DE G DE GRUYTER OPEN

State Aid for the Coal Sector in the European Union: Pre- and post-crisis perspective

Piotr Podsiadło
Faculty of Finance, Cracow University of Economics, Poland
piotr.podsiadlo@uek.krakow.pl

Abstract
This article presents the evolution of the conditions of state aid admissibility to the coal industry, starting with legal regulations within the European Coal and Steel Community, the European Community, and now the European Union. The thesis was formulated that, in connection with the expiry on 31 December 2010 of Council regulation No. 1407/2002, on the basis of which the European Commission allowed aid for the national mining industry in different member states in the period before the onset of the financial and economic crisis, the immediate cause of introduction of the next regulation for mining state aid in the form of Council Decision 2010/787/EU on state aid to facilitate the closure of uncompetitive coal mines was the increasing intensity of the aid for the mining industry in recent years.

Keywords: financial and economic crisis, state aid, coal mining sector, legal regulations, the European Union

ORIGINAL SCIENTIFIC PAPER

RECEIVED: JUNE 2015
REVISED: JULY 2015
ACCEPTED: SEPTEMBER 2015

DOI: 10.1515/ngoe-2015-0017
UDK: 338.124.4:339.13.027:622.33(094)
JEL: E62, K20, K33

NG OE
NAŠE GOSPODARSTVO OUR ECONOMY
Vol. 61 No. 5 2015
pp. 3 – 11

1 Introduction

Considering the essential context of granting state aid by the member states of the European Union, we can distinguish three main categories of aid permitted under article 107 paragraph 3 of the Treaty on the Functioning of the European Union (TFEU - OJ 2010 C 83/1). The qualification of the aid measure to one of three categories—regional aid, horizontal aid, or sectoral aid—is determined based on the purpose for which state aid was intended; in the case of the coexistence of multiple purposes, the main purpose determines the result (Evans, 1997, p. 25). Regional aid is distinguished by its territorial reference; this aid is granted to enterprises operating in an area characterized by a relatively low level of economic development. Horizontal aid admissibility is not dependent on the area covered by this type of aid, but on the purposes to be achieved as a result of granting. These include, for example, the development of small and medium-sized enterprises, research and development, environmental protection, employment, and training. Sectoral aid is strictly aimed at enterprises operating in a particular sector of the economy. The basis for recognizing it as compatible with the internal market and admissible is primarily article 107 paragraph 3 points c and d TFEU. In this case, the criterion for granting aid is the affiliation of the beneficiary to the given sector. A special place among these sectors is occupied by so-called sensitive sectors, which include synthetic fibers, automotive, shipbuilding, and the steel and coal mining sectors. In addition, such sectors as agriculture, fishing and fisheries, and transport can benefit from this aid.

State aid for sensitive sectors is connected with the restructuring processes of respective sectors of the economy and individual enterprises. This aid is permitted in cases where the granting accelerates the necessary changes or the development of these sectors, restores their long-term operations, and has a soothing effect on the social and economic costs of changes in these sectors. Sectoral aid is subject to particularly thorough and careful control due to the nature of specific sectors (Romariz, 2014). At the very least, the low capacity utilization, overproduction, or fierce competition in the internal market and beyond should be indicated. State aid for the coal industry is justified by the competitive imbalance of coal mines in the member states of the European Union, with coal being imported from outside the EU. Since the 1950s, some European coal production could no longer compete on the market, mainly due to a reduction in the cost of transporting coal from third countries, the depletion of coalfields with attractive geological conditions, and increased labor costs. Hence, the European Coal and Steel Community, later the European Community, and now the European Union authorized member states to grant subsidies to the coal industry in order to allow for an organized process of restructuring and closing unprofitable mines.

The aim of this article is to present the conditions for admissibility of state aid to the coal mining sector, including regulations made before the financial and economic crisis and the new regulation in the form of Council Decision 2010/787/EU, which since 1 January 2011 has allowed the European Commission to assess the potential requests for aid in the mining industry. With particular regard for the financial aspects of the application of Council Regulation No 1407/2002, the analysis is carried out to verify the claim that the introduction of another regulation of state aid for mining resulted from member states' increasing expenditures on aid to the mining industry.

The foundation of the European Union policy in the field of state aid is a provision specified in article 107 paragraph 1 TFEU, which constitutes that state aid is incompatible with the internal market (Böhmelt, 2013; Hille & Knill, 2006; König & Mäder, 2013; Toshkov, 2008). It is thus not the definition of whether the aid is incompatible or compatible with the internal market, but defining state aid as prohibited unless excluded from this prohibition under article 107 paragraphs 2 and 3 or article 106 paragraph 2 TFEU. Thus, based on the treaty provisions that speak directly of aid being compatible with the internal market, such provisions allow the adoption of a broad and flexible interpretation of the term "state aid" (D'Sa, 1998; Schina, 1987). In the concept of "state aid" as defined in article 107 paragraph 1 TFEU, which is of a broad and general nature, the open texture of law is clearly evidenced (Hart, 1997). As a result, there is no way to determine the semantic scope of that concept and legal norm defining the prohibition of state aid solely by reference to its semantic dictionary meaning and formal inference rules. Determining the semantic concept of state aid and the meaning of a legal norm defining the prohibition of state aid is specified during legal discourse, which in this case is proceeding before the Court of Justice of the European Union. The Court of Justice of the EU may be referred to as a "precedent court" because the general rules formulated in its case law determine the interpretation and application of both treaties as well as all EU secondary law (Scheuring, 2010). Therefore, this article analyzes state aid granted to the coal mining sector based on the concept of state aid with the meaning given and constantly being given by the case law of the EU courts.

2 Literature Review

State aid for the coal sector has been of considerable interest to the community sectoral policy since the 1951 signing of the European Coal and Steel Community (ECSC) Treaty of Rome (1957). Although article 4 of the ECSC treaty clearly prohibited state aid for the mining sector (ECJ, 30/59, para 20), in 1964 the European Commission sanctioned the granting of state aid to the coal industry (CFI, T-239/94, paras 61–64). This would justify the worsening economic situation in this sector, which was affected by the rising costs of mining in the member states, the competition of cheaper imported coal, and price pressure from alternative energy sources, such as crude oil and natural gas (CFI, T-106/96, para 62). Following the premise of improving the situation in the mining industry, the commission issued five decisions that allowed for state aid in connection with covering the costs of restructuring processes: Decision 3/65/ECSC (OJ 1965 L 31), Decision No 3/71/ECSC (OJ 1971 L 3), Decision 528/76/ECSC (OJ 1976 L 63), Decision No 2064/86/ECSC (OJ 1986 L 177/1), and Decision No 3632/93/ECSC (OJ 1993 L 329/12). Commission Decision No. 3632, which was released as the last one in the framework of the ECSC, introduced a radical approach to generating a significant loss in the mining industry and allowed for state aid upon fulfillment of the specified purposes. It then indicated improvement of the economic situation of mining, taking into account global prices of coal (with a target of lowering the size of granted aid), preventing the threats to the economic and social situation in regions that have been particularly affected by the total or partial restriction of the operation of mining sector enterprises, and supporting the mining industry to adapt to environmental protection requirements. These objectives were to be achieved through the use of five possible types of aid specified in this decision—namely, operating aid, aid to limit the scope of activity, aid to cover the additional costs, aid for research and development, and aid for environmental protection. It should be highlighted that the member states had an obligation to provide each of the mentioned aids directly from the budget, which was intended to improve transparency and allow verification of the amounts spent. Failure to meet this condition was explicit with the lack of acceptance of the commission for the given aid measure (ECJ, 214/83, para 30; ECJ, C-441/97 P, para 53).

After the expiration of the ECSC treaty in July 2002, the legal basis for granting state aid to the coal industry came from the provisions of the treaty establishing the European Community (now the Treaty on the Functioning of the European Union [TFEU]). Article 107 paragraph 3 point e and article 109 TFEU Council Regulation EC No 1407/2002 of 23 July 2002 issued state aid to the coal industry (OJ 2002 L 205/1). This regulation was meant to enable restructuring and reduce the capacity of the coal sector enterprises on the one hand and ensure access to coal in order to improve the energy security of the European Union on the other hand (Heidenhain, 2010, pp. 395–398). This document sanctioned the admissibility of state aid for the coal industry to cover only the costs associated with the extraction of coal to produce electricity, combined production of heat and electricity, production of coke, and the fueling of blast furnaces. This aid could be given to the reduction of activity in this sector (liquidation of certain coal mines) or to the access to coal resources. Coal regulation provided for additional aid to cover exceptional costs not related to the current operations of the coal mining sector enterprises, which are so-called inherited liabilities, including liabilities for social benefits. In all three exemptions from the general prohibition on granting state aid, the foundation to benefit from state aid was the plans notified by the European Commission. Member states granting state aid to the coal sector enterprises were obliged to provide the commission with all necessary information relating to the current situation in the national power industry in order to justify the estimated production capacity forming part of the plan for protecting access to coal reserves (Holscher, Nulsch, & Stephan, 2014).

In connection with the expiry of the term of regulation 1407/2002 from 20 July 2010 at the end of 2010, the European Commission presented a new document setting out the conditions of admissibility of state aid to the coal industry sector (European Commission, 2010). A new legal instrument regulating aid to the coal industry on procedural grounds could be developed only in the form of a council regulation, based on article 107 paragraph 3 point e of TFEU. On December 10, 2010, the council passed decision 2010/787/EU on state aid, facilitating the closure of uncompetitive coal mines (OJ 2010 L 336/24), which is valid from 1 January 2011 to 31 December 2027. The aid may cover only the costs connected with coal for electricity production, combined production of heat and electricity, production of coke, and the fueling of blast furnaces in the steel industry, where such use takes place in the union.

The council's decision provides for two types of aid. The first is the aid for closure (article 3). Mines that incur losses during their current activity may benefit from such aid provided that they present a plan of liquidation whose deadline does not extend beyond 31 December 2018. All entities authorized to receive such aid have to have been in operation on 31 December 2009, while the total amount of the aid for closure granted by a member state must be characterized by a downward trend. The reduction has to be no less than 25% by the end of 2013, no less than 40% by the end of 2015, no less than 60% by the end of 2016, and no less than 75% by the end of 2017 compared to aid granted in 2011. Furthermore, the total amount of closure aid to the coal industry of a given member state may not exceed, for any year after 2010, the amount of aid granted by a member state and approved by the commission in accordance with articles 4 and 5 of regulation 1407/2002 for 2010. The notified aid may not exceed the difference between the foreseeable production costs and foreseeable revenue for a given coal production year. The aid actually paid is subject to annual adjustment based on actual costs and revenues—at the latest by the end of the coal production year following the year for which the aid was granted. It should also be emphasized that the amount of aid per one ton of coal equivalent may not cause a reduction in the prices along with the coal delivery from the union (the so-called prices for union coal at utilization point) to be lower than the prices of similar calorific value of coal from third countries.

The second type of aid is aid to cover exceptional costs, such as costs arising from or resulting from the closure of coal production units; these costs are not related to current production (article 4). Such aid may be used to cover the costs incurred or provisions made by the enterprises that are closing or have closed coal production units, including enterprises benefiting from closure aid. Such aid may also be used to cover the costs incurred by several enterprises. An exhaustive list of cost categories that can be covered by state aid was included in the annex to the council's decision.

It should be highlighted that the council's decision contains procedural provisions that are very similar to the provisions of Council Regulation No 1407/2002. They mainly explain how the commission should be notified of such aid to enable complete assessment before considering approval of the aid. In order to increase transparency and efficiency of the aid provided by the member states to the coal mining sector, the total aid received by the enterprises is shown in the profit and loss account as a separate item of revenue, as opposed to sales revenue. The maximum amount of aid approved by the council's decision shall apply regardless of whether the aid is financed entirely by member states or partly financed by the European Union (Clayton & Segura Catalan, 2015). These rules are designed to allow for the isolation of aid measures from the funds obtained from normal business activity in order to ensure better control over state aid.

3 Data and Methodology

According to EU competition law, state aid for enterprises in the coal mining sector should be provided by member states in accordance with the principles of proportionality and degressivity (ECJ, 31/59, para 88). Thus, the amount of granted aid shall be appropriate to the results achieved while it is also necessary to aim for the gradual reduction of state aid for mines. In relation to the scoreboards prepared by the commission in the field of state aid (i.e., state aid scoreboard), the resources allocated to state aid for the mining industry in the period covered by Council Regulation EC No 1407/2002 amounted to EUR 16.6 billion in 2003, EUR 8.1 billion in 2004, EUR 6.0 billion in 2005, approximately EUR 3.8 billion in 2006, and approximately EUR 2.9 billion in 2007 for the period of 2008–2010 (see Table 1). The decreasing intensity of the aid in the mining sector was associated with closing of the least profitable mines and—indirectly—with a reduction in sectoral aid for horizontal aid granted to enterprises irrespective of the regions and sectors in which they operate and, thus, are more preferred by the commission.

In the course of regulation 1407/2002, the commission's decisions related to 11 member states: Bulgaria, the Czech Republic, France, Spain, Germany, Poland, Romania, Slovakia, Slovenia, Hungary, and the United Kingdom. In 2005–2007, the average value of the aid for the mining industry amounted to EUR 4.84 billion, while in the comparable period of 2008–2010 it was already EUR 3 billion. State aid reduction reflected the situation on the coal market. First, coal consumption in the EU decreased by 4.7% in 2005 compared to 2004, and in 2006 it fell a further 5.4%. Moreover, the production of coal in the member states underwent systematic limitation due to increasing imports of cheaper raw materials from third countries. Countries such as Bulgaria, the Czech Republic, and France completely abandoned the granting of aid based on the provisions in regulation 1407/2002. However, this did not preclude the possibility of granting aid to enterprises operating in the mining sector based on the general state aid rules that applied to all sectors. It is necessary to point out the definition of aid determined in article 107 paragraph 1 TFEU, which refers to the types of aid, such as regional aid, environmental aid, training aid, or aid for research and development.

By analyzing the intensity of aid directed to the coal industry, four groups of member states can be distinguished. The first group includes countries that have ceased coal subsidies for operating coal mines (the Czech Republic, Bulgaria, France, Italy). The second group includes countries that provide operational aid (Romania). The third group includes the countries that have decided that, as part of their overall energy strategy, they want to keep the coal mines likely to be profitable without operating aid in the market, thus providing only investment aid (Poland, Slovenia, the United Kingdom). The fourth group comprises those countries that provide both operating aid and investment aid (Germany, Hungary, Slovakia, Spain). This trend is presented in Table 2.

Table 1 State Aid Granted to the Mining Sector by Member States based on Council Regulation EC No 1407/2002 (in millions of euros)

	2003	2004	2005	2006	2007	2008	2009	2010	Total
Bulgaria	2.5	11	9.4	6.6	:	:	:	:	**29.5**
Czech Republic	0.2	19.4	0.4	0	0	0	0	0	**20**
France	1076.7	1029.5	0	:	:	:	:	:	**2106.2**
Germany	7150.6	3374.3	3010.7	2586.5	2532.6	1913.6	1847.4	1845.3	**24261**
Greece	18.2	:	:	:	:	:	:	:	**18.2**
Hungary	12	110.3	42	34	41	36.9	30.7	29.1	**336**
Poland	5470.9	664.4	256.5	170.9	110.2	157.2	98.3	197	**7125.4**
Romania	194.6	265.4	82.1	111.4	121.4	95.2	76.8	63.7	**1010.6**
Slovakia	6.6	1.5	4	5.9	4.2	4	5.5	5	**36.7**
Slovenia	19.1	16.6	16.3	16.8	18.4	18.3	16.7	11.9	**134.1**
Spain	2567.6	2520.9	2462	868.1	836.7	813.3	774.4	821.8	**11664.8**
United Kingdom	36.8	53.6	66.9	13.1	0.5	2.2	:	:	**173.1**
EU 28	16555.9	8066.8	5950.4	3813.2	3665.1	3040.6	2849.9	2973.8	**46915.7**

Source: EUROSTAT (2015).

Table 2 State Aid to Coal Industry Sector due to the Target of Destination (in millions of euros)

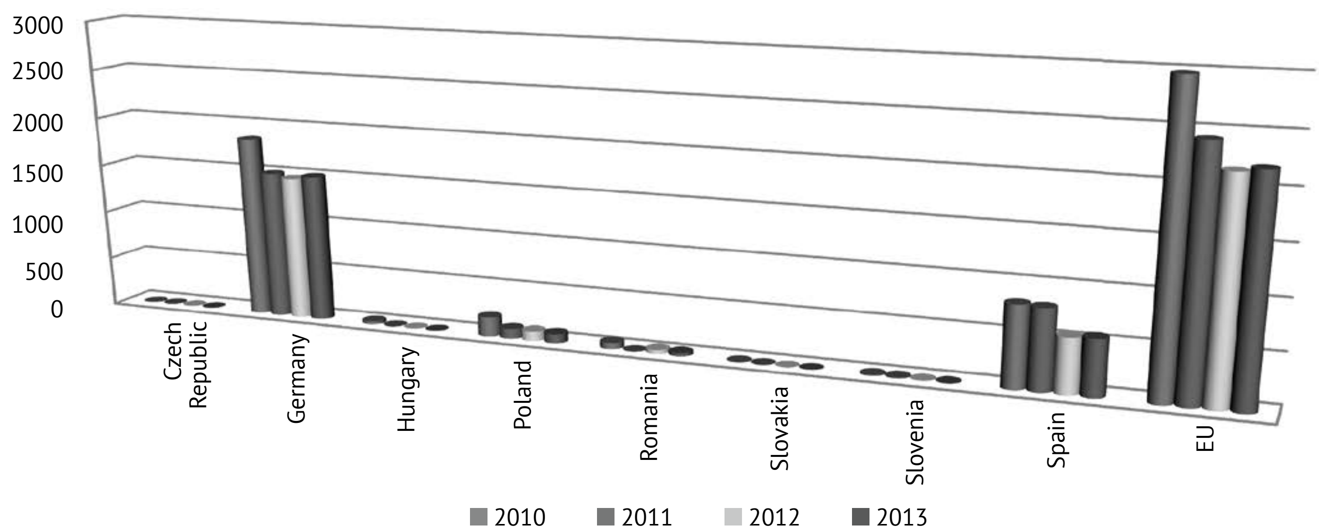
	Average annual value of aid for current production		Average annual value of aid for purposes other than current production		Average annual value of total aid for the coal industry sector	
	2005–2007	**2008–2010**	**2005–2007**	**2008–2010**	**2005–2007**	**2008–2010**
Bulgaria	2866.24	1845.32	1961.69	1179.50	4827.93	3024.82
Czech Republic	3.80	0	4.48	0	8.28	0
France	0	0	6.46	0	6.46	0
Germany	2138.62	1289.13	723.53	698.56	2862.15	1987.69
Hungary	42.59	31.22	20.95	3.41	63.54	34.63
Poland	0	0	325.67	109.21	325.67	109.21
Romania	73.75	84.69	0	0	73.75	84.69
Slovakia	1.33	4.11	2.34	0.27	3.67	4.38
Slovenia	0	0	16.10	11.44	16.10	11.44
Spain	562.14	436.17	556.33	367.27	1118.47	803.44
United Kingdom	0	0	38.92	0.78	38.92	0.78
EU 28	2866.24	1845.32	1961.69	1179.50	4827.93	3024.82

Source: author's calculations based on DG Competition.

Taking into account two periods concerning the years 2005–2007 and 2008–2010, it should be noted that the vast majority of countries that support the domestic mining industry limited the aid to this sector. The exceptions are only Romania and Slovakia, for which we can observe an increase in operating aid granted. It should be noted that the four countries have finished granting the aid. France closed its last coal mine in 2004, although in 2006 it authorized a private enterprise, which by definition was not to receive any subsidies, to start mining activity in a new open-cast mine in the area of *L'arc* (Gardanne). The Czech Republic privatized previously state-owned coal mines and ceased granting subsidies, which led to a significant reduction in both mining and employment. Italy had one active coal mine in Sardinia, for which no state aid was identified to the commission. In these three countries, the restructuring process was completed.

In terms of permissible investment aid, the United Kingdom, Poland and Slovakia have limited their subsidies for mines, whereas the United Kingdom and Slovakia have completely privatized their mines, which were previously owned by the state. In Poland, the privatization process is underway.

Figure 1 State aid for the mining sector granted by member states based on Council Decision 2010/787/EU in 2010–2013 (in millions of euros)



Source: EUROSTAT (2015).

The restructuring process of the coal mining industry in these countries ended to such an extent that all mines far from reaching a break-even point ceased their operations. In contrast, Germany, Hungary, Romania, and Spain continued operating aid schemes based on article 5 paragraph 3 of the coal regulation. In these countries, there was very little probability that their domestic mining industry would survive without operating aid.

The coal regulation provided for two different instruments for facilitating the closure of mines that are no longer competitive on the world market: closure aid, which was the aid covering the operating losses of mines until the date of closure, and aid for inherited liabilities, which covers certain categories of social and environmental obligations resulting from the coal industry. The process of closing unprofitable mines was carried out in all member states that produce coal, with the exception of Italy. Germany, Spain, and France have granted closure aid to alleviate the social consequences of closing the mines. Without the payment of closure aid, closing the mines took place in three countries (Hungary, Slovakia, Poland). Activities of the second instrument have been adopted by the Czech Republic and France, whose governments continued paying subsidies for acquired social and environmental commitments. Other member states, with the exception of Hungary and Italy, have to a certain extent taken over acquired social and environmental costs not only for closed mines, but also for still active mines.

Figure 1 shows the amount of aid for the mining sector in 2010–2013, which includes the first three years of the Council Decision 2010/787/EU. According to the current provisions, the value of granted aid did not exceed the reference value from 2010 in relation to all member states providing aid for this purpose and for each of the countries separately. It should be noted that three countries, the Czech Republic, Hungary, and Slovakia, have already ceased granting the aid. Thus, the aid for mining industry is provided by only five member states: Germany (EUR 1504 million in 2013), Poland (EUR 93.3 million in 2013), Romania (EUR 33.4 million in 2013), Slovenia (EUR 4.7 million in 2013), and Spain (EUR 568.1 million in 2013). In 2011–2013, state aid for the mining industry showed a downward trend, whereas the value of aid began to grow in 2013.

4 Results and Discussion

Council Decision 2010/787/EU considered that the production and consumption of coal in Europe in the future will continue to decline and that, despite the development of new mining technologies, coal mines are and will be more expensive to maintain than in the countries exporting coal, such as Indonesia, Australia, and South Africa. In addition, it was pointed out that, compared to the world's crude oil or natural gas reserves, Europe has the most substantial reserves of coal, which gave direction to the mining industry in many member states. Thus, even watching the slow process of restructuring the mining industry in some member states in the first decade of the 21st century, it was not difficult to conclude that the mining sector deprived of access to state aid will not meet the rules of competition and will fall, causing severe consequences in the regions already affected by high structural unemployment and destroyed environment. The possibility of granting state aid—although on more restrictive conditions—was thus justified by the "too big to fail" principle known from its application to the banking sector, which meant that mining in some regions and even in member states is an too important employer and, despite regular losses, is unlikely to be liquidated (compare Hallerberg, 2011). This factor is thus closely linked to the effects for the energy sector of the financial crisis, which in Europe began with the collapse of the Lehman Brothers Bank in 2008. The transmission mechanism in this case was very simple: The deteriorating economic situation due to limited opportunities for investment by enterprises of the real economy—along with the limited access to bank loans—led to decreased energy consumption and demand for coal.

Thus, the implementation of Council Decision 2010/787/EU of 10 December 2010 occurred during the financial crisis that emerged in 2008, confirming that even countries characterized by low-cost mining depend on global coal prices. The financial crisis has caused a sharp deterioration in the economic situation of many countries, including the fastest-growing, but most carbon-intensive, countries of China and India. This in turn led to a decrease in demand for energy and as a result changed the trend of energy prices from upward to downward. Coal prices fell from USD 220 per ton in July 2008 to just USD 70 per ton in January 2009. Since mid-2011, the price of coal has declined; at the end of 2014, coal prices stood at USD 75–76 per ton according to index-ARA (Amsterdam-Rotterdam-Antwerp).

In light of such considerations, the question emerges as to whether in the current macroeconomic situation coal can gain and maintain a competitive position in the market of energy carriers without state aid? Even before the financial crisis, a number of "traditionally mining" member states decided to end coal mining. Other countries such as the Czech Republic, Poland, the United Kingdom, and Spain continued production, which at that time of high energy prices on world markets was profitable. However, considering the effects of the crisis on the mining sector in the form of low coal prices, it is expected that projects profitable even a few years ago may again require significant support from the state. Only member states can decide whether to grant mining support. Such a situation can be seen in Poland, where—under pressure from the trade unions—the authorities have currently abandoned the unconditional closing of unprofitable mines. The agreement implies that some of these mines will indeed be a part of Mine Restructuring Company, with an allocated PLN 2.3 billion (approximately EUR 545 million), but not in order to extinguish their activity. Mines are to be restructured and then sold to potential investors. The agreement between unions and the government indicates that everything will follow Council Decision 2010/787/EU, according to which state aid for mines may be granted only for their closing and only until the end of 2018. The interpretation of this plan is that, when the Mine Restructuring Company sells mines, it will simply ask the government for aid, which will be included in the price of the mines. In addition, the Polish government believes that at least one or two years of peace were gained to find an investor, all for a cost of PLN 2.3 billion. However, the European Commission interprets decision 787 totally differently than the Polish government—namely, one of the key conditions for granting aid for mining is the irreversible closure of mines. Therefore, the commission cannot give permission for state aid, which is not intended to facilitate the closure of the mines, and investment and restructuring in these mines are not allowed. According to the commission's interpretation, operating losses in the mines may be covered in the mines "irrevocably destined for closure by the end of 2018"; only extraordinary costs incurred after the closing (e.g., water pumping) can be covered longer (i.e., until 2027). In addition, Poland notified Brussels of its aid plan for mines and must at the same time present a plan for their closure. Discrepancies in interpretations also appear in terms of the amount of aid possible to grant. In accordance with article 3 point g of Council Decision 2010/787/EU, aid for mining granted annually cannot be more in the given country than in 2010, which means that the amount of support may not exceed PLN 400 million per year. Meanwhile, Poland already intends to spend PLN 1 billion on aid for mines in 2015 and another PLN 900 million in 2016. Why is the commission able to exceed the aid limit? In 2010, Poland for the first and the last time provided support for investments in mines, which was indicated in the EU laws at the time. It allocated exactly PLN 400 million from the budget for this purpose. Moreover, according to article 108 TFEU, until the commission does not approve state aid plan, member states may not grant such aid, which means that theoretically the Polish government has no right to pay out money to the Mine Restructuring Company for the mines. Waiting for the Brussels agreement would mean that the miners will not get a salary during this time because, after all, the Mine Restructuring Company does not have the money.

As such, what is the case for the planned 2015 aid for Polish mines? First, the lack of specific regulations in the current Council Decision 2010/787/EU does not block the opportunity to grant aid, and it does not make this aid automatically illegal. Second, the ability to provide aid for mining will really depend on the will and creativity of the member states. However, in each case of aid for the mining sector, the starting point for assessing the admissibility of providing aid is the definition of aid incompatible with the internal market defined in article 107 TFEU and conditions for notification of such aid to the European Commission, as stated in article 108 TFEU.

5 Conclusion

The Green Paper on the European Union's energy security published in 2000 formulated a critical (from the point of view of the problem addressed in the article) methodological approach of the European Commission relating to the admissibility of state aid for the mining sector and its compatibility with the internal market (European Commission, 2000). Namely, the commission made decisions about the future of the coal industry, given the lack of any possibility of achieving competitiveness in this industry on the world market. A competitive imbalance between the production of coal within the European Union and imported coal from outside the area forced the coal industry to take decisive restructuring measures, including a significant reduction in production capacity. As a result, Europe has become largely dependent on external supplies of primary energy sources, which violated the European strategy for the security of energy supply, taking into account the development of national sources of primary energy used in particular for the production of electricity. Therefore, on 16 October 2001, the European Parliament adopted a resolution on a European strategy for the security of energy supply, which recognized the importance of coal as a national source of energy. Strengthening the EU's energy security justified maintaining the possibility of coal production while taking into account the financial aid of the country in the sector, increasing its efficiency and reducing the size of the subsidy.

The green paper's records were reflected in Regulation 1407/2002, adopted on 23 July 2002, which was rather an act of acceptance of the fact that the coal industry in the European Union is not and will not be able to operate under market conditions. Therefore, the primary purpose of this document was to continue the restructuring process of the mining industry in the member states and to improve the security of the energy supply to the EU market through the use of coal for this purpose, provided that reasonable and acceptable costs of its acquisition can be achieved. Therefore, in line with the strategy of the EU's energy security, coal has gained a reputation as a strategic fuel whose production could be subsidized in order to mitigate the potential energy crises. However, the thesis stated at the outset of this article must be rejected because, taking into account the figures presented by the General Directorate on Competition, it should be noted that the intensity of aid to the coal industry decreased each year, showing the same downward trend. From 2004 to 2009, the value of the granted aid amounted respectively to EUR 16.6 billion, EUR 8.1 billion, EUR 6.0 billion, approximately EUR 3.8 billion, EUR 3.7 billion, EUR 3 billion, EUR 2.8 billion, and EUR 3 billion. In comparable 3-year periods, 2005–2007 and 2008–2010, public aid for the mining industry averaged EUR 4.84 billion and EUR 3.03 billion for all 27 member states. Such data confirm the view contained in Council Decision 2010/787/EU that a small proportion of subsidized coal in the overall energy mix does not justify the further maintenance of such subsidies in order to secure the energy supply in the European Union. In addition, the indefinite support for uncompetitive coal mines is not justified by EU policies promoting renewable energy sources and sustainable and secure low carbon economy. In 2011–2013, state aid for the mining sector did not exceed the level of 2010, which indicates members states' compliance with expenditure rules introduced by Council Decision 2010/787/EU. The council's decision of 10 December 2010 expresses the sectoral state aid system proposed by the commission, which should be regarded as a transitional system, leading to the full application of the general rules on state aid to the coal sector. Yet this raises a question as to whether, when informed by financial and economic crisis macroeconomic realities, there will be a need for a new form of regulation of admissibility of state aid for mining. Nevertheless, it would be rather a very specific regulation resulting from the fact that certain issues are not in any existing state aid framework compatible with the provisions of the Treaty on the Functioning of the European Union.

Given current considerations within the structure and conditions of admissibility of state aid, it should be noted that changes in EU policy regarding the providing of aid have been introduced in response to the severe consequences of the financial crisis affecting the restriction of access to sources of finance and the crisis in the real economy shifting primarily into a decline in production, which together contributed to a crisis of public finances—namely, a crisis of excessive public debt and budget deficit resulting from the slowdown in different sectors of the economy. Member states reported a decline in GDP and trade as well as significant limitations of production and expenditures on crucial investments; they also experienced a rise in unemployment, thereby increasing social unrest. In such conditions, a significant decrease in demand and orders for raw materials and finished goods as well as the increasing problems of buyers' solvency have become commonplace, which in turn contributed to the deterioration of enterprises' financial situation, leading to the inhibition of initiated or the omission of new investments, changes in the structure of employment, and even the bankruptcy of certain business entities. At the same time, tightening banks' lending policies significantly reduced enterprises' access to external sources of financing, thereby impeding the ability to stay on the market, implement new investment, and ensure further development. In this situation, the state's actions to support the economy have become one of the tools for opposing the increasing economic and social difficulties.

Acknowledgments

Publication was financed with funds granted to the Faculty of Finance at Cracow University of Economics, within the framework of the subsidy for the maintenance of research potential.

References

1. Böhmelt, T. (2013). The temporal dimension of the credibility of EU conditionality and candidate states' compliance with the *acquis communautaire*, 1998–2009. *European Union Politics, 14*(2). http://dx.doi.org/10.1177/1465116512458164
2. Case 30/59, Judgment of European Court of Justice of 23 February 1961, ECR 1961, 1. *De Gezamenlijke Steenkolenmijnen in Limburg/High Authority*.
3. Case 31/59, Judgment of the European Court of Justice of 4 April 1960, ECR 1960, 71. *Acciaieria e Tubificio di Brescia/High Authority*.
4. Case 214/83, Judgment of European Court of Justice of 3 October 1985, ECR 1985, 3053. *Germany/Commission*.
5. Case C 441/97 P, Judgment of European Court of Justice of 30 November 2000, ECR 2000, I-10293. *Wirtschaftsvereinigung Stahl, Thyssen Stahl AG, Preussag Stahl AG i Hoogovens Staal BV/Commission*.
6. Case T-239/94, Judgment of the Court of First Instance of 24 October 1997, ECR 1997, II-1839. *Association des acieries européennes indépendantes (EISA)/Commission*.
7. Case T-106/96, Judgment of the Court of First Instance of 7 July 1999, ECR 1999, II-2155. *Wirtschaftsvereinigung Stahl/Commission*.
8. Clayton M., & Segura Catalan, M. J. (2015). The notion of state resources: So near and yet so far. *European State Aid Quarterly, 14*(2).
9. *Commission Decision 3/65/ECSC regarding the community system of measures taken by member states to assist the coal-mining industry.* OJ L 31, 25.2.1965.
10. *Commission Decision No 3/71/ECSC of the Commission of 22 December 1970 on community rules for interventions by member states for the benefit of the coal industry.* OJ L 3, 5.1.1971.
11. *Commission Decision 528/76/ECSC of 25 February 1976 regarding the community system of measures taken by the member states to assist the coal-mining industry.* OJ L 63, 11.3.1976.
12. *Commission Decision No 2064/86/ECSC of 30 June 1986 establishing community rules for state aid to the coal industry.* OJ L 177/1, 1.7.1986.

13. *Commission Decision No 3632/93/ECSC of 28 December 1993 establishing community rules for state aid to the coal industry*. OJ L 329/12, 30.12.1993.
14. *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*. OJ C 83/1, 30.3.2010.
15. *Council Decision of 10 December 2010 on state aid to facilitate the closure of uncompetitive coal mines*. OJ L 336/24, 21.12.2010.
16. *Council Regulation EC No 1407/2002 of 23 July 2002 on state aid to the coal industry*. OJ L 205/1, 2.8.2002.
17. D'Sa, R. M. (1998). *European Community law on state aid*. London: Sweet&Maxwell.
18. European Commission. (2000). *Green paper—Towards a European strategy for the security of energy supply*. Brussels, 29.11.2000, COM(2000) 769 final.
19. European Commission. (2010). *Proposal for a Council regulation on state aid to facilitate the closure of uncompetitive coal mines*. Brussels, 20.7.2010, COM(2010) 372 final.
20. EUROSTAT. (2015). Coal, steel, shipbuilding aid. Retrieved from http://ec.europa.eu/eurostat/tgm_comp/table.do?tab=table&plugin=1&language=en&pcode=comp_css_01
21. Evans, A. (1997). *European Community law of state aid: Oxford European Community law series*. Oxford & New York: Oxford University Press.
22. Hallerberg, M. (2011). Fiscal federalism reforms in the European Union and the Greek crisis. *European Union Politics, 12*(1). http://dx.doi.org/10.1177/1465116510387652
23. Hart, H. L. A. (1997). *The concept of law* (2nd ed.). Oxford: Oxford University Press.
24. Heidenhain, M. (2010). *European state aid law. Handbook*. München-Oxford: Verlag C. H. BECK & Hart Publishing.
25. Hille, P., & Knill, C. (2006). 'It's the bureaucracy, stupid': The implementation of the acquis communautaire in EU candidate countries, 1999–2003. *European Union Politics, 7*(4). http://dx.doi.org/10.1177/1465116506069442
26. Holscher, J., Nulsch, N., & Stephan, J. (2014). Ten years after accession: State aid in Eastern Europe. *European State Aid Law Quarterly, 13*(2).
27. König, T., & Mäder, L. (2013). Non-conformable, partial and conformable transposition: A competing risk analysis of the transposition process of directives in the EU15. *European Union Politics, 14*(1). http://dx.doi.org/10.1177/1465116512447703
28. Romariz, C. (2014). Revisiting material selectivity in EU state aid law or "The ghost of yet-to-come." *European State Aid Law Quarterly, 13*(1).
29. Scheuring, K. (2010). *Precedens w orzecznictwie Trybunału Sprawiedliwości Unii Europejskiej*. Waraw: Oficyna a Wolters Kluwer business.
30. Schina, D. (1987). *State aids under the EEC Treaty. Articles 92 to 94*. Oxford: ESC Publishing Ltd.
31. Toshkov, D. (2008). Embracing European law. Compliance with EU directives in Central and Eastern Europe. *European Union Politics, 9*(3). http://dx.doi.org/10.1177/1465116508093490
32. Treaty of Rome. (1957). Retrieved from http://www.gleichstellung.uni-freiburg.de/dokumente/treaty-of-rome

Author

Piotr Podsiadło, Ph.D., is an assistant professor employed at the Faculty of Finance at the Cracow University of Economics in Poland, focusing on the field of public finance and financial policy, especially state aid policy in the European Union. He is the author/co-author of more than 30 scientific articles and has participated in more than 40 domestic and international conferences. He is a member of The Risk Banking and Finance Society in Florence, Italy.

Državna pomoč za premogovni sektor v Evropski uniji – pred- in pokrizna perspektiva

Izvleček

V prispevku predstavljamo razvoj pogojev za dopustnost državne pomoči premogovni industriji, začenši s pravnimi predpisi Evropske skupnosti za premog in jeklo, potem predpisi Evropske skupnosti in danes Evropske unije. Oblikovali smo tezo, da se je v povezavi s potekom Regulative Sveta EU št. 1407/2002 dne 31. decembra 2010, na osnovi katere je Evropska komisija dovolila pomoč rudarski industriji v različnih državah članicah EU v obdobju pred začetkom finančne in ekonomske krize in ki je postala vzrok za uvedbo novega predpisa o državni pomoči rudarstvu v obliki Odločitve Sveta EU 2010/787/EU o olajševanju zaprtja nekonkurenčnih rudnikov premoga, intenzivnost pomoči rudarski industriji v zadnjih letih povečala.

Ključne besede: finančna in ekonomska kriza, državna pomoč, premogovni sektor, pravni predpisi, Evropska unija.