

Opinion of the ECSC Consultative Committee (11 October 2001)

Caption: Example of an opinion delivered by the ECSC Consultative Committee.

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Opinion of the ECSC Consultative Committee of 11 October 2001 on the European Commission proposal for a Council Regulation on State aid to the coal industry (1)

(adopted unanimously with one abstention at the 358th session of 11 October 2001)

(2001/C 321/02)

1. Early decision required

As far back as 28 June 1995, the ECSC Consultative Committee took the view in its Memorandum on matters connected with the expiry of the ECSC Treaty in 2002 that the current ECSC rules on aid for the coal sector were not just of social and regional importance but should also be 'considered to be an adequate instrument for energy policy' and 'that after the expiry of the ECSC Treaty, this type of aid by Member States should be expressly permitted' (2).

However, it is now nearly the end of 2001 and this issue of vital importance to the coal industry in the Community has still not been resolved. With the prospect of EU enlargement to the east only a few years away, the central and eastern European accession countries need to be given clear signals on aid policy. Not only for the coal and steel sectors, but for industry in general, there is a need to have a stable legal and planning framework for investment and employment purposes.

The Consultative Committee therefore welcomes the fact that the Commission has now presented a proposal on this urgent issue, which needs to be discussed immediately by the Council so that an early decision can be taken.

In this context, the Committee reiterates that it is absolutely vital for the Steel Aid Code to be renewed on the expiry of the ECSC Treaty. The current Commission proposal to terminate the separate arrangements that are in place for the so-called sensitive sectors by absorbing them into the multisectoral framework for large investment projects (and into other horizontal frameworks as necessary) will not meet the specific needs of the steel industry. This proposal will weaken the State aid disciplines that played an important role in removing the over-capacity from which the EU steel industry previously suffered. It is complex to administer, economically inefficient and lacks transparency.

2. General and specific comments on the explanatory memorandum

The Consultative Committee considers that the Commission proposal gives a comprehensive, and generally accurate, description of the situation in the European coal industry and of its key determining factors.

In principle, the Committee agrees with the Commission's approach of determining the future role of coal and the issue of aid to the coal industry after the expiry of the ECSC Treaty as part of a strategy on the security of energy supply - in accordance with the position adopted by the Committee on the Commission's Green Paper on the security of energy supply (3).

The Committee also welcomes the principle that, in order to achieve the common goals of safeguarding energy supply and to ensure sustainable development, the Member States retain the possibility of creating an indigenous primary energy base founded on coal and renewable energies.

The Committee is also in agreement with the Commission that a coal aid scheme based on the EC Treaty requires a careful analysis of the links with other fields of Community policy, particularly, as detailed by the Commission in its explanatory memorandum,

- the consequences for competition in the coal and electricity sectors (the steel sector should also be taken into account in this context - but distortions of competition can in all instances be avoided by the adoption of suitable provisions),

- the environmental effects of coal extraction and coal use (when discussions are conducted on environmental policy, even within the Commission, the proven high environmental and safety standards of coal extraction in the EU and the progress and potential of modern clean coal technologies need to be emphasised more than they have been),
- the conditions for social and regional cohesion in the coalmining areas (highlighting the regional and social problems of further restructuring), and
- EU enlargement (extending to major coal-producing countries such as Poland and the Czech Republic, where the geological conditions are relatively similar to those in the Community).

One further specific remark needs to be made in this context. The Committee was taken aback to note the assertion in the Commission proposal concerning coal aid that ‘measures have been taken’ with regard to the social dialogue in the framework of the ECSC Consultative Committee ‘to enable this dialogue to continue as effectively as possible in the framework of the EC Treaty after 23 July 2002’ (Annex 4, Section 3).

The Consultative Committee does not in fact yet know of any such measures. Indeed, its activities will end with the expiry of the ECSC Treaty without, regrettably, there being any comparable body to replace it. Coal and steel will instead be assigned to the general European Economic and Social Committee, with which constructive bilateral negotiations on incorporation are currently being conducted. These talks have, however, not yet reached a final outcome, nor can any judgement be made at this stage about the effectiveness of the future structured dialogue for the coal and steel sectors.

3. Questions and concerns about the regulatory section

Moving on to the details of the proposed regulation, the Consultative Committee feels that a number of problems and unresolved issues still require further discussion before adequate remedies can be found. The benchmark view here is once again the position adopted by the Committee on the Commission's Green Paper on the security of energy supply, particularly its statements on the coal industry (4). The following identifies the main questions and concerns discussed in the Committee:

- Is it satisfactory that a scheme which is intended to apply until 2010 only makes specific provisions until 2007, and makes plans for a review covering the remaining period which may entail quite different provisions, thus clouding the future outlook? The Committee considers it useful that the scheme apply right through until at least 2010. The Council does, in any case, retain the right to make amendments, and the arrangement whereby the Commission can present an interim report containing any proposals for amendments is sufficient. This is apparent from the current scheme which, in the opinion of the Commission itself, has proven its worth over its lifespan of some 8 ½ years.
- It is also problematic that a scheme which aims to *improve* the security of energy supply by creating a solid primary energy base, should demand the ‘continuous reduction’ and reallocation of coal aid to renewable energy sources. It is desirable that the new scheme make it possible for the Member States to strive for the long-term goal of a stable minimum output of indigenous coal, which - as detailed in the Commission proposal - allows continued access to substantial deposits, thus ensuring the preservation of the infrastructure in working order, skilled core workforce and technological know-how required for this purpose. The reduction of the aid earmarked to secure these resources should therefore only proceed to the point at which this minimum level is reached.
- The social and regional consequences of further adaptation must at the same time be given consideration. Aid for the reduction of coalmining activity should be limited to the period up to 2007 only in so far as it concerns measures decided upon within the framework of Decision No 3632/93/ECSC. The current scheme already makes provision for a certain amount of flexibility beyond 2002 ‘on exceptional social and regional grounds’. It would also be more appropriate not to impose reductions in this aid.
- In its proposal, the Commission itself admits to a fairly vague and thus very broad margin of discretion,

particularly in assessing aid to secure resources or the underlying plans for such aid. This broad margin of discretion clashes with the idea of legal certainty and predictability, and with the competence of the individual Member States where energy is concerned. More stringent assessment and authorisation criteria are required. The proposal contains examples of impractical and disproportionate requirements, such as providing economic data on each and every production unit in a coal enterprise or asking Member States to supply 'all the information regarding reductions in greenhouse gas emissions'.

- The coal industry and coal-producing Member States should suffer no discrimination through either procedures or information and notification obligations which differ from the normal rules governing aid in other sectors. There is therefore no reason to change the procedural rules which have been tried and tested within the ECSC framework and comply with Community law. There is nonetheless a need to amend the deadlines for the notification, examination and authorisation procedure so that the Commission can reach timely decisions even with increased information requirements.

(1) COM(2001) 423 final, 25.7.2001.

(2) OJ C 206, 11.8.1995, p. 9.

(3) OJ C 220, 7.8.2001, p. 2.

(4) See *ibid.*, especially p. 3 *et seq.*