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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1837/96
of 24 September 1996
fixing the coefficients applicable to cereals exported in the form of Irish whiskey
for the period 1996/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EEC) No 2825/93 of 15 October 1993 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the fixing and granting of adjusted refunds in respect of cereals exported in the form of certain spirit drinks⁽¹⁾, as amended by Regulation (EC) No 3098/94⁽²⁾, and in particular Article 5 thereof,

Whereas Article 4 (1) of Regulation (EEC) No 2825/93 provides that the quantities of cereals eligible for the refund are to be the quantities placed under control and distilled, weighted by a coefficient to be fixed annually for each Member State concerned; whereas that coefficient expresses the ratio between the total quantities exported and the total quantities marketed of the spirituous beverage concerned on the basis of the trend noted in those quantities during the number of years corresponding to the average ageing period of the spirituous beverage in question; whereas, in view of the information provided by Ireland on the period 1 January to 31 December 1995, the average ageing period in 1995 was six years for Irish whiskey; whereas the coefficients for the period 1 July 1996 to 30 June 1997 should be fixed;

Whereas Article 10 of Protocol 3 to the Agreement on the European Economic Area⁽³⁾ precludes the grant of refunds for exports to Liechtenstein, Iceland and Norway; whereas, therefore, pursuant to Article 7 (2) of Regulation (EEC) No 2825/93, account should be taken of this in the calculation of the coefficient for 1996/97;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For the period 1 July 1996 to 30 June 1997, the coefficients provided for in Article 4 of Regulation (EEC) No 2825/93 applying to cereals used in Ireland for manufacturing Irish whiskey shall be as set out in the Annex.

Article 2

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

It shall apply with effect from 1 July 1996.

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

Done at Brussels, 24 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 258, 16. 10. 1993, p. 6.

⁽²⁾ OJ No L 328, 20. 12. 1994, p. 12.

⁽³⁾ OJ No L 1, 3. 1. 1994, p. 1.

ANNEX

Coefficients applicable in Ireland

Period of application	Coefficient applicable	
	to barley used for the manufacture of Irish whiskey, category B ⁽¹⁾	to cereals used for the manufacture of Irish whiskey, category A
1 July 1996 to 30 June 1997	0,270	0,534

⁽¹⁾ Including barley processed into malt.

COMMISSION REGULATION (EC) No 1838/96

of 24 September 1996

fixing the coefficients applicable to cereals exported in the form of Scotch whisky for the period 1996/97

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

Having regard to Commission Regulation (EEC) No 2825/93 of 15 October 1993 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the fixing and granting of adjusted refunds in respect of cereals exported in the form of certain spirit drinks⁽¹⁾, as amended by Regulation (EC) No 3098/94⁽²⁾, and in particular Article 5 thereof,

Whereas Article 4 (1) of Regulation (EEC) No 2825/93 provides that the quantities of cereals eligible for the refund are to be the quantities placed under control and distilled, weighted by a coefficient to be fixed annually for each Member State concerned; whereas that coefficient expresses the ratio between the total quantities exported and the total quantities marketed of the spirituous beverage concerned on the basis of the trend noted in those quantities during the number of years corresponding to the average ageing period of the spirituous beverage in question; whereas, in view of the information provided by the United Kingdom on the period 1 January to 31 December 1995, the average ageing period in 1995 was eight years for Scotch whisky; whereas the coefficients for the period 1 July 1996 to 30 June 1997 should be fixed;

Whereas Article 10 of Protocol 3 to the Agreement on the European Economic Area⁽³⁾ precludes the grant of

refunds for exports to Liechtenstein, Iceland and Norway; whereas, therefore, pursuant to Article 7 (2) of Regulation (EEC) No 2825/93, account should be taken of this in the calculation of the coefficient for 1996/97;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For the period 1 July 1996 to 30 June 1997, the coefficients provided for in Article 4 of Regulation (EEC) No 2825/93 applying to cereals used in the United Kingdom for manufacturing Scotch whisky shall be as set out in the Annex.

Article 2

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

It shall apply with effect from 1 July 1996.

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

Done at Brussels, 24 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 258, 16. 10. 1993, p. 6.

⁽²⁾ OJ No L 328, 20. 12. 1994, p. 12.

⁽³⁾ OJ No L 1, 3. 1. 1994, p. 1.

*ANNEX***Coefficients applicable in the United Kingdom**

Period of application	Coefficient applicable	
	to barley processed into malt used in the manufacture of malt whisky	to cereals used in the manufacture of grain whisky
1 July 1996 to 30 June 1997	0,569	0,603

COMMISSION REGULATION (EC) No 1839/96

of 24 September 1996

fixing the coefficients applicable to cereals exported in the form of Spanish
whisky for the period 1996/97

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

Having regard to Commission Regulation (EEC) No 2825/93 of 15 October 1993 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards the fixing and granting of adjusted refunds in respect of cereals exported in the form of certain spirit drinks⁽¹⁾, as amended by Regulation (EC) No 3098/94⁽²⁾ and in particular Article 5 thereof,

Whereas Article 4 (1) of Regulation (EEC) No 2825/93 provides that the quantities of cereals eligible for the refund are to be the quantities placed under control and distilled, weighted by a coefficient to be fixed annually for each Member State concerned; whereas that coefficient expresses the ratio between the total quantities exported and the total quantities marketed of the spirituous beverage concerned on the basis of the trend noted in those quantities during the number of years corresponding to the average ageing period of the spirituous beverage in question; whereas, in view of the information provided by Spain on the period 1 January to 31 December 1995, the average ageing period in 1995 was four years for Spanish whisky; whereas the coefficients for the period 1 July 1996 to 30 June 1997 should be fixed;

Whereas Article 10 of Protocol 3 to the Agreement on the European Economic Area⁽³⁾ precludes the grant of

refunds for exports to Liechtenstein, Iceland and Norway; whereas, therefore, pursuant to Article 7 (2) of Regulation (EEC) No 2825/93, account should be taken of this in the calculation of the coefficient for 1996/97;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For the period 1 July 1996 to 30 June 1997, the coefficients provided for in Article 4 of Regulation (EEC) No 2825/93 applying to cereals used in Spain for manufacturing Spanish whisky shall be as set out in the Annex.

Article 2

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

It shall apply with effect from 1 July 1996.

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

Done at Brussels, 24 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 258, 16. 10. 1993, p. 6.

⁽²⁾ OJ No L 328, 20. 12. 1994, p. 12.

⁽³⁾ OJ No L 1, 3. 1. 1994, p. 1.

*ANNEX***Coefficients applicable in Spain**

Period of application	Coefficient applicable to cereals used for the manufacture of Spanish whisky, category A
1 July 1996 to 30 June 1997	0,0065

COMMISSION REGULATION (EC) No 1840/96
of 24 September 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,

HAS ADOPTED THIS REGULATION:

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⁽¹⁾, as last amended by Regulation (EC) No 1587/96⁽²⁾,

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⁽³⁾, as last amended by Regulation (EC) No 1315/96⁽⁴⁾, 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 licences for some of these products should not be issued in respect of applications pending,

Article 1

1. The issue of export licences for milk products falling within CN code 0406 is hereby suspended for the period from 25 to 30 September 1996.
2. Export licences shall be issued in respect of applications covering products falling within CN code 0406 which were submitted before 23 September and are still pending and against which licences would be issued from 25 September 1996.
3. Export licences shall be issued in respect of applications covering products falling within CN code 0406 which were submitted on 23 September and are still pending and against which licences would be issued from 30 September 1996 except for pending applications covering products falling within CN code 0406 90 76, against which no licences shall be issued.
4. No licences shall be issued for products falling within CN code 0406 for which applications submitted on 24 September 1996 are still pending and against which licences would have been issued from 1 October 1996.

Article 2

This Regulation shall enter into force on 25 September 1996.

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

Done at Brussels, 24 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 21.

⁽³⁾ OJ No L 144, 28. 6. 1995, p. 22.

⁽⁴⁾ OJ No L 170, 9. 7. 1996, p. 20.

COMMISSION REGULATION (EC) No 1841/96

of 24 September 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⁽¹⁾, as last amended by Regulation (EC) No 2933/95⁽²⁾, 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⁽³⁾, as last amended by Regulation (EC) No 150/95⁽⁴⁾, 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 Commission 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 25 September 1996.

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

Done at Brussels, 24 September 1996.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 307, 20. 12. 1995, p. 21.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 24 September 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	89,6	0808 10 92, 0808 10 94, 0808 10 98	624	67,7
	060	80,2		999	113,5
	064	70,8		039	121,0
	066	54,0		052	68,6
	068	80,3		064	61,6
	204	86,8		070	90,2
	208	44,0		284	72,1
	212	97,5		388	52,7
	400	170,4		400	54,4
	624	95,8		404	63,6
	999	86,9		416	72,7
ex 0707 00 25	052	82,8	0808 20 57	508	113,5
	053	156,2		512	126,1
	060	61,0		524	100,3
	066	53,8		528	53,0
	068	69,1		624	86,5
	204	144,3		728	107,3
	624	87,1		800	141,3
	999	93,5		804	88,6
	052	54,3		999	86,7
	204	77,5		039	104,1
	412	54,2		052	64,0
0709 90 79	508	42,9		064	75,8
	624	151,9		388	57,2
	999	76,2		400	70,4
	052	69,6		512	88,7
	204	88,8		528	132,9
	220	74,0		624	79,0
	388	70,3		728	115,4
	400	68,2		800	84,0
	512	80,0		804	73,0
	520	66,5		999	85,9
	524	64,4	0809 30 41, 0809 30 49	052	93,8
0805 30 30	528	66,1		220	121,8
	600	96,5		624	106,8
	624	48,9		999	107,5
	999	72,1		052	66,3
	052	77,7		064	49,0
	064	49,5		066	73,5
	066	49,4		068	37,1
	220	110,8		400	75,6
	400	139,2		624	49,5
	412	58,5		676	68,6
	508	307,2		999	59,9
0806 10 40	512	186,0	0809 40 30		
	600	88,5			

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 March 1996

on aid granted by the region of Liguria (Italy) for agricultural cooperatives

(Only the Italian text is authentic)

(96/559/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to Council Regulation (EEC) No 234/68 of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage ⁽¹⁾, as last amended by Regulation (EC) No 3290/94 ⁽²⁾ and in particular Article 11 thereof, as well as the corresponding provisions of the other regulations governing the common organization of the markets in agricultural products,

Having given notice to the parties concerned to submit their comments in accordance with the first subparagraph of Article 93 (2),

Whereas:

I

1. By letter dated 19 August 1993, recorded as received on 30 August 1993, the Italian Permanent Representative to the European Communities notified to the Commission in accordance with Article 93 (3) of the EC Treaty draft Law No 292/93 of Liguria (hereinafter referred to as 'draft Law No 292/93'), on aid for agri-

cultural cooperatives. In reply to the Commission's requests for further details of 16 September 1993 and 29 November 1993, the Italian authorities sent additional information to the Commission by letters dated 22 October 1993 and 13 January 1994.

By letter of 22 March 1994, the Commission informed the Italian Government of its decision to initiate the procedure under Article 93 (2) of the Treaty with regard to the special subsidies provided for in Article 1 of draft Law No 292/93, which it considered to constitute operating aid which could not qualify for the derogations in Article 92 of the Treaty and which had, therefore, to be deemed incompatible with the common market.

In accordance with the procedure, the Commission gave notice to the Italian Government to submit its comments. Through a publication in the *Official Journal of the European Communities* ⁽³⁾, the Commission also gave notice to the other Member States and interested parties to submit their comments.

The Italian Government submitted its comments by telex on 6 May 1994, recorded as received on 10 May 1994, and on 12 December 1994, recorded as received on 13 December 1994.

2. Article 1 of draft Law No 292/93 provides for the award of aid to cooperatives to meet their debts.

⁽¹⁾ OJ No L 55, 2. 3. 1968, p. 1.

⁽²⁾ OJ No L 349, 31. 12. 1994, p. 105.

⁽³⁾ OJ No C 159, 10. 6. 1994, p. 3.

The aid is to reduce liabilities resulting from:

II

(a) non-subsidized bank loans taken out in the past to:

- finance investments such as the construction of buildings and the purchase of equipment and machinery,
- cover the cooperatives' start-up costs,
- cover the cooperatives' administrative and operating costs;

(Article 1 (2) (a))

(b) reduced-rate land improvement loans taken out between 1 January 1981 and 31 December 1984 (a period of particularly high interest rates in Italy) for investments;

(Article 1 (2) (b))

(c) liabilities incurred by members of the cooperative for products delivered but not yet paid for.

(Article 1 (2) (c))

The beneficiaries are any cooperatives harvesting, processing and marketing agricultural products (mostly floricultural products) which submit a restructuring plan. The plan — which must describe the cooperatives' economic standing, set out the solutions it proposes and include a financial commitment on the part of its members to the cost of restructuring — was submitted to the public authorities for approval.

The total aid amounts to Lit 2,6 billion. The aid may, in cases 2 (a) and 2 (c) above, cover up to 50 % of the liabilities in question. In the case of 2 (b), the subsidies correspond to an adjustment in the subsidized rate of interest on the land improvement loans, which may not exceed the difference between the interest rate fixed when the loans were taken out and the current subsidized interest rate.

In their letter of 13 January 1994, the Italian authorities said in relation to the measures under Article 1 (2) (a) of draft Law 292/93 that 'the aid rates ... comply with the limits laid down in Regulation (EEC) No 866/90' and that the recipient cooperatives 'have undertaken investments falling within the objectives of Article 1 of Regulation (EEC) No 866/90'.

3. Article 8 of the draft Law 292/93 provides for its entry into force only after a favourable decision by the Commission as to its compatibility under Articles 92 and 93 of the Treaty.

Under the Article 93 (2) procedure, Italy provided the following clarifications:

The Italian authorities declared that the aid component intended to reduce the liabilities resulting from bank loans to fund investments (first indent of 2 (a)) 'meets the conditions regarding sectoral limits laid down in point 2 of the Annex to Commission Decision 90/342/EEC and comply with the objectives of Article 1 of Regulation (EEC) No 866/90'.

Moreover, 'any further aggravation of the cooperatives' financial position would entail their bankruptcy, which would have an adverse effect on employment'.

As regards the other proposed aids, the Italian authorities said that the aid would be a special, one-off payment and that, at Lit 2,5 billion, its scale was truly modest and could not distort competition.

Furthermore, the Italian authorities said that the market in flowers would not be distorted by the activities of the cooperatives and that the activities would be important for environmental and scenic reasons.

III

Article 92 (1) of the Treaty states that 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 common market.

The aid in question is intended to ensure the survival and operation of the recipient cooperatives which, without this aid, would be eliminated from the market or else obliged to improve their economic efficiency.

It therefore improves the economic standing of the beneficiary undertakings *vis-à-vis* their competitors who do not receive this assistance. It accordingly distorts or threatens to distort competition as described above.

Given the value of trade in live plants and flower products (exports from Italy to the rest of the Community in 1993: ECU 179,59 million; imports from the rest of the Community to Italy: ECU 303,07 million (')), the aid is likely to affect trade between the Member States by encouraging national production, processing and marketing to the detriment of operators in the other Member States.

(') Eurostat-Comext.

In this regard it should be noted that neither the arguments adduced by the Italian Government nor the relatively small scale of the beneficiary undertaking nor the relatively low level of the aid granted, automatically rules out the possibility of adverse effects on trade between Member States.

In view of the foregoing, the measures in question are State aid fulfilling the criteria laid down in Article 92 (1) of the Treaty.

IV

1. There are, however, exceptions to the principle of incompatibility laid down in Article 92 (1) of the Treaty.
2. The exceptions on incompatibility under Article 92 (2) obviously do not apply and have not been invoked by the Italian authorities.
3. The exceptions under Article 92 (3) must be interpreted strictly when scrutinizing any regional or sectoral aid programme or any individual application of general aid schemes.

These exceptions may be allowed in particular only where the Commission can establish that the aid is needed to achieve one of the objectives in question. To allow an exception in the case of an aid not offering such a guarantee would allow trade between the Member States to be affected and would unjustifiably distort competition to the detriment of the Community interest while at the same time unduly favouring the operators of certain Member States.

4. In the case in point, the aid offers no such guarantee. The Italian Government has not supplied, nor has the Commission found, any proof that the aid in question fulfils the conditions required for the application of any of the derogations provided for in Article 92 (3) of the Treaty.
5. The aid measures do not promote the execution of an important project of common European interest within the meaning of point (b) of Article 92 (3) since, by virtue of their possible effects on trade, the measures are contrary to the common interest.

Neither are they measures to remedy a serious disturbance in the economy of a Member State within the meaning of the same provision.

6. The Commission would state the following in reply to the comments made by the Italian Government:

As regards the argument put forward that the cooperatives would have to declare bankruptcy without this aid, it is normal that the forces at work in a market economy may bring about the demise of uncompetitive undertakings.

However, as the Commission pointed out when opening the procedure under Article 93 (2) of the Treaty, the aid may be deemed compatible with the common market only under the following, highly specific conditions:

- (a) the aid must relate to financial burdens for loans taken out to fund investments already made;
- (b) the cumulative subsidy equivalent of any aid granted when the loans were taken out must not exceed the levels generally accepted by the Commission, namely, in the case of investments in processing or marketing, 55 % for projects complying with the sectoral plans or one of the objectives of Article 1 of Council Regulation (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products⁽¹⁾, as last amended by Regulation (EC) No 2843/94⁽²⁾, and 35 % for other projects, without being excluded by the selection criteria referred to in point 2 of the Annex to Commission Decision 90/342/EEC⁽³⁾, applied by analogy for assessing aid pursuant to Article 92 of the Treaty;
- (c) the aid in question must be linked to readjustments in the rates of new loans taken out in response to changes in interest rates or must relate to agricultural holdings submitting viability guarantees, in particular in cases where the financial burdens resulting from existing loans are such that the holdings may be endangered and possibly go bankrupt.

The purpose of these criteria is to ensure that the aid is granted only to a cooperative which, although profitable in principle, has encountered serious cash-flow problems as a result of specific and unforeseeable circumstances which cannot be attributed to the manager of such cooperative, following an investment designed permanently to improve agricultural structures.

⁽¹⁾ OJ No L 91, 6. 4. 1990, p. 1.

⁽²⁾ OJ No L 302, 25. 11. 1994, p. 1.

⁽³⁾ OJ No L 163, 29. 6. 1990, p. 71.

As regards the various measures provided for in Article 1 of draft Law No 292/93, the legislative text notified by the Italian authorities and the additional information and comments sent subsequently do not contain any evidence that all the criteria listed above have been met in all cases.

As regards the source of the financial instability affecting the recipient cooperatives, under the criteria set out in (a) above, only the cost of loans undertaken for financing investments are taken into account. On this basis the aid measures described under the second and third indents of I.2 (a), and I.2 (c) cannot be deemed compatible with the Commission's consistent practice on aid for cooperatives in difficulty.

While the aid measures described in the first indent of I.2 (a) and in I.2 (b) are linked to investments satisfying condition (a) above, they do not, however, comply with the relevant Community rules on the basis of the criteria set out in point (b).

Although the Italian authorities have declared that the objectives of Article 1 of Regulation (EEC) No 866/90 and the sectoral restrictions have been complied with — an affirmation that was never, incidentally, included as a condition for eligibility for the aid in draft Law No 292/93 itself — the Commission notes that the information enabling it to calculate the subsidy equivalent was never supplied to it, despite its requests for further information and even though this had been the subject of the decision to initiate the procedure provided for in Article 93 (2) of the Treaty.

Furthermore, as regards the stipulation on viability set out in (c) above, the Italian authorities have not provided, nor has the Commission found, any parameter or other economic criterion on which to establish the viability of the recipient cooperatives.

Viability is not, moreover, a *sine qua non* for the grant of aid but is solely one of several 'priority criteria for granting the aid' under Article 4 of the draft Law.

In addition, the Commission had noted in its decision initiating the procedure that the cooperatives' difficulties must be due to events beyond their control. The information received from the Italian authorities does not, on the other hand, rule out the possibility that the

proposed aid seeks, at least in part, to defray expenditure arising from the unprofitable management of the cooperatives.

As the aid measures provided for in Article 1 of the draft Law No 292/93 do not satisfy all the conditions described under (a), (b) and (c), they cannot have any lasting effect on the development of the sector concerned and are therefore incompatible with the Commission's consistent practice.

7. In addition, the proposed measures do not comply with the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁾.

The guidelines in question were adopted by the Commission after the procedure provided for in Article 93 (2) of the Treaty was initiated in 1994; they define the general handling of aid for rescuing and restructuring aid in all sectors.

In the agricultural sector, the Member State may, if it so wishes, apply the guidelines to the individual beneficiaries, rather than the special rules (which were applied at the time the procedure was opened since no alternative was then available).

Under the guidelines, rescue aid must consist, *inter alia*, of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates.

The guidelines also state: 'The *sine qua non* of all restructuring plans is that they must restore the long-term viability of the firm within a reasonable time scale and on the basis of realistic assumptions as to its future operating conditions. Consequently, restructuring aid must be linked to a viable restructuring/recovery programme submitted in all relevant detail to the Commission'.

As none of the above conditions have been met, the aid in question cannot be justified as aid designed to rescue or restructure ailing firms.

Consequently, the Commission notes that these measures do not qualify for the derogations provided for in points (a) and (c) of Article 92 (3) regarding aid to promote the economic development of areas of certain economic activities.

⁽¹⁾ OJ No C 368, 23. 12. 1994, p. 12.

8. As regards the activities of the cooperatives, their important positive impact on the environment and their major role in the scenic landscape of Liguria, the Italian authorities, in putting forward those considerations, have supplied no information as to whether the purpose of the aid was (first and foremost) to protect the environment, and if so, to what extent.

The Commission cannot therefore accept the justifications put forward by the Italian Government.

9. In view of the foregoing, the aid cannot qualify for any of the derogations provided for in Article 92 of the Treaty and are to be considered incompatible with the common market,

market under Article 92 of the EC Treaty and shall not be granted.

Article 2

Italy is required to abolish the provision referred to in Article 1 within two months of the date of notification of this Decision.

Article 3

Italy shall inform the Commission within two months of the date of notification of this Decision, of the measures it has taken to comply with it.

Article 4

This Decision is addressed to the Italian Republic.

HAS ADOPTED THIS DECISION:

Done at Brussels, 13 March 1996.

Article 1

The aid provided for in Article 1 of draft Regional Law (Liguria) No 292/93 is incompatible with the common

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 30 April 1996

on German aid to the coal industry for 1995 and 1996

(Only the German text is authentic)

(96/560/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⁽¹⁾, and in particular Articles 2 (1) and 9 thereof,

I

Whereas, by letter of 5 October 1995, Germany notified the Commission, in accordance with Article 9 (1) of Decision No 3632/93/ECSC, of the aid it intended to grant to the coal industry in 1995 and 1996; whereas, by letters of 6 December 1995, 18 December 1995 and 23 February 1996, Germany submitted the additional information requested by the Commission;

Whereas, in accordance with Decision No 3632/93/ECSC, the Commission gives its opinion on the following financial measures:

- aid totalling DM 2 708,5 million for 1995 and DM 2 539,2 million for 1996 for the sale of coal and coke to the Community steel industry together with a financial measure to assist the undertaking Saarbergwerke AG totalling DM 118,4 million for 1995 and DM 118,4 million for 1996 in the context of a debt-register claim to be charged to the public budgets,
- aid totalling DM 7 500 million for payments to the German coal industry in 1996 under the Fifth Electricity-from-Coal Law of 12 December 1995⁽²⁾ (*'fünftes Verstromungsgesetz'*),
- aid totalling DM 97 million for 1996 to enable mining undertakings to maintain their underground labour force (*'Bergmannsprämie'*),

- aid totalling DM 200 million for 1996 for the undertakings Ruhrkohle AG, Saarbergwerke AG, Gewerkschaft Auguste Victoria, Sophia Jacoba GmbH and Preussag to cover exceptional commitments;

Whereas the financial measures proposed by the Federal Government for the coal industry comply with the provisions of Article 1 (1) of Decision No 3632/93/ECSC; whereas, therefore, the Commission, in accordance with Article 9 (4), is required to check whether those measures conform to the general objectives and criteria defined in Article 2 and the specific criteria defined in Articles 3 and 4 of the Decision; whereas, in accordance with Article 9 (6) of the Decision, the Commission has to decide whether the measures are compatible with the modernization, rationalization and restructuring plan which the Commission approved by Decision 94/1070/ECSC⁽³⁾;

II

Whereas the financial measures proposed by Germany for the coal industry pursuant to Article 3 of Decision No 3632/93/ECSC are limited from 1996 onwards to aid for coking coal (*'Kokskohlenbeihilfe'*), aid for coal for power stations (*'Beihilfe für die Verstromungskohle'*) and aid to maintain an underground labour force in deep mines (*'Bergmannsprämie'*);

Whereas the aid for coking coal will be granted, as explained in the letter of 5 October 1995, as part of a three-year ceiling for the period 1995 to 1997 totalling DM 8 065 million, of which DM 5 010 million is to be provided by the Federal Government and DM 2 700 million by the State of North Rhine-Westphalia; whereas the Federal Government's contribution is to be reduced from DM 1 760 million for the 1995 financial year to DM 1 650 million for the 1996 financial year and then to DM 1 600 million for the 1997 financial year; whereas the contribution from the Land of North Rhine-Westphalia is

⁽¹⁾ OJ No L 329, 30. 12. 1993, p. 12.

⁽²⁾ *Bundesgesetzblatt* (German Law Gazette), 16. 12. 1995, p. 1638.

⁽³⁾ OJ No L 385, 31. 12. 1994, p. 18.

to be reduced from DM 948,5 million for 1995 to DM 889,2 million for 1996 and then to DM 862,3 million for 1997; whereas the contribution from the Saar is to be replaced by a debt-register entry totalling DM 355 million to be charged to the public budgets and to assist the undertaking Saarbergwerke AG, of which DM 118,4 million is to offset losses for 1995 and DM 118,4 to offset losses for 1996; whereas those sums will be paid out as from the 1996 financial year and will be the subject of a final settlement in 1998;

Whereas the rules for coking coal are intended to cover the difference between production costs and the selling price freely agreed for coal of the same quality, in the light of the conditions prevailing on the world market; whereas this measure is covered by supply agreements between undertakings eligible for operating aid under Article 3 and aid for the reduction of activity under Article 4 of Decision No 3632/93/ECSC and the Community steel industry;

Whereas the payment based on the new system of aid for coking coal is to be regarded as a maximum amount; whereas, at the end of the three-year period, the exact difference between the agreed price and the production costs per tonne for all supplies will be determined by means of a final settlement; whereas, unlike under the previous system, no more advanced estimates of annual supply volumes are to be given; whereas only the volumes actually supplied may be the subject of aid; whereas, any amount of aid overpaid will be recovered, if necessary, after the final settlement; whereas the payments planned for 1995 and 1996 amount to DM 2 708,5 million and DM 2 539,2 million; whereas to these must be added financial measures totalling DM 118,4 million for each of the two years in the framework of a debt register entry to be charged to the public budgets, to be granted to the undertaking Saarbergwerke AG;

Whereas the inclusion of this measure in the modernization, restructuring and rationalization plan submitted by the Federal Government, the reduction in volumes and the imposition of a ceiling on aid for the period from 1992 to 1994 are in keeping with the objective set out in the first indent of Article 2 (1) of Decision No 3632/93/ECSC to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving the degression of aids; whereas the

arrangements for granting this aid should then, in accordance with Article 3 of this Decision, help to improve the economic viability of the undertakings concerned by reducing production costs; whereas it must, however, be stressed, that the reduction in costs achieved between 1992 and 1995, which, according to the figures supplied by the German authorities, is of the order of 3,6 %, is totally inadequate, confirming the need for a firm approach to the reduction of capacity;

Whereas Germany must take care to ensure that this aid does not produce any discrimination between producers, between purchasers or between consumers as referred to in point (b) of Article 4 of the Treaty;

Whereas, in assessing the aid, the Commission has taken account, in accordance with the second indent of Article 2 (1) of Decision No 3632/93/ECSC, of the need to minimize the social and regional impact of restructuring;

Whereas, in the light of the above and on the basis of the information provided by the Federal Government, the aid planned for 1995 and 1996 is compatible with the objectives of the abovementioned Decision and with the smooth functioning of the common market;

III

Whereas the financial measure totalling DM 7 500 million which Germany wishes to take for the coal industry and which is intended to cover the difference between production costs and the sales price freely agreed between the contracting parties falls under the Fifth Electricity-from-Coal Law of 12 December 1995; whereas, in this context, it should be recalled that, in accordance with Article 9 (7) of Decision No 3632/93/ECSC, the rules based on the Third Electricity-from-Coal Law had to be fundamentally changed in order to be compatible with the provisions of that Decision; whereas, furthermore, the Federal Constitutional Court, by Order of 11 October 1994, declared the levy for the German coal industry known as the '*Kohlepfennig*' pursuant to the said Third Electricity-from-Coal Law to be unconstitutional and it therefore had to be abolished on 1 January 1996;

Whereas, unlike the old levy procedure, this aid is now entered in the Federal Budget and therefore complies with the provisions of Article 2 (2) of Decision No 3632/93/ECSC;

Whereas this measure is operating aid within the meaning of Article 3 of the framework decision and is intended to cover the difference between production costs and the selling price freely agreed between the contracting parties in the light of the conditions prevailing on the world market; whereas the Commission is therefore required to give an opinion on it in accordance with Article 9 of the Decision and in particular check whether the measures, apart from complying with the specific criteria laid down in Article 3, are also compatible with the modernization, rationalization and restructuring plan;

Whereas, in its assessment of that plan, it had already emphasized that the prospects of a tangible improvement in the competitiveness of the German coal industry are poor and that any substantial decrease in aid could therefore only be achieved by gradually and continuing reducing production in the undertakings concerned;

Whereas, in this context, it should be recalled that the reduction in costs achieved between 1992 and 1995, which, according to the figures provided by the German authorities, is of the order of 3,6 %, is totally inadequate and therefore confirms the need for a firm approach to capacity reduction; whereas, therefore, the Commission reserves the right beyond the period covered by this Decision to demand a supplement to the modernization, rationalization and restructuring plan to enable it to determine whether the action taken by the German authorities has been adequate;

Whereas the Commission is, however, of the opinion that the decision by Germany to impose a ceiling on aid for coal for power stations and then gradually to reduce the amounts of aid from DM 7 500 million for 1996 to DM 7 000 million for 1997 and DM 7 000 million for 1998 is a step in the right direction in view of the objective of the first indent of Article 2 (1) of the Decision;

Whereas in assessing the aid the Commission has taken account, in accordance with the second indent of Article 2 (1), of the urgent need to minimize the social and regional impact of restructuring;

Whereas, in the light of the above and on the basis of the information provided by Germany, the aid planned for 1996 is compatible with the objectives of Decision No 3632/93/ECSC and with the smooth functioning of the common market;

IV

Whereas aid totalling DM 97 million is planned to enable mining undertakings to maintain a qualified underground

labour force in deep mines (*Bergmannsprämie*); whereas this aid corresponds to DM 10 per underground shift; whereas it indirectly covers part of the difference between production costs and the foreseeable sales proceeds; whereas, according to the German notification, this aid is an extra payment to miners and thus also reduces production costs; whereas it is therefore aid which has to be assessed by reference to Article 3 of the Decision;

Whereas the proposed aid contributes to the maximization of productivity and therefore helps in the restructuring and rationalization of the coal industry; whereas it therefore also helps to achieve the objectives referred to in the first indent of Article 2 (1), namely to make, in the light of coal prices on international markets, further progress towards economic viability with the aim of achieving the depression of aid;

Whereas, in assessing the aid, the Commission has taken account, in accordance with the second indent of Article 2 (1), of the priority need to minimize the social and regional impact of restructuring;

Whereas, it should again be recalled that, despite the very slight decline in production costs at constant prices observed during the last few years, extra effort will be required from 1997 in order to generate a real trend towards a reduction in production costs at 1992 prices within the meaning of the second subparagraph of Article 3 (2);

Whereas this aid will improve the economic viability of the undertakings concerned in accordance with the provisions of Article 3 of the Decision by increasing productivity and thereby reducing production costs;

Whereas, in the light of the above and on the basis of the information provided by Germany, the aid planned for 1996 is compatible with the objectives of Decision No 3632/93/ECSC and with the smooth functioning of the common market;

V

Whereas the aid totalling DM 200 million to assist the undertakings Ruhrkohle AG, Saarbergwerke AG, Gewerkschaft Auguste Victoria, Sophia Jacoba GmbH and Preussag to cover exceptional costs is intended to cover additional costs due to the removal of waste water from

mines closed down as part of restructuring and near to working pits; whereas little or no water is pumped out of the closed-down mines and some of the water, which has nothing to do with the existing production, flows into the working pit nearby, thereby giving rise to additional costs;

Whereas this aid is specifically referred to in paragraph II (b) of the Annex to Decision No 3632/93/ECSC as a measure intended to cover expenditure, resulting from restructuring, on the supply of water and the removal of waste water; whereas, in order to meet the requirements of Article 5 of the Decision, it may not exceed the expenditure;

Whereas the Commission has examined the information provided by Germany and the agreements between the public authorities and the undertakings concerned and has ascertained that this condition is met;

Whereas this lessening of pressure will reduce the financial imbalance between the undertakings concerned and enable them to continue their activities; whereas the aid therefore complies with the objectives given in Article 2 (1) of the Decision;

VI

Whereas Germany is to make sure that the aid granted under this Decision does not exceed the difference between production costs and the foreseeable sales proceeds in any undertaking or production unit;

Whereas the Commission is required, in accordance with the second indent of Article 3 (1) and Article 9 (2) and (3) of Decision No 3632/93/ECSC, to verify whether the aid granted for current production achieves the objectives set out in Articles 3 and 4 of the Decision; whereas it must therefore be informed as to the level of payments and their allocation,

HAS ADOPTED THIS DECISION:

Article 1

Germany is hereby authorized to take the following measures to assist the coal industry:

- aid totalling DM 2 708,5 million for 1995 and DM 2 539,2 million for 1996 for the supply of coal and coke to the Community steel industry, together with a financial measure to assist the undertaking Saarbergwerke AG totalling DM 118,4 million for 1995 and DM 118,4 million for 1996 in the framework of a debt-register claim to be charged to the public budgets,
- aid totalling DM 7 500 million for payments to the German coal industry in 1996 in connection with the Fifth Electricity-from-Coal Law of 12 December 1995,
- aid totalling DM 97 million for 1996 to maintain underground mine workers (*'Bergmannsprämie'*),
- aid totalling DM 200 million for 1996 for the undertakings Ruhrkohle AG, Saarbergwerke AG, Gewerkschaft Auguste Victoria, Sophia Jacoba GmbH and Preussag to cover exceptional costs.

Article 2

Germany shall ensure that, if the expenditure is cancelled or has been overestimated, it shall recover payment of any items referred to in this Decision.

Article 3

Germany shall provide information no later than 30 September 1996 about payments actually made during the 1995 financial year and no later than 30 September 1997 about payments actually made during the 1996 financial year.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 30 April 1996.

For the Commission

Christos PAPOUTSIS

Member of the Commission

CORRIGENDA

Corrigendum to Decision 96/433/ECSC of the Representatives of the Governments of the Member States, meeting within the Council of 8 July 1996 on certain measures applicable with regard to Kazakhstan concerning trade in certain steel products covered by the ECSC Treaty

(Official Journal of the European Communities No L 180 of 19 July 1996)

On page 29 in Annex I, under heading 'SB 2. Wire rod', after CN code 7213 91 70 insert CN code 7213 91 90.
