

# Official Journal

## of the European Communities

ISSN 0378-6978

L 216

Volume 39

27 August 1996

English edition

## Legislation

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## I

*(Acts whose publication is obligatory)*

**COMMISSION REGULATION (EC) No 1680/96****of 26 August 1996****opening intervention in accordance with Article 6 (4) of Council Regulation (EEC) No 805/68**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community,

Heving regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal<sup>(1)</sup>, as last amended by Regulation (EC) No 1588/96<sup>(2)</sup>, and in particular Article 6 (7) thereof,

Whereas Article 6 (4) of Regulation (EEC) No 805/68 provides that intervention must be opened in a Member State or region of a Member State if for two consecutive weeks the average Community market price of young uncastrated male animals less than two years old or castrated male animals, recorded on the basis of the Community grading scale is less than 78 % of the intervention price and the average market price in the Member State concerned, calculated on the same basis, is less than 60 % of the intervention price;

Whereas where the conditions are met, all offers to sell into intervention must be accepted in the Member State or region of the Member State concerned for those products referred to in Article 4 of Commission Regulation (EEC) No 2456/93 of 1 September 1993 laying down

detailed rules for the application of Council Regulation (EEC) No 805/68 as regards the general and special intervention measures for beef<sup>(3)</sup>, as last amended by Regulation (EC) No 307/96<sup>(4)</sup> and in Article 1 of Commission Regulation (EC) No 1318/96 derogating from Regulation (EEC) No 2456/93<sup>(5)</sup>;

Whereas the conditions referred to above are met in relation to young uncastrated male animals less than two years old in Northern Ireland,

HAS ADOPTED THIS REGULATION:

*Article 1*

Intervention, as referred to in Article 6 (4) of Regulation (EEC) No 805/68, is opened in the Member States and regions of the Member States listed in the Annex to this Regulation of the categories and qualities referred to therein.

*Article 2*

This Regulation shall enter into force on 27 August 1996.

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

Done at Brussels, 26 August 1996.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 24.

<sup>(2)</sup> OJ No L 206, 16. 8. 1996, p. 23.

<sup>(3)</sup> OJ No L 225, 4. 9. 1993, p. 4.

<sup>(4)</sup> OJ No L 43, 21. 2. 1996, p. 3.

<sup>(5)</sup> OJ No L 170, 9. 7. 1996, p. 26.

*ANEXO — BILAG — ANHANG — ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — ALLEGATO —  
BIJLAGE — ANEXO — LIITE — BILAGA*

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el artículo 1

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητας που αναφέρονται στο άρθρο 1

Member States or regions of a Member State and quality groups referred to in Article 1

États membres ou régions d'États membres et groupes de qualités visés à l'article 1<sup>er</sup>

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1

In artikel 1 bedoelde Lid-Staten of gebieden van een Lid-Staat en kwaliteitsgroepen

Estados-membros ou regiões de Estados-membros e grupos de qualidades referidos no artigo 1º

Jäsenvaltiot tai alueet ja 1 artiklassa tarkoitettut laaturyhmät

Medlemsstater eller regioner och kvalitetsgrupper som avses i artikel 1

|                                                   |             |             |   |   |   |   |
|---------------------------------------------------|-------------|-------------|---|---|---|---|
| Estados miembros o regiones de Estados miembros   | Categoría A | Categoría C |   |   |   |   |
| Medlemsstat eller region                          | Kategori A  | Kategori C  |   |   |   |   |
| Mitgliedstaaten oder Gebiete eines Mitgliedstaats | Kategorie A | Kategorie C |   |   |   |   |
| Κράτος μέλος ή περιοχές κρατους μέλους            | Κατηγορία Α | Κατηγορία Γ |   |   |   |   |
| Member States or regions of a Member State        | Category A  | Category C  |   |   |   |   |
| États membres ou régions d'États membres          | Catégorie A | Catégorie C |   |   |   |   |
| Stati membri o regioni di Stati membri            | Categoria A | Categoria C |   |   |   |   |
| Lid-Staat of gebied van een Lid-Staat             | Categorie A | Categorie C |   |   |   |   |
| Estados-membros ou regiões de Estados-membros     | Categoria A | Categoria C |   |   |   |   |
| Jäsenvaltiot tai alueet                           | Luokka A    | Luokka C    |   |   |   |   |
| Medlemsstater eller regioner                      | Kategori A  | Kategori C  |   |   |   |   |
|                                                   | U           | R           | O | U | R | O |
| Northern Ireland                                  | x           | x           | x |   |   |   |

**COMMISSION REGULATION (EC) No 1681/96**  
**of 26 August 1996**  
**establishing the standard import values for determining the entry price of**  
**certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables<sup>(1)</sup>, as last amended by Regulation (EC) No 2933/95<sup>(2)</sup>, and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy<sup>(3)</sup>, as last amended by Regulation (EC) No 150/95<sup>(4)</sup>, and in particular Article 3 (3) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commis-

sion fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 27 August 1996.

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

Done at Brussels, 26 August 1996.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

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<sup>(1)</sup> OJ No L 337, 24. 12. 1994, p. 66.

<sup>(2)</sup> OJ No L 307, 20. 12. 1995, p. 21.

<sup>(3)</sup> OJ No L 387, 31. 12. 1992, p. 1.

<sup>(4)</sup> OJ No L 22, 31. 1. 1995, p. 1.

## ANNEX

to the Commission Regulation of 26 August 1996 establishing the standard import values  
for determining the entry price of certain fruit and vegetables

| (ECU/100 kg)  |                        |                       | (ECU/100 kg)                          |                        |                       |
|---------------|------------------------|-----------------------|---------------------------------------|------------------------|-----------------------|
| CN code       | Third country code (1) | Standard import value | CN code                               | Third country code (1) | Standard import value |
| 0702 00 35    | 052                    | 69,4                  | 0808 10 92, 0808 10 94,<br>0808 10 98 | 624                    | 67,7                  |
|               | 060                    | 80,2                  |                                       | 999                    | 108,1                 |
|               | 064                    | 70,8                  |                                       | 039                    | 121,0                 |
|               | 066                    | 54,0                  |                                       | 052                    | 64,0                  |
|               | 068                    | 80,3                  |                                       | 064                    | 77,5                  |
|               | 204                    | 86,8                  |                                       | 070                    | 90,2                  |
|               | 208                    | 44,0                  |                                       | 284                    | 72,1                  |
|               | 212                    | 97,5                  |                                       | 388                    | 103,2                 |
|               | 624                    | 95,8                  |                                       | 400                    | 65,2                  |
|               | 999                    | 75,4                  |                                       | 404                    | 63,6                  |
| ex 0707 00 25 | 052                    | 62,4                  | 0808 20 57                            | 416                    | 72,7                  |
|               | 053                    | 156,2                 |                                       | 508                    | 113,5                 |
|               | 060                    | 61,0                  |                                       | 512                    | 119,0                 |
|               | 066                    | 53,8                  |                                       | 524                    | 100,3                 |
|               | 068                    | 69,1                  |                                       | 528                    | 72,5                  |
|               | 204                    | 144,3                 |                                       | 624                    | 86,5                  |
|               | 624                    | 87,1                  |                                       | 728                    | 107,3                 |
|               | 999                    | 90,6                  |                                       | 800                    | 141,3                 |
|               | 052                    | 54,3                  |                                       | 804                    | 102,3                 |
|               | 204                    | 77,5                  |                                       | 999                    | 92,5                  |
| 0709 90 79    | 412                    | 54,2                  | 0809 30 41, 0809 30 49                | 039                    | 104,1                 |
|               | 508                    | 42,9                  |                                       | 052                    | 74,9                  |
|               | 624                    | 151,9                 |                                       | 064                    | 64,2                  |
|               | 999                    | 76,2                  |                                       | 388                    | 80,3                  |
|               | 052                    | 133,1                 |                                       | 400                    | 70,4                  |
| 0805 30 30    | 204                    | 88,8                  |                                       | 512                    | 88,7                  |
|               | 220                    | 74,0                  |                                       | 528                    | 132,9                 |
|               | 388                    | 72,6                  |                                       | 624                    | 79,0                  |
|               | 400                    | 68,2                  |                                       | 728                    | 115,4                 |
|               | 512                    | 80,0                  |                                       | 800                    | 84,0                  |
|               | 520                    | 66,5                  |                                       | 804                    | 73,0                  |
|               | 524                    | 57,1                  |                                       | 999                    | 87,9                  |
|               | 528                    | 60,0                  |                                       | 052                    | 53,9                  |
|               | 600                    | 96,5                  |                                       | 220                    | 121,8                 |
|               | 624                    | 48,9                  | 0809 40 30                            | 624                    | 106,8                 |
| 0806 10 40    | 999                    | 76,9                  |                                       | 999                    | 94,2                  |
|               | 052                    | 60,7                  |                                       | 052                    | 78,8                  |
|               | 064                    | 75,6                  |                                       | 064                    | 51,7                  |
|               | 066                    | 49,4                  |                                       | 066                    | 43,2                  |
|               | 220                    | 110,8                 |                                       | 068                    | 42,4                  |
|               | 400                    | 137,3                 |                                       | 400                    | 143,5                 |
|               | 412                    | 58,5                  |                                       | 624                    | 212,2                 |
|               | 508                    | 307,2                 |                                       | 676                    | 68,6                  |
|               | 512                    | 186,0                 |                                       | 999                    | 91,5                  |
|               | 600                    | 27,4                  |                                       |                        |                       |

(1) Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 16). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 1682/96**  
**of 26 August 1996**

**temporarily suspending the issuing of export licences for certain milk products  
and determining what proportion of the amounts covered by pending  
applications for export licences may be allocated**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products <sup>(1)</sup>, as last amended by Regulation (EC) No 1587/96 <sup>(2)</sup>,

Having regard to Commission Regulation (EC) No 1466/95 of 27 June 1995 laying down special detailed rules of application for export refunds on milk and milk products <sup>(3)</sup>, as last amended by Regulation (EC) No 1315/96 <sup>(4)</sup>, and in particular Article 8 (3) thereof,

Whereas the market in certain milk products is currently subject to uncertainty; whereas licence applications of a speculative nature should be avoided which may lead to distortions of competition between operators and potentially disrupt the continuity of exports of these products for the remainder of the period in question; whereas the issue of export licenses for the products involved should be

temporarily suspended and certain licences should not be issued in respect of applications pending,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The issue of export licences for milk products falling within CN code 0406 is hereby suspended for the period from 27 to 30 August 1996.
2. Exports licences shall be issued in respect of applications covering products falling within CN code 0406 which were submitted before 23 August and are still pending and against which licences would be issued from 27 August 1996.
3. No licences shall be issued for products falling within CN codes 0406 for which applications submitted on 23 and 26 August 1996 are still pending and against which licences would have been issued from 30 August 1996.

*Article 2*

This Regulation shall enter into force on 27 August 1996.

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

Done at Brussels, 26 August 1996.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

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<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 13.

<sup>(2)</sup> OJ No L 206, 16. 8. 1996, p. 21.

<sup>(3)</sup> OJ No L 144, 28. 6. 1995, p. 22.

<sup>(4)</sup> OJ No L 170, 9. 7. 1996, p. 20.

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 20 March 1996

authorizing the grant by the United Kingdom of aid to the coal industry

(Only the English text is authentic)

(96/514/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry<sup>(1)</sup>,

Whereas:

## I

In a letter dated 7 November 1995 the United Kingdom notified the Commission, pursuant to Article 9 (1) of Decision No 3632/93/ECSC, of the aid which it intends to grant to the coal industry in the 1996/97 financial year. In a letter dated 25 January 1996 the United Kingdom also sent the additional information requested by the Commission.

In accordance with Decision No 3632/93/ECSC, the Commission must give a ruling on the following financial measures notified for the 1996/97 financial year:

- a payment of £ 37 million for the exceptional social-welfare benefits made necessary by the restructuring process,

- a payment of £ 115 million for contributions to pension schemes,

- a payment of £ 90 million for concessionary supplies of coal, smokeless fuel or, in some cases, payment in kind for former workers of the British Coal Corporation and their dependants, which basically amounts to reauthorizing a sum initially covered by the provision of £ 2 000 million authorized by Commission Decision 90/634/ECSC<sup>(2)</sup>, which lapsed after the privatization of the enterprise,

- a payment of £ 35 million for compensation for industrial injury and damage to health,

- a payment of £ 95 million to cover the environmental damage caused by mining activities before privatization,

- a payment of £ 6 million to cover the costs arising from residual activities prior to dissolution of the British Coal Corporation following privatization.

The financial measures which the United Kingdom intends to take in respect of the coal industry fall within the scope of Article 1 (1) of Decision No 3632/93/ECSC. The Commission must therefore give a ruling pursuant to Article 9 (4) of the Decision on whether they comply with the objectives and criteria set out in the Decision and are compatible with the proper functioning of the common market.

<sup>(1)</sup> OJ No L 329, 30. 12. 1993, p. 12.

<sup>(2)</sup> OJ No L 346, 11. 12. 1990, p. 22.

## II

By Decision 94/754/ECSC<sup>(1)</sup>, the Commission approved the modernization, rationalization and restructuring plan notified by the United Kingdom Government by letter of 30 March 1994, as complying with the general and specific objectives set out in Decision No 3632/93/ECSC.

The priority objective set by the plan is to make the United Kingdom coal industry fully competitive with coal prices on international markets and to privatize the British Coal Corporation. To achieve that objective, the industry has had to step up the restructuring process, which has led to the closure of a large number of production units.

On 5 July 1994 the Coal Industry Act 1994 received Royal Assent. The Act defined a new legal framework for the British coal industry, enabling the coal-mining operations of the public undertaking known as the British Coal Corporation to be fully privatized, and providing for the establishment of a public-sector body, the Coal Authority, to be responsible for granting rights over, and licences to work, unworked coal and coal mines in the United Kingdom hitherto owned by the British Coal Corporation.

On 14 April 1994 the United Kingdom Government invited bids to purchase a number of successor companies to which were to be transferred all the coal mining operations of British Coal Corporation, and a number of mines which were, at that time, mothballed. The sale of the successor companies to which the coal-mining operations were transferred, to three private sector companies (Mining (Scotland) Limited, RJB Mining plc, and Celtic Energy Limited), was completed on 31 December 1994. In addition, companies owning two mothballed mines were sold: one to Goitre Tower Anthracite Limited on 22 December 1994 and one to Coal Investments plc on 24 April 1995.

The United Kingdom coal industry now consists exclusively of private undertakings which received no aid under Articles 3, 4, 6 and 7 of Decision No 3632/93/ECSC in respect of any period after 31 March 1995.

The aid to cover inherited liabilities (Article 5 of the Decision), covered by this notification, is paid only to former workers of the British Coal Corporation directly or to the coal pension funds or to the public-sector bodies, particularly the Coal Authority and the British Coal

Corporation, and exclusively in respect of inherited liabilities arising from the period prior to privatization.

## III

The aid to cover exceptional social-welfare benefits arising from the restructuring and closure of British Coal Corporation mines meets the Corporation's and the Government's obligation to pay compensation to workers who have been made redundant or been transferred to other mines as a result of the restructuring, rationalization and modernization of the United Kingdom coal industry. To cover these costs, the United Kingdom Government intends to pay £ 37 million in the 1996/97 financial year. These financial measures meet obligations entailed by the restructuring, rationalization and modernization of the United Kingdom coal industry and cannot therefore be considered related to current production (inherited liabilities).

In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely the cost of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age, other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalization, and the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such payments before the restructuring, can be considered compatible with the common market provided that the amount paid does not exceed the costs.

## IV

The aid for contributions to pension schemes and other pension arrangements for British Coal Corporation workers meets the Corporation's obligations with regard to the pensions of some 600 000 members for that part of their employment spent with the Corporation. To cover these contributions, the United Kingdom Government intends to pay £ 115 million in the 1996/97 financial year. These financial measures meet obligations made necessary by the restructuring, rationalization and modernization of the United Kingdom coal industry and cannot therefore be considered to be related to current production (inherited liabilities). Responsibility for pensions of British Coal Corporation workers who continued to work for the companies established after privatization in respect of the period of entitlement arising after privatization is being met by separate industry-wide pension schemes funded entirely by the new companies.

<sup>(1)</sup> OJ No L 220, 25. 8. 1994, p. 12.

In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely the cost of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age, and the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such payments before the restructuring, can be considered compatible with the common market provided that the amount paid does not exceed the costs.

## V

The aid for concessionary entitlement to coal or smokeless fuel or, in certain cases, cash-in-lieu to former workers or their dependants meets the British Coal Corporation's obligations under the agreements signed with the mining trade unions. Since privatization, the companies established after privatization have borne the obligation to supply fuel to British Coal Corporation workers transferred to them. To cover the obligations to supply fuel to former British Coal Corporation workers who have retired or been made redundant, or to their dependants, the United Kingdom Government intends to pay £ 90 million in the 1996/97 financial year. This aid was initially covered by the provision of £ 2 000 million authorized by Decision 90/634/ECSC. The provision, set up within the British Coal Corporation, was retransferred to the Government on the occasion of the privatization and consequently lapsed, leading to the necessity to reauthorize the various amounts for the financial years subsequent to privatization.

These financial measures meet the obligations to supply workers who retired or were made redundant in the process of restructuring, rationalization and modernization of the United Kingdom coal industry or their dependants and cannot therefore be considered as related to current production (inherited liabilities).

In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely the supply of free coal to workers who lose their jobs as a result of restructuring and rationalization, may be considered compatible with the common market provided that the amount paid does not exceed the costs.

## VI

The aid cover compensation for industrial injury and damage to health suffered by former workers of the British Coal Corporation meets the Corporation's obligations to pay compensation for industrial injury and damage to health suffered in the course of their employment within the Corporation before privatization. For accidents occurring after that date, the companies established after privatization must assume full liability. To compensate former workers of the British Coal Corporation for industrial injury and damage to health arising from employment before privatization, the United Kingdom Government intends to pay £ 35 million in the 1996/87 financial year.

As the beneficiaries of these financial measures are workers who have been made redundant, have retired or have been transferred to the private companies, this aid is therefore intended to cover the costs arising from the modernization, rationalization or restructuring of the coal industry and is not related to current production.

In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely residual costs to cover former miners' health insurance, may be considered compatible with the common market provided that the amount paid does not exceed the costs.

## VII

The aid which the United Kingdom intends to grant to the Coal Authority and/or, on a transitional basis, to the residual part of the British Coal Corporation covers liabilities for the environmental damage caused by underground production activities before privatization of the British Coal Corporation. Part of these liabilities are for damage caused on the surface by subsidence. The other liabilities include the rehabilitation of abandoned mine sites and tips, methane venting and water pumping from old workings. The companies succeeding the British Coal Corporation are responsible for the obligations connected with the working of the resources or mines transferred to them as this is one of their areas of responsibility defined in their operating licences.

To cover the costs arising from mining activities before privatization, the United Kingdom Government intends to pay £ 95 million in the 1996/97 financial year.

This aid is therefore designed to cover the costs arising from the modernization, rationalization or restructuring of the coal industry which are not related to current production (inherited liabilities). In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely additional underground safety work resulting from restructuring, mining damage provided that it has been caused by zones of working previously in service and residual costs resulting from contributions to bodies responsible for water supplies and for the removal of waste water, may be considered compatible with the common market provided the amount paid does not exceed the costs.

### VIII

The aid to cover the costs arising from the British Coal Corporation's residual activities between privatization and the dissolution of the Corporation meets the Corporation's obligation to cover certain residual activities not related to current production, such as the management and disposal of the Corporation's residual property assets and liabilities in the period up to December 1997, the privatization of the remaining subsidiaries, particularly the taxes on the revenue from sale of these subsidiaries, the obligations to complete certain ongoing research programmes, the Corporation's responsibilities with regard to certain legal action taken against it (other than action for compensation for industrial injury or damage to health) and, finally, the cost to the Coal Authority of activities relevant to maintaining access to coal reserves after mining has stopped.

To cover those residual activities, the United Kingdom Government intends to pay £ 6 million in the 1996/97 financial year.

These financial measures meet obligations made necessary by the restructuring, rationalization and modernization of the United Kingdom coal industry and cannot therefore be considered to be related to current production (inherited liabilities).

In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely residual costs resulting from administrative, legal or tax provisions and costs in connection with maintaining access to coal reserves after mining has stopped, may be considered compatible with the common market provided that the amount paid does not exceed the costs.

### IX

With respect to the new legal and regulatory framework established for the United Kingdom coal industry by the

Coal Industry Act 1994, the United Kingdom Government will ensure that the aid granted pursuant to this Decision gives rise to no discrimination between producers, purchasers or users on the Community coal market.

In the light of the foregoing and on the basis of the information supplied by the United Kingdom, the aid measures referred to in this Decision are compatible with the provisions of Articles 2 to 9 of Decision No 3632/93/ECSC and with the proper functioning of the common market,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The United Kingdom Government is hereby authorized to take the following financial measures, totalling £ 378 million, in the 1996/97 financial year:

- a payment of £ 37 million for the British Coal Corporation or the public administration succeeding it to cover exceptional social-welfare benefits for workers who lose their jobs as a result of the restructuring, rationalization and modernization of the United Kingdom coal industry,
- a payment of £ 115 million for contributions to pension schemes for former workers of the British Coal Corporation and their dependants,
- a payment of £ 90 million for a concessionary entitlement to coal and smokeless fuel, or in certain cases, cash-in-lieu for former British Coal Corporation workers and their dependants,
- a payment of £ 35 million for compensation for industrial injury and damage to health for former workers of the British Coal Corporation and their dependants,
- a payment of £ 95 million to cover the environmental damage caused by mining activities before privatization,
- a payment of £ 6 million to cover the costs arising from the residual activities of the British Coal Corporation.

#### *Article 2*

The United Kingdom shall give notification by 30 September 1997 of the amount of aid actually paid in the 1996/97 financial year to the recipients referred to in Article 1 of this Decision and shall report on any changes made compared with the amounts originally notified.

*Article 3*

The United Kingdom shall ensure that it is reimbursed for any overestimated expenditure or cancelled expenditure on any of the items covered by this Decision.

*Article 4*

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 20 March 1996.

*For the Commission*

Christos PAPOUTSIS

*Member of the Commission*

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## COMMISSION DECISION

of 27 March 1996

concerning aid granted by Italy to Altiforni e Ferriere di Servola, an ECSC company in special administration, located in Trieste, Italy

(Only the Italian text is authentic)

(Text with EEA relevance)

(96/515/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 4 (c) thereof,

Having regard to Commission Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry<sup>(1)</sup>,

Having given notice, pursuant to Article 6 (4) of the abovementioned Decision, to other Member States and interested parties to submit their comments and having regard to those comments,

Whereas:

## I

## FACTS AND PROCEDURE

Following a complaint lodged by one of the firm's competitors, the Commission, by letters dated 28 February and 13 July 1994, asked the Italian Government for information regarding aid allegedly received by the steel undertaking Altiforni e Ferriere di Servola (hereinafter referred to as 'AFS').

By letters dated 17 March and 4 August 1994 from the Minister for Industry, Trade and Craft Trades, the Italian Government, while stating that no aid was granted to AFS, acknowledged that a State guarantee had been granted under Article 2a of Italian Law No 95/1979 to AFS for loans granted to it by a number of banks.

On the basis of the information at its disposal, including that provided by the Italian Government, the Commission ascertained that:

- (i) AFS had accumulated debts more than five times the size of its share capital. It was in so poor a financial situation that, having been declared insolvent by a national court, it was placed under the 'special ad-

ministration' procedure (amministrazione straordinaria) provided for in Italian Law No 95/1979;

- (ii) the State guarantee granted under Law No 95/1979 allowed AFS to secure funds in order to remain in business;
- (iii) credit granted to AFS and guaranteed by the Italian Government amounted to Lit 26,5 billion;
- (iv) AFS did not pay the Italian Government any premium or other consideration in exchange for the guarantee.

In the light of the foregoing, the Commission informed the Italian authorities that it had serious doubts on the question whether, under normal market conditions, any credit would have been granted to AFS and whether a private institution would have given it a guarantee in view of its insolvency. The Commission pointed out that, in line with its practice and in the light of Court of Justice case-law, any State guarantee granted to a firm in difficulty which could not have been financed by private financial institutions or which was granted on more favourable conditions than those normally made in the financial market constitutes State aid, whether or not the guarantee has been activated.

As it was difficult at that stage for the Commission to determine whether the aid was compatible with the common market, it decided on 23 November 1994 to initiate the procedure provided for in Article 6 (4) of Decision No 3855/91/ECSC in respect of the aid in question. It informed the Italian Government of its decision by letter dated 12 December 1994, asking the Italian authorities why they failed to fulfil their obligation to notify the aid.

On 19 September 1995 the abovementioned letter was published in the *Official Journal of the European Communities*<sup>(2)</sup> in order to give the other Member States and interested parties the opportunity to submit their comments.

<sup>(1)</sup> OJ No L 362, 21. 12. 1991, p. 57.

<sup>(2)</sup> OJ No C 242, 19. 9. 1995, p. 4.

## II

## THE OBSERVATIONS OF OTHER INTERESTED PARTIES

In the course of this procedure, the Commission received comments from the German and the United Kingdom Governments, as well as from the British Iron and Steel Producers Associations (Bispa) and the German cast iron associations (Roheisenverband). The observations can be summarized as follows:

- the German and the United Kingdom Governments, Bispa and Roheisenverband fully supported the Commission decision to initiate the procedure,
- in particular, the United Kingdom Government pointed out that State loan guarantees constitute State aid if they artificially supported the operations of an insolvent company, even if they are not activated. The United Kingdom authorities feel that the entire sum guaranteed by the State was State aid and they asked the Commission to require that the guarantee be revoked and the company pay the Italian Government sums equivalent to the premium that would have been payable in respect of a guarantee granted by a private financial institution,
- Bispa stressed the fact that, given the hopeless financial situation of the company, as amply illustrated in the Commission's decision to open the procedure, it was quite clear that AFS was able to continue in operation because of the State loan guarantees granted which led directly to the continuing injury suffered by the British producers. The producers of light long products found it increasingly difficult to compete fairly on the Italian market where AFS was a significant player,
- the German Government and Roheisenverband pointed out that AFS could remain active in the market thanks to large amounts of State aid granted by the Italian Government in addition to the guarantee in question; they drew the attention of the Commission to a Lit 4,5 billion State aid granted by the Friuli Venezia Giulia Region to AFS with a view to protecting the environment.

## III

## THE OBSERVATIONS OF THE ITALIAN GOVERNMENT

On 29 November 1995 the Commission sent the Italian Government a copy of the comments received, asking the Italian authorities to reply, if they wished to, within 15

days. By letters dated 10 and 22 January and 21 February 1996, the Italian authorities submitted their comments. The Italian Government reiterated the position it had already put forward when the Commission decided to initiate the procedure pursuant to Article 6 (4) of Decision No 3855/91/ECSC.

The Italian authorities contested the Commission's legal assessment of the case, maintaining that this kind of guarantee, granted under Article 2a of Italian Law No 95/1979, whose main aim is not to safeguard ailing companies but maintain employment, did not constitute State aid. In any case, even assuming the contrary, the Italian authorities took the view that in determining whether in the present case the public intervention should be regarded as State aid, the Commission should attach decisive importance to the fact that the State guarantee had never been activated. This fact was sufficient, in the Italian Government's view, to rule out the possibility that the guarantee constitutes State aid.

In addition, the Italian Government pointed out that:

- as regards the failure to notify in advance the guarantee given by the State to AFS in respect of the discounting of commercial bills for a total of Lit 26,5 billion, the Italian authorities informed the Commission about the operation and the application of Law No 95/1979 in the early years of its implementation (early 1980s), giving details of the working of the Treasury Ministry guarantee,
- the Treasury Ministry guarantee, which was a one-off measure introduced pending finalization of AFS' restructuring programme, was given on 5 May 1993 in respect of commercial bills discounted on or before 30 June 1993. The guarantee had expired and at no time during its period of validity was it activated,
- after 30 June 1993 AFS carried out further discounting of commercial bills through the banking system or factoring companies, using only private insurance policies; thus, it appeared that the major difficulties experienced by the firm did not prevent it from finding funds without the benefit of a State guarantee,
- finally, it was stated that consideration was being given to amending the rules governing State guarantees under Law No 95/1979 to the effect that firms in 'special administration' would have to make a payment to the State based on the size of the guarantee they received and in line with normal market conditions. A similar measure could apply to AFS should the Commission consider this to be necessary. By letter dated 9 March 1995, the Italian authorities agreed with the Commission that the State guarantee, granted without any charges, does constitute State aid and that they were therefore considering amending Law No 95/1979.

## IV

The German Government and Roheisenverband, after pointing out that AFS could remain on the market thanks to the considerable amounts of State aid granted by the Italian Government in addition to the guarantee in question, drew the Commission's attention to a Lit 4,5 billion State aid granted by the Friuli Venezia Giulia Region to AFS for environmental protection purposes. The Commission wishes to make it clear that the sole subject of the present procedure is the State guarantee given to AFS. Accordingly, unless it decides to extend the scope of the Article 6 (4) procedure initiated on 23 November 1994, the Commission is not empowered to include in this final decision other State aid allegedly granted to AFS. This being said, it must be stressed that, according to the information in the Commission's possession, the Lit 4,5 billion of aid for environmental protection, while being planned, has not been awarded yet. The other State aid allegedly granted to AFS will be investigated separately from this procedure.

As regards the claim by the Italian authorities that they did not fail in their duty to notify the guarantee in advance, the Commission feels bound to remind them that in 1989 it addressed two letters on State guarantees to the Member States<sup>(1)</sup>. In the letters, the Commission pointed out that, since it would normally assume that guarantees given by the State direct, or indirectly through other financial institutions, could be regarded as being State aid, such guarantees had therefore to be notified to the Commission prior to being granted.

AFS is a company falling under Article 80 of the ECSC Treaty because it has produced products listed in Annex I to the ECSC Treaty. It follows that the aid in question, granted in the form of a State guarantee, should have been notified to, and authorized by, the Commission prior to being granted, in accordance with Decision No 3855/91/ECSC. The Commission notes that, even if the Italian Government had not regarded the guarantee as constituting aid, it should have notified the Commission of the grant pursuant to Article 6 (2) of the above-mentioned Decision, which requires Member States to inform the Commission of any plans for transfers of State resources to steel undertakings. It is apparent from the facts before the Commission that the actions of the Italian Government allowed AFS to receive considerable financing.

The Commission accordingly regards the State guarantee granted to AFS as an illegal aid on the ground that the Italian authorities failed to give prior notification.

As to the reasoning put forward by the Italian authorities to the effect that no aid was involved in the guarantee since it was not activated, the Commission regards this as totally irrelevant on the ground that the competitive distortion occurs from the moment the firm is enabled to remain in business as a result of the State's intervention, i.e. from the moment the company is able to borrow money backed by the State guarantee.

As for the remaining observations put forward by the Italian authorities, the Commission must repeat that, in line with past Commission decisions and with the Court's case-law, State guarantees for loans are a particularly insidious form of State aid whose distortions of competition are liable to be extremely severe, in particular where guarantees are granted to ailing companies or those with poor prospects. State guarantees can artificially support the operations of an insolvent company which, unable to be funded under normal market conditions, would be compelled either to increase its capital or to close down.

Aid granted to certain enterprises in the form of a State guarantee for loans contracted with private financial institutions has a number of features which it shares to some extent with the acquisition of public holdings. That is why, as in the case of the acquisition of public holdings, the Commission looks for the presence of aid in a State guarantee by comparing it with the conditions the recipient company would have obtained on the open market and, first and foremost, by assessing whether the recipient company would have found any private guarantor on the open market.

There are reasons to believe that no State aid is involved in a State guarantee as long as:

- the beneficiary firm is in a financially sound position,
- the beneficiary firm is able to obtain a private-sector loan without a State guarantee,
- a guarantee is provided against payment by a firm of a premium corresponding to the usual commercial rate in the light of the risk incurred by a lender of private loans for the same duration and on comparable terms.

On the other hand, there are reasons to believe that State aid is involved in a State guarantee in cases where the beneficiary would not, without the State guarantee, find a financial institution prepared to grant a loan on any terms or where, assuming that a private guarantor would have been found, no premium was paid to the State for the guarantee. In the first case, particularly with regard to ailing firms when their financial position is well known and the repayment prospects are anything but certain, the aid may be as high as the amount effectively covered by that guarantee; in the second case the aid is limited to the premium not paid by the beneficiary.

<sup>(1)</sup> Commission letters to Member States SG(89) D/4328 of 5 April 1989 and SG(89) D/12772 of 12 October 1989.

Therefore, the Commission takes the view that a State loan guarantee can be regarded as not being State aid only if the firm could have obtained the same guarantee from a private financial institution, and, this being the case, only if the company is paying the same premium to the government as would have been payable to a private guarantor.

In the case in point, it is worth recalling that AFS obtained the guarantee under Italian Law No 95/1979, which applies only if it is established by an independent court that the following three conditions are met:

- (a) the firm employs more than 300 people;
- (b) debts are at least five times greater than the firm's capital;
- (c) the firm is insolvent, i.e. it is incapable of paying its debts in a normal way.

It is agreed that AFS meets all three conditions. It is also agreed that no premium was paid by AFS to the Italian State for the guarantee. Despite the Italian authorities' assurance about their willingness to make AFS pay a premium and to modify Italian Law No 95/1979 to the effect that firms would have to make a payment to the State calculated in accordance with normal market conditions, the Commission is bound to observe that nothing has been done until now either to recover at least the premium which should have been paid by AFS or to modify the law.

In the light of the above factual and legal considerations and given AFS's extremely poor financial situation and its legal status as a company in 'special administration', it appears unlikely that:

- (a) it would have been able to secure funds to continue its business, without the State guarantee;
- (b) it would have been able to obtain the same guarantee from a private guarantor on the open market given the risks involved.

The burden of producing evidence to rebut these two conclusions lies with the Italian authorities. The Commission notes that the Italian authorities did so by supplying documentary evidence to show the capacity of the company to obtain from a private investor a similar guarantee under normal market conditions.

On the basis of the information in its possession, in particular that obtained at the end of the investigation, the Commission has established that, once the State guarantee expired on 30 June 1993, AFS carried out further discounting of commercial bills. In doing so, it used a private guarantee granted by SIAC, an Italian insurance

company. This is a company in which are represented some of the largest Italian private insurance groups, like Generali, through Aurora Assicurazioni, La Fondiaria, Società Reale di Assicurazioni, Assitalia, Toro Assicurazioni, Allianz Pace, Compagnia di Assicurazione di Milano, Il Duomo as well as Banca Popolare di Novara, one of the largest private banks in Italy. The guarantee, which expired on 30 September 1994, was granted at a premium of 3,6 % a year of the guaranteed amount; it was, however, agreed that the amount of the premium to be paid for each four-month period could not be less than Lit 200 million, regardless of the amount of credit actually guaranteed during the period in question.

In the light of the foregoing, the Commission concludes that the granting of the State guarantee without charging any premium constitutes State aid since AFS could not have obtained such a guarantee on the open market. On the other hand, it appears that the guarantee as such does not constitute State aid since it would have also been given by a private bank under normal market conditions.

As regards the compatibility of such aid with the common market for coal and steel, Article 4 (c) of the ECSC Treaty provides that it is incompatible with the common market and subsidies or aid granted by States, in any form whatsoever, must accordingly be abolished and prohibited.

In partial derogation from Article 4 (c), Articles 2 to 5 of Decision No 3855/91/ECSC, adopted with the unanimous assent of the Council pursuant to Article 95 of the ECSC Treaty, establish rules authorizing the granting of aid to the steel industry in certain specific cases, as well as aid for research and development, environmental protection and closures.

On the basis of the information at its disposal the Commission has come to the conclusion that the State guarantee at issue is not covered by any of the abovementioned rules, so that none of these could properly be invoked in the present case. In fact the Italian Government has not invoked any of these derogations.

## V

It follows that the State aid in the form of a State guarantee granted to the ECSC undertaking AFS without any premium being required in exchange is illegal and incompatible with the common market for coal and steel. The Commission, having regard to the information gathered and in particular to that concerning the financial conditions under which the private guarantee was granted by SIAC, concludes that the State aid in question is equal to the premiums which should have been paid under the private guarantee agreement,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid in the form of a State guarantee covering an amount of Lit 26,5 billion granted from 5 May until 30 June 1993 under Article 2a of Italian Law No 95/1979 by the Italian State to AFS without being subject to payment of a premium is illegal and incompatible with the common market for coal and steel, within the meaning of Article 4 of the ECSC Treaty.

*Article 2*

The aid is equivalent to the premium which AFS should have paid under normal market conditions for a guarantee similar to that granted by the State. Italy shall recover the aid from the recipient company.

Repayment shall be made in accordance with the procedure and provisions of Italian law, with interest based on

the reference rate used in the assessment of regional aid schemes, starting to run on the date on which the aid was granted until the date of effective reimbursement.

*Article 3*

The Italian Government shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply herewith.

*Article 4*

This Decision is addressed to the Italian Republic.

Done at Brussels, 27 March 1996.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

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