

## **CONSULTATION PAPER**

### **Consultation paper on the aftermath of the expiry of Regulation (EC) No 1407/2002 on State aid to the coal industry<sup>1</sup>**

Please note that this text is prepared as a basis for comment and does not prejudge the final form of any decision taken by the Commission.

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<sup>1</sup> OJ L205, 2.8.2002, p. 1

## Table of contents

1.	Introduction.....	3
2.	Earlier consultations and report .....	3
3.	Definition of hard coal .....	4
4.	Market context and consequences of the expiry of the Coal Regulation.....	5
5.	Recent study.....	7
6.	Policy objectives .....	7
6.1.	Objectives identified by the Coal Regulation.....	7
6.2.	Current general policy objectives .....	11
6.3.	Specific policy objective .....	12
7.	Policy options.....	12
8.	Questions to stakeholders.....	13

## 1. INTRODUCTION

1. State aid to the hard coal industry is currently governed by Council Regulation (EC) No 1407/2002 on State aid to the coal industry (the "Coal Regulation"). Aid granted by coal-subsidizing Member States under the Coal Regulation can be broadly divided into 3 categories:
  - (a) **Aid for accessing coal reserves:** aid for ongoing activities (e.g. operating aid to cover current production losses (Article 5(3)), and investment aid for accessing reserves on any scale (Article 5(2));
  - (b) **Aid for reduction of mining activity:** aid for ongoing activity for mines that are under a closure plan (Article 4); this possibility already expired at the end of 2007.
  - (c) **Aid to cover exceptional costs:** aid to cover exceptional costs of restructuring and decommissioning, as well as of inherited social and environmental liabilities of closed mines (Article 7).
2. The Coal Regulation is set to expire on 31<sup>st</sup> December 2010. From that date, in the absence of new sector-specific rules, State support to the hard coal industry shall be governed by the general EC Treaty rules on State aid.
3. The Coal Regulation does not require the Commission to carry out an assessment of the need to prolong some of its provisions beyond 2010. It is based on the principle of aid digression or reduction. In most coal-producing Member States, the necessary measures have already been implemented.
4. However, according to information currently available, a limited number of Member States where restructurings are expected to be still ongoing after 2010 would consider it necessary to be able to grant sector-specific State aid to their coal-mining sectors beyond that date. In this context, the Commission services have decided to undertake a stakeholders' consultation in order to be able to reach a comprehensive view on the reasons which may militate for maintaining or adopting sector-specific State aid rules for the coal mining industry for the period starting at the expiry of the Coal Regulation. It should be borne in mind that such sector-specific State aid rules should not be maintained or established beyond 2010 in the absence of good reasons related to objectives of common interest for the EU.

## 2. EARLIER CONSULTATIONS AND REPORT

5. In 2006, the Commission carried out a public consultation on the application of Regulation 1407/2002 in order to prepare the report required by Article 11 of the same Regulation. The Commission received contributions from 11 stakeholders. The questionnaire and a summary of the replies can be found on the Commission's website<sup>2</sup>.

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<sup>2</sup> [http://ec.europa.eu/energy/coal/consultations/2006\\_04\\_15\\_en.htm](http://ec.europa.eu/energy/coal/consultations/2006_04_15_en.htm)

6. The Commission Report on the Application of Council Regulation (EC) No 1407/2002 on State Aid to the Coal Industry was adopted on 21<sup>st</sup> May 2007. This document can also be found on the Commission's website<sup>3</sup>.
7. With regard to the possible need to amend the Coal Regulation, the 2007 Commission Report first examined developments on the coal market and overall energy security. The report showed that there was a higher level of awareness of the importance of energy security in 2007 than there was in 2003 when the Coal Regulation was adopted. However, the problems concern mainly oil and natural gas. With respect to coal, the report noted that the world market seemed to function efficiently. The report concluded that the security of European coal imports was not considerably different in 2007 from 2003.
8. When examining the social and regional consequences of mining, the 2007 Report concluded that a prolongation of article 4 (closure aid) of the Regulation was not necessary because as far as the period 2008-2010 was concerned, all State aid necessary for carrying out the mine closures until 2010 could be approved under Articles 5 (access to reserves) and 7 (inherited liabilities).
9. The 2007 Report concluded that it was not necessary to propose amendments to the Coal Regulation.

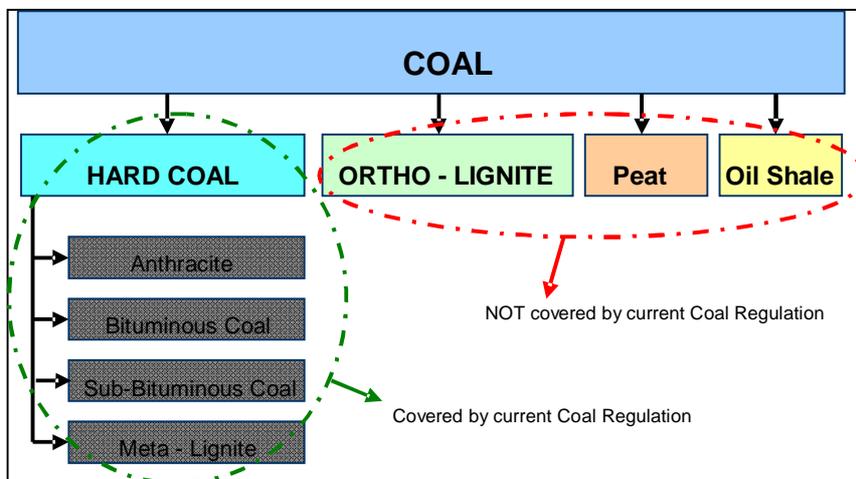
### 3. DEFINITION OF HARD COAL

10. In the context of the Coal Regulation, the following definitions are used<sup>4</sup>:
  - **Coal:** broad definition only used when general reference, i.e. to the European coal sector, is made that includes all types of coal.
  - **Hard Coal:** whenever possible, hard coal is further sub-divided into anthracite, bituminous coal, sub-bituminous coal and meta-lignite. All these types of hard coal are covered under the current Regulation.
  - **Ortho-Lignite:** This quality of lignite is not covered under the current Regulation. Therefore, it is important to distinguish between this C-grade coal and meta-lignite, which is still covered by the Regulation as Hard Coal.
  - **Peat and Oil Shale:** If applicable, the terms “peat” and “oil shale” are used to refer to these specific sub-types of coal.
11. Hence, the Regulation only applies to hard coal as shown in the following picture. Only hard coal is subject of the present consultation.

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<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2007) 253 final, 21.5.2007, see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0253:EN:NOT>

<sup>4</sup> According to Article 2(a) of the Coal Regulation, 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".



Source: ECORYS.

#### 4. MARKET CONTEXT AND CONSEQUENCES OF THE EXPIRY OF THE COAL REGULATION

12. The EU presently accounts for approximately 288 million tonnes of coal equivalent (Mtce) of coal production, of which 122 Mtce is hard coal. Poland and Germany are by far the largest coal producers in the EU; together they account for about one third of all coal presently produced in the EU. Coal, in all its forms, is typically used either for electricity generation, for heat generation or for steel production and other industrial processes. Hard coal currently accounts for 15% of primary energy consumption.
13. Out of the 10 hard coal-producing Member States, 6 countries are giving at least some form of State aid under the Coal Regulation until 2010: mainly **Germany** and **Spain**, and to a lesser extent also **Hungary**, **Poland**, **Romania** and **Slovakia** (Slovenia only provides aid to already closed mines). When taking account of all types of aids<sup>5</sup>, subsidized hard coal represents 68% of the total hard coal produced in the EU. When taking account of operational aid only, subsidized coal accounts for 19% of the EU hard coal production.
14. According to a recent study<sup>6</sup>, some Member States are facing very high production costs compared to current and projected world market prices (under different scenarios). The hard coal production of these countries is likely to remain uncompetitive in future years and would only survive with continued State support beyond 2010.
15. The Coal Regulation expires on 31 December 2010. Absent a new legal framework based on Article 87 (3) (e) of the Treaty, allowing for certain specific types of State aid to the coal industry, Member States could grant aid only within the limits foreseen by general State aid rules applicable to all sectors.

<sup>5</sup> Operational aid (aid to cover production losses), investment aid and aid to cover exceptional losses.

<sup>6</sup> An evaluation of the needs for State aid to the coal industry, Ecorys, December 2008, study prepared for the European Commission

16. Compared to the present regime, this reduces the possibilities for State aid to the coal industry:

- **Operating aid** to accompany the process of closure of undertakings has been foreseen in other sectors such as shipbuilding<sup>7</sup> or the steel industry<sup>8</sup>, but it is strictly limited. Even if it cannot be excluded that similar measures could be declared compatible in the coal sector on the basis of Art. 87(3)(c) of the Treaty (via the adoption of common rules on such measures), it must be noted that these possibilities are much more restrictive than what is currently allowed under the Coal Regulation<sup>9</sup>.
- **Investment aid** could only be authorized in regions which are eligible under the Regional Aid Guidelines<sup>10</sup>. Investment aid refers to the setting-up of a new establishment, the extension of an existing establishment, the diversification of the output of an establishment into new, additional products, or a fundamental change in the overall production process of an existing establishment. Replacement investments are excluded<sup>11</sup>. It follows that not all investments in existing mines would be eligible. Hence, the possibilities offered by general State aid rules are significantly more restrictive than under the Coal Regulation.
- As far as the State aid for **inherited liabilities** is concerned, aid for the rehabilitation of former mining sites could in certain circumstances be eligible under the Environmental Aid Guidelines<sup>12</sup>, insofar as "*the person responsible for the pollution is not identified or cannot be made to bear the costs*"<sup>13</sup>. Certain aid for social inherited liabilities could perhaps be declared compatible on the basis of Art. 87(3)(c) (via the adoption of common rules on such measures), taking account of similar measures existing for the steel and shipbuilding sectors; this concerns payments to workers made redundant or accepting early retirement, the costs of counselling services to workers made redundant or retired before the legal retirement age and costs for vocational training<sup>14</sup>. Furthermore, aid for the retraining of former coal miners could up to a certain extent be authorized based

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<sup>7</sup> Framework on aid to shipbuilding, OJ C317, 30.12.2003, p. 11, see §3.3.2 (closure aid)

<sup>8</sup> Communication from the Commission: Rescue and restructuring aid for the steel sector, OJ C70, 19.3.2002, p. 21, see § 2.2

<sup>9</sup> Operating aid for coal mines during several years (as under the Coal Regulation) will most probably not be possible under general State aid rules.

<sup>10</sup> Guidelines on National Regional Aid for 2007-2013, OJ C54, 4.3.2006, p.13

<sup>11</sup> This has been confirmed by the Commission decision in the case C 57/2007 (ex-N 843/2006) – Slovakia – OJ L248, 17.9.2008, p. 19.

<sup>12</sup> Community Guidelines on State aid for Environmental Protection, OJ C82, 1.4.2008, p.1

<sup>13</sup> According to the Guidelines on rescue and restructuring aid, in certain sectors, restructuring aid may be allowed in the case of closure of a company. This concerns aid to alleviate the social costs of restructuring and the environmental aid to clean up polluted sites which might otherwise be abandoned. However, the coal sector is excluded from this measure. Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C244, 1.10.2004, p.2 (see §42).

<sup>14</sup> Framework on aid to shipbuilding (see footnote 7), §17, and Rescue and restructuring aid for the steel sector (see footnote 8), §2.1.

on the rules for training aid in the GBER<sup>15</sup>. These possibilities are far more restrictive than the types of aid allowed under the Coal Regulation<sup>16</sup>.

## 5. RECENT STUDY

17. A recent study carried out by Ecorys<sup>17</sup> for the Commission has assessed the application of general State aid rules to the concerned Member States. The general outcome of the study is that public service obligations and the regional aid guidelines offer the most possibilities of supporting the European hard coal industry after the expiry of the Coal Regulation. Depending on country specifics, these options can cover quite a substantial proportion of the production. The other above-mentioned State aid possibilities only could make a marginal difference, when applied in conjunction with the previous two ones, mainly in terms of easing some of the potential negative regional economic and social impacts expected from mine closures. Still, general State aid rules are not a substitute for the current Coal Regulation and will not allow the continuation of all the subsidies that are now covered by the Coal Regulation.
18. In terms of policy options for the future, the Ecorys study does not recommend a continuation of the present Coal Regulation, but rather favours applying a mix of general State aid options combined with coal-specific rules on exceptional costs. It must be emphasized that the study only expresses the opinion of the consultant undertaking the study. The views have not been adopted or in any way approved by the Commission and should not be relied upon as a statement of the Commission's views.

## 6. POLICY OBJECTIVES

### 6.1. Objectives identified by the Coal Regulation

19. According to Article 1 of the Coal Regulation, it mainly aims to contribute to the restructuring of the coal industry by taking account of the social and regional aspects of the sector's restructuring and of the security of energy supply ("*maintaining, as a precautionary measure, a minimum quantity of indigenous coal production to guarantee access to reserves*").

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<sup>15</sup> Commission Regulation (EC) No 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation), OJ L214, 9.8.2008, p. 3

<sup>16</sup> Note that when Member States pay for inherited liabilities, these payments might not constitute State aid if the concerned companies have ceased all economic activities and may not resume such activities (for example in the context of a liquidation process) and thus do no longer qualify as undertakings (the Commission has come to such a conclusion in the decision it took in case N 261/2007 – Bulgaria – *Support to coal sector*). Furthermore, if the State finances social or environmental programmes in coal mining areas, no State aid is involved if such programmes fall outside the scope of the social and environmental liabilities of undertakings. For example, the State may finance training programmes for former miners which the coal mining company is not legally bound to finance.

<sup>17</sup> See footnote 6

20. The Regulation's recitals refer to the security of supply, the improvement of the competitiveness of the Coal industry through restructuring and increased efficiency, the increase in social and regional cohesion and to the coal industry's support to the competitiveness of the European mining and clean coal technologies.

*Security of supply*

21. Member States use a diversity of different fuels, where the most significant are oil and gas. For most coal-subsidizing Member States (except for Poland and to some extent Germany), subsidized coal is almost exclusively used for electricity generation:

Member State	Use of Subsidised Hard Coal as % of Total (Source : Ecorys)		
	Electricity generation	Steel and other industry	Heat generation
Germany	9%	22%	-
Hungary	3,6%	-	-
Romania	7%	-	-
Slovakia	22%	-	N/A
Spain	13,6%	-	-
Poland <sup>18</sup>	42,5 %	>90%	-

22. As far as electricity production is concerned, most Member States use a diverse range of fuels in the process of electricity production. Hard coal represents 18% of the EU electricity production (2006 figures), of which 42% is produced in the EU. As 68% of the EU hard coal production receives some form of State aid under the Coal Regulation, subsidized coal serves for only 5.1% of the electricity production in the EU. When taking account only of aid to cover production losses, this figure reduces to 1.4%.
23. This low and declining percentage raises doubts on whether the security of supply still justifies a specific instrument such as the Coal Regulation.
24. The world coal market has shown greater stability than the markets for other energy sources. There seem to be no particular tensions as regards the supply of coal that would deter EU power generators from investing in coal-fired power plants. Very recent changes related to the quickly increasing demand from Asia and the

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<sup>18</sup> It should be noted that Poland does not provide operating aid per se. Polish mining companies are currently able to produce competitive coal, apparently because their additional costs for closed mines are covered by State aid for inherited liabilities. In the table above, all the production of the companies receiving aid for inherited liabilities is considered "subsidized coal". In addition, it is important to note that only four Member States have decided to maintain operating aid schemes for their coal mining industry until 2010: Romania, Germany, Hungary and Spain (Slovakia provides investment aid and aid for inherited liabilities).

modification of the geographical origin of EU coal imports seem not (yet) to affect this view. Even if this were so, in view of the low proportion of electricity generated from subsidized coal, it is doubtful whether an additional instrument would be needed to address security of supply concerns.

25. It would be useful to verify in how far power stations using coal from nearby coal mines can easily switch from local coal to imported coal or whether there are transport-related issues that hinder a quick switch-over.

*Restructuring, increased efficiency and social and regional cohesion*

26. The recitals of the Coal Regulation explicitly refer to the need for restructuring and increased efficiency in the coal sector, but at the same time emphasize the "*major social and regional consequences as a result of the reduction in activity*" (recital 14). Therefore the Regulation foresees closure aid that allows closing mines "*to benefit, temporarily, from aid to alleviate the social and regional consequences of their closure*". The Regulation also allows coal mines to receive aid "*intended to cover exceptional costs, inherited liabilities in particular*."

27. The Regulation confirmed the temporary character of closure aid by allowing the possibility given under Article 4 only until 2007. Still, even afterwards, some Member States provided operating aid to closing mines, but then under Article 5 of the Regulation.

28. One could argue that the Regulation established a level-playing field by fixing the same deadline for the whole of the EU coal mining industry and that a prolongation of specific aid measures for the latecomers would be unfair towards the national coal mining sectors which were restructured within the timeframe set by the Coal Regulation. A continuation of a specific aid regime may go against the legitimate expectations of both industry and Member States which no longer see any need for sector-specific operating aid. But even then, social and regional considerations remain important. As some EU coal mines still remain in operation while being uncompetitive, the restructuring of the sector is not fully completed. In this context, it is useful to assess whether the existing instruments – such as training aid or possible closure aid under Article 87(3)(c) similar to those allowed for the steel and shipbuilding sectors – are adequate and sufficient for the coal mining sector.

*Environmental aspects*

29. Coal mining and the use of coal as energy source have a considerable environmental impact. The following main categories of impact can be distinguished:
- Visual and biodiversity impact on the landscape
  - Impact on ground water and soil subsidence in underground mining areas
  - Impact through mining waste
  - Emissions of greenhouse gases during the production, the transport and the burning of coal

- Emissions of pollutants (other than greenhouse gases) linked to the burning of coal

30. It follows that a reduction of coal mining has a positive environmental impact. But a reduction of coal subsidies does not necessarily lead to a reduction of coal use. A study carried out by *Europe Economics*<sup>19</sup> has shown that State aid to the coal industry influences only the sourcing of coal, i.e. the decision to buy domestically produced coal or to buy imported coal. The study has found no indication that State aid to the Coal industry would affect the overall fuel mix, i.e. the share of coal in electricity production. The environmental impact of a reduction in coal subsidies remains uncertain as regards emissions of pollutants. It is difficult to know in advance what kind of imported coal will replace the subsidised domestic coal. Depending on the method of mining (deep or open cast), depending on the transport distance, and depending on the mining technology used, the emissions of greenhouse gases and of pollutants of imported coal may vary considerably.
31. Recital 16 of the Coal Regulation mentions environmental aspects by referring to the transfer of resources from aid for coal mining to aid for renewable energy sources (in line with the Environmental Aid Guidelines). This is particularly of significance when a plan to close coal mines foresees in the (partial) replacement by renewable energy sources as the subsidies would then contribute to positive environmental effects.
32. The closure of the mines themselves has also environmental aspects, mainly in the form of liabilities generated during the mine exploitation. This concerns rehabilitation and restoration measures such as remediation and re-cultivation of mining sites, the recovery of machines from below the surface, the securing of mining shafts, clearing and pumping of ground water, etc. State aid could be needed to carry out these tasks. In any case, it must be assessed in how far such subsidies, whenever they fall within the scope of Article 87 (1)<sup>20</sup>, can be compatible with the Environmental Aid Guidelines<sup>21</sup>.

The latter mainly refer to the "polluter pays" principle, according to which the polluter should pay all the costs of its pollution. But a coal mining company that is closing down some of its mines (e.g. in the context of a gradual close-down) may be financially incapable of bearing these costs. This raises the question whether the existing instruments under general State aid rules are adequate and sufficient in such circumstances.

#### *European mining and clean coal technologies*

33. The study carried out by *Europe Economics* also shows that the existence of a European coal industry creates spill-over effects for other sectors of the economy, such as the producers of mining equipment and the producers of environmental

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<sup>19</sup> Evaluation of State aid for the coal industry, a report by Europe Economics and Fraunhofer ISI with BSR Sustainability and the Krakow Institute for Sustainable Energy, October 2006

<sup>20</sup> Payment for inherited liabilities by the public authorities to a coal mining company normally does not involve State aid if the latter company has ceased all economic activities and cannot resume such activities, for instance because it is undergoing a liquidation process.

<sup>21</sup> See footnote 12.

technologies which are needed for securing the mine and during the clean up of the mine. Industry associations consider it important to have a domestic "test bed" for mining equipment, and that a complete closure of all domestic mines might harm the industry.

34. The question arises whether the expiry of the Coal Regulation may entail the closure of mines that are useful to these sectors and whether it would be justified to allow State aid that keeps at least part of these mines in life in view of their spill-over effects for other sectors or whether there are alternative ways for these industries to compensate for the possible loss of the spill-over effects.

## 6.2. Current general policy objectives

35. The broader, horizontal objectives of the Commission with regard to State aid and to coal can be derived from the Strategic Energy Review - as endorsed by the European Council and the Council of Ministers -, the State Aid Action Plan and the Environment Action Programme:

- In its second **Strategic Energy Review**<sup>22</sup>, adopted in November 2008, the Commission underlines the importance of indigenous energy sources for the security of energy supply. It cites "*making the best use of the EU's indigenous energy resources*" as one of the five priorities of its action plan. In this context, the Commission explains that coal "*remains an essential component of Europe's domestic energy supply and an important alternative to oil and gas*". The Strategic Energy Review mainly promotes the development of renewable indigenous energy sources and considers that the use of coal in the longer run is only compatible with the climate challenge if highly-efficient plants predominate and carbon capture and storage (CCS) is widely available.
- The **Council (TTE)**<sup>23</sup> in its conclusions of 19 February 2009 and the **European Council** of 19/20 March 2009 endorse the Strategic Energy Review and recall "*the need to make best use of its own energy resources, including renewables, fossil fuels and, in countries which choose to do so, nuclear energy*" (emphasis added). The Council further stated that it is necessary to ensure the environmentally compatible development of the EU's indigenous fossil fuel resources.
- The general policy objectives for State aid have been defined by the Commission in its "**State aid action plan**"<sup>24</sup>. The Commission considers that the main objective of State aid control is to ensure a level playing field, which is a prerequisite for the efficient functioning of a market-based economy.<sup>25</sup> It then recognises that under certain circumstances, State aid might be justified, especially when it restores a level playing field by correcting a market failure or when it improves equity by

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<sup>22</sup> Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions, Second Strategic Energy Review, An EU Energy Security and Solidarity Action Plan, 13.11.2008, COM(2008) 781 final

<sup>23</sup> Transport, Telecommunications and Energy

<sup>24</sup> COM(2005) 107 final, available on-line under [http://ec.europa.eu/comm/competition/state\\_aid/others/action\\_plan/saap\\_en.pdf](http://ec.europa.eu/comm/competition/state_aid/others/action_plan/saap_en.pdf).

<sup>25</sup> *Ibidem*, points 6 and 7.

increasing social or regional cohesion. The State aid action plan favours a move towards horizontal State aid rules and away from sector-specific rules where possible.

- In the sixth **Environment Action Programme 2002-2012**<sup>26</sup>, the Commission cites among the objectives "*undertaking as soon as possible an inventory and review of subsidies that counteract an efficient and sustainable use of energy with a view to gradually phasing them out*" and "*encouraging renewable and lower carbon fossil fuels for power generation*". This follows an objective to phase out subsidies to fossil fuel production and consumption by 2010 as set in the **Strategy for Sustainable Development**<sup>27</sup>.

36. In summary, while the Commission wishes to apply horizontal State aid rules in as many sectors as possible and with regard to energy policy favours a move towards renewable energy sources and an environmentally sustainable use of indigenous energy sources, it also recognizes the importance of making the best use of domestic energy resources, including fossil fuels.

### **6.3. Specific policy objective**

37. It follows that indefinite State support for coal mining is not in line with the Commission's broad policy objectives, especially when it counteracts efforts to raise competitiveness or to move to renewable energy sources. But at the same time, the closure of uncompetitive mines may have consequences on a social, environmental and economic level which need to be addressed.

38. The specific policy objective which the present consultation addresses is therefore to minimize the possible adverse effects of mine closures that may follow a phasing-out of subsidies, especially with regard to their social and environmental aspects.

## **7. POLICY OPTIONS**

39. The Commission intends to assess the necessity of sector-specific rules with regard to the three specific categories of aid in the Coal Regulation:

### *(1) Investment aid*

As investment aid is only possible under strict conditions, the assessment should determine whether there is a particular need in the coal industry justifying State aid for investment that goes beyond the general State aid rules.

### *(2) Operating aid (closure aid)*

The assessment needs to determine whether operating aid aimed at covering current production losses could still be worth authorising when it accompanies an orderly winding-down of activities in the context of a well-defined mine closure plan (gradual phasing-out of

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<sup>26</sup> Decision No 1600/2002/EC if the European Parliament and of the Council laying down the Sixth Community Environment Action Programme, OJ L242, 10.9.2002, p.1 – see Article 5(2)

<sup>27</sup> COM(2001)264 final, 15.5.2001

operating aid over a given maximum period at the end of which the concerned mine will be closed).

(3) *Aid to cover exceptional costs (inherited social and environmental liabilities)*

The assessment will mainly refer to inherited social and environmental liabilities and whether additional possibilities going beyond cross-sector State aid rules would be needed and justified and will take account of the fact that as indicated above, State funding for social and environmental programmes does not involve State aid to coal mining companies if these programmes are not part of the social and environmental liabilities of coal mining companies, or when these companies have irreversibly ceased all economic activities.

(4) *Any combination of the previous*

A combination of the three previous options would resemble a prolongation of the current Coal Regulation. However, given the defined policy objective, it must be noted that such prolongation is an unlikely outcome of this assessment.

40. The baseline for each of the policy options is the "do nothing" scenario, i.e. the application of general State aid rules to the hard coal sector. In case the "do nothing" would be chosen for each of the above-mentioned aid categories, the Commission could still issue an information note or guidelines on the application of the general State aid rules to the hard coal sector.

## 8. QUESTIONS TO STAKEHOLDERS

41. The Commission invites all stakeholders to give comments on the following issues:

On a general level:

42. ***Q1. How do stakeholders evaluate the impact of the expiry of the Coal Regulation on the hard coal industry? Would general State aid rules be sufficient or are there sector-specific needs, related to objectives of common interest for the Community, that call for sector-specific rules beyond 2010? In how far does the hard coal sector differ from the ortho-lignite sector for which there are no specific rules?***
43. ***Q2. Are there specific objectives of common interest for the Community which may justify maintaining afloat coal mining undertakings which would not otherwise be viable due the level of their production costs or of their social and environmental liabilities?***

On a more specific level:

44. ***Q3. Is there a specific need, related to objectives of common interest for the Community, for investment aid in hard coal mining that goes beyond the possibilities offered by general State aid rules?***
45. ***Q4. Is there a specific need for operating aid in hard coal mining that goes beyond the possibilities offered by general State aid rules? Should (phasing-out) operating aid be allowed in the context of a closure plan and, if yes, why and for how long?***

*Which concerns related to objectives of common interest for the Community may justify such aid?*

46. *Q5. In how far are related industries, such as mining and clean coal technologies, sensitive to further downsizing of hard coal mining activities in the EU? In how far would they be affected by the expiry of the Coal Regulation? What are the alternatives for these industries in the case of closures of hard coal mines in the EU due to the cessation of certain types of State aid?*
47. *Q6. Do you consider that security of energy supplies may justify maintaining sector-specific types of State aid for the coal mining sector? In particular, is there a risk that EU power generators using coal may face difficulties to source coal at an affordable price if certain EU mines are closed due to the cessation of certain types of sector-specific State aid for the coal mining industry? Can power generators using subsidized coal easily switch to alternative sources of coal (whether from other EU Member States or from outside the EU)?*
48. *Q7. Is there a justification to grant coal mining undertakings derogation from the general State aid rules with regard to generated liabilities, taking into account the "polluter pays" principle? Would they cope with their environmental obligations in the absence of sector-specific State aid rules?*
49. *Q8. Can coal mining undertakings cope with their inherited social liabilities in the absence of sector-specific State aid rules?*
50. *Q9. Regarding the improvement of social and regional cohesion, would subsidies to coal industries be a cost-effective and sustainable way to create or maintain jobs?*
51. *Q10. Is State aid an appropriate instrument to deal with the social and environmental consequences of coal mine closures, in particular when it entails maintaining production activities which would not be otherwise viable? Could equivalent results with less distortions of competition be achieved if the coal mining companies were made to honour their liabilities to the extent possible and if the State financed the remaining social and environmental charges once the concerned companies have ceased all economic activities?*
52. Stakeholders are invited to provide comments in writing. They are requested to send their response by **15 July 2009** at the latest, by e-mail to:

[TREN-COAL-CONSULTATION@ec.europa.eu](mailto:TREN-COAL-CONSULTATION@ec.europa.eu)

53. The responses by stakeholders and a summary of responses will be published on the Commission's website. Therefore, responses should ***clearly indicate whether they are confidential*** and therefore cannot be published.