



***Fact finding: support to  
coal/lignite in the EnC***

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Bulgaria accused of illegal aid to fossil fuel

# Romania keeps giving state aid to coal even as it holds EU presidency

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By Alexandru Mustață | CEE Bankwatch

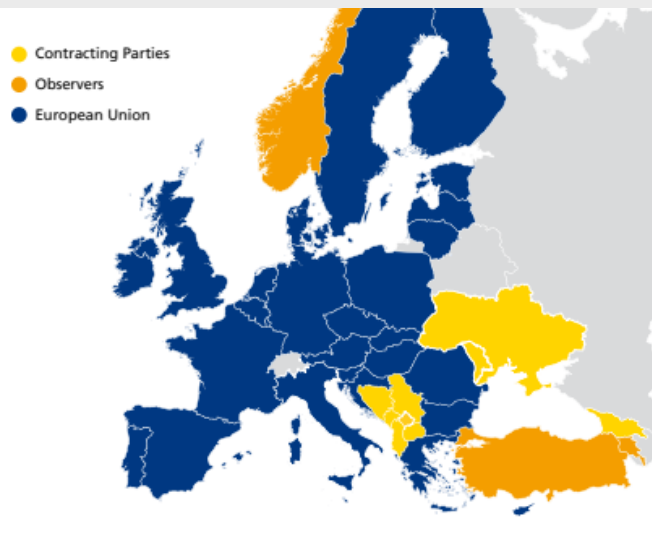
Jan 31, 2019

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- ***Study***
- ***Why relevant for EnC***
- ***Take-aways for State aid authorities***
- ***Landscape of support to coal/lignite***



- Purpose
- Geographical reach
- Measures covered
- 2015-2017
- Public sources only



- Environment and Climate Change
- State aid:

## Article 18 EnCT

*“1. The following shall be incompatible with the proper functioning of the Treaty, insofar as they may affect trade of Network Energy between the CP:*

...

***(c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources.***

*2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles [101, 102 and 107 TFEU] (attached in Annex III).”*



## WTO definition

a financial contribution (ii) by a government or any public body within the territory of a Member (iii) which confers a benefit.

## Article 18 EnCT

- Advantage
- Selectivity
- Granted by the state/through State resources
- Distort competition
- Effect on trade



## Measures identified

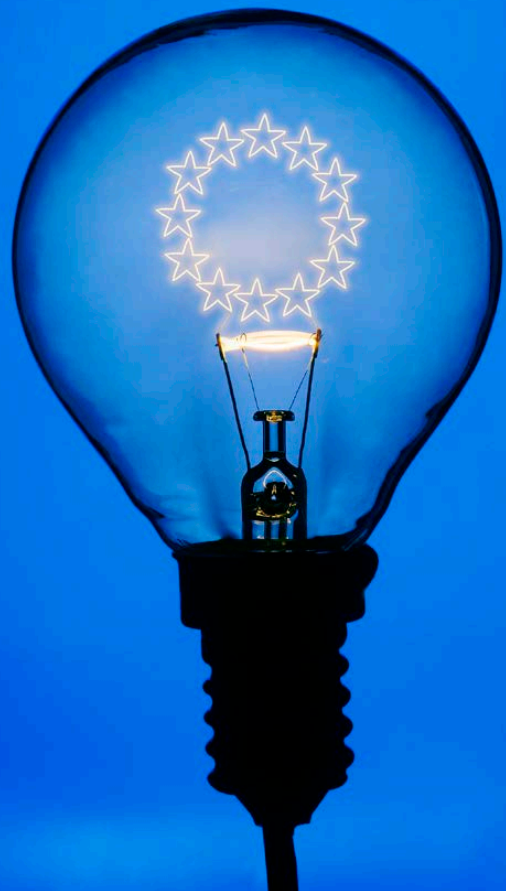
country by country – year per year

Mostly fiscal support, i.e. direct funding from budget, covering arrears, government loans, debt write-offs or repayment of creditor claims on the basis of state guarantees, lower taxes and fees, VAT exemption

Public finance support, i.e. mostly state guarantees for foreign loans for reconstruction and revitalisation

Direct investment of state enterprises in capital, regular advances on production, extending loans, tolerance for non-payment of electricity bills

## Impact on prices



- Relevance of subsidies/State aid to coal/lignite
- Reach of such subsidies/State aid
- Impact on the market
- Role of State aid authorities to play

**-> investigation and courageous decision-making required**



The background is a satellite-style image of the Earth, showing the continents of Europe and Africa. Overlaid on this are numerous glowing blue lines that represent energy transmission or network connections. These lines are curved and intersect, creating a complex web of energy paths across the globe.

*Thank you  
for your attention!*

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## ***State aid to coal/lignite – legal framework***

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- 1. EnC Treaty***
- 2. TFEU***
- 3. Case Law***
- 4. Council Decision 2010/787***
- 5. Other legal acts***
- 6. National law***

# 1. EnC Treaty

## Article 18 EnCT

*“1. The following shall be incompatible with the proper functioning of the Treaty, insofar as they may affect trade of Network Energy between the CP:*

*...*

*(c) any public aid which distorts or threatens to distort competition by favouring certain undertakings or certain energy resources.*

*2. Any practices contrary to this Article shall be assessed on the basis of criteria arising from the application of the rules of Articles [101, 102 and 107 TFEU] (attached in Annex III).”*

## Article 19 EnCT

*“With regard to public undertakings and undertakings to which special or exclusive rights have been granted, each CP shall ensure that as from 6 months following the date of entry into force of this Treaty, the principles of the [TFEU], in particular Article [106 (1) and (2)] thereof (attached in Annex III), are upheld.”*



### Article 107 TFEU (ex Article 87 TEC)

1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

2. The following shall be compatible with the internal market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision

repealing this point.

## 2. TFEU

3. The following may be considered to be compatible with the internal market:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

### 3. Case Law

#### Article 94 EnCT

*„The institutions shall interpret any term or other concept used in this Treaty that is derived from European Community law in conformity with the case law of the Court of Justice or the Court of First Instance of the European Communities [...].“*


## 4. Council Decision 2010/787

Decision of the Council of the EU  
refers to Article 107(3)(e) TFEU

Previous Council Regulation 1407/2002  
expired

*“The Union’s policy of encouraging renewable energy sources and a sustainable and safe low-carbon economy does not justify the indefinite support for uncompetitive coal mines. The categories of aid permitted by Regulation 1407/2002 should therefore not be continued indefinitely.” (preamble para 3)*

## 4. Council Decision 2010/787



In the absence of sector-specific State aid rules, only the general State aid rules apply to coal -> uncompetitive coal mines may no longer be eligible for aid and may be forced to close

HOWEVER: MS should be able to take measures to alleviate the social and regional consequences of the closure of those mines, that is to say the orderly winding down of activities in the context of an irrevocable closure plan and/or the financing of exceptional costs, in particular inherited liabilities



## 4. Council Decision 2010/787



Transition from sector-specific rules to general State aid rules

Mitigation of distortion of competition: aid for closure of uncompetitive mines must be degressive and strictly limited to coal production units that are irrevocably planned for closure

Mitigating environmental impact: plan of appropriate measures for example in the field of EE, RES or carbon capture and storage

## 4. Council Decision 2010/787

Costs covered:

Which do not directly affect the cost of production

Intended to cover exceptional costs that arise from the closure – separate accounts for production units

!!! The application of this Decision does not exclude that aid to coal may be found compatible with the internal market on other grounds!!!

## 5. Other legal acts

### European Commission Guidelines on State aid for environmental protection and energy 2014-2020

(„EEAG“)

Extended until 2022

#### Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees:

Individual guarantees: no State aid IF

- The borrower is not in financial difficulty.
- The extent of the guarantee can be properly measured when it is granted (i.e. linked to a specific financial transaction, for a fixed maximum amount and limited in time).
- The guarantee does not cover more than 80% of the outstanding loan or other financial obligation.
- A market-oriented price is paid for the guarantee.

## 6. National State aid law and provisions



Centralized enforcement authority: COM

EU State aid provision, i.e. TFEU only



Decentralized enforcement system: national enforcement authority/authorities – monitoring and assistance by ECS

National State aid laws and secondary legislation



- Based primarily on national law
- National law needs to comply with EU/EnC law, therefore relevance of EU/EnC law
- Check if it falls under closure aid
- If not: very limited possibility for compatibility





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