

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1407/2002**  
**of 23 July 2002**  
**on State aid to the coal industry**

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 <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

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

Having regard to the opinion of the Economic and Social Committee <sup>(4)</sup>,

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 <sup>(5)</sup>, 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.
- (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.

<sup>(1)</sup> OJ C 304 E, 30.10.2001, p. 202.

<sup>(2)</sup> Opinion delivered on 30 May 2002 (not yet published in the Official Journal).

<sup>(3)</sup> OJ C 321, 16.11.2001, p. 2.

<sup>(4)</sup> OJ C 48, 21.2.2002, p. 49.

<sup>(5)</sup> OJ L 329, 30.12.1993, p. 12.

- (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<sup>(1)</sup>.
- (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<sup>(2)</sup> 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.

<sup>(1)</sup> OJ C 37, 3.2.2001, p. 3.

<sup>(2)</sup> OJ L 309, 27.11.2001, p. 1.

- (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,

- (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

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 <sup>(1)</sup>;
- (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;

<sup>(1)</sup> 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).

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;
- (e) aid must not lead to any distortion of competition on the electricity market, the market of combined heat and electricity production, the coke production market and the steel market.

#### Article 5

##### Aid for accessing coal reserves

1. Members States may, in accordance with paragraphs 2 and 3, grant aid to an undertaking, intended specifically to production units or to a group of production units, only if the aid contributes to maintaining access to coal reserves. A production unit may receive aid only under one of the categories referred to in paragraphs 2 or 3. No cumulation of aid under paragraph 2 and paragraph 3 shall be possible.

##### Aid for initial investment

2. Aid intended to cover initial investment costs may be declared to be compatible with the common market only if it satisfies the conditions laid down in Article 4(c), (d) and (e) and the following conditions:

- (a) the aid shall be earmarked for existing production units which have not received aid under Article 3 of Decision No 3632/93/ECSC or which have received aid authorised by the Commission under the said Article 3 having demonstrated that they were able to achieve a competitive position vis-à-vis prices for coal of a similar quality from third countries;
- (b) production units shall draw up an operating plan and a financing plan showing that the aid granted to the investment project in question will ensure the economic viability of these production units;
- (c) the aid notified and actually paid shall not exceed 30 % of the total costs of the relevant investment project which will enable a production unit to become competitive in relation to the prices for coal of a similar quality from third countries.

The aid granted in accordance with this paragraph, whether in the form of a single payment or spread over several years, cannot be paid after 31 December 2010.

##### Current production aid

3. Aid intended to cover current production losses may be declared to be compatible with the common market only if it satisfies the conditions laid down in Article 4(b) to (e) and the following conditions:

- (a) operation of the production units concerned or of the group of production units in the same undertaking forms part of a plan for accessing coal reserves;

- (b) aid shall be granted to production units which, with particular reference to the level and pattern of production costs, and within the limits of the quantity of indigenous coal to be produced in accordance with the plan referred to in (a), afford the best economic prospects.

#### Article 6

##### Degression of aid

1. The overall amount of aid to the coal industry granted in accordance with Article 4 and Article 5(3) shall follow a downward trend so as to result in a significant reduction. No aid for the reduction of activity may be granted under Article 4 beyond 31 December 2007.

2. The overall amount of aid to the coal industry granted in accordance with Articles 4 and 5 shall not exceed, for any year after 2003, the amount of aid authorised by the Commission in accordance with Articles 3 and 4 of Decision No 3632/93/ECSC for the year 2001.

#### 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, i.e. costs related to the environmental rehabilitation of former coal mining sites;
- (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 so that financial flows under this Regulation can be clearly identified. The funds shall be 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 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(1)</sup>, aid as referred to in this Regulation shall be subject to the special rules laid down in paragraphs 2 to 12.

2. Member States which grant aid to the coal industry shall provide the Commission with all the information needed, against the current energy background, to justify the estimated production capacity forming part of the plan for accessing coal reserves, the minimum production level needed to guarantee such access, as well as, regarding the categories of aid provided for in this Regulation, the appropriate types of aid, taking account of the specificities of the coal industry in each Member State.

3. Production costs are calculated in accordance with the three-monthly outline statements of costs sent to the Commission by the coal undertakings or associations thereof. The coal undertakings include normal depreciation and interest on borrowed capital in their calculation of production costs. Eligible interest costs on borrowed capital shall be based on market-based interest rates and limited to operations (processes) listed in Article 2(e).

4. Member States which intend to grant aid for the reduction of activity as referred to in Article 4 shall submit beforehand to the Commission a closure plan for the production units concerned by 31 October 2002 at the latest. 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; these costs are calculated in accordance with paragraph 3;
- (c) estimated coal production, per coal year, of production units forming the subject of a closure plan;

(d) the estimated amount of aid for the reduction of activity per coal year.

5. Member States which intend to grant the aid as referred to in Article 5(2) shall, by 31 December 2002 at the latest, submit to the Commission a provisional plan for accessing coal reserves. That plan shall provide, as a minimum, for objective selection criteria, such as economic viability, to be met by the production units in order to receive aid for investment projects.

6. Member States which intend to grant the aid as referred to in Article 5(3) shall, by 31 October 2002 at the latest, submit to the Commission a plan for accessing coal reserves. That 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;
- (b) identification of production units or a group of production units in the same coal undertaking meeting such selection criteria;
- (c) the real or estimated production costs for each production unit per coal year; these costs are calculated in accordance with paragraph 3;
- (d) an operating plan and a financing plan for each production unit or group of production units in the same undertaking reflecting the budgetary principles of Member States;
- (e) estimated coal production, per coal year, of the production units or group of production units in the same undertaking forming part of the plan for accessing coal reserves;
- (f) the estimated amount of aid for accessing coal reserves for each coal year;
- (g) the respective shares of indigenous coal and renewable energy sources against the amount of indigenous primary energy sources that contribute to the objective of energy security within the framework of sustainable development and their expected upward or downward trend.

7. As part of the notification of the plans referred to in paragraphs 4, 5 and 6, 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.

8. Member States may, on duly justified grounds, notify the Commission of the individual identity of production units forming part of the plans referred to in paragraphs 4 and 6 by June 2004 at the latest.

9. Member States shall inform the Commission of any amendments to the plan initially submitted to the Commission in accordance with paragraphs 4, 5, 6, 7 and 8.

<sup>(1)</sup> OJ L 83, 27.3.1999, p. 1.

10. 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 4, 5, 6, 7 and 8.

11. 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.

12. 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 conditions and criteria set out in Articles 4, 5, 6, 7 and 8 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(10) in the light of the plans submitted in the framework of Article 9(4), (5), (6), (7) and (8). 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 the European 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. It shall evaluate in the light of the measures taken by the Member States the results of the restructuring of the coal industry and the effects on the internal market.

2. It shall present a balance of the respective share of the different indigenous sources of primary energy in each Member State, including the different categories of fossil fuels available. It shall, taking into account the development of renewable sources of energy, evaluate the actual contribution of indigenous coal to long-term energy security in the European Union as part of a strategy of sustainable development, and present its assessment of how much coal is needed to that end.

#### 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, if necessary, submit to the Council proposals for the amendment of this Regulation concerning its application to aid for the period from 1 January 2008. In keeping with the principle of aid reduction, the proposals shall establish, *inter alia*, the principles on the basis of which Member States' plans are to be implemented as from 1 January 2008.

2. The principles referred to in paragraph 1 shall be established in the light of the objectives referred to in Article 1, with particular reference to the social and regional consequences of the measures to be taken and the energy context.

#### Article 14

### Entry into force

1. This Regulation shall enter into force the day of its publication in the *Official Journal of the European Communities*.

It shall apply from 24 July 2002.

2. Aid covering costs for the year 2002 may, however, on the basis of a reasoned request by a Member State, continue to be subject to the rules and principles laid down in Decision No 3632/93/ECSC, with the exception of rules regarding deadlines and procedures.

3. This Regulation shall apply until 31 December 2010.

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

Done at Brussels, 23 July 2002.

*For the Council*  
*The President*  
P. S. MØLLER

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## ANNEX

**Definition of costs referred to in Article 7**1. *Costs incurred and cost provisions made 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 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 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) 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) 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 1994 and which exceeds the rate of inflation);
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 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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