



JOINT SUBMISSION TO THE EUROPEAN COMMISSION BY THE CLIMATE ACTION NETWORK EUROPE AND THE EUROPEAN ENVIRONMENT BUREAU CONCERNING THE REVIEW OF COUNCIL REGULATION 2002/1407 ON STATE AID TO THE COAL INDUSTRY

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Commissioner Andris Piebalgs
European Commission
B 1049 Brussels Belgium

Monday, 10 July 2006

PHASING OUT STATE AID FOR COAL PRODUCTION IN EUROPE

Dear Commissioner,

Thank you for the opportunity to provide comments during the preparatory stages of the European Commission's mid-term review of Council Regulation 2002/1407 on state aid to European coal producers (hereafter 'the Coal Regulation').

This submission is made jointly by the Climate Action Network Europe (CAN) and by the European Environment Bureau (EEB).

1. Sustainable, competitive and secure energy

Energy policies are often based on the interaction of three main concerns: environmental sustainability, competitiveness and security of supplies. The following section discusses the Coal Regulation in relation to each of these headings:

Sustainable energy

If the world is to avoid dangerous climate change and the consequent severe disruption to other environmental systems, including human systems, it is essential that the greenhouse gas emissions caused by burning fossil fuels must be substantially reduced. Coal is one of the most polluting and least efficient fuels. Consequently, in order to meet the EU objective of limiting global warming to less than a two degree Celsius increase in average surface temperatures, coal use must be drastically reduced.

Given the urgent need to prevent dangerous climate change, the continuation of public financial support for coal production by some EU member states, as facilitated by the Coal Regulation, cannot be justified. In accordance with the environmental principles laid down in Article 174 of

the EC treaty, and in particular the polluter pays principle, the price paid by those that continue to buy and use coal must reflect all of the associated costs, including, at the very least, its production costs in full.

Moreover, given that the available financial aid toward any policy objective is finite, it is vital for public authorities to prioritise the allocation of resources in such a way as to get the most benefit from the best options. In the energy sector, these options are the effective management of energy demand and the further expansion of renewable energy sources. The existence of the Coal Regulation and its associated aids seriously undermines such an approach, as would any replacement regulation from 2011 onwards.

Competitive energy

The European Commission's current State Aid Action Plan is a wide-ranging review of Community state aid control and a major contribution to the goals of 'the Lisbon competitiveness agenda'. The review, which is strongly supported by the European Council, calls for **less and better targeted** aid. Important in this aim is the process of moving aid from sectoral objectives, e.g. coal production, to horizontal objectives, e.g. environmental protection, including renewables and efficiency. This general approach to state aid reform is strongly supported by CAN and EEB members. In the interest of consistency, the Commission must ensure that its treatment of the coal sector follows its general aims for aid reform, and therefore that subsidies for coal end.

Moreover, it is perverse for the EU on the one hand to be encouraging coal production, and consequently maintaining higher carbon dioxide emissions, whilst on the other hand to be discouraging carbon emissions through instruments such as the EU emissions trading scheme. Such a conflict between policy instruments is also contrary to Article 6 of the EC Treaty, which requires that environmental protection requirements are integrated into "the definition and implementation" of all other policies and activities.

Furthermore, the energy sector is still far from providing a level playing for all sources of supply. Dirty energy options, such as coal and nuclear, have benefited from many decades of state support, often in heavily protected and monopolistic markets. Coal and nuclear also consistently fail to internalise their many and substantial external costs. On the other hand, new and clean energy options coming to market now face much more competitive conditions, including for example price comparisons to older centralised power plants the capital costs of which were fully depreciated long ago. The ending of state aid for coal removes one more important market distortion as part of a broader move towards a level playing field across the energy sector.

Secure energy

The world market for coal is well established with abundant reserves in all regions. Coal is available from many different suppliers at relatively stable prices. These market conditions are unlikely to change in the decades ahead, as indeed has already been acknowledged by the Commission in earlier Communications on coal aid.

As there is no 'insecurity of supply' regarding imports of coal into the Community, nor are there any supply interruptions likely in the future, granting financial support to indigenous coal production on the basis of maintaining security of supplies - or on the basis of hedging a future security of supply option - is simply a cover for blatant and unjustified protectionism.

Ending coal subsidies may in the short to medium term likely result in some shift to alternatives, including non-subsidised mining inside the Community (usually open pit), and/or imports from

outside the Community, and/or intra-Community trade. However, the practical and financial constraints associated with each of these options (e.g. emissions caps, land-use impacts, current account imbalances, transport logistics) creates additional political and commercial drivers to prioritise more sustainable and indigenous alternatives, particularly demand management and clean, renewable options. Moreover, the increased deployment of such 'home-grown' options like renewables in turn helps reinforce Europe's energy security over the longer term, as well as create comparatively higher numbers of indigenous high-quality jobs.

2. State aid for coal production: reviewing the current regime

General remarks

The 1952 European Coal and Steel Community (ECSC) included from the start a general ban on state aid for coal production. However, from 1965 onwards, there have been in total six Community legal instruments that have allowed multiple exceptions to this general ban on a continuous basis up to the present day.

The main reason stated for allowing state aid over the past 40 years was to facilitate an orderly restructuring of the Community coal sector in the face of competition (from e.g. less expensive imports, less expensive open-cast mining and other alternatives, notably gas, uranium, demand management and renewables). Over the whole period from 1965 to the present day, at least €200 billion in aid was granted. Current aid levels remain at approximately €5 billion per year.

The present Coal Regulation was introduced in 2002, on expiry of the ECSC, replacing a 1993 Community legal instrument, for a period of a further 8 years approximately. It will expire on 31 December 2010, forty-five years after the first exceptions to the general aid ban were introduced. Although substantial restructuring in the coal sector has clearly taken place throughout this period, it does not follow that aid for coal during restructuring and adjustment to market conditions can be continued indefinitely.

Given the overriding imperative of mitigating climate change, CAN and EEB firmly believe that the expiry of the current Coal Regulation, at the end of 2010, is an appropriate final deadline for ending public financial support for coal production in Europe.

The period between now and 2010 is sufficiently long to effect all the necessary changes. This period also corresponds to the fulfilment of existing restructuring plans and payment of the associated aid measures that have already been allowed by the Commission or are likely to be so in the near future.

Article 4: aid for reduction in activity

Aid for the reduction in activity under Article 4 is already time-limited and cannot be granted after 31 December 2007. Extensions to this deadline should not be introduced.

Article 5: aid for production

With regard to Article 5.2 on aid for initial investment, no new aids should be granted. If a new production venture is considered, the decision on whether to proceed should be based exclusively on the project's commercial merits and risks; it must not be supported with state aid. Such public financial support would create a further market distortion vis-à-vis the numerous alternatives, as listed above, and also be a failure to uphold the polluter pays principle.

With regard to Article 5.3 on aid for current production, no further aid whatsoever should be granted after the date of expiry of the Coal Regulation. Aid prior that date may be granted

providing that it is in such a way as to contribute to an orderly final end to aid payments before the end of 2010.

Article 7: aid to cover exceptional costs ('inherited liabilities')

If earlier restructuring plans at the national level have been properly formulated and executed, then there is no need for further aid of this type. In effect, there should be no aid for 'new' inherited liabilities. Instead, such costs should be taken into account by undertakings in the normal way when establishing the current overall operating costs for any given production unit.

In the event that a coal-producing undertaking no longer exists, and consequently the polluter pays principle cannot properly be upheld, then the costs associated with the re-mediation of coal production sites may unavoidably fall to a public authority of some kind. In these circumstances, the Commission may assess such aid under its guidelines on state aid for environmental protection, in particular paragraph 38.

However, it is stressed that this type of situation would be an exception to the norm, which is that the decommissioning costs of a coal mine are borne by its operator and consequently reflected in the sale price of the product. If there is any uncertainty that an operator may in the future no longer exist, then the operator in question should be required to establish a segregated decommissioning fund in order to set aside money to meet future costs after its production has ended.

Comparison with control of aid for steel after ECSC expiry

The European Coal and Steel Community expired on 23 July 2002. The Coal Regulation was adopted on the same day using, for the first time, the EC treaty as its legal basis. However, it should be noted that no equivalent regulation was introduced for the steel sector, which instead became subject to the normal competition rules that are applicable to all other industries. The approach taken on steel demonstrates that such an approach is also possible for coal; no special treatment under EU law is necessary.

Conclusion

The fundamental threat of dangerous climate change means that a continued heavy reliance on coal and public financial support for coal production cannot be justified. Therefore the European Commission must use all its political influence and legal powers to ensure that state aid for coal production is phased out, which should be implemented by the date of the expiry of the current Regulation at the end of 2010. The Commission should make clear in its forthcoming report on the subject that it will not propose any new act to replace the current Coal Regulation.

Thank you for your consideration of these important matters.

Yours sincerely,

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