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EUROPEAN COMMISSION

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Proposal for a

COUNCIL REGULATION

on State aid to facilitate the closure of uncompetitive coal mines

{SEC(2010) 850}
{SEC(2010) 851}

EXPLANATORY MEMORANDUM

1. Context of the proposal

Aid to the EU hard coal industry is regulated by a sector-specific legal instrument: Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry¹ (the "Coal Regulation").

The Coal Regulation expires on 31 December 2010. In the absence of a new legal framework 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.

Compared to the Coal Regulation, the general State aid rules significantly reduce the possibilities for State aid to the coal industry, especially but not only with regard to production aid. However, some Member States are facing very high production costs compared to current and projected world market prices and therefore have an economically uncompetitive production of hard coal today and most likely in the future.

Subsidised coal has only a marginal impact on the security of energy supply on the EU level. (although at the level of individual Member states the situation varies) The small contribution of subsidised hard coal to the overall EU energy mix strongly limits the capacity of such subsidies to compensate for supply disruptions, be it in coal or in other energy sources. Subsidised coal serves for only 5.1% of the electricity production in the EU. When taking into account only the aid to cover production losses, this figure is reduced to 1.4% (even if it may be higher for individual Member States).

But as the expiry of the Coal Regulation will force some Member States to close their hard coal mines, they will have to cope with the social and regional consequences. Given the regional concentration of coal mines (e.g. Ruhrgebiet in Germany, the north-west of Spain, the Jiu Valley in Romania), the social impact of the simultaneous closure of the mines could be significant. When taking into account jobs in related industries, up to 100000 jobs may be at stake. The immediate closure of the mines that could take place after a sudden end of subsidies would overburden the regional labour markets with a flood of redundant mine workers, which cannot rapidly enough be re-employed in other industries and therefore risk becoming long-term unemployed.

With regard to the environment, it must also be considered that the closure of a mine necessitates a series of measures to rehabilitate the mining site, such as removing the mining equipment from the mine, cleaning-up the site, underground safety work, removal of waste water, etc. In case the undertaking continues mining or non-mining economic activities, State financing could constitute State aid and the other activities of the undertaking may be at risk if the undertaking had to bear these costs on its own.

The present proposal aims to offer Member States a legal framework that allows them to address more effectively the possible adverse effects of mine closures that may follow a phasing-out of subsidies, especially with regard to their social and environmental aspects, while minimising distortions of competition on the internal market.

¹ OJ L205, 2.8.2002, p.1

2. Public consultation

The Commission carried out an open internet consultation between 13 May and 15 July 2009. To this effect, the Commission services published a consultation paper on its Internet website which described the problem at hand, the policy objectives and the various policy options which stakeholders were invited to comment on. In addition, the Sectoral Social Dialogue Committee "**Extractive Industries**" was consulted in a plenary meeting on 4 June 2009.

The Commission received 60 contributions.

The social partners of the coal industry and of the mining equipment industry generally argue in favour of the continuation of the State aid categories currently allowed under the Coal Regulation. They call for at least a new EU regime on State aid for the reduction of activity as well as aid for mine closures and inherited liabilities.

Inversely, the environmental organisations do not favour a new sector-specific State aid regime for the coal sector. They argue that State aid to coal mining has a negative impact on the energy production from clean, sustainable and renewable sources and it does not provide incentives for the energy efficiency and savings. They argue that more jobs could be created in the renewable energy sector than would be lost in the coal sector.

The governments of most coal-producing Member States favour either a prolongation of the current Coal Regulation or a new Regulation allowing at least part of the aids which are currently covered. A few coal-producing Member States showed less concern, either because they already today do not grant State aid, or because they believe that general State aid rules would be sufficient to provide support to their coal industry.

3. Impact Assessment

The European Commission has assessed various policy options that address the possible adverse effects of mine closures that may follow a phasing-out of subsidies, especially with regard to their social and environmental aspects.

Option 1: the baseline scenario

Under the baseline scenario, the Commission would not propose a new sector-specific legal instrument applicable after the expiry of the Coal Regulation. Only general State aid rules would apply to the hard coal sector from 2011.

Option 2: Commission Guidelines

Under option 2, the Commission would adopt guidelines based on Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU"), which would be similar to those adopted in the shipbuilding and steel sectors and would allow Member States to grant aid limited to cover payments by coal mine undertakings to workers made redundant or accepting early retirement due to mine closures, the costs of counselling such workers and the costs of vocational retraining. It may also cover costs to finish ongoing contracts (for a maximum of 6 months) or the costs related to cancelling such contracts, whatever of both is lower. Moreover, it may cover expenditure incurred for the immediate cleaning and rehabilitation of the production sites, but could not cover the sometimes significant amounts involved in the rehabilitation of the underground as their scope and duration (sometimes even eternal) would exceed what can be authorised under Article 107(3)(c) TFEU.

Option 3: Council Regulation allowing time-limited operating aid (closure aid)

Under option 3, the Commission would propose a Council Regulation on the basis of Article 107(3)(e) TFEU. The Regulation would allow Member States to grant clearly degressive operating aid aimed at covering current production losses as long as it accompanies an orderly winding-down of activities in the context of a well-defined mine closure plan (concerning only mines already existing today). This would be a gradual phasing-out of operating aid over a maximum period of 10 years.

Option 4: Council Regulation allowing aid to cover exceptional costs (inherited social and environmental liabilities)

Under option 4, the Commission would propose a Council Regulation on the basis of Article 107(3)(e) TFEU. This Regulation would allow Member States to grant aid for the social and environmental costs linked to the closure of coal mines, such as social welfare benefits and costs related to the rehabilitation of the former coal mining sites, as defined in the Annex of the current Coal Regulation.

Option 5: the combination of options 3 and 4

Under option 5, the Commission would propose a Council Regulation on the basis of Article 107(3)(e) TFEU that allows Member States to grant both, closure aid (as in option 3) and aid to cover exceptional costs (as in option 4).

Option 6: prolongation by 10 years of the current Coal Regulation

Under option 6, the Commission would propose to the Council to prolong Council Regulation 1407/2002 - as it stands today - by a further 10 years, i.e. till the end of 2020. This would differ from option 5 by removing the conditionality with regard to the closure of the mines and the possibility to grant investment aid.

The various options have been compared under the assumption that the concerned Member States would indeed grant aid as allowed under the respective options. Sector-specific State aid rules only provide the possibility - not an obligation - for State aid; the impact assessment cannot prejudge on the decisions that Member States will take with regard to State aid.

From an **economic** point of view, option 2 seems to be preferable to the baseline scenario in terms of mitigating the direct economic impact on the most concerned regions and industries. At the same time, it is preferable to options 3 to 5 in terms of minimizing the impact on competition.

From the **social** point of view, option 5 gives the most favourable result when compared to the baseline scenario. The combination of a gradual closure of mines, allowing maximizing (early) retirement possibilities, with complementary support in terms of counseling and retraining effectively reduces the negative social impact of the mine closures in the regions concerned. Although it does not promote the creation of permanent jobs, it directly addresses the problem that the social impact of mine closures is geographically concentrated in a few regions.

From an environmental point of view, there is a lot of uncertainty. Although the immediate environment of the mines would certainly benefit from an immediate or almost immediate stop of production (options 1, 2 and 4), the picture is uncertain with regard to global

greenhouse gas emissions when the emissions from the burning of coal by electricity producers are taken into account. This uncertainty results from the high substitution rate of domestic coal by imported coal. Although this would not be a 100% substitution, the difference between the policy options would depend upon the modalities of the national policies with regard to favouring the switch to other energy sources. Finally, with regard to the local impact, we need to consider that option 5 ensures the financing of the rehabilitation of the mining sites and the gradual closure of mines allows to better taking account of preparations that need to be done well in advance of the closure.

The impact assessment concludes that there is no clear-cut objective preference for one particular policy option. Options 2 and 5 stand out as the most adequate options to attain the policy objective of cushioning the impact of the mine closures, but taking account of the different legal constraints imposed by Article 107(3) (c) and Article 107 (3) (e), namely that no operating aid can be granted under the former.

As for a simple prolongation of the current Coal Regulation (option 6), past experience with that Regulation has shown that its degressivity and the conditions attached are too weak to ensure an effective restructuring of the coal industry. On the contrary, Member States could deviate from the policy objective by simply continuing to provide production aid to uncompetitive mines without a clear commitment for closure. It follows that the same mining undertakings could still be uncompetitive at the new expiry date of the Regulation in 10 years. The underlying problem of non-competitiveness would not be solved, but just delayed.

Based on the results of the impact assessment, the Commission has decided to propose a new Council Regulation based on option 5. Indeed, mine closures will have a strong social impact concentrated on a few regions in the EU which requires an adequate transitional period. During this transitional period, operating aid will be necessary to ensure an appropriate and progressive phasing out. For the legal reasons developed below, this objective can only be achieved with a Council regulation based on Article 107(3)(e). In the context of the aftermath of the economic and financial crisis and taking into account the Commission's declared stronger focus on the social dimension of European policy making, an additional instrument for Member States to soften the social and regional impact of mine closures will contribute to enhance the social cohesion of Europe's regions.

4. Legal elements of the proposal

According to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the provision of certain goods shall be incompatible with the internal market, in so far as it affects trade between Member States, save as otherwise provided for in the Treaty.

Article 107(2) TFEU provides that certain aid is automatically compatible with the internal market. Article 107(3) TFEU lists the aid that the Commission may declare to be compatible with the internal market. Of particular interest is Article 107(3)(c) which provides for derogations for aid granted to facilitate the development of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the EU interest.

Article 107(3)(e) provides that other categories of aid compatible with the internal market may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

The Commission estimates that the type of State aid foreseen in the present proposal - especially when it comes to operating aid of a significant amount and for a long duration – goes beyond the possibilities offered by Article 107(3)(c) TFEU. Therefore, the Commission proposes to the Council to make use of Article 107(3)(e) in order to define the categories of State aid in the hard coal sector that the Commission may declare compatible with the internal market.

5. Budgetary implications

The proposal has no implications for the Community budget.

6. Detailed explanation of the proposal

The Commission proposes a sector-specific State aid regime that is to be considered as a transitory regime towards the full application of general State aid rules in the (hard) coal sector.

In addition to the possibilities offered by the general State aid rules, the proposal offers the possibility to declare two types of aid to the hard coal industry as compatible with the internal market: closure aid and aid to cover exceptional costs.

Closure aid

Closure aid is operating aid designed to cover the current production losses of production units that are planned for closure. It allows a gradual closure process of uncompetitive coal mines.

This type of aid may only be granted to coal mines in the context of a definitive closure plan. Therefore, aid is degressive and must be recovered in case the concerned mine is not closed. Such aid can only be granted to production units that were already active before the Commission made its proposal.

Early discussions with the concerned Member States have shown that unexpected events may necessitate a temporary stabilisation or increase of subsidies between successive years in order to allow a coal mine to pursue its activity until the planned closure date. Therefore, the Commission decided to slightly deviate from one of the modalities described in option 5 of the impact assessment report: while maintaining the overall obligation of significant degressivity, it proposes a rate of degressivity defined between successive periods of fifteen months (rather than yearly). It proposes a rate of degressivity of minimum 33% between successive periods of fifteen months and a maximum duration of the closure plan of 4 years.

The proposal also contains safeguards to avoid overcompensation and to limit possible distortions of competition in the energy markets.

Aid to cover exceptional costs

Such aid aims to cover costs which are not related to current production and which arise in the context of mine closures, such as so-called social and environmental inherited liabilities. The annex of the proposed Regulation includes an exhaustive list of cost categories that can be covered.

Procedures

The proposal contains procedural provisions which are very similar to those of Council Regulation (EC) No 1407/2002 and which mainly clarify how such aid is to be notified to the Commission in order to allow the Commission a thorough assessment before considering authorisation.

Proposal for a

COUNCIL REGULATION (EU) No .../...

on State aid to facilitate the closure of uncompetitive coal mines

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 107(3)(e) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Whereas:

- (1) Council Regulation (EC) No 1407/2002⁵ of 23 July 2002 on State aid to the coal industry expires on 31 December 2010.
- (2) The small contribution of subsidised coal to the overall energy mix no longer justifies the maintenance of such subsidies with a view of securing the supply of energy on a Union level.
- (3) The Union's policies of encouraging renewable and lower carbon fossil fuels for power generation do not justify the indefinite support for uncompetitive coal mines. The categories of aid permitted by Regulation (EC) No 1407/2002 should therefore not be continued indefinitely.
- (4) However, in the absence of sector-specific State aid rules, only the general State aid rules will apply to coal. In this context, uncompetitive coal mines, currently benefiting from aid under Regulation (EC) No 1407/2002, may no longer be eligible for aid and may be forced to close.
- (5) Without prejudice to the general State aid rules, Member States should be able to take measures to alleviate the social and regional consequences of the closure of those

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ L 205, 2.8.2002, p.1

mines, that is to say the orderly winding down of activities in the context of an irrevocable closure plan and/or the financing of exceptional costs, inherited liabilities in particular.

- (6) This Regulation marks the transition of the coal sector from sector-specific rules to the general State aid rules applicable to all sectors.
- (7) In order to minimise the distortion of competition in the internal market resulting from aid, such aid should be degressive and strictly limited to production units that are irrevocably planned for closure.
- (8) In order to mitigate the negative environmental impact of aid to coal, the Member State should provide a plan of appropriate measures, for example in the field of energy efficiency, renewable energy or carbon capture and storage.
- (9) Undertakings should also be eligible for aid to cover costs which, in accordance with normal accounting practice, do not directly affect the cost of production. Such aid is intended to cover exceptional costs that arise from the closure of their production units. In order to avoid such aid unduly benefiting undertakings that close only some of their production sites, the undertakings concerned should keep separate accounts for each of their production units.
- (10) In accomplishing its task, the European Commission should ensure that normal conditions of competition are established, maintained and complied with. With regard to more especially the electricity market, aid to the coal industry should not be such as to affect electricity producers' choice of sources of primary energy supply. Consequently, the prices and quantities of coal should be freely agreed between the contracting parties in the light of prevailing conditions on the world market.
- (11) The application of this Regulation does not exclude that aid to the coal industry may be found compatible with the internal market on other grounds;
- (12) The Commission should assess the measures notified on the basis of this Regulation and take decisions in accordance with the requirements of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁶.

HAS ADOPTED THIS REGULATION:

SECTION I

INTRODUCTORY PROVISIONS

Article 1 *Definitions*

For the purposes of this Regulation, the following definitions shall apply:

⁶ OJ L83, 27.3.1999, p.1

- (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 Europe⁷;
- (b) "closure" means the permanent cessation of production and sales of coal;
- (c) "closure plan" means a plan drawn up by a Member State providing for measures culminating in the definitive closure of coal production units;
- (d) "coal production unit" means underground or opencast coal workings and related infrastructure capable of producing raw coal independently of other parts of the undertaking;
- (e) "coal year" means calendar year or another 12-month period used as a reference for contracts in the coal industry;
- (f) "production costs" means total costs related to current production, including mining operations, operations for the dressing of coal, in particular washing, sizing and sorting, and transport to the delivery point, normal depreciation and market-based interest charges on borrowed capital.
- (g) "current production losses" means the positive difference between the coal production cost and the selling price at delivery point freely agreed between the contracting parties in the light of the conditions prevailing on the world market;
- (h) "coal imports" mean any consignment of coal products originating in a third country and entering the customs territory of the Community for purposes other than transit, which is intended for the production of electricity or to supply the coke ovens of a Member State.

SECTION II

COMPATIBILITY OF AID

Article 2 *Principle*

1. In the context of definite closure of uncompetitive mines, aid to the coal industry may be considered compatible with the proper functioning of the internal market if it complies with the provisions of this Regulation.

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 Union.

⁷ 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).

Article 3
Closure aid

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

- (a) the operation of the production units concerned must form part of a closure plan the deadline of which does not extend beyond 1 October 2014 ;
- (b) the production units concerned must be closed definitively in accordance with the closure plan;
- (c) the aid notified must not exceed the difference between the foreseeable production costs and the foreseeable revenue for a coal year; the aid actually paid must 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;
- (d) the amount of aid per tonne coal equivalent must not cause prices for Union coal at delivery point to be lower than those for coal of a similar quality from third countries;
- (e) the production units concerned must have been in activity on 31 December 2009;
- (f) the overall amount of closure aid granted by a Member State for any particular undertaking must follow a downward trend, where the reduction between successive periods of fifteen months must not be less than 33 percent of the aid provided in the initial fifteen month period of the closure plan;
- (g) the overall amount of closure aid to the coal industry of a Member State must not exceed, for any year after 2010, the amount of aid granted by that Member State and authorised by the Commission in accordance with Articles 4 and 5 of Regulation (EC) No 1407/2002 for the year 2010.
- (h) the Member State must provide a plan to take measures aimed at mitigating the environmental impact of the use of coal, for example in the field of energy efficiency, renewable energy or carbon capture and storage. The inclusion of measures constituting State aid within the meaning of Article 107 (1) in such a plan is without prejudice to the notification and standstill obligations imposed on the Member State with respect to these measures by Article 108 (3) TFEU, and to the compatibility of these measures with the internal market."

2. If the production units to which aid is granted pursuant to paragraph 1 are not closed at the date fixed in the closure plan as authorised by the Commission, the Member State concerned shall recover all aid granted in respect of the whole period covered by the closure plan.

Article 4
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 closure of coal production units and which are not related to current production, may be considered compatible with the internal 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 closure of or have closed production units, including undertakings benefiting from closure aid;
- (b) the costs incurred by several undertakings.

2. The categories of costs covered by paragraph 1 are defined in the Annex. Paragraph 1 shall not apply to costs resulting from non-compliance with environmental regulations.

Article 5 *Cumulation*

1. The maximum amount of aid authorised under this Regulation shall apply regardless of whether the aid is financed entirely from State resources or is partly financed by the Union.

2. Aid authorised under this Regulation shall not be combined with other State aid within the meaning of Article 107(1) TFEU or with other forms of Community financing for the same eligible costs if such overlapping results in an aid amount higher than that authorised under the provisions of this Regulation.

Article 6 *Separation of accounts*

All aid received by undertakings shall be shown in the profit-and-loss accounts as a separate item of revenue distinct from turnover. Undertakings benefiting from aid under this Regulation shall keep precise and separate accounts for each of their production units and for other economic activities which are not related to coal mining. The funds shall be managed in such a way that there is no possibility of them being transferred to other production units which are not part of the closure plan or to other economic activities of the same undertaking.

SECTION III **PROCEDURES**

Article 7 *Information to be provided by Member States*

1. In addition to the provisions of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁸, aid as referred to in this Regulation shall be subject to the special rules laid down in paragraphs 2 to 6.

2. Member States which intend to grant closure aid as referred to in Article 4 shall notify a closure plan for the production units concerned to the Commission. The plan shall contain at least the following:

⁸ OJ L 83, 27.3.1999, p.1

- (a) identification of the production units;
- (b) the real or estimated production costs for each production unit per coal year;
- (c) estimated coal production, per coal year, of production units forming the subject of a closure plan;
- (d) the estimated amount of closure aid per coal year.

3. Member States shall notify any amendments to the closure plan to the Commission.

4. Member States shall notify all the aid which they intend to grant to the coal industry under this Regulation during a coal year. They shall submit to the Commission all details relevant to the calculation of the foreseeable production costs and their relationship to the closure plans notified to the Commission pursuant to paragraph 2.

5. Member States shall inform the Commission of the amount and of the calculation of the aid actually paid during a coal year no later than six months after the end of that year. Where any corrections are made to the amounts originally paid during a given coal year, Member States shall inform the Commission before the end of the following coal year.

6. When notifying aid as referred to in Articles 4 and 5 and when informing the Commission on aid actually paid, Member States shall supply all the information necessary for the Commission to verify that the provisions of this Regulation are complied with.

SECTION IV

FINAL PROVISIONS

Article 8

Implementing measures

The Commission shall take all necessary measures for the implementation of this Regulation. It may establish a joint framework for communication of the information referred to in Article 7.

Article 9

Entry into force

1. This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union. It shall apply from 1 January 2011.

2. This Regulation shall expire on 31 December 2026.

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

Done at Brussels, [...]

For the Council
The President
[...]

ANNEX

Definition of costs referred to in Article 4

1. Costs incurred and cost provisions made only by undertakings which are closing production units

Exclusively the following cost categories and only if they result from the closure of coal production units:

(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;

(c) the payment of pensions and allowances outside the statutory system to workers who lose their jobs and to workers entitled to such payments before the closure;

(d) the cost covered by the undertakings for the readaptation of workers in order to help them find new jobs outside the coal industry, especially training costs;

(e) the supply of free coal to workers who lose their jobs and to workers entitled to such supply before the closure, or the monetary equivalent;

(f) residual costs resulting from administrative, legal or tax provisions which are specific to the coal industry;

(g) additional underground safety work resulting from the closure of production units;

(h) mining damage provided that it has been caused by the production units subject to closure;

(i) costs related to the rehabilitation of former coal mining sites, notably:

- residual costs resulting from contributions to bodies responsible for water supplies and for the removal of waste water,

- other residual costs resulting from water supplies and the removal of waste water;

(j) residual costs to cover former miners' health insurance;

(k) costs related to the cancelling or modification of ongoing contracts (for a maximum value of 6 months of production);

(l) exceptional intrinsic depreciation provided that it results from the closure of production units.

The increase in the value of the land shall be deducted from the eligible costs for categories (g), (h) and (i).

2. Costs incurred and cost provisions made by several undertakings

(a) increase in the contributions, outside the statutory system, to cover social security costs as a result of the drop, following closure of production units, in the number of contributors;

(b) expenditure, resulting from the closure of production units, 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 the closure of production units, in the coal production subject to levy.