State aid to facilitate the closure of uncompetitive coal mines

2010/0220(NLE) - 06/07/2010 - Legislative proposal

PURPOSE: to establish the principles of State aid to facilitate the closure of uncompetitive coal mines

PROPOSED ACT: Council Regulation.

BACKGROUND: aid to the EU hard coal industry is regulated by a sector-specific legal instrument: Council Regulation (EC) No 1407/2002 on State aid to the coal industry (the "Coal Regulation"). This 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 of 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 the removal of mining equipment from the mine, cleaning-up the site, underground safety work, and removal of waste water. 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 alone.

IMPACT ASSESSMENT: the 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** - 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** - the Commission would adopt guidelines based on Article 107 (3)(c) of the 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, whichever is lower, as well as expenditure incurred for the immediate cleaning and rehabilitation of the production sites. It 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)** – 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)** - 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.
- **Option 5: the combination of options 3 and 4** - 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**.

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 counselling 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.

Lastly, 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 legal reasons, 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.

LEGAL BASE: 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. 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.

CONTENT: the 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. 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 option of declaring 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: this 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 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 deviate slightly 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 clarify how such aid is to be notified to the Commission in order to allow the Commission a thorough assessment before considering authorisation.

FINANCIAL IMPLICATIONS: the proposal has no implications for the Union's budget.