renewable energy sources, will help to maintain a proportion of indigenous primary energy sources, which will significantly boost the Union's energy security. Furthermore, a proportion of indigenous primary energy sources will also serve to promote environmental objectives within the framework of sustainable development.

(9) The strategic context of energy security is of an evolving nature which justifies at medium term an evaluation of this Regulation, taking into account the contributions of all indigenous primary energy sources.

(10) 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.

(11) 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 energy security. The aid given by Member States will therefore be limited to covering investment costs or current production losses where mining is part of a plan for accessing coal reserves.

(12) State aid to help maintain access to coal reserves to ensure energy security should be earmarked for production units which could contribute to this objective at satisfactory economic conditions. The application of these principles will help to contribute to the digression of aid to the coal industry.

(13) Given risks related to geological uncertainties, aid to cover initial investment cost allow production units which are viable, or close to economic viability, to implement the technical investments necessary to maintain their competitive capacity.

(14) 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 maintaining access to coal reserves 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.

(15) 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.

(16) 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[(6)].

(17) 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.

(18) A minimum level of production 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 Union. Such a policy will contribute to a significant global reduction in pollutant and greenhouse gas emissions.

(19) 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 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 for accessing coal reserves and, where appropriate, any closure plan submitted.

(20) In order to take account of the deadline set in Directive 2001/80/EC[(7)] on large combustion plants, Member States should have the possibility to notify the Commission of the individual identity of production units forming part of the closure plans or the plans for accessing coal reserves by June 2004 at the latest.

(21) Provided it is compatible with the present scheme, aid for research and development and aid for environmental protection and training may also be granted by Member States to the coal industry. The aid must be granted in compliance with the requirements and criteria laid down by the Commission for these categories of aid.

(22) 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 owing 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.

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(23) The proposed State aid scheme takes account of very diverse factors which characterise the present coal 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 Union's energy security, 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, taking into account the different categories of fossil fuels available on the territory of the Community, 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.

(24) This Regulation should enter into force as soon as possible after the expiry of the ECSC Treaty and it should be applied retroactively in order to ensure the full benefit of its provisions,

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 restructuring of the coal industry. The rules laid down herein take account of:

— the social and regional aspects of the sector's restructuring,

— the need for maintaining, as a precautionary measure, a minimum quantity of indigenous coal production to guarantee access to reserves.

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[8];

(b) ‘plan for accessing coal reserves’: plan drawn up by a Member State, providing for the production of the minimum quantity of indigenous coal necessary to guarantee access to coal reserves;

(c) ‘closure plan’: plan drawn up by a Member State providing for measures culminating in the definitive closure of coal production units;

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(d) 'initial investment costs': fixed capital costs directly related to infrastructure work or to the equipment necessary for the mining of coal resources in existing mines;

(e) 'production costs' means costs related to current production, calculated in accordance with Article 9(3). These cover, apart from mining operations, operations for the dressing of coal, in particular washing, sizing and sorting, and the transport to the delivery point;

(f) 'current production losses' means the positive difference between the coal production cost and the delivered selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

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

2 Aid shall cover 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 for the reduction of activity

Aid to an undertaking intended specifically to cover the current production losses of production units may be considered compatible with the common market only if it satisfies the following conditions:

(a) operation of the production units concerned shall form part of a closure plan whose deadline does not extend beyond 31 December 2007;

(b) the aid notified per tonne coal equivalent shall not exceed the difference between the foreseeable 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;

(c) the amount of 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;

(d) aid must not lead to any distortion of competition between coal buyers and users in the Community;