

DECISIONS

COUNCIL DECISION

of 10 December 2010

on State aid to facilitate the closure of uncompetitive coal mines

(2010/787/EU)

THE COUNCIL OF THE EUROPEAN UNION,

activities in the context of an irrevocable closure plan and/or the financing of exceptional costs, in particular inherited liabilities.

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

Having regard to the proposal from the European Commission,

(6) This Decision marks the transition, for the coal sector, from the application of sector-specific rules to the application of general State aid rules which are applicable to all sectors.

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

(7) In order to minimise the distortion of competition in the internal market resulting from State aid to facilitate the closure of uncompetitive coal mines, such aid should be degressive and strictly limited to coal production units that are irrevocably planned for closure.

(1) Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry ⁽²⁾ 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 for securing the supply of energy in the Union.

(8) In order to mitigate the environmental impact of the production of coal by coal production units to which closure aid is granted, the Member States should establish a plan of appropriate measures, for example in the field of energy efficiency, renewable energy or carbon capture and storage.

(3) The Union's policy of encouraging renewable energy sources and a sustainable and safe low-carbon economy does 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.

(9) Undertakings should 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 coal production units. In order to avoid such aid from unduly benefiting undertakings that close only some of their production sites, the undertakings concerned should keep separate accounts for each of their coal production units.

(4) However, in the absence of sector-specific State aid rules, only the general State aid rules 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 mines, that is to say the orderly winding down of

(10) In accomplishing its task under this Decision, the Commission should 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 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.

⁽¹⁾ Opinion of 23 November 2010 (not yet published in the Official Journal).

⁽²⁾ OJ L 205, 2.8.2002, p. 1.

- (11) The application of this Decision should not exclude that aid to the coal industry may be found compatible with the internal market on other grounds. In this context, other specific rules, in particular those concerning aid for research, development and innovation, aid for environmental protection and aid for training activities, continue to apply within the limits of the maximum aid intensities, unless they provide otherwise.
- (12) The Commission should assess the measures notified on the basis of this Decision and take decisions in accordance with Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾.
- (13) To avoid any discontinuity between measures envisaged in Regulation (EC) No 1407/2002 and the measures foreseen in this Decision, this Decision should apply from 1 January 2011,

HAS ADOPTED THIS DECISION:

CHAPTER 1

INTRODUCTORY PROVISIONS

Article 1

Definitions

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

- (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 ⁽²⁾;
- (b) 'closure' means the permanent cessation of production and sale 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;

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ 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).

- (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 utilization 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 utilisation point freely agreed between the contracting parties in the light of the conditions prevailing on the world market.

CHAPTER 2

COMPATIBILITY OF AID

Article 2

Principle

1. In the context of 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 Decision.

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.

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 coal production units concerned must form part of a closure plan the deadline of which does not extend beyond 31 December 2018;
- (b) the coal 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 utilisation point to be lower than those for coal of a similar quality from third countries;
- (e) the coal production units concerned must have been in activity on 31 December 2009;
- (f) the overall amount of closure aid granted by a Member State must follow a downward trend: by the end of 2013 the reduction must not be less than 25 %, by the end of 2015 not less than 40 %, by the end of 2016 not less than 60 % and by the end of 2017 not less than 75 % of the aid granted in 2011;
- (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 States must establish a plan to take measures aimed at mitigating the environmental impact of the production of coal by production units to which aid is granted pursuant to this Article, for example in the field of energy efficiency, renewable energy or carbon capture and storage.

2. The inclusion of measures constituting State aid within the meaning of Article 107(1) of the Treaty in a plan as referred to in point (h) of paragraph 1 shall be without prejudice to the notification and standstill obligations imposed on Member States with respect to such measures by Article 108(3) of the Treaty, and to the compatibility of such measures with the internal market.

3. If the coal 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 and cost provisions made only by undertakings which are closing or have closed coal 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 Decision shall apply regardless of whether the aid is financed entirely by Member States or is partly financed by the Union.

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

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. Where undertakings benefiting from aid under this Decision continue trading or operating after closing down some or all of their coal production units they shall keep precise and separate accounts for each of their coal production units and for other economic activities which are not related to coal mining. The aid granted under this Decision shall be managed in such a way that there is no possibility of it being transferred to other coal production units which are not part of the closure plan or to other economic activities of the same undertaking.

CHAPTER 3

PROCEDURES

Article 7

Information to be provided by Member States

1. In addition to Regulation (EC) No 659/1999, aid as referred to in this Decision 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 3 shall notify a closure plan for the coal production units concerned to the Commission. The plan shall contain at least the following:

- (a) identification of the coal production units;

(b) the real or estimated production costs for each coal production unit per coal year;

(c) estimated coal production, per coal year, of coal 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 Decision 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 the year in question. 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 3 and 4 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 Decision are complied with.

CHAPTER 4

FINAL PROVISIONS

Article 8

Implementing measures

The Commission shall take all necessary measures for the implementation of this Decision. It may, within the limits laid down by this Decision, establish a joint framework for communication of the information referred to in Article 7.

Article 9

Entry into force

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

It shall apply from 1 January 2011.

It shall expire on 31 December 2027.

Done at Brussels, 10 December 2010.

For the Council

The President

V. VAN QUICKENBORNE

ANNEX

DEFINITION OF COSTS REFERRED TO IN ARTICLE 4

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

The following cost categories exclusively, 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 have lost or who lose their jobs;
- (c) the payment of pensions and allowances outside the statutory system to workers who have lost or 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 have lost or 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 coal production units;
- (h) mining damage, provided that it has been caused by the coal production units which have been closed or which are being closed;
- (i) all duly justified costs related to the rehabilitation of former coal mining sites, including:
 - 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 coal production units;
- (m) costs of surface recultivation.

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

2. Costs incurred and cost provisions made by several undertakings

The following cost categories exclusively:

- (a) increase in contributions, outside the statutory system, to cover social security costs as a result of the drop, following closure of coal production units, in the number of contributors;
 - (b) expenditure, resulting from the closure of coal 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 coal production units, in the coal production subject to levy.
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