

Official Journal

of the European Communities

ISSN 0378-6978

L 306

Volume 40

11 November 1997

English edition

Legislation

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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2230/97
of 7 November 1997
concerning the stopping of fishing for plaice by vessels flying the flag of Belgium

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁽¹⁾, as last amended by Regulation (EC) No 686/97⁽²⁾, and in particular Article 21 (3) thereof,

Whereas Council Regulation (EC) No 390/97 of 20 December 1996 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1997 and certain conditions under which they may be fished⁽³⁾, as last amended by Regulation (EC) No 1974/97⁽⁴⁾, provides for plaice quotas for 1997;

Whereas, in order to ensure compliance with the provisions relating to the quantitative limitations on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;

Whereas, according to the information communicated to the Commission, catches of plaice in the waters of ICES division VII f and g by vessels flying the flag of Belgium

or registereed in Belgium have reached the quota allocated for 1997; whereas Belgium has prohibited fishing for this stock as from 19 October 1997; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of plaice in the waters of ICES division VII f and g by vessels flying the flag of Belgium or registered in Belgium are deemed to have exhausted the quota allocated to Belgium for 1997.

Fishing for plaice in the waters of ICES division VII f and g by vessels flying the flag of Belgium or registered in Belgium is prohibited, as well as the retention on board, the transshipment and the landing of such captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 19 October 1997.

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

Done at Brussels, 7 November 1997.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ L 261, 20. 10. 1993, p. 1.

⁽²⁾ OJ L 102, 19. 4. 1997, p. 1.

⁽³⁾ OJ L 66, 6. 3. 1997, p. 1.

⁽⁴⁾ OJ L 278, 11. 10. 1997, p. 1.

COMMISSION REGULATION (EC) No 2231/97
of 7 November 1997
concerning the stopping of fishing for salmon by vessels flying the flag of
Finland

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

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁽¹⁾, as last amended by Regulation (EC) No 686/97⁽²⁾, and in particular Article 21 (3) thereof,

Whereas Council Regulation (EC) No 390/97 of 20 December 1996 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1997 and certain conditions under which they may be fished⁽³⁾, as last amended by Regulation (EC) No 1974/97⁽⁴⁾, provides for salmon quotas for 1997;

Whereas, in order to ensure compliance with the provisions relating to the quantitative limitations on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member States are deemed to have exhausted the quota allocated;

Whereas, according to the information communicated to the Commission, catches of salmon in the waters of ICES division III b, c and d (EC zone) by vessels flying the flag of Finland or registered in Finland have reached the

quota allocated for 1997; whereas Finland has prohibited fishing for this stock as from 22 October 1997; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of salmon in the waters of ICES division III b, c and d (EC zone) by vessels flying the flag of Finland or registered in Finland are deemed to have exhausted the quota allocated to Finland for 1997.

Fishing for salmon in the waters of ICES division III b, c and d (EC zone) by vessels flying the flag of Finland or registered in Finland is prohibited, as well as the retention on board, the transhipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 22 October 1997.

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

Done at Brussels, 7 November 1997.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ L 261, 20. 10. 1993, p. 1.

⁽²⁾ OJ L 102, 19. 4. 1997, p. 1.

⁽³⁾ OJ L 66, 6. 3. 1997, p. 1.

⁽⁴⁾ OJ L 278, 11. 10. 1997, p. 1.

COMMISSION REGULATION (EC) No 2232/97
of 10 November 1997
on the supply of vegetable oil as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security⁽¹⁾, and in particular Article 24 (1) (b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated vegetable oil to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid⁽²⁾, as amended by Regulation (EEC) No 790/91⁽³⁾;

Whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

Whereas, in order to ensure that the supplies are carried out for a given lot, provision should be made for tenderers to be able to mobilize either rape-seed oil or sunflower

oil; whereas the contract for the supply of such each lot is to be awarded to the tenderer submitting the lowest tender,

HAS ADOPTED THIS REGULATION:

Article 1

Vegetable oil shall be mobilized in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

The supply shall cover the mobilization of vegetable oil produced in the Community. For lot B mobilization may not involve a product manufactured and/or packaged under inward processing arrangements.

Tenders relating to lot B shall cover either rape-seed oil or sunflower oil. Tenders shall be rejected unless they specify the type of oil to which they relate.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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

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

Done at Brussels, 10 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ L 204, 25. 7. 1987, p. 1.

⁽³⁾ OJ L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation No** ⁽¹⁾: 458/96
2. **Programme**: 1996
3. **Recipient** ⁽²⁾: Euronaid, PO Box 12, NL-2501 CA Den Haag (tel.: (31 70) 33 05 757; fax: 36 41 701; telex: 30960 EURON NL)
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination**: Ecuador
6. **Product to be mobilized**: refined soya-bean oil
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁴⁾ ⁽⁷⁾: —
8. **Total quantity (tonnes net)**: 120
9. **Number of lots**: one
10. **Packaging and marking** ⁽⁶⁾ ⁽⁸⁾: see OJ C 267, 13. 9. 1996, p. 1 (10.4 A, B and C(2))
see OJ C 114, 29. 4. 1991, p. 1 (IIIA(3))
Language to be used for the marking: Spanish
11. **Method of mobilization**: the Community market
12. **Stage of supply**: free at port of shipment
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 15. 12. 1997 — 4. 1. 1998
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 25. 11. 1997 (12 noon (Brussels time))
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 9. 12. 1997 (12 noon (Brussels time))
 - (b) period for making the goods available at the port of shipment: 29. 12. 1997 — 18. 1. 1998
 - (c) deadline for the supply: —
22. **Amount of tendering security**: ECU 15 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾: Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Brussels (telex: 25670 AGREC B; fax: (32 2) 296 70 03 / 296 70 04 (exclusively))
25. **Refund payable on application by the successful tenderer** ⁽⁴⁾: —

LOT B

1. **Operation No** ⁽¹⁾: 447/96
2. **Programme**: 1996
3. **Recipient** ⁽²⁾: WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma (tel.: (39-6) 6513 2988; fax: 6513 2844/3; telex: 626675 WFP I)
4. **Representative of the recipient**: WFP Head of Sub-Office, House No LK103, Chilomoni King Road, Namiwawa, Blantyre, Malawi
5. **Place or country of destination**: Malawi
6. **Product to be mobilized**: vegetable oil: refined rape-seed oil or refined sunflower oil
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁷⁾ ⁽⁹⁾: see OJ C 114, 29. 4. 1991, p. 1 (III. A (1) (a) or (b))
8. **Total quantity (tonnes net)**: 61
9. **Number of lots**: one
10. **Packaging and marking** ⁽⁶⁾: see OJ C 267, 13. 9. 1996, p. 1 (10.4.A, B and C (2))
see OJ No C 114, 29. 4. 1991, p. 1 (III.A (3))
Language to be used for the marking: English
11. **Method of mobilization**: mobilization of refined vegetable oil produced in the Community. Mobilization may not involve a product manufactured and/or packaged under inward-processing arrangements
12. **Stage of supply**: free at destination
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: see point 4
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 15 — 28. 12. 1997
18. **Deadline for the supply**: 7. 2. 1998
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 25. 11. 1997 (12 noon (Brussels time))
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 9. 12. 1997 (12 noon (Brussels time))
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 29. 12. 1997 — 10. 1. 1997
 - (c) deadline for the supply: 21. 2. 1998
22. **Amount of tendering security**: ECU 15 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾:
Bureau de l'aide alimentaire, Attn Mr T. Vestergaard,
Bâtiment Loi 130, bureau 7/46,
Rue de la Loi/Wetstraat 200, B-1049 Brussels
(telex: 25670 AGREC B; fax: (32-2) 296 70 03/296 70 04 (exclusively))
25. **Refund payable on application by the successful tenderer** ⁽⁴⁾: —

Notes:

- (¹) The operation number should be mentioned in all correspondence.
- (²) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (³) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium -134 and -137 and iodine-131 levels.
- (⁴) Article 7 (3) (g) of Regulation (EEC) No 2200/87 shall not be applicable to tenders submitted.
- (⁵) Refined soya-bean oil meeting the following criteria:
- appearance, at room temperature: clear and brilliant,
 - flavour and odour: bland,
 - free fatty acids: maximum 0,1 %,
 - water and impurities: maximum 0,05 %,
 - colour, Lovibond 5/4 (red/yellow): maximum 1,5/15,
 - peroxide value (meq/kg): maximum 2,0,
 - specific gravity at 20 °C: 0,91 to 0,93 g/cm³,
 - refractive index at 20 °C: 1,470 to 1,476,
 - iodine value (Wijs): 125 to 140 g/100 g.
- (⁶) Notwithstanding OJ C 114, point III.A (3) (c) is replaced by the following: 'the words "European Community"'.
- (⁷) The successful tenderer shall supply to the beneficiary or its representative, on delivery, a sanitary certificate.
- (⁸) Shipment to take place in 20-foot containers, FCL/FCL (each containing 15 tonnes net).
The supplier will be responsible for the cost of making the containers available in the stack position at the container terminal at the port of shipment. The beneficiary will be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.
The provisions of Article 13 (2), second subparagraph, of Regulation (EEC) No 2200/87 shall not apply.
The supplier must submit to the recipient's agent a complete packing list of each container, specifying the number of metal canisters belonging to each operation number as specified in the invitation to tender.
The supplier must seal each container with a numbered locktainer (Sysko locktainer 180 seal), the number of which is to be provided to the recipient's forwarder.
- (⁹) Tenders shall be rejected unless they specify the type of oil to which they relate.
-

COMMISSION DECISION No 2233/97/ECSC
of 10 November 1997
amending Annex IV to Decision No 1401/97/ECSC on administering certain
restrictions on imports of certain steel products from Ukraine

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Commission Decision No 1401/97/ECSC of 7 July 1997 on administering certain restrictions on imports of certain steel products from Ukraine ⁽¹⁾, and in particular Article 8 in conjunction with Article 7 thereof,

Whereas Ukraine has, in accordance with Article 3 (4) of the agreement on trade in certain ECSC steel products ⁽²⁾, requested the transfer of certain quantitative limits for 1997 between different product groups, and whereas the European Coal and Steel Community consents to this request;

Whereas it is therefore necessary to amend Annex IV to Decision No 1401/97/ECSC to take account of the amended quantitative limits;

Whereas the measures provided for in this Decision are in conformity with the opinion of the Committee established under Article 7 of Decision No 1401/97/ECSC,

HAS ADOPTED THIS REGULATION:

Article 1

Annex IV to Decision No 1401/97/ECSC is replaced by the text contained in the Appendix to this Decision.

Article 2

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

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

Done at Brussels, 10 November 1997.

For the Commission

Leon BRITTAN

Vice-President

⁽¹⁾ OJ L 193, 22. 7. 1997, p. 12.

⁽²⁾ OJ L 210, 4. 8. 1997, p. 16.

*Appendix**ANNEX IV***QUANTITATIVE LIMITS****Ukraine**

Products	1997	1998	1999	2000	2001
<i>SA. Flat products</i>					
SA1. Coils	30 362 ⁽¹⁾	31 250	32 032	32 832	33 653
SA2. Heavy plate	102 707	107 843	110 539	113 302	116 135
SA3. Other flat products	12 862 ⁽²⁾	14 135	14 488	14 850	15 222
<i>SB. Long products</i>					
SB1. Beams	8 359	8 777	8 996	9 221	9 452
SB2. Wire rod	22 000	23 100	23 677	24 269	24 876
SB3. Other long products	56 864	59 707	61 200	62 730	64 298

⁽¹⁾ This figure has been increased by 600 tonnes.

⁽²⁾ This figure has been reduced by 600 tonnes.

COMMISSION REGULATION (EC) No 2234/97

of 10 November 1997

amending Regulation (EC) No 3175/94 laying down detailed rules of application
for the specific arrangements for the supply of cereal products to the smaller
Aegean islands and establishing the forecast supply balance

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

Having regard to Council Regulation (EEC) No 2019/93
of 19 July 1993 introducing specific measures for the
smaller Aegean islands concerning certain agricultural
products ⁽¹⁾, as last amended by Commission Regulation
(EC) No 2417/95 ⁽²⁾, and in particular Article 4 thereof,

Whereas Commission Regulation (EEC) No 2958/93 ⁽³⁾,
as last amended by Regulation (EC) No 1802/95 ⁽⁴⁾, lays
down common detailed rules for the implementation of
the specific arrangements for the supply of certain agri-
cultural products to the smaller Aegean islands;

Whereas, pursuant to Article 2 of Regulation (EEC) No
2019/93, the forecast supply balance of cereal products
was established for 1997 by Commission Regulation (EC)
No 3175/94 ⁽⁵⁾, as last amended by Regulation (EC) No
2416/96 ⁽⁶⁾; whereas to meet the needs of these islands,

amendments must be made to this forecast supply
balance for 1997; whereas, subsequently, Regulation (EC)
No 3175/94 should be amended;

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

The Annex to Regulation (EC) No 3175/94 is hereby
replaced by the Annex to the present Regulation.

Article 2

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

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

Done at Brussels, 10 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 184, 27. 7. 1993, p. 1.

⁽²⁾ OJ L 248, 14. 10. 1995, p. 39.

⁽³⁾ OJ L 267, 28. 10. 1993, p. 4.

⁽⁴⁾ OJ L 174, 26. 7. 1995, p. 27.

⁽⁵⁾ OJ L 335, 23. 12. 1994, p. 54.

⁽⁶⁾ OJ L 329, 19. 12. 1996, p. 27.

ANNEX

Supply balance for cereals for the smaller Aegean islands for 1997

(in tonnes)

Quantity		1997	
Cereal products originating in the European Communities	CN code	Islands belonging to group A	Islands belonging to group B
Grain cereals	1001, 1002, 1003, 1004 and 1005	7 300	41 750
Barley originating in Limnos	1003	5 000	
Wheat flour	1101 and 1102	11 000	40 000
Food industry residues and waste	2302 to 2308	4 000	26 300
Preparations of a kind used in animal feeding	2309 90	2 500	12 000
Total		24 800	120 050
Grand Total		149 850	

These groups are defined in Annexes I and II of Regulation (EEC) No 2958/93.

COMMISSION REGULATION (EC) No 2235/97

of 10 November 1997

amending Regulation (EC) No 3392/93 on detailed rules for the application of Council Regulation (EEC) No 1842/83 laying down general rules for the supply of milk and certain milk products at reduced prices to school children

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 ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾, and in particular Article 26 (4) thereof,

Whereas the first subparagraph of Article 2 (1) of Council Regulation (EEC) No 1842/83 ⁽³⁾, as last amended by Regulation (EC) No 1958/97 ⁽⁴⁾, provides for the grant of Community aid for the products known as 'viili/fil' made from whole milk;

Whereas it is therefore necessary to include these products in the Annex to Commission Regulation (EC) No 3392/93 ⁽⁵⁾, as last amended by Regulation (EC) No 2808/95 ⁽⁶⁾; whereas, in addition, Article 4 (1) of that Regulation should be amended to specify the amount of Community aid for these products, taking account of the fact that their fat content is at least 3 %;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 3392/93 is hereby amended as follows:

1. the first indent of the second subparagraph of Article 4 (1) is replaced by the following:

— ECU 26,73 per 100 kg for category I products listed in the Annex, whose fat content is at least 3,00 % but less than 3,50 %;

2. in the Annex, the following text is added under category I:

'(d) "Viili/fil" whose fat content is at least 3,00 %'.

Article 2

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

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

Done at Brussels, 10 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 21.

⁽³⁾ OJ L 183, 7. 7. 1983, p. 1.

⁽⁴⁾ OJ L 277, 10. 10. 1997, p. 1.

⁽⁵⁾ OJ L 306, 11. 12. 1993, p. 27.

⁽⁶⁾ OJ L 291, 6. 12. 1995, p. 21.

COMMISSION REGULATION (EC) No 2236/97

of 10 November 1997

amending Regulations (EEC) No 417/85 and (EEC) No 418/85 on the application of Article 85 (3) of the Treaty to categories respectively of specialization agreements and of research and development agreements

(Text with EEA relevance)

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

Having regard to Council Regulation (EEC) No 2821/71 of 20 December 1971 on application of Article 85 (3) of the Treaty to categories of agreements, decisions and concerted practices⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 1 thereof,

Having published a draft of this Regulation⁽²⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas the period of validity of Commission Regulations (EEC) No 417/85⁽³⁾ and (EEC) No 418/85⁽⁴⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, on the application of Article 85 (3) of the Treaty to categories respectively of specialization agreements and of research and developments agreements, expires on 31 December 1997;

Whereas the Commission has launched a survey aiming to identify the problems which the application of the abovementioned Regulations by the interested undertakings has given rise to; whereas it is appropriate to examine in this context, all the legal, economic, and political factors which determine cooperation between undertakings operating on the same market;

Whereas it is appropriate to allow sufficient time to complete this survey, to evaluate its results and to draw the conclusions for future regulation on the matter;

Whereas this work could not be completed in time for the adoption and publication of a new Regulation before 31 December 1997;

Whereas to maintain legal certainty for undertakings, it is appropriate to amend Regulations (EEC) No 417/85 and (EEC) No 418/85 by extending their period of validity; whereas it is appropriate to limit their period of validity until 31 December 2000,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 10 of Regulation (EEC) No 417/85, '31 December 1997' is replaced by '31 December 2000'.

Article 2

In Article 13 of Regulation (EEC) No 418/85, '31 December 1997' is replaced by '31 December 2000'.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 10 November 1997.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽¹⁾ OJ L 285, 29. 12. 1971, p. 46.

⁽²⁾ OJ C 190, 21. 6. 1997, p. 3.

⁽³⁾ OJ L 53, 22. 2. 1985, p. 1.

⁽⁴⁾ OJ L 53, 22. 2. 1985, p. 5.

COMMISSION REGULATION (EC) No 2237/97**of 10 November 1997****on the issue of import licences for high-quality fresh, chilled or frozen beef and veal**

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

Having regard to Commission Regulation (EC) No 936/97 of 27 May 1997 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat⁽¹⁾,

Whereas Commission Regulation (EC) No 936/97 provides in Articles 4 and 5 the conditions for applications and for the issue of import licences for meat referred to in Article 2 (f);

Whereas Article 2 (f) of Regulation (EC) No 936/97 fixes the amount of high-quality fresh, chilled or frozen beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms for the period 1 July 1997 to 30 June 1998 at 11 500 tonnes;

Whereas it should be recalled that licences issued pursuant to this Regulation will, throughout the period of

validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import licences from 1 to 5 November 1997 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 2 (f) of Regulation (EC) No 936/97 shall be granted in full.

2. Applications for licences may be submitted, in accordance with Article 5 of Regulation (EC) No 936/97, during the first five days of December 1997 for 2 044 tonnes.

Article 2

This Regulation shall enter into force on 11 November 1997.

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

Done at Brussels, 10 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 137, 28. 5. 1997, p. 10.

COMMISSION REGULATION (EC) No 2238/97
of 10 November 1997
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 2375/96⁽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 11 November 1997.

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

Done at Brussels, 10 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 10 November 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 45	064	57,0
	204	56,6
	999	56,8
0805 20 31	204	101,3
	999	101,3
0805 20 33, 0805 20 35, 0805 20 37, 0805 20 39	052	49,8
	999	49,8
0805 30 40	052	86,3
	528	49,4
	999	67,9
0806 10 50	052	113,9
	400	225,1
	999	169,5
0808 10 92, 0808 10 94, 0808 10 98	052	53,7
	060	44,5
	064	46,0
	400	88,0
	404	85,8
	528	52,4
	800	114,7
0808 20 67	999	69,3
	052	92,7
	064	76,1
	400	94,8
	999	87,9

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

COMMISSION REGULATION (EC) No 2239/97

of 10 November 1997

altering the export refunds on cereals and on wheat or rye flour, groats and meal

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

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96 ⁽²⁾, and in particular the fourth subparagraph of Article 13(2) thereof,

Whereas the export refunds on cereals and on wheat or rye flour, groats and meal were fixed by Commission Regulation (EC) No 2210/97 ⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 2210/97 to the information known to the Commission that the export refunds at present in force should be altered to the amounts set out in the Annex hereto;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 ⁽⁴⁾, as last amended by Regulation (EC) No 150/95 ⁽⁵⁾, are used to convert amounts expressed in third country currencies

and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 ⁽⁶⁾, as last amended by Regulation (EC) No 1482/96 ⁽⁷⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 1766/92, exported in the natural state, as fixed in the Annex to Regulation (EC) No 2210/97 are hereby altered as shown in the Annex to this Regulation in respect of the products set out therein.

Article 2

This Regulation shall enter into force on 11 November 1997.

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

Done at Brussels, 10 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ L 304, 7. 11. 1997, p. 9.

⁽⁴⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁵⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁶⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁷⁾ OJ L 188, 27. 7. 1996, p. 22.

ANNEX

**to the Commission Regulation of 10 November 1997 altering the export refunds on cereals and
on wheat or rye flour, groats and meal**

<i>(ECU / tonne)</i>			<i>(ECU / tonne)</i>		
Product code	Destination (1)	Amount of refund	Product code	Destination (1)	Amount of refund
1001 10 00 9200	—	—	1101 00 11 9000	—	—
1001 10 00 9400	—	—	1101 00 15 9100	01	13,00
1001 90 91 9000	—	—	1101 00 15 9130	01	12,00
1001 90 99 9000	03	0	1101 00 15 9150	01	11,25
	02	—	1101 00 15 9170	01	10,25
1002 00 00 9000	03	17,00	1101 00 15 9180	01	9,75
	02	0	1101 00 15 9190	—	—
1003 00 10 9000	—	—	1101 00 90 9000	—	—
1003 00 90 9000	03	4,00	1102 10 00 9500	01	36,50
	02	0	1102 10 00 9700	—	—
1004 00 00 9200	—	—	1102 10 00 9900	—	—
1004 00 00 9400	—	—	1103 11 10 9200	—	— (2)
1005 10 90 9000	—	—	1103 11 10 9400	—	— (2)
1005 90 00 9000	—	—	1103 11 10 9900	—	—
1007 00 90 9000	—	—	1103 11 90 9200	01	0 (2)
1008 20 00 9000	—	—	1103 11 90 9800	—	—

(1) The destinations are identified as follows:

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Liechtenstein.

(2) No refund is granted when this product contains compressed meal.

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ L 214, 30. 7. 1992, p. 20).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 12 March 1997

concerning State aid for Aircraft Services Lemwerder (ASL)

(Only the German text is authentic)

(Text with EEA relevance)

(97/753/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 the Agreement establishing the European Economic Area, and in particular Article 62 (1) (a) thereof,

Having given notice in accordance with Article 93 to interested parties to submit their comments to it,

Whereas:

I

On 30 May 1995 the Commission decided to initiate the procedure under Article 93 (2) of the EC Treaty in respect of aid granted by the authorities of the *Land* of Lower Saxony to Aircraft Services Lemwerder GmbH (ASL), an enterprise specialized in the maintenance and refurbishing of civil aircraft. The enterprise is located in Lemwerder, a structurally disadvantaged area which has been eligible for regional aid under Article 92 (3) (c) of the EC Treaty since 1 January 1995.

Until 1993 the plant was a branch of DASA, which then decided to close the plant down, discontinuing its maintenance and refurbishing activities in Lemwerder and

transferring its military aviation activities to DASA's Manching plant in Bavaria. The *Land* of Lower Saxony intervened and negotiated an agreement with DASA in order to safeguard the civil aviation activities at the Lemwerder plant. An independent consultancy firm was commissioned by it to report on the possibilities of continuing civil aircraft maintenance as an independent activity.

The report excluded DASA as a potential partner at the Lemwerder plant. DASA decided to discontinue its civil aviation maintenance activities, because they were no longer economically viable in view of the sharp falls in prices and worldwide overcapacity.

Consequently, drastic measures regarding employment, working hours and wages were a prerequisite for the continued existence of the Lemwerder plant.

The report concluded that there were estimated overcapacities of 25 - 30 % in the sector which were not expected to decrease, whereas the annual increase in demand would be only 3 - 4 %, with the result that the market was expected to be a buyers' market even after the year 2000. It therefore recommended that the Lemwerder plant should concentrate its activities on light and heavy maintenance, technical modification, refurbishing, equipping, painting and repair of civil aircraft. These activities could be supplemented by, among other things, R&D, logistics, training, and maintenance and repair of components.

Taking a price of US\$ 44 per man-hour for heavy maintenance and a price of US\$ 75 for painting and assuming an exchange rate of US\$ 1 = DM 1,70 (current rate: US\$ 1 = approximately DM 1,65, after two years of a constant rate of US\$ 1 = DM1,50), the report came to the conclusion that the Lemwerder plant needed at least 400 000 man-hours of work and an annual turnover of some DM 42 million in order to be economically viable.

On the basis of this report, the *Land* of Lower Saxony decided to set up a new company called ASL Aircraft Services Lemwerder GmbH (ASL). This company bought all the assets of DASA's Lemwerder plant for DM 1. The *Land* of Lower Saxony provided it with equity capital amounting to DM 10 million, of which DM 3,25 million was paid up immediately; the remainder would, according to the German authorities, be paid up before the end of 1996. ASL is wholly owned by a subsidiary of Norddeutsche Landesbank Girozentrale, a public enterprise. However, the entrepreneurial responsibility for ASL belongs to the *Land* authorities, which have guaranteed Norddeutsche Landesbank, as the (formal) owner of ASL, against any financial and legal claims by third parties.

ASL is specialized in the maintenance and refurbishing of civil aircraft. The military activities of the former DASA plant had been gradually transferred to DASA's Manching plant in Bavaria by 30 June 1996.

DASA paid DM 80 million to ASL, given that it would have had to finance a social plan (DM 64,5 million) and pension claims (DM 27,5 million) in the event of closure of the Lemwerder plant. This amount was entered in ASL's balance sheet as a provision (*Rückstellung*) but served partly to finance the negative cash flow that was expected during the restructuring. In order that ASL could use DM 60 million of this amount freely as liquidity, the *Land* authorities gave a unilateral guarantee to ASL to cover the cost of the social plan and pension claims up to that amount should the company not prove viable.

DASA has also agreed to award certain contracts to ASL in the period up to and including 1998; these would include the refurbishing and repair of military components, thereby guaranteeing 160 000 man-hours of work each year.

In the course of the restructuring, ASL decided to reduce its workforce from 1 200 to 575 by 30 June 1996. Assuming an average rate of DM 80 (US\$ 54) per man-hour and an annual workload of 400 000 man-hours, it concluded that it could be viable from 1998 onwards after making losses amounting, according to their own forecasts, to DM 16,5 million in 1995, to DM 15,3 million in

1996 and to DM 10,3 million in 1997. The positive figures from 1998 onwards were based on the assumptions that the restructuring would then have been completed and that the situation in the maintenance market would improve and prices recover from that date onwards. According to those estimates (which were submitted to the Commission), turnover was expected to be DM 47,2 million in 1995, DM 63,2 million in 1996 and some DM 65 million from 1997 onwards.

In order to increase competitiveness, the workers agreed to a reduction of 10 % from 1 January 1995 and a further reduction of 7 % from 1 January 1996 in those components of their wages not covered by their collective bargaining agreement. In addition, more flexible working hours were agreed, with up to 50 hours a week, weekends included, having to be worked without any additional financial compensation.

Besides the reduction in the workforce from 1 200 to finally 575 by 30 June 1996, ASL scaled down capacity for military aircraft maintenance by 75 % and for civil aircraft maintenance by 30 %.

The Commission examined the above measures in the light of Article 92 of the EC Treaty and concluded that the measures taken by the *Land* of Lower Saxony, both the capital injection of DM 10 million and the unilateral guarantee of DM 60 million, may constitute State aid. At the time, it had serious doubts whether the aid qualified for the exemptions under Article 92 (3) of the EC Treaty and under the Community guidelines on State aid for rescuing and restructuring firms in difficulties⁽¹⁾. It therefore decided to initiate the Article 93 (2) procedure on 30 May 1995.

II

By letters dated 27 June, 27 September and 29 November 1996, the German authorities gave their views on the Commission's decision to initiate the Article 93 (2) procedure in respect of the aid granted to ASL.

According to the German authorities, the capital injection by the *Land* of Lower Saxony amounting to DM 10 million did not constitute aid within the meaning of Article 92 (1) since the *Land* authorities had in this case acted as any private investor would have done. The restructuring of ASL had led to substantial savings which allowed ASL to act in the same flexible way as a medium-sized enterprise. Wages, salaries and fringe benefits had been reduced. The workforce had been further

⁽¹⁾ OJ C 368, 23. 12. 1994, p. 12.

reduced from 782 to 575 on 30 July 1996. Total working time had become more flexible. Negotiations were already under way with potential home-fleet customers, and the Indonesian State holding IPTN had expressed an interest in acquiring 25,1 % of ASL. All this suggests that the losses in the start-up phase could be cancelled out and reasonable profits could be expected. Against this background, any investor operating under normal market economy conditions would come to the conclusion that a financial participation in such an enterprise was promising. The Commission, in assessing the company's profitability prospects, had focused too closely on the plans submitted to it. It would run counter to economic reality to make the behaviour of an entrepreneur in a market economy dependent solely on specific business prospects. Taking all these points into account, the German authorities took the view that the *Land* of Lower Saxony had acted as any private investor would have done.

As for the unilateral guarantee amounting to DM 60 million, the German authorities stressed that it enabled ASL to use the payments received from DASA as liquidity without reducing the employees' claims in the event of ASL's bankruptcy or of other major changes within the enterprise. They also highlighted the fact that the guarantee would be activated only in the event of ASL's bankruptcy or of a further substantial reduction in the workforce and only in respect of ASL's employees, not in respect of ASL itself.

The German authorities were convinced that ASL can become profitable. During the first half of 1995, ASL had achieved an average price of DM 90,91 for a total of 375 000 man-hours (maintenance: 165 000 man-hours, DM 70 per man-hour; components sector: 110 000 man-hours, DM 120 per man-hour). ASL's capacities were fully utilized. There were even bottlenecks in respect of new orders. For 1995, orders corresponding to 500 000 man-hours were expected, exceeding both the consultant's and ASL's forecasts by 25 %. In addition, ASL was less dependent on the US\$/DM exchange rate since 70 % of ASL's business was transacted in DM.

A profit and loss account dated October 1995 and submitted by the German authorities showed an overall turnover of DM 73 million in 1995, 50 % up on ASL's own forecast and 100 % up on the consultant's forecast, while expected losses amounted to DM 15 million, slightly below the estimated figure of DM 16,5 million.

III

By letter dated 26 January 1996, the Commission transmitted to the German authorities the comments of third parties, one German competitor and one Danish competitor, which it had received following publication of the Commission's decision to initiate the procedure⁽¹⁾.

The German competitor stressed that the relevant market for ASL's activities is and will remain a buyers' market for at least another five to eight years, with overcapacities estimated at 30 %. Therefore, an aircraft maintenance company would need a significant number of home-fleet customers in order to survive. Large airlines had their own maintenance facilities and basically optimized their capital and workforce utilization by acquiring additional business from smaller operators who do not invest in maintenance facilities because of the existence of a buyers' market. Since ASL did not have a home fleet or any special relationship with a large airline, it depended entirely on the spot market. The German competitor also pointed out that ASL had announced at the end of 1995 that it aimed for a cost base corresponding to a man-hour rate of less than DM 100. ASL, however, had offered its services at man-hour rates that were as much as 25 % below that target figure. Such market behaviour was possible only because of the capital injection by the *Land* of Lower Saxony, a step which, given the market situation, no private investor would have been prepared to take.

The Danish competitor expressed its concern about the aid for ASL and stressed that such an aid represented an unacceptable distortion of competition in an already saturated market.

IV

By letter dated 21 February 1996, the German authorities transmitted their reply to the comments made by third parties.

They emphasized that, contrary to one of the competitors' observations, ASL was able to attract a significant home-fleet clientele. It received a total of 31 orders from four airlines (two German, one Danish and one Icelandic airline). ASL had offered its services to those airlines at world market prices. At the same time, it was negotiating with other airlines in order to increase its home-fleet clientele.

⁽¹⁾ OJ C 295, 10. 11. 1995, p. 17.

The German authorities also highlighted the fact that in 1995 ASL had received orders corresponding to 537 000 man-hours, 34 % higher than the consultant's estimation, and had achieved a turnover of DM 80 million, significantly higher than the estimated turnover of DM 47 million. The operating loss amounted to only DM 10 million and was expected to be further reduced to DM 7 million for 1996.

In addition, they stressed that ASL was continuing to cut costs, which stood at DM 125 per man-hour in 1995, and that a further reduction to close on DM 100 could be achieved by further reductions in the workforce (to 575) in 1996.

As regards the unilateral guarantee, the German authorities emphasized again that the authorities of the *Land* of Lower Saxony had entered into commitments only *vis-à-vis* the employees in the event of ASL's failure, and not *vis-à-vis* the enterprise itself. The guarantee entailed no legal obligation to provide the enterprise with capital.

V

In July 1996 the Commission, in response to a request from the German authorities, agreed to postpone a final decision since a new plan was being worked out for ASL under which it would be re-privatized and new investors would assume the entrepreneurial risk in full.

By letter dated 4 October 1996, the German authorities forwarded to the Commission two letters of intent. In the first letter, the Indonesian state holding IPTN expressed an interest in acquiring 25,1 % of ASL's shares. In the second letter, a group of three private investors expressed an interest in purchasing the remaining 74,9 %. After purchasing the shares, they would also be prepared to provide ASL, via a financing company, with equity amounting to DM 10 million.

The privatization contracts were to be signed by the end of October 1996.

The German authorities also pointed out that ASL had not been in a position to use the entire DM 80 million provided by DASA as freely available liquidity since in 1994 ASL had to repay DM 35 million to DASA in order to enable it to cover the costs of a social plan for employees who had remained with DASA. In addition, ASL had to provide another DM 6 million under a social plan to cover claims of 250 of its own employees who had been made redundant. Finally, in 1994 ASL had to pay a further DM 9 million to DASA for stocks taken over in.

As a result, only DM 30 million out of the original DM 80 million was available to ASL as liquidity reserves.

At the Commission's request, the German authorities sent on 6 November 1996 copies of the privatization contracts and of the most recent profit and loss account for ASL.

According to the German authorities, ASL was sold on 31 October 1996. The purchase of 25,1 % of ASL's shares by IPTN, however, did not go ahead since IPTN had sought additional guarantees in respect of ASL's liquidity and equity capital which the *Land* of Lower Saxony had been unwilling to give.

Nevertheless, the negotiations with the private investment group, which was prepared to acquire 100 % of ASL's shares, were successful. ASL was sold for a symbolic price of DM 1, this being, according to the German authorities, the usual price for an enterprise which had expected to incur losses in 1996 and 1997 and anticipated becoming profitable only at the end of 1997. The purchasers planned to grant via PVV GmbH, a company wholly owned by them, a loan amounting to DM 10 million in order to bolster ASL's equity capital. The German authorities stressed that this loan would be financed in full by the investors without any public money being involved. The only condition was that the *Land* of Lower Saxony would not withdraw the capital injected into the company.

In the context of the sale of ASL, the *Land* of Lower Saxony withdrew the DM 60 million guarantee in respect of the social plan for ASL's employees that would be activated in the event of ASL's bankruptcy. It also stated that it would not enter into any further financial undertaking in favour of ASL.

The profit and loss account presented by the German authorities confirmed that ASL made estimated losses of DM 8 million in 1996. The attached balance sheet indicated that ASL would have used up all its liquidity reserves by the end of 1996 and would therefore urgently need a fresh injection of capital in order to cover the losses which were expected before the company became profitable at the end of 1997.

In response to a further request for information from the Commission, the German authorities indicated on 22 November and 16 December 1996 that the private investors would finance the DM 10 million capital injection entirely out of their own resources and that no public undertaking would be entered into in the future. Furthermore, the DM 10 million loan provided by the purchasers had the effect, under German company law, of replacing equity capital and could not, therefore, be secured by ASL's assets. As a result, the amount involved would have been irrevocably lost in the event of ASL's bankruptcy. The loan would be granted for a period of 10 years at an annual interest rate of 6 %, with the first two years being a grace period. The German authorities also transmitted copies of records of ASL's board of management meetings, the audited balance sheet for 1995 and the monthly management reports for 1996.

VI

The Article 93 (2) procedure confirmed the Commission's view when instituting the procedure that the measures taken by the *Land* of Lower Saxony had to be regarded as aid within the meaning of Article 92 (1) of the EC Treaty.

That the capital injection of DM 10 million provided by the *Land* of Lower Saxony in order to safeguard an uneconomic activity in a newly established enterprise constitutes State aid is already established by the Commission communication of 1984⁽¹⁾. The fact that the *Land* of Lower Saxony was not directly the owner but that it guaranteed the Norddeutsche Landesbank against any claims arising as a result of its being the owner changes nothing in this respect. ASL is formally owned by Durum, a wholly owned, Zurich-based subsidiary of Norddeutsche Bank/Girozentrale. The Norddeutsche Bank/Girozentrale is a public enterprise, its shares being held by the *Land* of Lower Saxony (50 %), the *Land* of Saxony-Anhalt (10 %), the municipally owned Niedersächsischer Sparkassen- und Giroverband (33,33 %), and the Zweckverband der Sparkassen Sachsen-Anhalt (6,67 %).

In applying the market economy investor principle⁽²⁾, it has to be concluded that a normal investor would not have acted in the same manner as the *Land* of Lower Saxony did in 1994. Both forecasts for ASL, which had been compiled by the consultants and then modified by the new owners and which had been submitted to the Commission by the German authorities before the procedure had been instituted, indicated that the losses anticipated in the first three years would not be offset in subsequent years.

The DM 60 million guarantee also constitutes aid. DASA had provided ASL with DM 80 million in exchange for being released from liabilities of DM 92 million in respect of pensions and a social plan which would have arisen if Lemwerder had been shut down completely. Even though there was no legal link with the contract between ASL and DASA concerning the provision of DM 80 million and although ASL had no legal obligation to set this amount aside, it is certain that the workers would have preferred to accept the DASA payments instead of providing ASL with the money if they had not been

convinced by the unilateral guarantee that their claims would have been met. Thus, there was a clear factual link between the unilateral guarantee and the opportunity to use DM 60 million as a liquidity reserve. On the basis of the guarantee, the DASA workers renounced their immediate claims on DASA, and DASA was able to provide ASL with resources which it would have had to provide anyway. At the same time, there was no legal obligation on ASL to set this amount aside since the workers who had meanwhile been taken over by ASL and knew that this money was available deferred their claims under the social plan. In this connection, the guidelines on State aid for rescuing and restructuring firms in difficulty state that 'the obligations a company itself has under employment legislation or collective agreements with trade unions to provide redundancy benefits and/or early retirement pensions are part of the normal costs of a business which a firm has to meet from its own resources. This being so, any contribution by the State to these costs must be counted as aid. This is true regardless whether the payments are made direct to the firm or are administered through a government agency to the employees' (point 3.2.5). Thus, the unilateral guarantee clearly constitutes aid.

Moreover, the success of ASL's restructuring is attributable primarily to external factors, such as the US\$/DM exchange rate and the acquisition of a 75 % home-fleet-based clientele, over which the company has no great influence. According to point 3.2.2 (i) of the abovementioned Community guidelines, these factors should not therefore constitute the basis for a sound restructuring plan. The Commission thus doubts whether the restructuring measures, at the moment when they were adopted and the aid was granted, could be regarded as sufficient to restore the company's viability.

On the other hand, it cannot be denied that ASL, in implementing the restructuring measures, was much more successful than foreseen in its own forecasts. The figures provided by the German authorities confirm that ASL was a loss-making enterprise in 1995 and 1996, although the losses were diminishing. In 1995 losses amounted to DM 14,514 million, DM 2 million lower than the DM 16,5 million forecast, while the turnover of DM 77,952 million exceeded the forecast by DM 30 million. In 1996 ASL reduced its losses to DM 7,934 million, equivalent to around 50 % of the originally estimated losses of DM 15,3 million. The expected turnover of DM 69,018 million also exceeded the original forecast by DM 6 million. In addition, according to the German authorities, ASL obtained roughly the prices which it expected to achieve and which the consultant had regarded as un-

⁽¹⁾ Application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings (EC Bulletin 9-1984).

⁽²⁾ Application of Articles 92 and 93 of the EEC Treaty and of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ C 307, 13. 11. 1993, p. 3).

realistic. Owing to cost-cutting measures, ASL was also able to reduce its costs from DM 125 per man-hour to DM 100 per man-hour, approaching the market prices for its services.

All these developments could be attributable to an easing of the situation in the aerospace maintenance market, where overcapacity was estimated at 25 - 30 %. The European aerospace industry as a whole achieved spectacular growth during the 1980s but was affected by a deep recession from 1990 onwards which was due to the general economic crisis and, for the military part of the industry, to political détente. The computed consumption of aerospace equipment in the EU fell by 14 % between 1990 and 1992. In 1993 the airline industry's overcapacity, along with the continuing contraction in defence budgets, continued to dampen activity in the aerospace industry. Production was down 7,4 % in value terms as domestic demand weakened and exports stagnated. The industry cut capacity correspondingly in that period. However, according to the information available to the Commission (Panorama of EU Industry 1995/96), the previous overcapacity in the aerospace sector as a whole seems to have diminished and it is reckoned that growth in production will accelerate again on the back of the general recovery in the world economy and the need to replace old aircraft, particularly business aircraft and helicopters. The aerospace maintenance industry is also expected to benefit.

The successful re-privatization of ASL is also an indication that the business plans were realistic and that the company, after the further losses anticipated in early 1997, can justifiably expect to break even by the end of this year. Although the investors will purchase the enterprise for the symbolic sum of DM 1, they will provide a DM 10 million loan which will, as the German authorities confirm, be financed completely out of their own resources and will provide the company with sufficient liquidity until it breaks even. Moreover, under German company law, this loan will, in the event of the company's bankruptcy, replace equity capital and will thus be irrecoverable for the investors. This demonstrates the investors' confidence in ASL's future and in the restoration of its profitability, for which they will, if necessary, carry out additional restructuring measures. Otherwise, they would hardly have been prepared to inject such a large amount of their own capital into the company. Under such circumstances, it is difficult for the Commission to substantiate the absence of any prospects of the company becoming viable and to prevent private investors taking over a company that is operating at full capacity and even encountering production bottlenecks.

Furthermore, it has to be taken into account that the German authorities have promised that there will be no

more public financial involvement in the company. This will ensure that ASL will act in the market like any other company and will no longer be in a position to distort competition with the help of financial support from the public authorities.

It should also be borne in mind that, according to the letter from the German authorities of 6 November 1996, the unilateral guarantee was withdrawn and no longer had any impact on ASL's activities.

For these reasons, it can be assumed that the company's viability will be restored without additional financial support from the public authorities.

In addition, there have been substantial reductions in maintenance capacity (75 % for military aircraft and 30 % for civil aircraft). The reduction for civil aircraft was 33 % in terms of man-hours and 50 % in terms of manpower. Thus, the reduction in capacity carried out by ASL corresponds to or even exceeds existing market overcapacity.

Compared with the level of State aid, the investor's financial risk is not insignificant. The investors are taking over a company whose equity capital is used up. Should the plan fail, they would lose DM 10 million of their own capital which they would have to finance themselves in full.

Finally, when assessing the restructuring measures in favour of ASL, it has to be noted that ASL is located in an area which is now eligible for regional aid pursuant to Article 92 (3) (c) of the EC Treaty and in which the closure of a large company like ASL would lead to a further increase in unemployment without any prospect of alternative jobs being created.

In view of ASL's apparently restored viability, the significant reduction in capacity and the considerable financial contribution made by the investors and since this was the first time that ASL had been restructured with the help of public money, the Commission has concluded that the capital injection of DM 10 million and the unilateral guarantee - since withdrawn - for DM 60 million in favour of ASL's workers, both provided by the *Land* of Lower Saxony, can be approved under Article 92 (3) (c), taken in conjunction with the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

In view of the continuing overcapacity in the aircraft maintenance sector, this approval should be conditional on ASL being prevented from distorting competition in future with the help of public funds.

To that end, steps must be taken to ensure that, for a period of at least five years, the German authorities do not grant any *ad hoc* operating aid or any *ad hoc* aid to finance capacity-enhancing projects,

HAS ADOPTED THIS DECISION:

Article 1

Both the capital injection of DM 10 million and the unilateral guarantee - since withdrawn - for DM 60 million, which were provided by the Land of Lower Saxony to Aircraft Services Lemwerder GmbH (ASL), constitute illegal aid because they were not notified to the Commission before being granted, in breach of Article 93 (3) of the EC Treaty.

However, they satisfy the criteria laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty and are therefore compatible with the common market within the meaning of Article 92 (3) (c) of the EC Treaty and Article 61 (3) (c) of

the EEA Agreement, on condition that Germany refrain until 31 December 2001 from granting ASL any *ad hoc* aid to finance capacity-enhancing projects or to cover any losses incurred by it.

Article 2

Germany shall inform the Commission, within two months of the notification of this Decision, of the measures it has taken to comply herewith.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 12 March 1997.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 30 April 1997

concerning the application to the steel firm Ferdofin Srl of Italian Law No 95/1979 on receivership arrangements for large firms in crisis

(Only the Italian text is authentic)

(Text with EEA relevance)

(97/754/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 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry ⁽¹⁾, and in particular Article 6 (5) thereof,

Having given interested parties notice to submit their comments ⁽²⁾, and having regard to those comments,

Whereas:

I

By letter dated 22 March 1996 the Commission informed the Italian authorities of its decision to initiate proceedings under Article 6 (4) of Commission Decision No 3855/91/ECSC (replaced with effect from 1 January 1997 by Decision No 2496/96/ECSC) in respect of the application of Italian Law No 95/1979 on receivership arrangements for large firms in crisis, known as the Prodi Law (hereinafter 'Law No 95/1979'), to Ferdofin Siderurgica Srl (hereinafter 'Ferdofin').

According to the Commission's information, based essentially on what was communicated by the Italian authorities, it was apparent that:

1. Ferdofin was in a very difficult financial situation; the firm's balance sheet as at 30 June 1994 and its profit and loss account showed that: (i) its cumulative losses totalled Lit 251,6 billion; (ii) there was, in relation to a capital of Lit 80 billion, a deficit on own funds of Lit 170,9 billion; (iii) medium- and long-term debts and debts towards credit institutions totalled Lit 526,5 billion, compared with assets of Lit 429,5 billion, much of which was already mortgaged;
2. in view of the foregoing, Ferdofin had, by Ministerial Decree of 28 December 1993, been placed under the procedure provided for in Law No 95/1979, which,

among other things, enabled the firm's debts to be frozen, including those contracted with public credit institutions;

3. given Ferdofin's financial situation, it had not been able to obtain any funding from private banks without a public guarantee.

On the basis of these facts, the Commission had serious doubts as to whether the aid in question, granted under Law No 95/1979, was compatible with the common market.

It therefore decided to initiate proceedings under Article 6 (4) of Decision No 3855/91/ECSC in respect of the application of Law No 95/1979 to Ferdofin.

II

As part of the proceedings, the Commission invited the Italian Government to submit its comments, and informed the other Member States and interested parties by publishing the decision initiating the proceedings ⁽³⁾.

In letters dated 24, 25 and 26 June 1996, the United Kingdom Government, Wirtschaftsvereinigung Stahl, Siderinsa and BISPA (the British Iron and Steel Producers Association) sent comments to the Commission, which forwarded them to the Italian authorities on 1 August 1996.

In their comments, all the above third parties expressed support for the Commission's decision to initiate proceedings. They argued in particular that Law No 95/1979 constituted by definition State aid in that it enabled the Italian State, through discretionary powers conferred on the Minister for Industry, to intervene to save firms undergoing an extremely serious financial crisis. Since the measures concerned contravened Article 4 (c) of the ECSC Treaty, the third parties concerned called on the Commission to rule them incompatible with the common market for coal and steel.

In response to the initiation of the procedure and to the comments from the other interested parties, the Italian Government put forward the following arguments (points 1 to 9 below):

⁽¹⁾ OJ L 338, 28. 12. 1996, p. 42.

⁽²⁾ OJ C 151, 25. 5. 1996, p. 10.

⁽³⁾ See footnote 2.

1. the purpose of the receivership arrangements for large firms is to enable the company's assets to be put into liquidation and consequently the creditors' claims to be satisfied while avoiding — wherever the necessary conditions are met — the dispersion of its business activities and the resulting loss of jobs. To that end, the firm is allowed to continue trading under the responsibility of an administrator who draws up a restructuring plan and manages the business for the two-year period that is necessary in order to complete the procedure for transferring the firm's activities to third parties. If, on the other hand, the administrator finds that the conditions are not met for a return to profitability, closure of the activities is decided and the firm is wound up;
 2. as in the case of other insolvency procedures, the provisions of Royal Decree No 267/1942 (the Bankruptcy Law) also apply to the receivership arrangements for large firms, one of the results of which is that the debtor is dispossessed of his assets and no longer has the right to manage and dispose of them. A clear distinction is also drawn between the company owning the assets and all the business activities; the latter are sold off on the basis of values determined by sworn experts and the proceeds are distributed among the company's creditors;
 3. once the company's activities (i.e. its physical assets, not its shares) have been sold off, the procedure continues and the company owning them is responsible for taking all the steps involved in the winding-up and other legal action (e.g. liability actions against former directors);
 4. the provision made under the receivership arrangements for large firms for the firm to stay in business in no way differs from the bankruptcy procedure, which also allows for trading on a provisional basis;
 5. it should be stressed that there is no principle in Italy's bankruptcy law — or indeed in that of the other Member States — whereby the business activities of a firm which has become insolvent should necessarily be broken up;
 6. the purpose of the bankruptcy procedure is to remove the firm from the control of the entrepreneur who let it become insolvent and to pay the creditors with the proceeds of the sale of its assets. Whether the assets are split up and sold separately after business activities have been shut down or whether the business assets are sold en bloc while they are still in operation matters little provided that the creditors are paid. It is for this very reason that the bankruptcy procedure allows for the possibility of trading on a provisional basis;
 7. in the light of the foregoing it is difficult to see how placing a firm under the receivership arrangements for large firms instead of the ordinary bankruptcy procedure can constitute State aid. The concept of State aid under Community law entails the existence of a beneficial effect on a firm's balance sheet, enabling it to compete with its rivals under preferential conditions. This does not occur when a firm is placed under the receivership arrangements for large firms since the firm itself does not derive any financial advantage from the procedure: the provisions governing continuation of the firm's activities do not impose any financial burden on the State;
 8. the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁾ describe in detail the type of measures involving aid that must be notified in advance to the Commission. The guidelines refer to financial measures such as capital injections, loans, tax concessions and loan guarantees, but make no mention of legal arrangements governing management of the winding-up of firms that have been declared insolvent;
 9. the statement that the Minister for Industry has discretion in deciding whether or not to place a firm under the receivership arrangements for large firms clearly stems from a misunderstanding of the relevant legal provisions. Initiation of the receivership procedure is not dependent on a discretionary decision by the administration but results from a court decision in cases where an insolvent firm meets the requirements laid down by Law No 95/1979 (it must have not less than 300 employees and debts towards the banking or social security system in excess of a limit laid down each year). We are therefore not dealing here with a derogatory measure but with a generally applicable procedure laid down by law for managing the winding-up of large firms in such a way as to avoid dispersion of their assets and thereby save jobs.
- Lastly, after stating that Ferofin had not received the guarantee provided for by Article 2 (a) of Law No 95/1979 pending the Community authorization procedure, the Italian authorities formally notified their decision to withdraw that request for authorization.
- ### III
- It must first be established whether the public measures in question constitute State aid falling within the scope of Community law.

⁽¹⁾ OJ C 368, 23. 12. 1994, p. 12.

With regard to the Community provisions that may be applicable in this case, it should be recalled that Ferdofoin produces steel products listed in Annex I to the ECSC Treaty and is therefore bound by the rules of that Treaty.

Article 4 (c) of the ECSC Treaty, which is the Community provision applicable in this case, states that subsidies or aid granted by States in any form whatsoever are recognized as incompatible with the common market for coal and steel and are accordingly abolished and prohibited within the Community. The only possible exceptions to this general prohibition are set out in full in Decision No 2496/96/ECSC. They concern aid for research and development (Article 2), aid for environmental protection (Article 3) and aid for closures (Article 4).

It should be noted here that the Italian authorities have not, in the extremely detailed comments they have submitted, invoked any of the abovementioned exceptions with a view to justifying the public measure in question.

Scrutiny of the text in fact clearly shows that the public measure concerned does not qualify under any of these exceptions since it is intended, in particular, to enable Ferdofoin to remain active on the market and to restore the necessary liquidity for pursuing its activities with a view to being sold off.

Having taken note of the Italian authorities' decision, following the initiation of proceedings, not to grant a State guarantee, the Commission has to determine whether Law No 95/1979 itself constitutes State aid in the light of the Community provisions, and more specifically the ECSC Treaty.

It should be stressed in this connection, in reply to the comments submitted by Italy, that unlike normal bankruptcy proceedings under Italian law the arrangements in question are not open to all firms but reserved for large firms, employing at least 300 people, which have become insolvent.

The arrangements clearly concern only large insolvent firms given the possible public interest in their continuing operation and recovery and in saving the jobs involved.

Under Law No 95/1979 together with the Decree placing the firm under the receivership arrangements for large firms, issued by the Minister for Industry in agreement with the Minister for the Treasury, the firm is allowed to continue trading for a period of two years, which may be extended up to a maximum of five years, under the responsibility of one or three administrators appointed by the Government. During that period, the administrator(s) must draw up a restructuring plan, subject to the approval of the supervisory authority, listing the plant and equipment to be restarted or added to, the plant or units to be transferred and any new business arrangements.

The receivership procedure ends if a composition is approved, or total assets are distributed, or credit is exhausted, or there are insufficient assets or if the firm is once again able to meet its liabilities on a regular basis.

There are grounds for concluding that the provisions in question cannot be regarded as general measures falling outside the scope of the Community rules on State aid, for the reasons set out in points 1 to 3 below:

1. in several respects the receivership procedure for large firms depends on the exercise of the discretionary powers vested in the public authorities, particularly as regard authorization of the firm to continue trading (Article 2 of Law No 95/1979 and Article 4 of the draft amending legislation). The discretionary nature of such authorization has been consistently confirmed by the Italian administrative courts⁽¹⁾;
2. contrary to the argument put forward by the Italian authorities, a firm's continued trading under the receivership arrangements for large firms is not equivalent to trading on a provisional basis under Article 90 of the Bankruptcy Law. Scrutiny of the relevant provisions clearly show that while trading on a provisional basis is an exception allowed in the interests of creditors with a view to increasing the value of the assets to be distributed as part of a procedure designed to ensure that all creditors are on an equal footing, continued trading under the receivership arrangements for large firms is the normal effect of a procedure designed to protect the firms concerned from the consequences of their insolvency and to allow the economic activity to continue;
3. this difference is reflected in the system of juridical supervision. While normal bankruptcy procedures include checks of both legality and substance by the courts, including supervision of the economic advisability of transactions carried out by those actively involved in the procedure, namely the administrator and the delegated judge, the receivership arrangements for large firms are subject to review by the administrative court, which is empowered to deal only with the legality of administrative acts and has no right to monitor the economic desirability of transactions. It should also be pointed out that Laws No 95/1979, and in particular Article 1 thereof, provides that the firms to which it applies are subject to the receivership arrangements for large firms 'with the exception of bankruptcy'. The rules thus clearly state that receivership is an exception to the normal bankruptcy procedures.

⁽¹⁾ Administrative Court of Lazio, Section III, 30. 11. 1985, n. 1986; Council of State, Section VILS, 29. 7. 1991, n. 492.

Moreover, the Court of Justice of the European Communities has consistently held, *inter alia* in its judgment of 2 July 1974 in Case 173/73 Italy v. Commission, that application of the Community rules on State aid — in particular when determining whether measures taken by States correspond to the definition of State aid laid down by Community law — is dependent not on the causes or objectives of the measures but on their effects.

To the extent that the effect of national rules is to favour certain firms or products — firms with more than 300 employees in the case in point — by allocating State resources to them, thereby distorting competition and affecting intra-Community trade, they fall within the scope of Article 4 (c) of the ECSC Treaty and possibly also Articles 92 and 93 of the EC Treaty.

On the question of the transfer of State resources, the receivership arrangements for large firms entail a number of financial benefits involving the transfer of resources from the State or having an impact on the State budget, in particular:

- debts towards the tax authorities and public social security bodies may qualify for exemption from individual enforcement proceedings and for suspension of interest payments (Articles 51 and 55 respectively of the Bankruptcy Law),
- as regards social security contributions, the firm qualifies for exemption from the payment of fines and penalties for non-payment of contributions,
- the Bankruptcy Law provides for separate enforcement proceedings for the collection of taxes on income, so that delays in payment incur a fine, in addition to interest payments and other penalties; this procedure is not applicable to firms under the receivership arrangements for large firms, which means they are not subject to fines for delay,
- under Article 5 (a) of Law No 95/1979, the registration charge on transfers of ownership of firms or parts of firms under the receivership arrangements is set at the token sum of Lit 1 million (about ECU 526).

These measures constitute State aid in so far as the State waives its claims on the firm covered by the receivership arrangements.

In the light of the foregoing, the measures provided for by Law No 95/1979 must be regarded as State aid; it remains to be determined whether such aid is compatible

with the common market for coal and steel. It should be borne in mind here that in the context of the EC Treaty the compatibility of the aid scheme could possibly be assessed on the basis of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, whereas in the context of the ECSC Treaty it can be determined only in the light of the general ban laid down in Article 4 (c) of that Treaty and the three possible exceptions set out exhaustively in Decision No 2496/96/ECSC. As has already been stated, not only have the Italian authorities not invoked any of the abovementioned exceptions with a view to justifying the State measure in question, but scrutiny of the text also shows that the State measure concerned cannot concern environmental protection, research and development or closures.

IV

It must be concluded that application of the receivership arrangements for large firms has enabled Ferdofin to avoid its liabilities towards the tax authorities and public social security bodies, which is tantamount to a transfer of State resources through lost revenue from the taxes and contributions owed by the firm concerned.

The firm's tax accounts as at 31 December 1995 show that it benefited from a suspension of payments in respect of the following debts:

- (a) Lit 10 786 million owed to the INPS;
- (b) Lit 723 million owed to the INAIL;
- (c) Lit 2 301 million owed to the tax authorities;
- (d) Lit 100 billion owed to banks controlled directly or indirectly by the State.

V

In the light of the foregoing, in particular Part III, it must be concluded that the comments submitted by the Italian authorities cannot substantially alter the Commission's initial assessment, as set out in its decision to initiate the proceedings, that the measures provided for by Law No 95/1979 constitute State aid which is incompatible with the common market for coal and steel.

The aid which Ferdofin has received must therefore be deemed incompatible with the common market since it does not qualify for any of the derogations laid down in Decision No 2496/96/ECSC from the prohibition enshrined in Article 4 (c) of the ECSC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Ferdofin has received in the context of the application to it of Law No 95/1979, through suspension of the payment of the following debts:

- (a) Lit 10 786 million owed to the INPS;
- (b) Lit 723 million owed to the INAIL;
- (c) Lit 2 301 million owed to the tax authorities;
- (d) Lit 100 billion owed to banks controlled directly or indirectly by the State,

is illegal since it was granted in breach of Article 6 (2) of Decision No 2496/96/ECSC.

It is also incompatible with the common market for coal and steel in pursuance of Article 4 (c) of the ECSC Treaty.

Article 2

Italy shall recover the aid referred to in Article 1 in accordance with the provisions of Italian law relating to the recovery of amounts owed to the public authorities. In order to counteract the effects of the aid, interest shall be charged on the amount of the aid from the date on which it was granted until the date it is reimbursed. The interest

rate applicable shall be that used by the Commission to calculate the net grant equivalent of regional aid schemes in the period in question.

Article 3

Italy shall forthwith cease to apply the provisions of Law No 95/1979 in respect of the failure by Ferdofin Siderurgica Srl to pay debts contracted with public bodies and enterprises.

Article 4

Italy shall inform the Commission, within two months of the notification of this Decision, of the measures taken to comply herewith.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 April 1997.

For the Commission

Karel VAN MIERT

Member of the Commission