



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.9.2002  
COM(2002) 482 final

Proposal for a

**COUNCIL REGULATION**

**concerning Community surveillance of imports of hard coal originating in third countries**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

The Treaty establishing the European Coal and Steel Community (ECSC Treaty) expired on 23 July 2002. Article 3 of the ECSC Treaty required the Community institutions, within the limits of their respective powers and in the common interest, to "ensure an orderly supply to the common market, taking into account the needs of third countries".

Article 46 of the ECSC Treaty accordingly stated that, in order to provide guidance on the course of action to be followed by all concerned and to determine its own course of action, the Commission had to conduct a continuous study of market and price trends.

During the oil crises in the 1970s, the Member States adopted decisions concerning Community surveillance of imports of hard coal originating in third countries intended for use in Community power stations. The representatives of the Governments of the Member States of the European Coal and Steel Community, meeting within the Council, adopted Decision 77/707/ECSC of 7 November 1977<sup>1</sup>, which was amended by Decision 85/161/ECSC of 26 February 1985<sup>2</sup>. The principal aim of these measures was to monitor hard coal imports, by country of origin, and to publish the average guide price (cif) of the imported coal. The Commission publishes quarterly information on the price of imported coal intended for power stations in the Community on the basis of these two Decisions.

In addition, Commission Decision No 341/94/ECSC of 8 February 1994<sup>3</sup> implementing Commission Decision No 3632/93/ECSC establishing Community rules for State aid to the coal industry enabled the Commission to determine the price of imported coal intended for blast furnaces in the Community. On the basis of this Decision, the coal industry provides information enabling the Commission to publish a guide price (cif) of imported coal for the production of coke. Decision No 341/94/ECSC is the last in a long series of Community measures that since 1970 have enabled the Commission to collect information on the prices of coal intended for the steel industry.

These data have proved essential in the context of monitoring State aid to the coal industry. Decision No 3632/93/ECSC<sup>4</sup> establishing Community rules for State aid to the coal industry provided that operating aid and aid for the reduction of activity are intended to cover the difference between production costs and the selling price freely agreed between the contracting parties "in the light of the conditions prevailing on the world market". In addition, Decision No 3632/93/ECSC provided that the amount of aid per tonne "may not cause delivered prices for Community coal to be lower than those for coal of a similar quality from third countries".

The information concerning Member States' purchases of coal, coking coal or coke from third countries to supply the blast furnaces of the Community steel industry and power stations in the Community has made effective monitoring of compliance with these provisions possible.

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<sup>1</sup> OJ L 292, 16.11.1977, p. 11.

<sup>2</sup> OJ L 63, 2.3.1985, p. 20.

<sup>3</sup> OJ L 49, 19.2.1994, p. 1.

<sup>4</sup> OJ L 329, 30.12.1993, p. 12.

The publication in the framework of ECSC legislation of the "guide prices for coking coal" and the "guide prices for imported steam coal" has been instrumental in improving the transparency of State aid to the coal industry. It has enabled the Commission to ensure that such aid does not distort competition on the market for steel products and on the electricity market through the possible sale of subsidised domestic coal at a price below that of imported coal.

This legislative framework ceased to exist when the ECSC Treaty expired. However, it is necessary to continue to have a Community procedure for monitoring coal imports from third countries in order to provide the Commission with the data it needs to implement the new rules on State aid to the coal industry applicable after the expiry of the ECSC Treaty. These data will also be essential in the context of the security of the European Union's energy supply.

The European Union has become increasingly dependent on external supplies for its primary energy sources. According to the Green Paper "Towards a European strategy for the security of energy supply"<sup>5</sup>, adopted by the Commission on 29 November 2000, imports currently account for 50% of the European Union's energy requirements, and this figure will rise to almost 70% by 2030 on current trends.

The European Union's dependence on imports of hard coal from third countries is growing. It increased from 33.3% in 1985 to 39.5% in 1990 and 70.2% in 2001 and could reach 100% by 2020 for the Europe of Fifteen. The enlargement process towards the countries of central and eastern Europe will only temporarily slow down this trend towards dependence on imported coal.

The European Union has introduced Community procedures for information and consultation on crude oil supply costs and the consumer prices of petroleum products<sup>6</sup>, and a Regulation introducing registration for crude oil imports and deliveries in the Community<sup>7</sup>. In addition, it has introduced procedures to improve the transparency of gas and electricity prices charged to industrial end-users.<sup>8</sup>

Industry has made wide use of the published "guide prices" of coal, given the reliability and impartiality of the information. The Commission has also received many letters asking for the quarterly publication of these data to be continued.

In addition, the Commission has published a report every year on "The market for solid fuels in the Community in [year X] and the outlook for [year X+1]". This has provided guidance for the parties concerned and given a true picture of activities on the coal market as well as the market in other solid fuels, such as lignite and peat.

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<sup>5</sup> COM(2000) 769 final.

<sup>6</sup> Council Decision No 1999/280/EC, 22 April 1999 - OJ L 110, 28.4.1999, p. 8.

<sup>7</sup> Council Regulation (EC) No 2964/95, 20 December 1995 - OJ L 310, 22.12.1995, p. 16.

<sup>8</sup> Council Directive 90/377/EEC, 29 June 1990 – OJ L 185, 17.7.1990, p. 16.

This proposal for a Council regulation therefore supplements the existing Community procedures for monitoring the various primary sources of fuels that contribute to the European Union's energy supplies. It ensures the continuity of the activities that began under the ECSC Treaty, which is all the more important as enlargement will bring large producers of solid fuels into the European Union. Both Poland and the Czech Republic are major coal producers, Estonia produces bituminous shale and practically all candidate countries for accession to the European Union produce lignite.

At its meeting on 12 March 2002 the "Committee of coal experts", made up of representatives of the Member States, delivered a favourable opinion on the introduction of a system of Community surveillance of imports to the European Union of hard coal originating in third countries.

Proposal for a

## COUNCIL REGULATION

**concerning Community surveillance of imports of hard coal originating in third countries**

**(Text with EEA relevance)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 284 thereof,

Having regard to the proposal from the European Commission<sup>9</sup>,

Whereas:

- (1) The Community has become increasingly dependent on its external supplies of primary energy sources. According to the Green paper "Towards a European Union strategy for the security of energy supply"<sup>10</sup>, adopted by the Commission on 29 November 2000, 50% of the Community's energy requirements are currently covered by imports, and this figure will rise to almost 70% by 2030 on current trends.
- (2) The diversification of suppliers and energy sources is a key factor in security of energy supply. It is therefore essential for the Community to have a system for monitoring imports of hard coal originating in third countries.
- (3) The ECSC Treaty and its implementing measures, notably Decision 77/707/ECSC adopted by the representatives of the Governments of the Member States of the European Coal and Steel Community, meeting within the Council on 7 November 1977, concerning Community surveillance of imports of hard coal originating in third countries<sup>11</sup>, amended by Decision 85/161/ECSC<sup>12</sup>, expired on 23 July 2002.
- (4) Commission Decision No 341/94/ECSC of 8 February 1994 implementing Decision No 3632/93/ECSC establishing Community rules for State aid to the coal industry<sup>13</sup>, which enables the Commission to determine the price of coal from third countries intended for blast furnaces and collect essential data on purchases of coal, coking coal or coke from third countries, also expired on 23 July 2002.

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<sup>9</sup> OJ C ..., ..., p. ...

<sup>10</sup> COM(2000) 769 final.

<sup>11</sup> OJ L 292, 16.11.1977, p. 11.

<sup>12</sup> OJ L 63, 2.3.1985, p. 20.

<sup>13</sup> OJ L 49, 19.2.1994, p. 1.

- (5) Information on the guide prices of coal originating in third countries intended for electricity production and of coke and coal intended for the steel industry is necessary for the proper functioning of the internal market, in particular for the monitoring of State aid to the Community coal industry.
- (6) It is therefore necessary to introduce a Community procedure for information and consultation on the costs of external supplies of hard coal and on guide prices for imported coal intended for the production of electricity and for coke and coal intended for the steel industry.
- (7) This procedure calls for the examination at regular intervals of aggregate information from Member States on the costs of external coal supplies and on prices of coal originating in third countries intended to be used for electricity production and for the steel industry. The information collected must make it possible to compare the development of the costs and the import prices of coal applied in the Community.
- (8) In keeping with current practice, Member States should continue to transmit to the Commission, each quarter, the prices of coal originating in third countries. Member States may retain their current system or set up new procedures for collecting the data.
- (9) The information collected and the results of the analyses carried out by the Commission must be published at Community level in order to ensure the transparency of the market, albeit in a form that does not enable specific imports or individual companies to be identified, with consultation between the Member States and the Commission.
- (10) If the Commission finds any anomalies or inconsistencies in the notified figures, it must be able to obtain other information from the Member State concerned.
- (11) In order to provide guidance, in line with the tasks assigned to the Community, on the course of action to be followed by all concerned and to determine its own course of action, in accordance with the provisions of the Treaty, the Commission conducts a continuous study of solid fuel market and price trends.
- (12) The Commission must publish the studies and the information collected in application of this Regulation, albeit in a form that does not enable specific imports or individual companies to be identified. It must specify the arrangements for the communications,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

This Regulation establishes a system for surveillance of imports of hard coal originating in third countries.

## *Article 2*

Member States shall provide the Commission with information on imports of hard coal and on the import prices (cif) of coal products intended for electricity production and for use in the steel industry in the Community.

This information shall be obtained by aggregating the data received in accordance with Article 4 and it shall be presented in such a way as to provide as accurate a picture as possible of the Community coal market.

## *Article 3*

For the purposes of this Regulation:

- (a) "coal imports" means any consignment of coal products or coke originating in third countries and entering the customs territory of the Community for purposes other than transit, which is intended for the production of electricity or to supply the coke ovens and blast furnaces of a Member State;
- (b) "import price" means the free-at-frontier price (cif ) of coal products and of coke entering the customs territory of the Community, based on tonnes of coal equivalent (tce) in the case of coal intended for power stations and based on a standard grade in the case of coal intended for coke ovens.

## *Article 4*

Any person or undertaking importing one of the coal products referred to in Article 5 from a third country shall provide the Member State in which that person or undertaking is established with the relevant information on such imports for each period not exceeding one month.

Any imports divided into several batches for transport reasons must be considered as a single import consignment if covered by a single price.

If an import consignment of a given product is declared as having been divided into several batches, each with different prices, a separate declaration shall be made for each batch.

## *Article 5*

1. The data characterising any import of coal products to a Member State must comprise:
  - (a) the designation of the coal product;
  - (b) the customs clearance point;
  - (c) the import date;
  - (d) the origin or provenance;
  - (e) the quantity;

- (f) the sulphur content;
  - (g) the cif price actually paid;
  - (h) the type of transaction, i.e. supplied under a contract of more than one year or of less than one year.
2. Information shall be communicated on the following coal products:
- (a) coal for the production of electricity or for combined heat and power generation;
  - (b) coal for the production of coke to supply steel industry blast furnaces;
  - (c) coal for injection in steel industry blast furnaces;
  - (d) coke to supply steel industry blast furnaces.
3. Member States may request from their Customs Services the information necessary to fulfil their obligations under this Regulation.

#### *Article 6*

The information which Member States are required to provide to the Commission pursuant to Article 2 shall be communicated within a period of one month from the end of each period not exceeding three months. This information shall be the aggregate result, for each type of coal product, of the data which Member States receive from persons or undertakings. For each of the coal products, the information shall comprise:

- (a) the tonnages, in the month following the end of the quarter concerned;
- (b) the import prices, excluding duties and taxes, in the month following the end of the quarter concerned;
- (c) the information required for the publication of an annual report on the solid fuel market in the Community. A committee of experts made up of representatives of the Member States shall determine the detailed information needed to draft such a report.

#### *Article 7*

On the basis of the information collected in application of this Regulation, the Commission shall publish in an appropriate form:

- (a) each quarter, the prices (cif), aggregated at Community level, of all coal imports intended for the production of electricity or for combined heat and power generation, excluding duties and taxes;
- (b) each quarter, the prices (cif), aggregated at Community level, of all coal imports intended for the production of coke for blast furnaces, excluding duties and taxes;



- (c) during the first quarter of each year, a report on the market in solid fuels in the Community concerning the preceding year together with a market outlook for the current year.

#### *Article 8*

Member States and the Commission shall consult each other at regular intervals at the request of a Member State or on the initiative of the Commission. These consultations shall concern in particular the communications to the Commission referred to in Article 7.

Consultations may be organised with international organisations and with third countries that have introduced similar information mechanisms.

#### *Article 9*

All information transmitted in application of this Regulation shall be confidential.

This provision shall not, however, prevent the dissemination of general or summary information, provided it is done in a form that precludes the identification of individual undertakings, i.e. such information must relate to at least three undertakings.

The Commission and the Member States shall not communicate, except to each other, information relating to individual undertakings or information which would enable individual undertakings to be identified.

#### *Article 10*

If the Commission finds any anomalies or inconsistencies in the information communicated to it by Member States, it may ask them to provide details of the calculation or evaluation procedures on which the aggregate information is based.

#### *Article 11*

The Commission shall adopt the provisions implementing this Regulation relating to the form, content and all other characteristics of the communications referred to in Article 1.

*Article 12*

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

It shall apply from 24 July 2002.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council  
The President*

## ANNEX

### **1. Information necessary for the publication of a "guide price" for imports of hard coal originating in third countries intended for conventional thermal power stations or for combined heat and power plants (Table I)**

Member States shall communicate to the Commission, for each quarter of the calendar year, the following data:

- imports of thermal coal in tonnes (units of mass, t = t) with a precise indication of the origin and of the net lower calorific value (net lower calorific value as received) expressed in kilojoules per kilogram (kJ/kg), broken down by:
  - sulphur content: (a) less than or equal to 1% or (b) greater than 1% respectively;
  - type of transaction: i.e. which is the subject of a delivery commitment under a contract of (a) more than one year or (b) less than one year.
- the average quarterly (cif) free-at-frontier price of all hard coal imports per tonne (t = t).

### **2. Information necessary for the publication of a "guide price" for imports of hard coal originating in third countries intended for coking plants in the steel industry (Table II)**

- imports of coking coal in tonnes (units of mass, t = t) with a precise indication of the origin and of the moisture, ash, volatile matter and sulphur content;
- the average quarterly price of all imports per tonne (t = t), calculated on the basis of the price fob, freight and the (cif) free-at-frontier price.

The "import price" of coking coal will be converted in order to calculate the average value for the Member State and the Community guide price, for the following reference grade:

- moisture: 8% ; the price will be corrected by 1% for each 1% difference;
- ash (dry): 7.5%; the price will be corrected by 2% for each 1% difference;
- volatile matter (dry): 26%; the price will be corrected by 0.3% for each 1% difference;
- sulphur (dry): 0.8%; the price will be corrected by 5% for each 1% difference;
- screen size: 0-30 mm.

The European Commission will inform the Member States of the method of calculating the guide price (cif) of coking coal used under the ECSC Treaty, in order to ensure standardised statistics.

**TABLE I: Report on quarterly imports of hard coal originating in third countries intended for use in conventional thermal power stations or in combined heat and power plants**

Importing country:

Delivery period:

Long-term contracts (1 year or over):

Exporting country	Tonnes	Net lower calorific value (kJ/kg)	Sulphur		Price (USD/tonne)
			≤ 1%	>1%	
United States					
South Africa					
Australia					
Poland					
Colombia					
Russia					
Ukraine					
China					
Venezuela					
Canada					
Indonesia					
Other					
<b>Total</b>					
<b>Average</b>					

Short-term contracts (less than one year):

Exporting country	Tonnes	Net lower calorific value (kJ/kg)	Sulphur		Price (USD/tonne)
			≤ 1%	>1%	
United States					
South Africa					
Australia					
Poland					
Colombia					
Russia					
Ukraine					
China					
Venezuela					
Canada					
Indonesia					
Other					
<b>Total</b>					
<b>Average</b>					

**TABLE II: Report on imports of hard coal originating in third countries intended for use in coke ovens in the iron and steel industry**

Importing country:

Delivery period:

<b>Exporting country</b>	<b>Kt</b>	<b>FOB*</b>	<b>FREIGHT*</b>	<b>CIF*</b>	<b>Moisture**</b>	<b>Ash**</b>	<b>Volatile matter**</b>	<b>Sulphur**</b>
United States								
Canada								
Australia								
Poland								
China								
Others								

\* price in USD

\*\* average values