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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 405/2003
of 27 February 2003
concerning Community monitoring of imports of hard coal originating in third countries
(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 284 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Community has become increasingly dependent on its external supplies of primary energy sources. According to the Green paper 'Towards a European Union strategy for the security of energy supply', adopted by the Commission on 29 November 2000, 50 % of the Community's energy requirements are currently covered by imports, and this figure will rise to almost 70 % by 2030 on current trends.

(2) The diversification of suppliers and energy sources is a key factor in security of energy supply. It is therefore essential for the Community to have a system for monitoring imports of hard coal originating in third countries.

(3) The ECSC Treaty and its implementing measures, notably Decision 77/707/ECSC of the representatives of the Governments of the Member States of the European Coal and Steel Community, meeting within the Council of 7 November 1977, concerning Community surveillance of imports of hard coal originating in third countries [1] expired on 23 July 2002.

(4) Commission Decision No 341/94/ECSC of 8 February 1994 implementing Decision No 3632/93/ECSC establishing Community rules for State aid to the coal industry [2], which enables the Commission to determine the price of coal from third countries intended for blast furnaces and to collect essential data on purchases of coal, coking coal or coke from third countries, also expired on 23 July 2002.

(5) Information on the guide prices of coal originating in third countries, intended for electricity production and of coal intended for the steel industry, is necessary for the proper functioning of the internal market, in particular for the monitoring of State aid to the Community coal industry.

(6) It is therefore necessary to introduce a Community procedure for information and consultation on the costs of external supplies of hard coal and on guide prices for imported coal intended for the production of electricity and for coal intended for the steel industry.

(7) This procedure calls for the examination at regular intervals of aggregate information from Member States on the costs of external coal supplies and on prices of coal originating in third countries intended to be used for electricity production and for the steel industry. The information collected must make it possible to compare the development of the costs and the import prices of coal applied in the Community.

(8) In keeping with current practice, Member States should continue to transmit to the Commission the prices of coal originating in third countries. Member States may retain their current system or set up new procedures for collecting the data.

(9) The information collected and the results of the analyses carried out by the Commission must be published at Community level in order to ensure the transparency of the market, albeit in a form that does not enable specific imports or individual companies to be identified, with consultation between the Member States and the Commission.

(10) If the Commission finds any anomalies or inconsistencies in the notified figures, it must be able to obtain other information from the Member State concerned.

(11) In order to provide guidance, in line with the tasks assigned to the Community, on the course of action to be followed by all concerned and to determine its own course of action, in accordance with the provisions of the Treaty, the Commission conducts a continuous study of solid fuel market and price trends.

[1] OJ L 292, 16.11.1977, p. 11. Decision amended by Decision 85/161/ECSC (OJ L 63, 2.3.1985, p. 20).
[2] OJ L 49, 19.2.1994, p. 1.

(12) The Commission must publish the studies and the information collected in application of this Regulation, albeit in a form that does not enable specific imports or individual companies to be identified. It must specify the arrangements for the communications.

(13) This Regulation should be applied retroactively from the expiry of the ECSC Treaty on, in order to ensure the full benefit of its provisions,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation establishes a system for monitoring of imports of hard coal originating in third countries.

Article 2

Member States shall provide the Commission with information on imports of hard coal and on the import prices of coal products intended for electricity production and for use in the steel industry in the Community.

This information shall be obtained by aggregating the data received in accordance with Article 4 and it shall be presented in such a way as to provide as accurate a picture as possible of the Community coal market.

Article 3

For the purposes of this Regulation:

(a) 'coal imports' means any consignment of coal products originating in third countries 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;

(b) 'import price' means the free-at-frontier price of coal products entering the customs territory of the Community, based on tonnes of coal equivalent (tce) in the case of coal intended for power stations and based on a standard grade in the case of coal intended for coke ovens.

Article 4

Any person or undertaking importing one of the coal products referred to in Article 5 from a third country shall provide the Member State, in which that person or undertaking is established, with the relevant information on such imports.

Any imports divided into several batches for transport reasons must be considered as a single import consignment if covered by a single price.

If an import consignment of a given product is declared as having been divided into several batches, each with different prices, a separate declaration shall be made for each batch.

Article 5

1. The data characterising any import of coal products to a Member State must comprise:

(a) the designation of the coal product;

(b) the quantity expressed in metric tonnes, and in addition for steam coal the average low calorific value;

(c) in the case of coal for the production of coke referred to in paragraph (2)(b): ash, moisture, volatile matter and sulphur content;

(d) the price actually paid.

2. Information shall be communicated on the following coal products:

(a) coal for the production of electricity or for combined heat and power generation;

(b) coal for the production of coke to supply steel industry blast furnaces.

3. Member States may request from their Customs Services information necessary to fulfil their obligations under this Regulation.

Article 6

The information which Member States are required to provide to the Commission pursuant to Article 2 shall be communicated within a period of two months from the end of each period not exceeding six months. This information shall be the aggregate result, for each type of coal product, of the data which Member States receive from persons or undertakings. For each of the coal products, the information shall comprise:

(a) the tonnage and characteristics for harmonisation referred to in Article 5(1)(b) and (c);

(b) the import prices.

Article 7

On the basis of the information collected in application of this Regulation, the Commission shall publish in an appropriate form:

(a) each semester, the prices aggregated at Community level, of all coal imports intended for the production of electricity or for combined heat and power generation, excluding duties and taxes;

(b) each semester, the prices aggregated at Community level, of all coal imports intended for the production of coke for blast furnaces, excluding duties and taxes;

(c) during the first quarter of each year, a report on the market in solid fuels in the Community concerning the preceding year together with a market outlook for the current year.

Article 8

Member States and the Commission shall consult each other at regular intervals at the request of a Member State or on the initiative of the Commission. These consultations shall concern in particular the communications referred to in Article 6 and 7.

Consultations shall be organised with international organisations and with third countries that have introduced similar information mechanisms.

Article 9

All information received by the Commission in the application of this Regulation shall be subject to the rules laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [1].

Member States may refrain from submitting details which relate to individual undertakings.

Article 10

If the Commission finds any anomalies or inconsistencies in the information communicated to it by Member States, it may ask them to provide details of the calculation or evaluation procedures on which the aggregate information is based.

Article 11

The Commission shall adopt the provisions implementing this Regulation relating to the form, content and all other characteristics of the communications referred to in Article 2.

Article 12

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

It shall apply from 24 July 2002 and shall expire on 31 December 2010.

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

Done at Brussels, 27 February 2003.

For the Council

The President

M. CHRISOCHOÏDIS

[1] OJ L 145, 31.5.2001, p. 43.