STATE AID FOR COAL MINING INDUSTRY

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Abstract After December 31, 2010, EC Regulation 1407/23 in July 2002, which regulated the forms of state aid for European coal industry has expired. The European Commission has examined through specific institutional mechanisms, either the opportunity to extend the provisions of the regulation, or approach a new paradigm, by shifting from the sector rule to of application to the general rule of the state aid.
It was chosen, with the majority of Member States under the Treaty of European Union Training (TFEU) for the second approach.

Problem definition at the debate moment

The negotiations at institutional level between representatives of member states, were based on the following topics proposed by the Commission officials: (i) the possibility to close the coal mines in several Member States, (ii) the social impact of mine closure, (iii) the impact of mine closure has on the environment and (iv) the impact on security of energy supply.

Regarding to the first theme discussion, the European Commission data showed that in Germany, Romania and Spain, the production costs for coal mining are very high compared with the prices (current or expected) market. A bit improved, but with a negative estimation for the future, is the industry situation in Hungary and Slovakia. For these reasons, access by the general state aid could be a valid option.

The most sensitive topic of discussion was that of the social impact, especially because in an important country such as Germany between employers and Government on the one hand, and unions, on the other hand, there is a social pact which includes commitments to preserve jobs until the year 2018. Available evidence from the Commission in 2010 indicated that, without state aid, 42,000 jobs (in countries such as Germany, Romania, Spain and possibly Hungary) may be threatened directly and another 55,000 indirectly. If the impact of these numbers, at the Union level is not significant, instead to the mining areas it is dramatic. And, more importantly, creating of large flows of redundant workers in these regional markets would be impossible reabsorbed in other sectors.

Environmental impact of mine closure is not considered significant. This assumes, however, the closed areas rehabilitation, which brings a financing problem that must be taken into account in the economy of solving problems.

Regarding coal energy supply security, the analysis started from the restricted contribution of subsidized coal to global energy sources of the Union. In 2010, the subsidized coal production to been the source of 5.1% of EU electricity production. Moreover, if taken into account only the type of state aid for covering loss of production (for Romania), the figure is reduced to 1.4% for the whole Union, with the remark that for some of those countries the figure is obviously higher. But coal can be imported from a variety of exporting countries, and in recent years coal supply on the market rose on average with 7% annually. In these circumstances it was considered that an additional aid for the security of supply problems would be worthless. Specifically, the Commission considers that it can be more effective building up stocks of imported coal, rather than the production of subsidies.

The Commission has redefined in debates the strategic objective as being related to promoting for the future, of transition to an energy policy based on renewable and sustainable use in terms of the environmental protection for indigenous energy sources.

At the same time, the evaluation of the possible scenarios for the best policy approach to the granting of state aid after 2010 for the coal mining industry was based on minimizing the potential negative impact of the mines closure, as a result of the elimination of subsidies, especially in terms of social and environmental issues, at the same time reducing as much as possible the effect of distortion of competition within the Union's internal market.

Scenarios considered

The first option was that of accessing state aid in accordance with norms generally valid in the EU. This scenario, as zero option was not seriously considered, according to the policy objectives outlined above. This scenario would have assumed that it will no longer be adopted a new legal instrument specifically, after the expiry of Regulation 1407/2002.

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The second scenario was based on Article 107, par. (3), lit. (c) TFEU, under which Member States would have to grant aid for the close of the activity, limited to: aid to cover payments for employees who are redundant or early retirement, retraining costs for the labor and counseling of those left without jobs. The costs may also be supported to complete the contracts that are in progress (up to 6 months) and for the greening of the perimeters where the closure took place. These types of aid could be granted up until the end of 2013.

In of the third scenario, based on Article 107, par. (3), lit. (e) TFEU this time, it is considered that Member States may grant aid for mines operation in a decreasing scale, in order to cover losses related to current production, as long as it is accompanied by clearance activities in a well defined closure plan; stating that the aid would only cover the existing mines in operation on request. The scheme would have supposed a gradual elimination of aid operation for a period of not more than 10 years, with a degressivity of 10% per year.

Scenario four is also based on Article 107, par. (3), lit. (e) TFEU, which would allow Member States to grant aid to social costs (social benefits for employees and former employees) and environmental issues related to the closure of coal mines and the rehabilitation of former mining.

The fifth option is a combination of options 3 and 4. Thus, it could enable Member States to provide support both to closure (as in option 3) as well as aid to cover exceptional costs, as in scenario 4.

The sixth scenario was considered to extend for another 10 years of Regulation no. 1407/2002. For this scenario all Member States were strongly interested.

From the comparative analysis of scenarios outlined above, during the debate the following issues were highlighted:

a) The second option was that which the European Commission has proposed and supported as basic option. This option would provide the opportunity to move to closure of mines and even to extend the closing deadline to complete the contracts the mine had already completed and should be honored. In this alternative can be organized more correctly also the social aspects of closure by providing direct support to affected workers, and environmental debt financing during the closure would be provided.
b) The third option would not save the permanent workplaces, but may allow a gradual reduction of labor. The aid to reduce the production of a mine uncompetitive production, linking it to minimize the tendency to direct redundancies, as might occur with the means to assist through labor redeployment to other activities. The gradual closure also facilitates the gradual implementation measures to protect the environment and landscape area.
c) The fourth option allows Member States to guarantee the social debt financing, the environmental ones, in the context of the gradual closure of coal mines. Such a support may allow the mining company not to reallocate resources from other potentially competitive mines to mines that would be closed.
d) Option five takes into account that in the case of the gradual closure of a mine, is likely to be needed aid and debt taken on together with other types of aid, mainly those of operating.
e) It is being remarked in the six scenario case that even after another ten years of extension, at the new expiration date of the regulation is very likely that the same mining companies to be still uncompetitive. So it would not be solved, but the existing problem would be postponed until the end of 2010.

Based on this analysis, the 2 and 5 options were considered those who should be taken into account and developed. The qualitative difference between the two, is the importance given by policymakers, a priority is resolving social issues or the economic ones. It has opted for the priority of the social issues.

Requirements of the decision 2010/787/E.U.

In the preamble of the decision are stated the principles that formed the basis for this legal text, namely:

a) Coal aid is compatible with the proper functioning of the European internal market in the context of categorical closure of uncompetitive mines, in strict accordance with the decision;
b) The aid covers the costs of coal for production of electricity, power and heat cogeneration, the production of coke, if this use takes place in the Union.

According to Article 3 of Decision - Aid for closing a mining company qualifies to receive aid to cover losses from actual production and is compatible with the common market if:

- exploitation in case is part of a closure plan whose deadline does not extend beyond October 31, 2018;
- production units concerned must permanently be closed under the closure plan;

- notified aid must not exceed the difference between production costs and incomes planned for a planned coal year. Aid effectively paid shall be subject to to annual adjustments based on actual costs and incomes, no later than the end of coal production following the year for which aid was granted;
- the amount of aid per tone coal equivalent shall not result in a price of the Union coal at point of use lower that for coal of similar quality from third countries;
- units of production must be developed activity until December 31, 2009;
- the total amount of aid granted by a Member State should have a downward trend: 25% by the end of 2013, and 40% by the end of 2014, 60% by the end of 2016 and no more than 75% end of 2017, compared to 2011;
- Member State should develop an action plan aimed at reducing the environmental impact of coal production from production units which are granted state aid.
- according to Article 4 of Decision - State aid in order to cover exceptional costs - is granted to companies who are or have been in existence related to the production of coal to enable them to cover costs arising or resulting from the closure of coal, but not related to current production.
- this aid can be used to cover: (i) costs only supported by companies which are in process of closing or have closed production units, including units receiving assistance for the closure and (ii) costs supported by several companies.

- the first category of costs are, among others, part:
- the cost of social insurance payments resulting from early retirement of workers;
- other exceptional expenses for workers who lose their job;
- the cost to companies for retraining of workers;
- free delivery of a quantity of coal workers who lose their jobs and the workers who benefit from this right before closing, or cash equivalent grant;
- further work to ensure safety underground, following the closure of production units;
- damage caused by mining, on condition that they have been caused by production units subject to closure;
- all duly justified costs related to rehabilitation of former mining;
- residual costs to cover former miners' health insurance;
- costs related to revocation or modification of current contracts for a maximum value of six months of production;
- costs for re-cultivation areas.

From the second category of costs are contribution increases for covering social security costs, from reducing the number of contributors and expenditures for various utilities.

Essential aspects in assessing the new legal framework

Limited contribution of subsidized coal in global energy sources no longer justifies the maintenance the State aid to ensure energy supply in the European Union. Union policies to encourage renewable energy sources and secure economy, sustainable, low carbon emissions, would not justify support for competitive coal mines, indefinitely.

However, EU Member States should be able to attenuate the social and regional consequences of the mine closure, in the absence of state aid - granted in accordance with Regulation 1407/2002, become uncompetitive.

In order for the new legal framework for state aid for the coal industry not to affect the Union's internal market competition, it must be given digressive and strictly limited to units planned for irrevocably closure.

Companies should also be eligible for support to cover the costs, in accordance with normal practice, does not directly affect the production costs. This aid is intended to cover exceptional costs arising from the closure of production.

To help prevent this kind of aid bring unjustified benefits for to businesses that close only a part the exploitation, they should have separate accounts for each component of the production units.

In the case of Romania, the new framework of economic policy measures affecting the Coal industry stationed in the Jiu Valley. By mid 2011, the Ministry of Economy, Trade and Business will have to notify the European Commission the form of state aid that has been chosen.

As resulting from the foregoing, those production units that are part of a closure plan until the end of 2018 will benefit of the aid. At least officially, intentions are to include such a plan for closing three of the seven coal mines in the National Hard Coal Company SA, following that the other four exploitations to continue their business without the benefit of an additional revenue through allocations from the state budget.

It results from this that the implications of new frame for a state aid of substance induce adjustments since:

- mines that are closing will need to identify a market without competing with other exploitations which continue their work without state aid;

- mines will be continuing their work to streamline their activity very high so that they should be able, predictable and sustainable, to cover the costs of their earnings;
- will appear differences related to human resources, the management of human and material resources between the two categories of mines during their function, until the closure of those who are part of a closure plan. Also, intensive use of production factors will be different, so the management of the next two categories of coal producers by the same economic entity is not recommended

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