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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1016/94
of 26 April 1994**

amending Regulation (EEC) No 3438/92 laying down special measures for the transport of certain fresh fruit and vegetables originating in Greece with regard to its period of application

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 (2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas Regulation (EEC) No 3438/92 ⁽³⁾ lays down special measures for the transport of certain fresh fruit and vegetables originating in Greece to Member States other than Italy, Spain and Portugal in 1992 and 1993 ;

Whereas, given that the conflict in the territories of the former Yugoslavia is continuing, the measures providing for temporary assistance for operators having to avoid

those territories should be extended for a maximum of one year,

HAS ADOPTED THIS REGULATION :

Article 1

In Article 2 (1) of Regulation (EEC) No 3438/92, the words 'in 1992 and 1993' shall be replaced by the words 'in 1992, 1993 and 1994'.

Article 2

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

It shall apply from 1 January 1994.

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

Done at Luxembourg, 26 April 1994.

For the Council

The President

G. MORAITIS

⁽¹⁾ OJ No C 105, 13. 4. 1994, p. 13.

⁽²⁾ Opinion delivered on 22 April 1994 (not yet published in the Official Journal).

⁽³⁾ OJ No L 350, 1. 12. 1992, p. 1.

COUNCIL REGULATION (EC) No 1017/94**of 26 April 1994****concerning the conversion of land currently under arable crops to extensive livestock farming in Portugal**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas more than one million hectares in several regions of Portugal have been collectivized in the context of the 'Reform Agraria'; whereas much of this land has been or is being redistributed to the former owners of their successors; whereas part of this land was dedicated to livestock production before collectivization; whereas, following collectivization, this land was largely used for the cultivation of arable crops; whereas, if the viability of the holdings concerned is not to be endangered, the conversion of the said land to traditional farming activities, namely extensive farming of cattle and/or sheep and goats, as recommended by Portugal in the regions concerned, requires the existence of a sufficient number of premium rights as referred to in Article 4d of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal⁽²⁾ and Article 5a of Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organization of the market in sheepmeat and goatmeat⁽³⁾; whereas Portugal should be enabled to implement a programme for the conversion of this land by providing it with a specific national reserve of premium rights; whereas, so as not to disturb the situation on the market in Portugal, the maximum number of livestock units (LU) which may be the subject of the conversion programme must be restricted;

Whereas the land collectivization process, because of its nature and scale, has affected all farming activity, and

therefore all farms, in the regions concerned; whereas all the agricultural areas in the collectivized regions should therefore be eligible for the conversion programme;

Whereas access to the conversion programme should be restricted to producers with all or part of their plots in the regions affected by collectivization, provided they fulfil certain conditions and undertake to convert such plots to extensive livestock farming with a maximum stocking density per converted hectare, in accordance with a conversion plan approved by the competent authorities;

Whereas male cattle born to new suckler cows installed under the conversion programme must also be eligible for the special premium provided for in Article 4 of Regulation (EEC) No 805/68, without prejudice to current producers; whereas it is therefore appropriate that part of the premium rights arising from the conversion of arable crops to the raising of suckler cows should be used to increase the regional ceiling on premiums referred to in the abovementioned Regulation;

Whereas, in order to prevent abuses of the system, the transfer and temporary transfer of rights obtained as a result of conversion should be restricted and provision should be made for penalties where producers do not fulfil their undertakings;

Whereas the conversion programme must be completed within a time limit; whereas it should therefore be stipulated that, at the end of the programme, the specific reserve created pursuant to this Regulation as well as any rights not yet allocated should lapse;

Whereas the arable areas converted to extensive livestock farming must cease to be eligible for compensatory payments under the scheme set up by Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops⁽⁴⁾; whereas such land should therefore be considered as permanent pasture as referred to in Article 9 of that Regulation and Portugal's regional base area should therefore be reduced by the total area of land converted,

⁽¹⁾ Opinion delivered on 22 April 1994 (not yet published in the Official Journal).

⁽²⁾ OJ No L 148, 28. 6. 1968, p. 24. Regulation as last amended by Commission Regulation (EC) No 3611/93 (OJ No L 328, 29. 12. 1993, p. 7).

⁽³⁾ OJ No L 289, 7. 10. 1989, p. 1. Regulation as last amended by Commission Regulation (EC) No 233/94 (OJ No L 30, 3. 2. 1994, p. 9).

⁽⁴⁾ OJ No L 181, 1. 7. 199, p. 12. Regulation as last amended by Commission Regulation (EC) No 231/94 (OJ No L 30, 3. 2. 1994, p. 2).

HAS ADOPTED THIS REGULATION:

Article 1

Portugal shall be authorized to carry out, for a period of eight years, in the regions listed in the Annex to this Regulation, a programme for the conversion of land currently under arable crops to extensive livestock production, up to a maximum of 200 000 hectares.

Article 2

Without prejudice to Article 4f of Regulation (EEC) No 805/68 and Article 5b of Regulation (EEC) No 3013/89, Portugal shall be allotted a specific autonomous national reserve (hereinafter called 'specific reserve') comprising a total number of rights to the suckler cow premium within the meaning of Article 4d of Regulation (EEC) No 805/68 and/or the ewe premium within the meaning of Article 5 of Regulation (EEC) No 3013/89 (hereinafter called 'premium rights') equivalent to 100 000 livestock units (LU).

For the purposes of this Regulation, the conversion of LU into premium rights shall be carried out using the conversion table in Annex 1 to Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures⁽¹⁾. This end, account shall be taken of suckler cows and sheep and/or goats covered by an application for participation in the conversion programme.

Article 3

1. The premium rights in the specific reserve shall be allocated to farmers having farmland which is entirely or partly used to produce the arable crops referred to in Annex I to Regulation (EEC) No 1765/92. Parcels shall be eligible only:

- if they are located in the regions listed in the Annex,
- if the producers have received compensatory payments as provided for in Regulation (EEC) No 1765/92 in respect thereof, and
- if they are the subject of a programme for conversion to extensive livestock production.

2. Allocation of rights shall be subject to the requirement that the stocking density on the declared area, calculated in accordance with Article 4g (1), (2) and (3) of

Regulation (EEC) No 805/68, must be 0,5 LU per hectare or less.

3. A number of premium rights equivalent to 0,5 LU shall be allocated per hectare converted to extensive livestock production. However, where areas are converted to the rearing of suckler cows, the number of rights to the suckler cow premium shall be reduced by 25 %; rights which remain unallocated as a result of this reduction shall be added to the respective regional ceiling referred to in Article 4b (3) of Regulation (EEC) No 805/68.

Article 4

In order to obtain premium rights, producers must submit an application specifying in particular the type of rights required, accompanied by:

- a development plan for extensive production of suckler cows and/or goats, demonstrating to the competent authority that the conversion will be completed within the time limit laid down in that the maximum stocking density referred to in Article 3 (2) will be complied with,
- an undertaking to cease cultivation of arable crops of the declared areas to convert to extensive livestock production,
- a declaration that the producer is aware of the conditions for allocating premium rights.

Article 5

On the basis of the applications submitted, the competent authorities shall decide on the number of rights to be allocated and shall inform applicants thereof each year, not later than two months before the first day of the first period for submission of premium applications stipulated by Portugal for suckler cows and/or sheep and/or goats.

Article 6

1. Premium rights allocated in accordance with this Regulation shall be added to the rights already held by the beneficiary and shall be subject to the relevant provisions of Regulation (EEC) No 805/68 and Regulation (EEC) No 3013/89 respectively. However, such rights may not be transferred definitively or temporarily for five years or marketing years following the date on which they were allocated.

2. Where the areas covered by an application for allocation of rights are not converted in accordance with the development plan referred to in Article 4 (a), the rights allocated in respect of those areas shall be withdrawn and returned to the specific reserve.

⁽¹⁾ OJ No L 218, 6. 8. 1991, p. 1. Regulation as last amended by Commission Regulation (EC) No 3669/93 (OJ No L 338, 31. 12. 1993, p. 26).

Article 7

At the end of the eight year following the entry into force of this Regulation, unallocated premium rights shall lapse and the specific reserve shall be abolished.

Article 8

The Portuguese authorities shall take the necessary measures to ensure that this Regulation is complied with. Such measures shall include, in particular:

- (a) verification of the eligibility of declared areas;
- (b) checks to ascertain that arable crops are no longer produced on the declared areas, which have been duly converted to extensive livestock production within the time limit laid down.

Article 9

1. The total area under arable crops converted under this Regulation and corresponding to all admissible applications during each marketing year shall be reduced, from

the following marketing year, from the regional base area or, where applicable, the individual base area provided for in Article 2 (2) or (3) of Regulation (EEC) No 1765/92. The Portuguese authorities shall communicate the total area converted to the Commission each year in good time to allow the regional base area to be amended.

2. Converted areas formerly under arable crops shall be considered as permanent pasture as referred to in Article 9 of Regulation (EEC) No 1765/92.

Article 10

The Commission shall, if necessary, adopt detailed rules for the application of this Regulation in accordance with the procedure laid down in Article 27 of Regulation (EEC) No 805/68 and Article 30 of Regulation (EEC) No 3013/89.

Article 11

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 Luxembourg, 26 April 1994.

For the Council

The President

G. MORAITIS

*ANNEX***List of regions referred to in Article 1**

Castelo Branco, Santarém, Lisboa, Setubal, Evora, Beja, Faro and Portalegre.

COMMISSION REGULATION (EC) No 1018/94

of 2 May 1994

on the sale of beef at prices fixed at a flat rate in advance held by certain intervention agencies and intended for supplying the Canary Islands and repealing Regulation (EC) No 737/94

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal⁽¹⁾, as last amended by Regulation (EC) No 3611/93⁽²⁾, and in particular Article 7 (3) thereof,

Whereas certain intervention agencies hold substantial stocks of beef bought into intervention; whereas an extension of the storage period for that beef should be avoided on account of the ensuing high costs;

Whereas Commission Regulation (EEC) No 1912/92 of 10 July 1992 laying down detailed implementing rules for the specific measures for supplying the Canary Islands with products from the beef and veal sector⁽³⁾, as last amended by Regulation (EC) No 577/94⁽⁴⁾, lays down the forecast supply balance for frozen meat of bovine animals for the period 1 July 1993 to 30 June 1994; whereas, in the light of traditional trade patterns, it is appropriate to release intervention beef for the purpose of supplying the Canary Islands during that period;

Whereas Article 4 of Commission Regulation (EEC) No 1695/92 of 30 June 1992 laying down common detailed rules for implementation of the specific arrangements for the supply of certain agricultural products to the Canary Islands⁽⁵⁾, as last amended by Regulation (EEC) No 2596/93⁽⁶⁾, provides for the use of aid certificates delivered by the competent Spanish authorities for supplies from the Community; whereas the potential purchaser should be obliged to submit an aid certificate to the intervention agency at the same time as the application to purchase from intervention; whereas, in order to improve the operation of the abovementioned arrangements, certain derogations from Regulation (EEC) No 1912/92 should be provided for, in particular, with regard to the payment of aid and the security for aid certificates; whereas the support arrangements for the supply of the Canary Islands from intervention stocks provided for in

Article 3 (2) of Council Regulation (EEC) No 1601/92⁽⁷⁾, as last amended by Commission Regulation (EEC) No 1974/93⁽⁸⁾, should be simplified by including the aid in the sale prices set in this Regulation;

Whereas for the purpose of purchase and control procedures, it is appropriate to apply certain provisions of Commission Regulation (EEC) No 2173/79 of 4 October 1979 on detailed rules of application for the disposal of beef bought in by intervention agencies and repealing Regulation (EEC) No 216/69⁽⁹⁾, as last amended by Regulation (EEC) No 1759/93⁽¹⁰⁾, and Commission Regulation (EEC) No 3002/92 of 16 October 1992 laying down common detailed rules for verifying the use and/or destination of products from intervention⁽¹¹⁾, as last amended by Regulation (EEC) No 1938/93⁽¹²⁾;

Whereas it is necessary to provide for the lodging of a security to guarantee that the beef arrives at the intended destination;

Whereas Commission Regulation (EC) No 737/94⁽¹³⁾ should be repealed;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A sale shall be organized of approximately:

- (a) — 1 873 tonnes of boneless beef held by the Irish intervention agency,
- 2 000 tonnes of boneless beef held by the United Kingdom intervention agency,
- 600 tonnes of boneless beef held by the Danish intervention agency,
- 500 tonnes of boneless beef held by the French intervention agency;

⁽⁷⁾ OJ No L 173, 27. 6. 1992, p. 13.

⁽⁸⁾ OJ No L 180, 23. 7. 1993, p. 26.

⁽⁹⁾ OJ No L 251, 5. 10. 1979, p. 12.

⁽¹⁰⁾ OJ No L 161, 2. 7. 1993, p. 59.

⁽¹¹⁾ OJ No L 301, 17. 10. 1992, p. 17.

⁽¹²⁾ OJ No L 176, 20. 7. 1993, p. 12.

⁽¹³⁾ OJ No L 87, 31. 3. 1994, p. 43.

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 328, 29. 12. 1993, p. 7.

⁽³⁾ OJ No L 192, 11. 7. 1992, p. 31.

⁽⁴⁾ OJ No L 74, 17. 3. 1994, p. 1.

⁽⁵⁾ OJ No L 179, 1. 7. 1992, p. 1.

⁽⁶⁾ OJ No L 238, 23. 9. 1993, p. 24.

(b) — 1 000 tonnes of bone-in beef hindquarters held by the French intervention agency,

— 33 tonnes of bone-in hindquarters held by the Danish intervention agency.

2. This meat shall be sold for delivery to the Canary Islands.

3. The qualities and selling prices of the products are given in Annex I hereto.

Article 2

1. Subject to the provisions of this Regulation, the sale shall take place in accordance with the provisions of Regulation (EEC) No 2173/79, and in particular Articles 2 to 5 thereof, and in accordance with the provisions of Regulation (EEC) No 3002/92.

2. The intervention agencies shall sell those products which have been in storage longest first.

Particulars of the quantities and places where the products are stored shall be made available to interested parties at the addresses given in Annex II.

Article 3

1. A purchase application shall only be valid when accompanied by an aid certificate covering at least the quantity concerned and issued pursuant to Regulations (EEC) No 1695/92 and (EEC) No 1912/92.

2. Notwithstanding Article 4 (1) of Regulation (EEC) No 1695/92, aid shall not be paid for intervention beef sold pursuant to this Regulation.

3. Notwithstanding Article 4 (4) (b) of Regulation (EEC) No 1695/92, in box 24 of the aid certificate application and of the aid certificate shall be entered: 'Aid certificate for use in the Canary Islands — no aid to be paid.'

4. Notwithstanding Article 6 (1) (b) of Regulation (EEC) No 1912/92, the security laid down for aid certificates shall be ECU 2 per 100 kilograms.

Article 4

Notwithstanding the second subparagraph of Article 2 (2) of Regulation (EEC) No 2173/79, purchase applications shall not indicate the store or stores where the meat applied for is being kept.

Article 5

1. Notwithstanding Article 15 (1) of Regulation (EEC) No 2173/79, the security shall be ECU 100 per tonne.

2. A security of ECU 2 500 per tonne of bone-in beef and of ECU 3 000 per tonne of boneless beef to guarantee delivery to the Canary Islands shall be lodged by the purchaser before taking over the meat concerned. The guarantee for fillets, however, shall be ECU 7 000 per tonne.

Delivery of the products concerned to the Canary Islands shall be a primary requirement within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85⁽¹⁾.

Article 6

In the removal order referred to in Article 3 (1) (b) of Regulation (EEC) No 3002/92 and the T 5 control copy shall be entered:

«Carne de intervención destinada a las islas Canarias — Sin ayuda [Reglamento (CE) n° 1018/94]»;

«Interventionskød til De Kanariske Øer — uden støtte (Forordning (EF) nr. 1018/94)»;

«Interventionsfleisch für die Kanarischen Inseln — ohne Beihilfe (Verordnung (EG) Nr. 1018/94)»;

«Κρέας από την παρέμβαση για τις Καναρίους Νήσους — χωρίς ενισχύσεις [Κανονισμός (ΕΚ) αριθ. 1018/94]»;

'Intervention meat for the Canary Islands — without the payment of aid [Regulation (EC) No 1018/94]';

«Viandes d'intervention destinées aux îles Canaries — Sans aide [règlement (CE) n° 1018/94]»;

«Carni in regime d'intervento destinate alle isole Canarie — senza aiuto [Regolamento (CE) n. 1018/94]»;

«Interventie vlees voor de Canarische eilanden — zonder steun (Verordening (EG) nr. 1018/94)»;

«Carne de intervenção destinada às ilhas Canárias — sem ajuda [Reglamento (CE) n° 1018/94]».

Article 7

Regulation (EC) No 737/94 is hereby repealed.

Article 8

This Regulation shall enter into force on 9 May 1994.

⁽¹⁾ OJ No L 205, 3. 8. 1985, p. 5.

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

Done at Brussels, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

ANEXO I — BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I — ALLEGATO I — BIJLAGE I — ANEXO I

Estado miembro	Productos	Cantidad aproximada (toneladas)	Precio de venta expresado en ecus por tonelada
Medlemsstat	Produkter	Tilnarmet mængde (tons)	Salgspriser i ECU/ton
Mitgliedstaat	Erzeugnisse	Ungefähre Mengen (Tonnen)	Verkaufspreise, ausgedrückt in ECU/Tonne
Κράτος μέλος	Προϊόντα	Κατά προσέγγιση ποσότητα (τόνοι)	Τιμές πώλησεως εκφραζόμενες σε Ecu ανά τόνο
Member State	Products	Approximate quantity (tonnes)	Selling prices expressed in ecus per tonne
État membre	Produits	Quantité approximative (en tonnes)	Prix de vente exprimés en écus par tonne
Stato membro	Prodotti	Quantità approssimativa (tonnellate)	Prezzi di vendita espressi in ecu per tonnellata
Lid-Staat	Produkten	Hoeveelheid bij benadering (ton)	Verkoopprijzen uitgedrukt in ecu per ton
Estado-membro	Produtos	Quantidade aproximada (toneladas)	Preço de venda expresso em ecus por tonelada

a) Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Αποστεωμένο κρέας — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada

Ireland	— Fillet	173	5 500
	— Striploin	1 000	1 700
	— Inside	200	1 150
	— Outside	200	1 000
	— Knuckle	100	1 100
	— Cube-roll	200	2 000
United Kingdom	— Fillet	700	3 700
	— Striploin	600	1 200
	— Topside	200	850
	— Silverside	200	850
	— Thick flank	200	850
	— Rumps	100	800
Danmark	— Mørbrad	100	3 900
	— Filet	200	1 300
	— Inderlår	200	1 000
	— Yderlår	100	1 000
France	— Filet	250	3 800
	— Faux-filet	250	1 150

b) Cuartos traseros con hueso — Bagfjerdinger, ikke udbenet — Hinterviertel mit Knochen — Οπίσθια τέταρτα με κόκαλα — Bone-in hindquarters — Quartiers arrière avec os — Quarti posteriori non disossati — Achtervoeten met been — Quartos traseiros com osso

France	— Quartiers arrière : catégorie A/C, classes U, R et O	1 000	750
Danmark	— Bagfjerdinger af kategori A/C, klasse R og O	33	750

*ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II —
ALLEGATO II — BIJLAGE II — ANEXO II*

**Direcciones de los organismos de intervención — Interventionsorganernes adresser —
Anschriften der Interventionsstellen — Διευθύνσεις των οργανισμών παρεμβάσεως — Addresses
of the intervention agencies — Adresses des organismes d'intervention — Indirizzi degli
organismi d'intervento — Adressen van de interventiebureaus — Endereços dos organismos de
intervenção**

- IRELAND :** Department of Agriculture, Food and Forestry
Agriculture House
Kildare Street
Dublin 2
Tel. (01) 678 90 11, ext. 2278 and 3806
Telex 93292 and 93607, telefax (01) 6616263, (01) 6785214 and (01) 6620198
- DANMARK :** EF-Direktoratet
Nyropsgade 26
DK-1602 København K
Tlf. 33 92 70 00, telex 15137 EFDIR DK, telefax 33 92 69 48
- UNITED KINGDOM :** Intervention Board for Agricultural Produce
Fountain House
2 Queens Walk
Reading RG1 7QW
Berkshire
Tel. (0734) 58 36 26
Telex 848 302, telefax (0734) 56 67 50
- FRANCE :** OFIVAL
Tour Montparnasse
33, avenue du Maine
F-75755 Paris Cedex 15
Tél. 45 38 84 00, télex 205476 F
-

COMMISSION REGULATION (EC) No 1019/94

of 2 May 1994

on the opening of a standing invitation to tender for the resale on the internal market of 90 000 tonnes of durum wheat held by the Greek intervention agency

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 Regulation (EEC) No 2193/93⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾, as amended by Regulation (EC) No 120/94⁽⁴⁾, lays down the procedures and conditions governing the offer for sale of cereals held by intervention agencies;

Whereas, in the present situation, a standing invitation to tender should be opened for the resale on the internal market of 90 000 tonnes of durum wheat held by the Greek intervention agency;

Whereas, given the lengthy storage period for certain lots reoffered for sale on the market, potential buyers, should be afforded a degree of security as regards quality;

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 Greek intervention agency shall, under the terms specified in Regulation (EEC) No 2131/93, initiate a standing invitation to tender for the resale on the internal market of 90 000 tonnes of durum wheat held by it.

Article 2

1. The deadline for the submission of tenders for the first partial invitation to tender shall be 10 May 1994.

2. The deadline for the submission of tenders for the final partial invitation to tender shall be 14 June 1994.

3. The tenders shall be deposited with the Greek intervention agency:

DYDAGEP.

241, Acharnon St, GR-10446 Athens

(Telex : 22 17 36 ITAG GR ; fax : 862 93 73)

Article 3

1. The successful tenderer shall notify the storer and the Greek intervention agency in writing at least five days in advance of his intention to remove the merchandise.

2. Before the lot awarded is removed, the Greek intervention agency and the successful tenderer shall take a reference sample in accordance with the method laid down in Commission Regulation (EEC) No 689/92⁽⁵⁾.

Where the final results of the analysis of the sample indicate a significant difference between the quality of the durum wheat to be removed and the quality as described in the notice of invitation to tender referred to in Article 1 of this Regulation, the successful tenderer may refuse the merchandise.

A significant difference shall be a specific weight of less than 76 kg/hl, a level of broken grains of more than 9 % and a discrepancy of one percentage point for the moisture content, 10 points for the Hagberg falling index, one percentage point for the protein content, to percentage points for the grains which have lost their vitreous aspect, a half a percentage point for the impurities referred to under B.2, B.3 and B.4 and a half a percentage point for the impurities referred to under B.5, the percentage admissible for noxious grains, damaged grains and ergor, however, remaining as laid down in the Annex to Regulation (EEC) No 689/92.

3. In the event of dispute, the intervention agency shall submit the sample in question for inscription and the costs incurred shall be borne by the losing party.

4. If removal of the durum wheat is delayed by more than five days with relation to the date of acceptance of

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ No L 21, 26. 1. 1994, p. 1.

⁽⁵⁾ OJ No L 74, 20. 3. 1992, p. 18.

the lot to be removed by the successful tenderer for reasons imputable to the Greek intervention agency, Greece shall be responsible for the payment of compensation.

Article 4

The Greek intervention agency shall notify the Commission, by no later than the Tuesday of the week following

the expiry of the deadline for the submission of tenders, of the quantity and the average prices of the different lots sold.

Article 5

This Regulation shall enter into force on the third 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, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EC) No 1020/94

of 2 May 1994

on the issuing of a standing invitation to tender for the resale on the internal market of 150 000 tonnes of common wheat fodder held by the intervention agency of the United Kingdom

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 amended by Commission Regulation (EEC) No 2193/93⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾, as amended by Regulation (EC) No 120/94⁽⁴⁾, lays down the procedure and conditions for the disposal of cereals held by intervention agencies; whereas that Regulation lays down, in particular, that the minimum price to be paid is the local market price and that it may not, under any circumstances, be lower than the intervention price for the cereal concerned;

Whereas, in the present market situation, a standing invitation to tender for the resale on the internal market of 150 000 tonnes of common wheat fodder held by the intervention agency of the United Kingdom should be issued;

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 intervention agency of the United Kingdom shall issue a standing invitation to tender for the resale on the

internal market of 150 000 tonnes of common wheat fodder held by it in accordance with Regulation (EC) No 2131/93.

Article 2

1. The final date for the submission of tenders for the first partial invitation to tender shall be 10 May 1994.
2. The final date for the submission of tenders for the last partial invitation to tender shall be 28 June 1994.
3. Tenders must be lodged with the intervention agency of the United Kingdom:

Intervention Board for Agricultural Produce,
Fountain House,
2 Queens Walk,
UK-Reading RG1 7QW Berks,
(Telex 848 302).

Article 3

Not later than Tuesday of the week following the final date for the submission of tenders, the intervention agency of the United Kingdom shall notify the Commission of the quantities and average prices of the various lots sold.

Article 4

This Regulation shall enter into force on the day of 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, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ No L 21, 26. 1. 1994, p. 1.

COMMISSION REGULATION (EC) No 1021/94

of 29 April 1994

relating mainly to a standing invitation to tender to determine levies and/or
refunds on exports of white sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EC) No 133/94⁽²⁾, and in particular Articles 13 (2), 18 (5), 19 (4) and (7) and the second subparagraph of Article 39 thereof,

Having regard to Council Regulation (EEC) No 608/72 of 23 March 1972 laying down rules to be applied in the case of considerable price rises on the world sugar market⁽³⁾, and in particular Article 1 (1) thereof,

Whereas, in conformity with Article 20 of Commission Regulation (EEC) No 1068/93 of 30 April 1993 on detailed rules for determining and applying the agricultural conversion rates⁽⁴⁾, as amended by Regulation (EC) No 547/94⁽⁵⁾, the amounts of tenders submitted within the framework of an invitation to tender organized by virtue of a measure relating to the common agricultural policy will be expressed in ecus; whereas Article 2 (3) of Commission Regulation (EEC) No 2630/81 of 10 September 1981, on special detailed rules for the application of the system of import and export licences for sugar⁽⁶⁾, as last amended by Regulation (EEC) No 1754/93⁽⁷⁾, provides that the amounts of the successful tenders shall be expressed in ecus on the licences and other documents certifying those amounts; whereas the value of the ecu shall be determined in accordance with Articles 2 and 3 of Council Regulation (EEC) No 3813/92⁽⁸⁾, as amended by Regulation (EC) No 3528/93⁽⁹⁾;

Whereas, in view of the situation on the Community and world sugar markets, a standing invitation to tender should be issued as soon as possible for the export of white sugar in respect of the 1994/95 marketing year which, having regard to possible fluctuations in world

prices for sugar, must provide for the determination of export levies and/or export refunds;

Whereas, the general rules governing invitations to tender for the purpose of determining export refunds for sugar were laid down in Council Regulation (EEC) No 766/68 of 18 June 1968 laying down general rules for granting export refunds on sugar⁽¹⁰⁾, as last amended by Regulation (EEC) No 1489/76⁽¹¹⁾;

Whereas, in view of the specific nature of the transactions involved, special detailed rules should be laid down in this Regulation, whilst those provided for in Commission Regulation (EEC) No 394/70 of 2 March 1970 on detailed rules for granting export refunds on sugar⁽¹²⁾, as last amended by Regulation (EEC) No 1684/92⁽¹³⁾, should not apply; whereas, for the same reasons, appropriate provisions should be laid down with regard to export licences issued in connection with the standing invitation to tender and there should be a derogation from Commission Regulation (EEC) No 2630/81; whereas, however, the provisions of Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products⁽¹⁴⁾, as last amended by Regulation (EC) No 3519/93⁽¹⁵⁾, and those of Commission Regulation (EEC) No 120/89 of 19 January 1989 laying down common detailed rules for the application of the export levies and charges on agricultural products⁽¹⁶⁾, as amended by Regulation (EEC) No 1431/93⁽¹⁷⁾, should remain applicable;

Whereas Article 13 (1) of Commission Regulation (EEC) No 1068/93 provides that where agricultural conversion rates are fixed in advance, on application by the party concerned, on the terms referred to in the second subparagraph of Article 6 (1) of Regulation (EEC) No 3813/92, such application must be lodged at the same time as the submission of the tender as part of a tendering procedure; whereas, for reasons specific to the sugar market, when an operator intends to take up the option of an advance fixing of an agricultural conversion rate, his decision shall be made only when the application for the

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 22, 27. 1. 1994, p. 7.

⁽³⁾ OJ No L 75, 28. 3. 1972, p. 5.

⁽⁴⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽⁵⁾ OJ No L 69, 12. 3. 1994, p. 1.

⁽⁶⁾ OJ No L 258, 11. 9. 1981, p. 16.

⁽⁷⁾ OJ No L 161, 2. 7. 1993, p. 45.

⁽⁸⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁹⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽¹⁰⁾ OJ No L 143, 25. 6. 1968, p. 6.

⁽¹¹⁾ OJ No L 167, 26. 6. 1976, p. 13.

⁽¹²⁾ OJ No L 50, 4. 3. 1970, p. 1.

⁽¹³⁾ OJ No L 176, 30. 6. 1992, p. 31.

⁽¹⁴⁾ OJ No L 331, 2. 12. 1988, p. 1.

⁽¹⁵⁾ OJ No L 320, 22. 12. 1993, p. 16.

⁽¹⁶⁾ OJ No L 16, 20. 1. 1989, p. 19.

⁽¹⁷⁾ OJ No L 140, 11. 6. 1993, p. 27.

export certificate in question is lodged; whereas in practice he may only apply for advance fixing of the agricultural conversion rate in question after having been declared successful tenderer in respect of the levy or refund for the quantity of sugar indicated in his tender; whereas in the case of the present tendering procedure, a derogation must be made from the said provisions, leaving the tenderer the option of applying for advance fixing of the agricultural conversion rate at the time when the application for the export certificate in question is lodged;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A standing invitation to tender shall be issued in order to determine export levies and/or export refunds on white sugar. During the period of validity of this standing invitation, partial invitations to tender shall be issued.
2. The standing invitation to tender shall remain open until 24 May 1995.

Article 2

The standing invitation to tender and the partial invitations shall be conducted in accordance with Regulation (EEC) No 766/68 and with the following provisions. Regulation (EEC) No 394/70 shall not apply.

Article 3

1. The Member States shall establish a notice of the invitation to tender. The notice of the invitation to tender shall be published in the *Official Journal of the European Communities*. Member States may also publish the notice, or have it published elsewhere.
2. The notice shall indicate in particular the terms of the invitation to tender.
3. The notice may be amended during the period of validity of the standing invitation to tender. It shall be so amended if the terms of the invitation to tender are modified during that period.

Article 4

1. The period during which tenders may be submitted in response to the first partial invitation to tender:
 - (a) shall begin on 20 May 1994;
 - (b) shall end on 1 June 1994 at 10.30 a.m.
2. The periods during which tenders may be submitted in response to the second and subsequent partial invitations:
 - (a) shall begin on the first working day following the end of the preceding period;

- (b) shall end at 10.30 a.m. on the Wednesday of the following week.

3. Notwithstanding paragraph 2 (b), the period for the submission of tenders which was to end on:

- Wednesday 12 October 1994 shall end on Tuesday 11 October 1994 at 10.30 a.m.,
- Wednesday 2 November 1994 shall end on Thursday 3 November 1994 at 10.30 a.m.,
- Wednesday 9 November 1994 shall end on Tuesday 8 November 1994 at 10.30 a.m.,
- Wednesday 16 November 1994 shall end on Thursday 17 November 1994 at 10.30 a.m.,

4. Notwithstanding paragraph 2, no partial invitations to tender will be issued on Wednesday, 28 December 1994 and Wednesday, 12 April 1995.

5. The time limits laid down in this Regulation are expressed in Belgian time.

Article 5

1. Offers in connection with this tender must be in writing, and must be either delivered by hand, against a receipt, to the competent authority in a Member State, or addressed to that authority by registered letter, telex, telegram or fax message.
2. An offer must indicate:
 - (a) the reference number of the invitation to tender to which the offer relates;
 - (b) the name address of the tenderer;
 - (c) the quantity of white sugar to be exported;
 - (d) the amount of the export levy or, where applicable, of the export refund, per 100 kilograms of white sugar, expressed in ecus with three decimal places;
 - (e) the minimum amount of the security to be lodged covering the quantity of sugar indicated in (c), expressed in the currency of the Member State in which the tender is submitted.
3. An offer shall be valid only if:
 - (a) the quantity to be exported is not less than 250 tonnes of white sugar;
 - (b) proof is furnished before expiry of the time limit for the submission of tenders that the tenderer has lodged the security indicated in the tender;
 - (c) it includes a declaration by the tenderer that if this tender is successful he will, within the period laid down in Article 12 (b), apply for an export licence or licenses in respect of the quantities of white sugar to be exported;

(d) it includes a declaration by the tenderer that if his tender is successful he will:

- where the obligation to export resulting from the export licence referred to in Article 12 (b) is not fulfilled, supplement the security by payment of the amount referred to in Article 13 (4), and
- within 30 days following the expiry of the export licence in question, notify the agency which issued the licence of the quantity or quantities in respect of which the licence was not used;

(e) it contains all the information required under paragraph 2.

4. A tender may stipulate that it is to be regarded as having been submitted only if:

- (a) the minimum export levy or, where applicable, the maximum export refund is fixed on the day of the expiry of the period for the submission of the tenders in question;
- (b) the tender, if successful, relates to all or a specified part of the tendered quantity.

5. A tender which is not submitted in accordance with the provisions of this Regulation, or which contains terms other than those indicated in the present invitation to tender, shall not be considered.

6. Once submitted, a tender may not be withdrawn.

Article 6

1. A security of ECU 9 per 100 kilograms of white sugar to be exported under this invitation to tender must be lodged by each tenderer. Without prejudice to Article 13 (4), this security shall in the case of successful tenderers and at the time of the application referred to in Article 12 (b) become the security for the export licence.

2. The security may be lodged at the tenderer's choice, either in cash or in the form of a guarantee given by an establishment complying with criteria laid down by the Member State in which the tender is submitted.

3. Except in cases of *force majeure* the security referred to in paragraph 1 will be released:

- (a) to unsuccessful tenderers in respect of the quantity for which no award has been made;
- (b) to successful tenderers who have not applied for the relevant export licence within the period referred to in Article 12 (b), to the extent of ECU 8 per 100 kilograms of white sugar.

However, this part of the releasable security shall be reduced by the amount representing the difference existing, as applicable:

- between the maximum amount of the export refund fixed for the partial invitation concerned and the maximum amount of the export refund fixed for the following partial invitation when the latter amount is higher than the former,

or

- between the minimum amount of the export levy fixed for the partial invitation concerned and the minimum amount of the export levy fixed for the following partial invitation when the latter amount is lower than the former;

(c) to successful tenderers for the quantity for which they have fulfilled, within the meaning of Articles 29 (b) and 30 (1) (b) (i) of Regulation (EEC) No 3719/88, the export obligation resulting from the licence referred to under Article 12 (b) in accordance with the terms of Article 33 of that Regulation.

The part of the security or the security which is not released shall be forfeit in respect of the quantity of sugar for which the corresponding obligations have not been fulfilled.

4. In case of *force majeure*, the competent authority of the Member State concerned shall take such action as it considers necessary having regard to the circumstances invoked by the party concerned.

Article 7

1. Tenders shall be examined in private by the competent authority concerned. The persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. Tenders shall be communicated to the Commission forthwith and in such manner that the tenders remain anonymous.

Article 8

1. After the tenders received have been examined, a maximum quantity may be fixed for the partial invitation concerned.

2. A decision may be taken to make no award under a specific partial invitation to tender.

Article 9

1. In the light of the current state and foreseeable development of the Community and world sugar markets, there shall be fixed either:

- a minimum export levy,

or

- a maximum export refund.

2. Subject to Article 10, where a minimum export levy is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of levy equal to or greater than such minimum levy.

3. Subject to Article 10, where a maximum export refund is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of refund equal to or less than such maximum refund and to every tenderer who has tendered for an export levy.

Article 10

1. Where a maximum quantity has been fixed for a partial invitation to tender:

- if a minimum levy is fixed, a contract shall be awarded to the tenderer whose tender quotes the highest levy; if the maximum quantity is not fully covered by that award, awards shall be made to other tenderers in descending order of levies quoted until the entire maximum quantity has been accounted for,
- if a maximum refund is fixed, contracts shall be awarded in accordance with the first indent; if after such awards a quantity is still outstanding, or if there are no tenders quoting an export levy, contracts shall be awarded in ascending order of refunds quoted until the entire maximum quantity has been accounted for, to tenderers quoting a refund.

2. However, where an award to a particular tenderer in accordance with the provisions of paragraph 1 would result in the maximum quantity being exceeded, that award shall be limited to such quantity as is still available. Where two or more tenderers quote the same levy or the same refund and awards to all of them would result in the maximum quantity being exceeded, then the quantity available shall be awarded as follows:

- by being divided among the tenderers concerned in proportion to the total quantities in each of their tenders, or
- by being apportioned among the tenderers concerned by reference to a maximum tonnage to be fixed for each of them, or
- by the drawing of lots.

Article 11

1. The competent authority of the Member State concerned shall immediately notify applicants of the result of their participation in the invitation to tender. In addition, that authority shall send successful tenderers a statement of award.

2. The statement of award shall indicate at least:

- (a) the reference number of the invitation to which the tender relates;

(b) the quantity of white sugar to be exported;

(c) the amount expressed in ecus of the export levy to be charged, or where applicable of the export refund to be granted per 100 kilograms of white sugar of the quantity referred to in (b).

Article 12

Every successful tenderer shall have:

- (a) the right to receive in the circumstances referred to under (b), in respect of the quantity awarded, an export licence indicating, as appropriate, the export levy or the export refund quoted in his tender;
- (b) the obligation to lodge, in accordance with the relevant provisions of Regulation (EEC) No 3719/88, an application for an export licence in respect of that quantity, the application not being revocable and Article 12 of Regulation (EEC) No 120/89 not applying in such a case. The application shall be lodged in accordance with the relevant provisions of Regulation (EEC) No 3719/88, not later than:
 - the last working day preceding the date of the partial invitation to tender to be held the following week,
 - or
 - if no partial invitation to tender is due to be held that week, the last working day of the following week;
- (c) the obligation to export the tenderer quantity and, if this obligation is not fulfilled, to pay, where necessary, the amount referred to in Article 13 (4).

This right and these obligations are not transferable.

Article 13

1. The first paragraph of Article 9 of Regulation (EEC) No 2630/81 shall not apply to the white sugar to be exported in accordance with this Regulation.

2. Export licences issued in connection with a partial invitation to tender shall be valid from the day of issue until the end of the fifth calendar month following that in which the partial invitation was issued.

However, export licences issued in respect of the partial invitations held from 1 May 1995 will be valid only until 30 September 1995.

3. The export licences issued in respect of the partial invitations held between 31 May and 15 September 1994 will be usable only from 15 September 1994.

4. Except in cases of *force majeure*, if the obligation to export resulting from the export licence referred to under Article 12 (b) has not been fulfilled and if the security referred to in Article 6 is less than :

- (a) the export levy indicated on the licence reduced by the levy referred to in the second subparagraph of Article 18 (1) of Regulation (EEC) No 1785/81 in force on the last day of validity of the said licence ;
- or
- (b) the sum of the export levy indicated on the licence and the refund referred to in Article 2 of Regulation (EEC) No 766/68 in force on the last day of validity of the said licence ;
- or
- (c) the export refund referred to in Article 2 of Regulation (EEC) No 766/68 in force on the last day of validity of the licence reduced by the refund indicated on the said licence,

then, for the quantity in respect of which the said obligation was not fulfilled, the licence holder shall be charged an amount equal to the difference between the result of the valuation made under (a), (b) or (c), as the case may be, and the security referred to in Article 6 (1).

Article 14

If the tenderer intends to apply for advance fixing of agricultural conversion rate under this standing invitation to tender, the provisions of the second indent of Article 13 (1) of Regulation (EEC) No 1068/93 shall not apply.

Article 15

1. If the terms of Article 12 of Regulation (EEC) No 766/68 apply, the export refunds and export levies fixed in advance under the terms of the present invitation to tender :

- (a) before 1 July 1994 for the sugar exported as from that date ;
- (b) before 1 July 1995 for the sugar exported as from that date,

shall be adjusted.

2. For the adjustment referred to in paragraph 1 (a) :

- (a) in the event of the fixing of an intervention price for white sugar applicable with effect from 1 July 1994, which is greater than that in force on 30 June 1994, the export refund and the export levy shall be adjusted by an amount equal to the difference expressed in ecus per 100 kilograms existing between the intervention price for white sugar applicable with effect from 1 July 1994 and the intervention price for that sugar in force on 30 June 1994 ;
- (b) in the event of the fixing of an intervention price for white sugar applicable with effect from 1 July 1994,

which is lower than that in force on 30 June 1994, the export refund and the export levy shall be adjusted by an amount equal to the difference expressed in ecus per 100 kilograms existing between the intervention price for white sugar in force on 30 June 1994 and the intervention price for that sugar applicable with effect from 1 July 1994.

3. For the calculation of the differences referred to in paragraph 2, the intervention prices in question shall be increased by the corresponding storage levy referred to in the second subparagraph of Article 8 (2) of Regulation (EEC) No 1785/81.

4. For the purpose of applying this Article, the Member State issuing the relevant export licence shall at the time of issue complete section 'special particulars' by adding the following :

'to be adjusted in accordance with adjudication Regulation (EC) No 1021/94 for exports which take place after 30 June ...' (1994 or 1995 as applicable).

5. Upon presentation by the holder of the export licence concerned, or by the assignee when the licence has been transferred, to the Member State that issued it and before the customs formalities for the quantities concerned have been carried out, that Member State shall enter the refund rate after adjustment in the section 'special particulars' and shall duly certify and stamp that section.

6. For the adjustment referred to in paragraph 1 (b) the provisions of paragraphs 2 to 5 shall be applicable *mutatis mutandis*.

7. Member States shall inform the Commission as quickly as possible of the quantities of sugar for which an adjustment under this Article has been made.

Article 16

When white sugar of CN code 1701 99 10 produced from beet or cane harvested in the Community or from raw sugar imported into the Community under preferential arrangements, is stocked in bulk under a customs warehousing or free zone procedure for advance payment of the refund as defined by Council Regulation (EEC) No 565/80⁽¹⁾, that sugar may, in addition to the operations referred to in Article 28 (4) of Commission Regulation (EEC) No 3665/87⁽²⁾, be mixed in the same place of storage with other white sugar of the same CN code 1701 99 10, having the same origin as indicated above, that is of the same commercial quality and possesses equivalent technical characteristics.

⁽¹⁾ OJ No L 62, 7. 3. 1980, p. 5.

⁽²⁾ OJ No L 351, 14. 12. 1987, p. 1.

Article 17

Article 13a of Commission Regulation (EEC) No 394/70 is replaced by the following:

'Article 13a

When white sugar of CN code 1701 99 10 produced from beet or cane harvested in the Community or from raw sugar imported into the Community under preferential arrangements is stocked in bulk under a customs warehousing or free zone procedure for advance payment of the refund as defined by Council Regulation (EEC) No 565/80 (*), that sugar may, in

addition to the operations referred to in Article 28 (4) of Commission Regulation (EEC) No 3665/87 (**), be mixed in the same place of storage with other white sugar of the same CN code 1701 99 10, having the same origin as indicated above, that is of the same commercial quality and possesses equivalent technical characteristics.

(*) OJ No L 62, 7. 3. 1980, p. 5.

(**) OJ No L 351, 14. 12. 1987, p. 1.

Article 18

This Regulation shall enter into force on 20 May 1994.

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

Done at Brussels, 29 April 1994.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION DECISION No 1022/94/ECSC

of 29 April 1994

extending the provisional anti-dumping duty on imports into the Community of
hematite pig-iron, originating in Brazil, Poland, Russia and Ukraine

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Commission Regulation (EEC) No
2424/88/ECSC of 29 July 1988 on protection against
dumped or subsidized imports from countries not
members of the European Coal and Steel Community⁽¹⁾,
and in particular Article 11 thereof,

Whereas Commission Decision No 67/94/ECSC⁽²⁾
imposed a provisional anti-dumping duty on imports of
hematite pig-iron originating in Brazil, Poland, Russia and
Ukraine;

Whereas the Commission has received a request on
behalf of the Ukrainian exporters concerned, which repre-
sent a significant percentage of the trade involved, asking
that the provisional duty imposed be extended for a
further two months;

Whereas the Commission considers that an extension of
the duty is necessary to enable it to make a definitive
assessment of the facts,

HAS ADOPTED THIS DECISION:

Article 1

The validity of the provisional anti-dumping duty on
imports into the Community of hematite pig-iron origi-
nating in Brazil, Poland, Russia and Ukraine imposed by
Decision No 67/94/ECSC is hereby extended for a period
of two months. It shall cease to apply if, before the expiry
of that period, the Commission adopts definitive measures
or the proceeding is terminated under Article 9 of Deci-
sion No 2424/88/ECSC.

Article 2

This Regulation shall enter into force on the day of 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, 29 April 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽¹⁾ OJ No L 2. 8. 1988, p. 18; Corrigendum: OJ No L 273, 5.
10. 1988, p. 19.

⁽²⁾ OJ No L 12, 15. 1. 1994, p. 5.

COMMISSION REGULATION (EC) No 1023/94

of 2 May 1994

on the supply of cereals as food aid

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

Having regard to Council Regulation (EEC) No 3972/86 of 22 December 1986 on food-aid policy and food-aid management ⁽¹⁾, as last amended by Regulation (EEC) No 1930/90 ⁽²⁾, and in particular Article 6 (1) (c) thereof,

Whereas Council Regulation (EEC) No 1420/87 of 21 May 1987 laying down implementing rules for Regulation (EEC) No 3972/86 on food-aid policy and food-aid management ⁽³⁾ 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 to certain beneficiaries 1 096 tonnes of cereals;

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 ⁽⁴⁾, as amended by Regulation (EEC) No 790/91 ⁽⁵⁾; whereas it

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

HAS ADOPTED THIS REGULATION:

Article 1

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

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, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 370, 30. 12. 1986, p. 1.

⁽²⁾ OJ No L 174, 7. 7. 1990, p. 6.

⁽³⁾ OJ No L 136, 26. 5. 1987, p. 1.

⁽⁴⁾ OJ No L 204, 25. 7. 1987, p. 1.

⁽⁵⁾ OJ No L 81, 28. 3. 1991, p. 108.

ANNEX I

LOTS A and B

1. **Operation Nos⁽¹⁾**: see Annex II
2. **Programme**: 1994
3. **Recipient⁽²⁾**: Euronaid, PO Box 12, NL-2501 CA Den Haag, Nederland; tel. (31 70) 33 05 757; fax 36 41 701; telex 30960 NL EURON
4. **Representative of the recipient⁽¹⁰⁾**: OJ No C 103, 16. 4. 1987
5. **Place or country of destination**: see Annex II
6. **Product to be mobilized**: oat flakes
7. **Characteristics and quality of the goods⁽³⁾ ⁽⁶⁾**: OJ No C 114, 29. 4. 1991, p. 1 (under II.B.1 (e))
8. **Total quantity**: 636 tonnes (1 096 tonnes of cereals)
9. **Number of lots**: two (see Annex II)
10. **Packaging and marking⁽⁵⁾ ⁽⁷⁾ ⁽⁸⁾ ⁽⁹⁾**: OJ No C 114, 29. 4. 1991, p. 1 (under II.B (2) (f) or II.B (2) (g) and II.B (3))
Sacks: 25 kg
Markings in Spanish (B5 and B6), French (lots A + B1 to B3) and Portuguese (B4)
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**: 27. 6 to 17. 7. 1994
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**: 12 noon (Brussels time), on 17. 5. 1994
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon (Brussels time) on 31. 5. 1994
 - (b) period for making the goods available at the port of shipment: 11 to 31. 7. 1994
 - (c) deadline for the supply: —
22. **Amount of the tendering security**: ECU 5 per tonne
23. **Amount of the 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, à l'attention de Monsieur T.Vestergaard, bâtiment Loi 120, bureau 7/46, 200 rue de la Loi, B-1049 Bruxelles (telex 22037 / 25670 AGREC B; telefax (32 - 2) 296 20 05 / 295 01 32 / 296 10 97 / 295 01 30 / 296 33 04)
25. **Refund payable on request by the successful tenderer^(*)**: refund applicable on 30. 4. 1994 fixed by Commission Regulation (EC) No 680/94 (OJ No L 83, 26. 3. 1994, p. 43)

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) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 25. 7. 1989, p. 10), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 25 of this Annex.

The amount of the refund shall be converted into national currency by applying the agricultural conversion rate applicable on the day of completion of the customs export formalities. The provisions of Articles 13 to 17 of Commission Regulation (EEC) No 1068/93 (OJ No L 108, 1. 5. 1993, p. 106) shall not apply to this amount.

- (⁵) Notwithstanding OJ No C 114, point II. B (3) (c) is replaced by the following : 'European Community'.
 - (⁶) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following documents :
 - health certificate.
 - (⁷) Shipment to take place in 20-foot containers (lots A + B1-B5) and in 40-foot containers (B6), condition FCL/FCL. The supplier shall be responsible for the cost of making the containers available in the stack position at the container terminal at the port of shipment. The recipient shall 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 paragraph, of Regulation (EEC) No 2200/87 shall not apply.
- The successful tenderer has to submit to the recipient's agent a complete packaging list of each container, specifying the number of bags belonging to each shipping number as specified in the invitation to tender.
- The successful tenderer has to seal each container with a numbered locktainer, the number of which is to be provided to the beneficiary's forwarder.
- (⁸) Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
 - (⁹) See fourth amendment to OJ No C 114 published in OJ No C 272, 21. 10. 1992, p. 6.
 - (¹⁰) The supplier should send a duplicate of the original invoice to : Willis Corroon Scheuer, PO Box 1315, NL-1000 BH Amsterdam.
-

ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II — ALLEGATO II — BIJLAGE II — ANEXO II

Lote	Cantidad total (en toneladas)	Cantidades parciales (en toneladas)	Acción nº	País de destino
Parti	Totalmængde (i tons)	Delmængde (i tons)	Aktion nr.	Bestemmelsesland
Partie	Gesamtmenge (in Tonnen)	Teilmengen (in Tonnen)	Maßnahme Nr.	Bestimmungsland
Παρίδια	Συνολική ποσότητα (σε τόνους)	Μερικές ποσότητες (σε τόνους)	Δράση αριθ.	Χώρα προορισμού
Lot	Total quantity (in tonnes)	Partial quantities (in tonnes)	Operation No	Country of destination
Lot	Quantité totale (en tonnes)	Quantités partielles (en tonnes)	Action nº	Pays de destination
Lotto	Quantità totale (in tonnellate)	Quantitativi parziali (in tonnellate)	Azione n.	Paese di destinazione
Partij	Totale hoeveelheid (in ton)	Deelhoeveelheden (in ton)	Maatregel nr.	Land van bestemming
Lote	Quantidade total (em toneladas)	Quantidades parciais (em toneladas)	Acção nº	País de destino
A	504	A1 : 156	173/94	Rwanda
		A2 : 168	174/94	Rwanda
		A3 : 180	175/94	Rwanda
B	132	B1 : 24	176/94	Madagascar
		B2 : 12	177/94	Madagascar
		B3 : 12	178/94	Togo
		B4 : 36	179/94	Brasil
		B5 : 24	180/94	Perú
		B6 : 24	181/94	República Dominicana

COMMISSION REGULATION (EC) No 1024/94

of 2 May 1994

laying down detailed rules governing the grant of private storage aid for Kefalotyri and Kasseri cheeses

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 (EEC) No 230/94 ⁽²⁾ and in particular Articles 9 (3) and 28 thereof,

Whereas Council Regulation (EEC) No 508/71 of 8 March 1971 laying down general rules on private storage aid for long-keeping cheeses ⁽³⁾ permits the granting of private storage aid for sheep's milk cheeses requiring at least six months for maturing where a serious market imbalance could be eliminated or reduced by seasonal storage ;

Whereas the market in Kefalotyri and Kasseri cheeses is at present disturbed by the existence of stocks which are difficult to sell and which are causing a lowering of prices ; whereas seasonal storage should therefore be introduced for these quantities to improve the situation and allow producers time to find outlets for their cheese ;

Whereas the detailed rules of this measure should determine the maximum quantity to benefit from it as well as the duration of the contracts in relation to the real requirements of the market and the keeping qualities of the cheeses in question ; whereas it is necessary to specify the terms of the storage contract so as to enable the identification of the cheese and to maintain checks on the stock in respect of which aid is granted ; whereas the aid should be fixed taking into account storage costs and the foreseeable trend of market prices ;

Whereas experience shows that provisions on checks should be laid down, particularly as regards the documents to be submitted and checks to be made on the spot ; whereas, therefore, it should be provided that Member States require the costs of checks be fully or partly borne by the contractor ;

Whereas Article 1 (1) of Commission Regulation (EEC) No 1756/93 of 30 June 1993 fixing the operative events

for the agricultural conversion rate applicable to milk and milk products ⁽⁴⁾, as last amended by Regulation (EC) No 180/94 ⁽⁵⁾, fixes the conversion rate to be applied in the framework of private storage aid schemes in the milk products sector ;

Whereas it is appropriate to guarantee the continuation of the storage operations in question ;

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

Aid shall be granted in respect of the private storage of 3 200 tonnes of Kefalotyri and Kasseri cheeses made from Community-produced ewes' or goats' milk or a mixture of the two and satisfying the requirements of Articles 2 and 3.

Article 2

1. The intervention agency shall conclude storage contracts only when the following conditions are met :

- (a) the quantity of cheese to which the contract relates is not less than two tonnes ;
- (b) the cheese was manufactured at least 90 days before the date specified in the contract as being the date of commencement of storage, and after 30 November 1993 ;
- (c) the cheese has undergone tests which show that it meets the condition laid down in (b) and that it is of first quality ;
- (d) the storer undertakes :
 - to keep the cheese during the entire period of storage in premises where the maximum temperature is + 16 °C,

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 30, 3. 2. 1994, p. 1.

⁽³⁾ OJ No L 58, 11. 3. 1971, p. 1.

⁽⁴⁾ OJ No L 161, 2. 7. 1993, p. 48.

⁽⁵⁾ OJ No L 24, 29. 1. 1994, p. 38.

- not, during the term of the contract, to alter the composition of the batch which is the subject of the contract without authorization from the intervention agency. If the condition concerning the minimum quantity fixed for each batch continues to be met, the intervention agency may authorize an alteration which is limited to the removal or replacement of cheeses which are found to have deteriorated to such an extent that they can no longer be stored.

In the event of release from store of certain quantities :

- (i) if the aforesaid quantities are replaced with the authorization of the intervention agency, the contract is deemed not to have undergone any alteration ;
- (ii) if the aforesaid quantities are not replaced, the contract is deemed to have been concluded *ab initio* for the quantity permanently retained.

Any supervisory costs arising from an alteration shall be met by the storer,

- to keep stock accounts and to inform the intervention agency each week of the quantity of cheese put into storage during the previous week, and of any planned withdrawals.
2. The storage contract shall be concluded :
 - (a) in writing, stating the date when storage covered by the contract begins ; this may not be earlier than the day following that on which the operations connected with putting the batch of cheese covered by the contract into storage were completed ;
 - (b) after completion by the operations connected with putting the batch of cheese covered by the contract into storage and at the latest 40 days after the date on which the storage covered by the contract begins.

Article 3

1. Aid shall be granted only for cheese put into storage during the period 15 May to 30 November 1994.
2. No aid shall be granted in respect of storage under contract for less than 60 days.
3. The aid payable may not exceed an amount corresponding to 150 days' storage under contract terminating before 31 March 1995. By way of derogation from the second indent of Article 2 (1) (d), when the period of 60 days specified in paragraph 2 has elapsed, the storer may remove all or part of the batch under contract. The

minimum quantity that may be removed shall be 500 kilograms. The Member States may, however, increase this quantity to two tonnes.

The date of the start of operations to remove cheese covered by the contract shall not be included in the period of storage under contract.

Article 4

1. The amount of aid shall be ECU 1,97 per tonne per day.
2. Aid shall be paid not later than 90 days from the last day of storage under contract.

Article 5

1. The Member States shall ensure that the conditions granting entitlement to payment of the aid are fulfilled.
 2. The contractor shall make available to the national authorities responsible for verifying execution of the measure any documentation permitting in particular the following particulars of products placed in private storage to be verified :
 - (a) ownership at the time of entry into storage ;
 - (b) the origin and date of manufacture of the cheeses ;
 - (c) the date of entry into storage ;
 - (d) presence in the store ;
 - (e) the date of removal from storage.
 3. The contractor or, where applicable, the operator of the store, shall keep stock accounts available at the store, covering :
 - (a) identification, by contract number, of the products placed in private storage ;
 - (b) the dates of entry into and removal from storage ;
 - (c) the number of cheeses and their weight shown for each lot ;
 - (d) the location of the products in the store.
 4. Products stored must be easily identifiable and must be identified individually by contract.
- A special mark shall be affixed to cheeses covered by contract.
5. Without prejudice to Article 2 (1) (d), on entry into storage, the competent bodies shall conduct checks in particular to ensure that products stored are eligible for the aid and to prevent any possibility of substitution of products during storage under contract.

6. The national authorities responsible for controls shall undertake :

- (a) an unannounced check to see that the products are present in the store. The sample concerned must be representative and must correspond to at least 10 % of the overall quantity under contract for a private storage aid measure. Such checks must include, in addition to an examination of the accounts referred to in paragraph 3, a physical check of the weight and type of product and their identification. Such physical checks must relate to at least 5 % of the quantity subject to the unannounced check ;
- (b) a check to see that the products are present at the end of the storage period under contract.

7. Checks conducted pursuant to paragraphs 5 and 6 must be the subject of a report stating :

- the date of the check,
- its duration,
- the operations conducted.

The report on checks must be signed by the official responsible and countersigned by the contractor or, where applicable, by the store operator.

8. In the case of irregularities affecting at least 5 % of the quantities of products subject to the checks the latter shall be extended to a larger sample to be determined by the competent body.

The Member States shall notify such cases to the Commission within four weeks.

9. The Member States may provide that the costs of checks will be borne partly or fully by the contractor.

Article 6

Member States shall communicate to the Commission on or before the Tuesday of each week :

- (a) the quantity of cheese for which storage contracts have been concluded during the previous week ;
- (b) any quantities in respect of which the authorization referred to in the second indent of Article 2 (d) has been given.

Article 7

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

It shall apply from 15 May 1994.

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

Done at Brussels, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EC) No 1025/94

of 2 May 1994

laying down detailed rules for the application of Council Regulation (EEC) No 2328/91 as regards the submission of expenditure forecasts and aid applications

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures⁽¹⁾, as last amended by Council Regulation (EEC) No 3669/93⁽²⁾, and in particular Article 31 (5) thereof,

Whereas the first subparagraph of Article 31 (4) of Regulation (EEC) No 2328/91 lays down that the Member States shall transmit their annual expenditure forecasts; whereas those forecasts cover the expenses referred to in Article 31 (1) of the said Regulation and are accompanied by aid applications prepared in accordance with Article 31 (2) of that Regulation; whereas updates of those forecasts and applications are prepared, where appropriate, in accordance with the second subparagraph of Article 31 (4) of that Regulation; whereas in the case of the Objective 1 regions referred to in Article 1 of Council Regulation (EEC) No 2052/88⁽³⁾ as amended by Regulation (EEC) No 2081/93⁽⁴⁾, the expenditure forecasts and aid applications are transmitted to the Commission in accordance with Article 31 (3) of Regulation (EEC) No 2328/91;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee on Agricultural structures and Rural Development,

HAS ADOPTED THIS REGULATION:

Article 1

1. In the case of regions not eligible under Objective 1 as defined in Article 1 of Regulation (EEC) No 2052/88, eligible expenditure under the legislation instruments

referred to in Article 31 (1) of Regulation (EEC) No 2328/91 shall be submitted using the tables set out in:

- Annex I, in respect of expenditure effected before 1994,
- Annex II, in respect of expenditure planned for the period 1994 to 1999.

2. In the case of Objective 1 regions, the Commission shall be notified of the amounts referred to in the same paragraph 1, broken down at least by year and by measures as provided for in the said paragraph.

Article 2

1. In the case of regions not eligible under Objective 1, the aid applications referred to in Article 31 (2) of Regulation (EEC) No 2328/91 must include as part of the information requested pursuant to the said paragraph a list of the national provisions for which Community aid is requested in respect of legislative instruments referred to in Article 31 (1) of the said Regulation and numerical data submitted using the tables set out in Annexes III and IV.

2. In the case of Objective 1 regions, the information referred to in paragraph 1 shall be sent to the Commission.

Article 3

The updates provided for in the second subparagraph of Article 31 (4) of Regulation (EEC) No 2328/91 shall be submitted using the tables set out in Annexes II to IV.

Article 4

This Regulation shall enter into force on the third 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, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 218, 6. 8. 1991, p. 1.

⁽²⁾ OJ No L 338, 31. 12. 1993, p. 26.

⁽³⁾ OJ No L 185, 15. 7. 1988, p. 9.

⁽⁴⁾ OJ No L 193, 31. 7. 1993, p. 5.

ANNEX I

**ELIGIBLE NATIONAL EXPENDITURE EFFECTED BEFORE 1994 IN NATIONAL CURRENCY
PREPARED ON ... WITH A VIEW TO AN APPLICATION FOR A REFUND FROM THE EAGGF,
GUIDANCE SECTION**

(Regions not eligible under Objective 1)(*)

Member State :

Measures involved	Total public expenditure		Amounts charged to the EAGGF	
	outside 5 (b) areas	in 5 (b) areas	outside 5 (b) areas	in 5 (b) areas
Type 1 measures (1)				
Regulation (EEC) No 2328/91				
Regulation (EEC) No 1360/78				
Regulation (EEC) No 389/82				
Regulation (EEC) No 1696/71				
Subtotal for type 1				
Type 2 measures (2)	All areas		All areas	
Directive 72/159/EEC				
Directive 72/160/EEC				
Regulation (EEC) No 1035/72				
Subtotal for type 2				
Total				

(*) Expenditure effected before 1994 for which no refund application has been submitted before that year is to be included in this table.

(1) It is necessary to indicate 5 (b) areas separately because each measure can appear under either of two separate budget headings : 5 (b) areas and non-5 (b) areas.

(2) Subtotals for 5 (b) areas and non-5 (b) areas are sufficient since only one budget heading applies in the case of each measure.

(Regions not eligible under Objective 1)

Member State :

[illegible]

ANNEX III

APPLICATION FOR EAGGF GUIDANCE AID IN NATIONAL CURRENCY PREPARED ON ... / UPDATED ...

(Regions not eligible under Objective 1)

Member State :

Measures involved ⁽¹⁾	1994		1995		1996		1997		1998		1999		Total	
	Total public expenditure	Expenditure charged to EAGGF	Total public expenditure	Expenditure charged to EAGGF	Total public expenditure	Expenditure charged to EAGGF	Total public expenditure	Expenditure charged to EAGGF	Total public expenditure	Expenditure charged to EAGGF	Total public expenditure	Expenditure charged to EAGGF	Total public expenditure	Expenditure charged to EAGGF
Regulation (EEC) No 2328/91														
— Investment aid (Articles 5 to 9)														
— Setting-up aid for young farmers (Articles 10 to 11)														
— Back-up measures to assist agricultural holdings (Articles 13 to 16)														
— Specific measures to support mountain and hill farming in certain less-favoured areas (Articles 17 to 20)														
— Vocational training (Article 28)														
Directive 72/159/EEC														
Directive 72/160/EEC														
Regulation (EEC) No 1035/72														
Regulation (EEC) No 1360/78														
Regulation (EEC) No 389/82														
Regulation (EEC) No 1696/71														
Total non-Objective 1														
Total for 5 (b) areas ⁽¹⁾														

⁽¹⁾ Any Member State which intends submitting separate documents detailing only a single part of these measures must identify the amounts relating to 5 (b) areas for each separate part.

ANNEX IV

PHYSICAL INDICATORS SUPPORTING THE AID APPLICATION PREPARED ON ... / UPDATED ...

Member State :

Measures involved	Physical indicators (estimates)	1994	1995	1996	1997	1998	1999	Total
Regulation (EEC) No 2328/91								
— Articles 5 to 9	Number of beneficiaries							
— Articles 10 and 11	Number of beneficiaries							
— Articles 13 to 16	Number of beneficiaries							
— Articles 17 to 20	Number of LU							
	Number of hectares							
	Number of investment projects							
— Article 28	Number of beneficiaries							
Directive 72/159/EEC	Number of beneficiaries							
Directive 72/160/EEC	Number of beneficiaries							
Regulation (EEC) No 1035/72	Number of beneficiaries							
Regulation (EEC) No 1360/78	Number of beneficiaries							
Regulation (EEC) No 389/82	Number of beneficiaries							
Regulation (EEC) No 1696/71	Number of beneficiaries							

COMMISSION REGULATION (EC) No 1026/94

of 2 May 1994

amending Regulation (EEC) No 1538/91 introducing detailed rules for implementing Council Regulation (EEC) No 1906/90 on certain marketing standards for poultry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1906/90 of 26 June on certain marketing standards for poultry ⁽¹⁾, as last amended by Regulation (EC) No 3204/93 ⁽²⁾, and in particular Articles 9 thereof,

Whereas Commission Regulation (EEC) No 1538/91 ⁽³⁾, as last amended by Regulation (EEC) No 2891/93 ⁽⁴⁾, specifies the Community reference laboratory responsible for checking the water content of frozen and quick-frozen chickens and their respective competences and tasks; whereas the level reference laboratory to carry out the tasks laid down;

Whereas Community financial assistance should initially be provided for a period of three years; whereas this will be re-examined with a view to granting an extension prior to expiry of the initial period;

Whereas a contract should be concluded between the European Community and the Community reference laboratory setting out the conditions governing payment of financial assistance;

Whereas the Management Committee for Poultrymeat and Eggs has not delivered an opinion within the time limit set by the chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The following paragraph 14 is hereby added to Article 14a of Regulation (EEC) No 1538/91:

'14. The Community shall grant the Community reference laboratory "Het Spelderholt", Centre for Poultry Research and Information Services, Beekbergen, the Netherlands, financial assistance of a maximum of ECU 75 000 for a period of three years for the completion of the tasks referred to in Annex IX paragraph 1.

The financial assistance shall be paid to the reference laboratory in accordance with the terms of a contract concluded between the Commission, acting on behalf of the European Community, and the laboratory.

The Director-General of the Directorate-General for Agriculture shall be authorized to sign the contract on behalf of the Commission.'

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, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 173, 6. 7. 1990, p. 1.

⁽²⁾ OJ No L 289, 24. 11. 1993, p. 3.

⁽³⁾ OJ No L 143, 7. 6. 1991, p. 11.

⁽⁴⁾ OJ No L 263, 22. 10. 1993, p. 12.

COMMISSION REGULATION (EC) No 1027/94

of 2 May 1994

laying down to what extent applications for issue of export licences submitted during April 1994 for beef and veal products which may benefit from special import treatment in a third country may be accepted

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

Having regard to Commission Regulation (EEC) No 2377/80 of 4 September 1980 on special detailed rules for the application of the system of import and export licences in the beef and veal sector ⁽¹⁾, as last amended by Regulation (EEC) No 2867/93 ⁽²⁾, and in particular Article 15 (6) (c) thereof,

Whereas Commission Regulation (EEC) No 2377/80 lays down, in Articles 14 and 15, detailed rules for export licence applications for the products referred to in Article 1 of Commission Regulation (EEC) No 2973/79 ⁽³⁾, as last amended by Regulation (EEC) No 3434/87 ⁽⁴⁾; whereas Article 15 (6) (c) of Regulation (EEC) No 2377/80 requires the Commission, where the quantities in respect of which licences are applied for exceed the quantities available, to reduce the quantities requested by a fixed percentage;

Whereas Commission Regulation (EEC) No 2973/79 fixed the quantities of meat which might be exported on special terms for the second quarter of 1994;

Whereas the quantities for which licence applications have been lodged for the second quarter of 1994 are lower

than those available; whereas these applications can, therefore, be met in full,

HAS ADOPTED THIS REGULATION:

Article 1

The applications for export licences lodged for the beef and veal referred to in Regulation (EEC) No 2973/79 for the second quarter of 1994 shall be met in full.

Article 2

Applications for licences in respect of the meat referred to in Article 1 may be entered in accordance with Articles 14 and 15 of Regulation (EEC) No 2377/80 during the first 10 days of the third quarter of 1994 the total quantity available being 3 710 tonnes.

Article 3

This Regulation shall enter into force on 3 May 1994.

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

Done at Brussels, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 241, 13. 9. 1980, p. 5.

⁽²⁾ OJ No L 262, 21. 10. 1993, p. 26.

⁽³⁾ OJ No L 336, 29. 12. 1979, p. 44.

⁽⁴⁾ OJ No L 327, 18. 11. 1987, p. 7.

COMMISSION REGULATION (EC) No 1028/94

of 2 May 1994

on the opening of a standing invitation to tender for the resale on the internal market of 200 000 tonnes of maize held by the French intervention agency

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 amended by Commission Regulation (EEC) No 2193/93⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾, as amended by Regulation (EC) No 120/94⁽⁴⁾ lays down the procedures and conditions governing the offer for sale of cereals held by intervention agencies;

Whereas, in the present market situation, a standing invitation to tender should be opened for the resale on the internal market of 200 000 tonnes of maize held by the Italian intervention agency;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The French intervention agency shall, pursuant to the terms specified in Regulation (EEC) No 2131/93, initiate a standing invitation to tender for the resale on the internal market of 200 000 tonnes of maize held by it.

Article 2

1. The deadline for the submission of tenders for the first partial invitation to tender shall be 17 May 1994.
2. The deadline for the submission of tenders for the final partial invitation to tender shall be 28 June 1994.
3. The tenders shall be deposited with the French intervention agency:

Office national interprofessionnel des céréales, 21, avenue Bosquet, F-75341 Paris, Cedex 07 (téllex : OFICE 200490 F/OFIDM 203662 F; télécopieur : 47056132).

Article 3

The French intervention agency shall notify the Commission, by not later than the Tuesday of the week following the expiry of the deadline for the submission of tenders, of the quantity and the average prices of the different lots sold.

Article 4

This Regulation shall enter into force on the day of 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, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ No L 21, 26. 1. 1994, p. 1.

COMMISSION REGULATION (EC) No 1029/94
of 2 May 1994

amending Regulation (EEC) No 1195/93 increasing to 3 550 000 tonnes the quantity of bread-making wheat held by the German intervention agency for which a standing invitation to tender for export has been opened

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 amended by Commission Regulation (EEC) No 2193/93⁽²⁾, and in particular Article 5 thereof,

Having regard to Commission Regulation (EEC) No 2131/93⁽³⁾, as amended by Regulation (EC) No 120/94⁽⁴⁾, lays down the procedure and conditions for the disposal of cereals held by the intervention agencies,

Whereas Commission Regulation (EEC) No 1195/93⁽⁵⁾, as last amended by Regulation (EC) No 863/94⁽⁶⁾, opened a standing invitation to tender for the export of 3 200 000 tonnes of bread-making wheat held by the German intervention agency; whereas, in the communication of 13 April 1994, Germany informed the Commission of the intention of its intervention agency to increase by 350 000 tonnes the quantity for which a standing invitation to tender for export has been opened; whereas the total quantity of bread-making wheat held by the German intervention agency for which a standing invitation to tender for export has been opened should be increased to 3 550 000 tonnes;

Whereas this increase in the quantity put out to tender makes it necessary to alter the list of regions and quantities in store; whereas Annex I to Regulation (EEC) No 1195/93 must therefore 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

Article 2 of Regulation (EEC) No 1195/93 is replaced by the following:

Article 2

1. The invitation to tender shall cover a maximum of 3 550 000 tonnes of bread-making wheat to be exported to all third countries.
2. The regions in which the 3 550 000 tonnes of bread-making wheat are stored are stated in Annex I to this Regulation.

Article 2

Annex I to Regulation (EEC) No 1195/93 is replaced by the Annex hereto.

Article 3

This Regulation shall enter into force on the day of 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, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ No L 21, 26. 1. 1994, p. 1.

⁽⁵⁾ OJ No L 122, 18. 5. 1993, p. 14.

⁽⁶⁾ OJ No L 99, 19. 4. 1994, p. 27.

*ANNEX**'ANNEX I*

<i>(tonnes)</i>	
Place of storage	Quantity
Schleswig-Holstein/Hamburg/ Niedersachsen/Bremen/ Nordrhein-Westfalen	1 533 291
Hessen/Rheinland-Pfalz/ Baden-Württemberg/Saarland/Bayern	601 718
Berlin/Brandenburg/ Mecklenburg-Vorpommern	574 306
Sachsen/Sachsen-Anhalt/Thüringen	806 904
Netherlands	13 971
Belgium	20 428'

COMMISSION REGULATION (EC) No 1030/94

of 2 May 1994

fixing the import levies 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 amended by Commission Regulation (EEC) No 2193/93⁽²⁾, and in particular Article 10 (5) and Article 11 (3) 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 amended by Regulation (EC) No 3528/93⁽⁴⁾,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EC) No 819/94⁽⁵⁾ and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market

rate established during the reference period from 29 April 1994, as regards floating currencies, should be used to calculate the levies;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 819/94 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 May 1994.

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

Done at Brussels, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁵⁾ OJ No L 94, 13. 4. 1994, p. 16.

ANNEX

to the Commission Regulation of 2 May 1994 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CN code	Third countries (*)
0709 90 60	99,56 ⁽²⁾ ⁽³⁾
0712 90 19	99,56 ⁽²⁾ ⁽³⁾
1001 10 00	9,11 ⁽¹⁾ ⁽³⁾
1001 90 91	92,32
1001 90 99	92,32 ⁽²⁾
1002 00 00	122,37 ⁽²⁾
1003 00 10	125,96
1003 00 90	125,96 ⁽²⁾
1004 00 00	100,83
1005 10 90	99,56 ⁽²⁾ ⁽³⁾
1005 90 00	99,56 ⁽²⁾ ⁽³⁾
1007 00 90	105,85 ⁽²⁾
1008 10 00	36,10 ⁽²⁾
1008 20 00	50,57 ⁽²⁾ ⁽²⁾
1008 30 00	0 ⁽²⁾
1008 90 10	(²⁾)
1008 90 90	0
1101 00 00	166,80 ⁽²⁾
1102 10 00	208,87
1103 11 10	47,58
1103 11 90	190,75
1107 10 11	175,21
1107 10 19	133,67
1107 10 91	235,09 ⁽¹⁰⁾
1107 10 99	178,41 ⁽²⁾
1107 20 00	206,12 ⁽¹⁰⁾

(¹) Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

(²) In accordance with Regulation (EEC) No 715/90 the levies are not applied to products imported directly into the French overseas departments, originating in the African, Caribbean and Pacific States.

(³) Where maize originating in the ACP is imported into the Community the levy is reduced by ECU 1,81/tonne.

(⁴) Where millet and sorghum originating in the ACP is imported into the Community the levy is applied in accordance with Regulation (EEC) No 715/90.

(⁵) Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by ECU 0,60/tonne.

(⁶) The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 (OJ No L 142, 9. 6. 1977, p. 10), as last amended by Regulation (EEC) No 1902/92 (OJ No L 192, 11. 7. 1992, p. 3), and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22), as amended by Regulation (EEC) No 560/91 (OJ No L 62, 8. 3. 1991, p. 26).

(⁷) The levy applicable to rye shall be charged on imports of the product falling within CN code 1008 90 10 (triticale).

(⁸) No levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

(⁹) Products falling within this code, imported from Poland or Hungary under the Agreements concluded between those countries and the Community and under the Interim Agreement between the Czech Republic, the Slovak Republic, Bulgaria and Romania and the Community and in respect of which EUR.1 certificates issued in accordance with Regulation (EC) No 121/94 or (EC) No 335/94 have been presented, are subject to the levies set out in the Annex to that Regulation.

(¹⁰) In accordance with Council Regulation (EEC) No 1180/77 this levy is reduced by ECU 5,44 per tonne for products originating in Turkey.

COMMISSION REGULATION (EC) No 1031/94

of 2 May 1994

fixing the premiums to be added to the import levies on cereals, flour and malt

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 amended by Commission Regulation (EEC) No 2193/93 ⁽²⁾, and in particular Article 12 (4) 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 amended by Regulation (EC) No 3528/93 ⁽⁴⁾,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 1681/93 ⁽⁵⁾ and subsequent amending Regulations;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market

rate established during the reference period from 29 April 1994, as regards floating currencies, should be used to calculate the levies;

Whereas, on the basis of today's cif prices and cif forward delivery prices, the premiums at present in force, which are to be added to the levies, should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The premiums to be added to the levies fixed in advance for the import in respect of the products listed in Article 1 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 May 1994.

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

Done at Brussels, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁵⁾ OJ No L 159, 1. 7. 1993, p. 11.

ANNEX

to the Commission Regulation of 2 May 1994 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current 5	1st period 6	2nd period 7	3rd period 8
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 00	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 00	0	0	0	0
1005 10 90	0	0	0	0
1005 90 00	0	0	0	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0
1102 10 00	0	0	0	0
1103 11 10	0	0	0	0
1103 11 90	0	0	0	0

B. Malt

(ECU/tonne)

CN code	Current 5	1st period 6	2nd period 7	3rd period 8	4th period 9
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EC) No 1032/94

of 2 May 1994

fixing the import levies on white sugar and raw sugar

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector ⁽¹⁾, as last amended by Regulation (EC) No 133/94 ⁽²⁾, and in particular Article 16 (8) 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 amended by Regulation (EC) No 3528/93 ⁽⁴⁾, and in particular Article 5 thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 1695/93 ⁽⁵⁾, as last amended by Regulation (EC) No 1010/94 ⁽⁶⁾;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EEC) No 1695/93 to the information known to the Commission that the

levies at present in force should be altered to the amounts set out in the Annex hereto;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 29 April 1994, as regards floating currencies, should be used to calculate the levies,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of white sugar and standard quality raw sugar, as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 May 1994.

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

Done at Brussels, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 22, 27. 1. 1994, p. 7.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁵⁾ OJ No L 159, 1. 7. 1993, p. 40.

⁽⁶⁾ OJ No L 111, 30. 4. 1994, p. 95.

ANNEX

to the Commission Regulation of 2 May 1994 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy ⁽¹⁾
1701 11 10	33,92 ⁽¹⁾
1701 11 90	33,92 ⁽¹⁾
1701 12 10	33,92 ⁽¹⁾
1701 12 90	33,92 ⁽¹⁾
1701 91 00	39,15
1701 99 10	39,15
1701 99 90	39,15 ⁽²⁾

⁽¹⁾ The levy applicable is calculated in accordance with the provisions of Article 2 or 3 of Commission Regulation (EEC) No 837/68 (OJ No L 151, 30. 6. 1968, p. 42), as last amended by Regulation (EEC) No 1428/78 (OJ No L 171, 28. 6. 1978, p. 34).

⁽²⁾ In accordance with Article 16 (2) of Regulation (EEC) No 1785/81 this amount is also applicable to sugar obtained from white and raw sugar containing added substances other than flavouring or colouring matter.

⁽³⁾ No import levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

COMMISSION REGULATION (EC) No 1033/94

of 2 May 1994

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 amended by Commission Regulation (EEC) No 2193/93 ⁽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 964/94 ⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 964/94 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 amended by Regulation (EC) No 3528/93 ⁽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 amended by Regulation (EC) No 547/94 ⁽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 964/94 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 3 May 1994.

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

Done at Brussels, 2 May 1994.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 196, 5. 8. 1993, p. 22.

⁽³⁾ OJ No L 108, 29. 4. 1994, p. 45.

⁽⁴⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁵⁾ OJ No L 320, 22. 12. 1993, p. 32.

⁽⁶⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽⁷⁾ OJ No L 69, 12. 3. 1994, p. 1.

ANNEX

to the Commission Regulation of 2 May 1994 altering the export refunds on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)			(ECU/tonne)		
Product code	Destination (1)	Amount of refund (2)	Product code	Destination (1)	Amount of refund (2)
0709 90 60 000	—	—	1007 00 90 000	—	—
0712 90 19 000	—	—	1008 20 00 000	—	—
1001 10 00 200	—	—	1101 00 00 100	01	45,00
1001 10 00 400	01	0	1101 00 00 130	01	42,00
1001 90 91 000	—	—	1101 00 00 150	01	37,00
1001 90 99 000	03	57,00	1101 00 00 170	01	33,00
	02	15,00	1101 00 00 180	01	29,00
1002 00 00 000	03	25,00	1101 00 00 190	—	—
	02	15,00	1101 00 00 900	—	—
1003 00 10 000	—	—	1102 10 00 500	01	71,00
1003 00 90 000	03	64,00	1102 10 00 700	—	—
	02	15,00	1102 10 00 900	—	—
1004 00 00 200	—	—	1103 11 10 200	01	0 (3)
1004 00 00 400	—	—	1103 11 10 400	01	0 (3)
1005 10 90 000	—	—	1103 11 10 900	—	—
1005 90 00 000	03	45,00	1103 11 90 200	01	0 (3)
	04	15,00	1103 11 90 800	—	—
	02	0			

(1) The destinations are identified as follows:

- 01 All third countries,
- 02 Other third countries,
- 03 Switzerland, Austria, Liechtenstein, Ceuta and Melilla,
- 04 Zones I, II a), b) and c), III a) and b), V, VI and VIII and Cuba.

(2) Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in Regulation (EEC) No 990/93 are observed.

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

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 12 April 1994

concerning aid to be granted by Germany to the steel company EKO Stahl AG,
Eisenhüttenstadt

(Only the Germany text is authentic)

(94/256/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

II

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular the first and second paragraphs of Article 95 thereof,

After consulting the Consultative Committee and with the unanimous assent of the Council,

Whereas :

I

The Community steel industry is currently experiencing its most difficult period since the first half of the 1980s. This is due to the general slowdown in the economy, which has had significant effect on industrial activities in general, and on the steel industry in particular, leading to a serious imbalance between supply and demand, accompanied by a collapse in prices. In addition, the international market generally has been weak : there is pressure from imports and there has been a trade dispute with the United States of America affecting substantial Community exports to that market. All of these factors have combined to aggravate the financial situation of almost all steel companies in the Community.

In November 1993, Company notified the Commission of a plan to restructure and partly privatize the steel company EKO Stahl AG, Eisenhüttenstadt.

This company, situated in the *Land* of Brandenburg, in the territory of the former German Democratic Republic (hereinafter referred to as 'the former GDR'), had been founded after the Second World War as a 'Kombinat' under the socialist economic system then prevailing in that territory. After German unification in 1990, it became a public company (Aktiengesellschaft). The only shareholder is the Treuhandanstalt (hereinafter referred to as 'the THA'), a public entity acting as a holding company for the former State-held companies of the former GDR.

The restructuring plan submitted on 4 November 1993 and revised on 12 November 1993 provides for a change of corporate form of EKO Stahl from a public company into a private limited company (Gesellschaft mit beschränkter Haftung) and the purchase of 60 % of the shares by the Italian Riva group. The purchaser will be under contractual obligation to take over the remaining shares on the basis of the earning capacity value in April to June 1999 on demand of the THA.

The decision to sell the majority of shares to Riva was taken after a general and unconditional bidding procedure which has been closed in October 1993. After an in-depth examination of the three bids received, the THA concluded that the Riva group had made the best offer. Germany submitted the comparison of the offers prepared by the THA and some additional information concerning the evaluation of the different proposals.

The restructuring concept envisages the modernization of the existing pig iron, crude steel, cold-rolling and re-treatment facilities without changing their current capacities and the installation of a new hot-wide-strip mill with a capacity of 900 kt/y to close the existing technological gap in the production flow which has been covered so far by expensive hire-rolling elsewhere. The existing installation for cutting hot wide coils into narrow strips will be closed.

The investments intended amount to DM 280 million for the pig iron facilities, DM 150 million for the crude steel facilities, DM 400 million for the hot-rolling facilities. Riva would cover DM 450 million of the total investment, the THA would cover DM 350 million and DM 300 million would be covered by investment aid under general regional aid schemes.

The THA would contribute DM 163 million to cover losses until privatization. To cover future losses until the completion of the restructuring, the THA accepted a negative purchase price of DM 180 million, which will be paid to Riva and immediately injected into the equity of the new private limited company, and a capital injection of DM 120 million. Riva would contribute DM 30 million to cover losses during the restructuring phase.

The plan envisages employment reductions of some 1 600 persons from 3 500 in 1993 to 1 900 in 1996, i.e. a reduction of 45,7 %. The total employment reduction since end of 1989 (11 510 workers) amounts to 9 610 workers, i.e. a reduction of 83,5 %.

In addition, Germany notified the Commission of the intention of the Riva group to close down of its hot-rolling facilities in the territory of the former GDR, a medium-section mill with a capacity of 320 kt/y belonging to HES Hennigsdorfer Elektrostahlwerke GmbH (Hennigsdorf/Brandenburg).

The Commission, in its assessment of the restructuring concept identified total aid of DM 813 million involved that is incompatible with the ECSC Treaty and Commission Decision No 3855/91/ECSC⁽¹⁾ (Steel Aid Code, hereinafter referred to as 'the SAC'). DM 300 million of aid may be deemed compatible with the orderly functioning of the common market under the third indent of Article 5 of the SAC, which allows investment aid under general regional aid schemes to be granted to steel under-

takings in the territory of the former GDR, provided the aid is accompanied by a reduction in the overall capacity in that territory. This aid will be dealt with separately.

III

The restructuring concept drafted by the purchaser and the THA is designed to achieve viability of EKO Stahl by the end of 1997. In addition, the present plan is based on the willingness of a private investor, experienced in the steel sector, to risk a considerable amount of private capital. An independent consultant, charged by the Commission in cooperation with Germany to evaluate the prospects of EKO Stahl, has clearly stated, that the company could reach long-term viability only by the creation of hot-rolling capacities. The investor, chosen after an open and unconditional bidding procedure, has demonstrated his willingness to assume the risk for the company's future viability without further aid than that covered by the restructuring concept.

IV

The extremely difficult Community steel market situation has endangered the sector in several Member States, including Germany. The aim providing EKO Stahl with a sound and economically viable structure contributes towards the achievement of the objectives of the ECSC Treaty, in particular Articles 2 and 3. The Commission considers that the public financial assistance measures proposed by Germany are necessary to achieve these aims. The Commission therefore finds itself faced with a situation not specifically provided for in the Treaty. In these exceptional circumstances recourse must be had to the first paragraph of Article 95 of the Treaty, so as to enable the Community to pursue the objectives set out in the initial Articles thereof.

At the same time, however, it is essential to ensure that the aid approved is limited to what is absolutely necessary and that it does not adversely affect trading conditions within the Community to an extent contrary to the common interest, particularly given the current difficulties on the Community steel market. It is therefore important that there should be adequate counterpart measures, commensurate with the amount of aid being exceptionally approved, so that a major contribution is made to the structural adjustment required in the sector.

⁽¹⁾ OJ No L 362, 31. 12. 1991, p. 57.

V

The proposed restructuring plan provides for the creation of a new hot-wide-strip mill with a capacity of 900 kt/y while no reduction of hot-rolled finished products at EKO Stahl itself is possible. The new hot-rolling facilities are considered to be necessary for the long-term viability of the company because the existing gap in the production flow causes an uneconomic competitive disadvantage.

However, it should be taken into account that the conditions applied during the steel restructuring round in the Community during the first half of the 1980s and in favour of the Spanish and Portuguese steel industry after the accession of those countries to the Community did allow for global territorial capacity reductions as counterpart for the aid proposed.

Considering both that, compared to the steel industry in both the Community of 10 and that of Spain and Portugal, the steel sector in the former GDR was, due to the structural shortcomings of the planned economy system at its entry into the Community, in a particularly uncompetitive situation and the first-time-character of the restructuring of the steel industry in the five new German *Länder*, it is equitable to allow for a similar accounting of global territorial capacity reduction in this case.

Including the increase in hot-rolling capacity of 900 kg/y in Eisenhüttenstadt as part of the proposed restructuring plan, the committed capacity reduction to be carried out in Hennigsdorf and taking into account the overall capacity reductions in the former GDR necessary to balance regional aid under Article 5 of the SAC for steel undertakings in the territory of the former GDR and aid in favour of Sächsische Edelstahlwerke GmbH, Freital/Sachsen, the remaining capacity reduction available to balance aid in favour of EKO Stahl on the basis of the aforementioned considerations amounts to 462 kt/y.

This net global capacity reduction in hot-rolled finished products constitutes a reasonable contributing to reduce the distortive effect of the aid involved. However, in order to ensure that the capacity creation would have the minimum possible impact on the depressed steel market in the Community, it is necessary to impose a number of conditions. The production of the new mill is to be built up to reach its capacity of 900 kt/y only after three years, starting in 1994. The capacity of the new mill shall be retained at 900 kt/y for a period of at least five years following the date of the last closure, or, if this will be later, the last payment of investment aid under the present plan. It shall be limited significantly below two m t/y for

a further five-year period. During the first five-year period the hot-rolled coils produced by the new mill shall be used exclusively for further processing in the company's cold-rolling facilities.

It is essential that the global closure offered by Germany is definitive and irreversible so that the capacity concerned no longer depresses the Community steel market. The closed installations must therefore be scrapped or sold for use outside Europe.

VI

It is not only necessary to ensure during the whole restructuring period that the aid approved enables the company to return to viability by the end of 1999, the aid must also be kept to the amount strictly necessary. In that context, it must also be ensured that the company does not as a result of the financial restructuring measures, obtain an unfair advantage over other companies in the sector by being provided at the outset with net financial charges below 3,5 % of annual turnover, which is the current average for Community steel companies. It is also appropriate to require that the company or its legal successor is not allowed to claim or be granted tax reduction or relief on past losses covered by aid. Furthermore, any additional loans must be on normal commercial conditions and no preferential treatment accorded to any fresh public debts incurred. Investment aid shall be granted only up to the real individual investments costs necessary to carry out the restructuring plan as it has been submitted to the Commission. If the investment costs are lower than initially estimated, the investment aid must be lowered accordingly.

VII

The implementation of this Decision requires strict monitoring by the Commission during the whole restructuring period and up until the end of 1998.

In order to carry out this monitoring effectively, the Commission will require the full and close collaboration of Germany, on whom clear and strict reporting obligations will be imposed.

In particular, the following elements will require close attention :

— compliance with the obligation to those hot-rolling capacity in Hennigsdorf,

- compliance with the obligations concerning the capacity limitations of the new hot-rolling facilities of EKO Stahl and the use of the products produced at these installations,
- progress towards viability,
- the granting of aid under the present restructuring plan and the source, terms and conditions of any further financing,
- the investments carried out,
- reductions in the workforce,
- production and the effects on the market,
- financial performance.

The Commission will submit six-monthly reports to the Council to keep it informed of developments.

It is also necessary to ensure that the aid is not used for the purpose of unfair competition practices. In addition the Commission may require on-the-spot checks made in accordance with Article 47 of the ECSC Treaty, in order to verify the information provided and in particular compliance with the conditions attached to the authorization of the aid. In that context, should a Member State make a complaint to the Commission that State aid is enabling the company to underprice, the Commission will initiate an investigation under Article 60 of the ECSC Treaty in particular.

Furthermore, should the Commission, on the basis of the information provided, find that the conditions laid down in its decision pursuant to Article 95 had not been met, it may require the suspension of payments of aid or the recovery of aid already paid. In the event of a Member State's failing to comply with such decision, Article 88 of the ECSC Treaty shall apply.

The Commission may decide that all reports should be on a quarterly basis. It may also decide to mandate an independent consultant, selected with the agreement of Germany, to assist it in its monitoring task.

The Commission will, by exercising all its powers, ensure that the aided company fulfils the conditions of this Decision, including the necessary progress towards viability and its other obligations resulting from the application of the ECSC Treaty. Should the monitoring reports indicate substantial deviations from the financial data on which the viability assessment has been made, the Commission may require appropriate measures to be taken to reinforce the restructuring measures.

VIII

A decision under Article 95 of the ECSC Treaty to authorize State aid is extraordinary in character given the provi-

sions of Article 4 (c). In view of all the above, the Commission can exceptionally authorize the aid proposed in this case subject to observance of the conditions and requirements it lays down. However, the aid involved, which is intended to restore the company to viability by the end of 1997, should be regarded as final. Should a return to viability not be achieved by that date, Germany shall not request any further derogation under Article 95 for the company,

HAS ADOPTED THIS DECISION :

Article 1

1. The following maximum amounts of aid which Germany plants to grant to EKO Stahl AG/GmbH may be regarded as compatible with the orderly functioning of the common market provided that the conditions and requirements of Articles 2 to 6 are met :

- compensation of losses accumulated since 1 July 1990 until the privatization of the company of DM 163 million,
- compensation of future losses during the restructuring phase until the end of 1996 of DM 300 million,
- investment aid of DM 350 million.

2. Germany shall ensure that the total aid granted under Article 95 of the ECSC Treaty and Decision No 3855/91/ECSC for the total EKO Stahl restructuring plan under no circumstances exceed an overall intensity of 70 % and that the investment aid is being closely allocated to the individual investment costs.

3. The new owner of EKO Stahl shall not receive any supplementary aid support (but social aid under Decision No 3855/91/ECSC in connection with the related closure of its production facilities at Hennigsdorf).

4. The aid has been calculated to enable the company to return to viability by the end of 1997. In the case that such viability is not attained by that date, Germany shall not request any further derogation under Article 95 of the ECSC Treaty for this company.

5. The aid shall not be used for the purpose of unfair competition practices.

6. Without prejudice to the aid measures referred to in this Article under the restructuring plan, any loans to the company must be on normal commercial terms ; and the beneficiary company must not receive debt holidays or friendly treatment of debts to the State.

Article 2

1. The new hot-wide-strip mill that is to be purchased by the new company shall be of a production capacity as close as possible to the maximum capacity of 900 000 t/y hot-wide-strip.

Germany shall demonstrate to the Commission, before the new mill is acquired, that the new company has fulfilled the aforementioned condition after due consideration is given to the availability on the market of such installations, second hand as well as new.

If the mill agreed by the Commission were to have a technological capacity exceeding 900 000 t/y, a technological bottleneck shall be imposed on the new hot-wide-strip mill to limit its capacity to 900 000 t/y.

2. The production at the new hot-wide-strip mill is to be built up to reach its capacity of 900 kt/y only after three years, starting in 1994.

The capacity limitation will be retained throughout a period of five years following the date of the last closure, or the last payment of aid to investment under the present plan, whichever is the later.

Upon the expiry of the aforementioned five-year period another five-year period will start to run, during which the production capacity for hot-wide strip at EKO Stahl shall be limited significantly below two million t/y.

During the first five-year period of capacity limitation Germany shall ensure that the hot-rolled steel capacity to be established at EKO Stahl will be utilized by the present and future owners exclusively for further processing in EKO Stahl's cold-rolling facilities.

3. Germany shall ensure that the aid approved under this Decision is not used to increase the present steel production capacity of EKO Stahl beyond the planned installation of a hot-wide-strip mill bottlenecked at 900 kt/y. There shall be no increase in capacity remaining under the aided restructuring plan, other than resulting from productivity improvements, for a period of five years starting from the date of the last closure, or the last payment of aid to investment under the present concept, whichever is the later.

Article 3

1. The following definitive closures of production capacity shall be carried out:

- the medium-section-strip mill No 450 of HES Hennigsdorfer Elektrostahlwerke GmbH, Hennigsdorf/Brandenburg, with a capacity of 320 kg/y shall be closed down by 30 June 1994 at the latest. The closure must be definitive and irreversible,
 - the definitive and irreversible reduction in hot-rolling capacity in the former German Democratic Republic between 1 July 1990 and 31 December 1996, including the capacity closure in Hennigsdorf, shall amount to 2 057 kt/y, including closures needed to balance derogations under Article 5 of Decision No 3855/91/ECSC and aid approved for Sächsische Edelmetallwerke GmbH, Freital/Sachsen under Article 95 of the ECSC Treaty, not taking into account the new capacity provided for under the restructuring plan for EKO Stahl.
2. The finality of the closures shall be ensured either by the demolition of the installations concerned or by their disposal by sale outside Europe.

Article 4

The approval of aid as outlined in Article 1 is in addition subject to the following conditions:

1. the level of net financial charges of the new EKO Stahl GmbH will be set at least at 3,5 % of annual turnover, at the date of its privatization;
2. the company or its legal successor will not claim or be granted tax reduction or relief on the basis of past losses accumulated until privatization and of future losses when these are being covered by State aid;
3. the beneficiary company shall carry out all the restructuring measures laid down in the restructuring plan as it has been submitted to the Commission, in accordance with the timetable contained therein.

Article 5

1. Germany shall cooperate fully with the following arrangements for monitoring this Decision:

- (a) Germany shall supply the Commission twice a year, and not later than 15 March and 15 September respectively, with reports containing full information in accordance with the enclosed Annex, on the beneficiary company and its restructuring. The first report should reach the Commission by 15 March 1994 and the last report by 15 September 1998, unless the Commission decides otherwise;

(b) the reports shall contain full information necessary for the Commission to monitor the restructuring process, the creation and use of capacity and show sufficient financial data to allow the Commission to assess whether its conditions and requirements are fulfilled. The reports shall at least contain full information in accordance with the Annex, which the Commission reserves the right to modify in line with its experiences during the monitoring process. It is up to Germany to oblige the beneficiary company to disclose all relevant data which may, under other circumstances, be considered as confidential.

2. The Commission shall, on the basis of the reports, draw up half-yearly reports which shall be submitted to the Council not later than 1 May and 1 November respectively, in order to allow discussion in the Council, if appropriate. If the beneficiary company envisages investments creating or extending capacity the Commission shall inform the Council on the basis of a report presenting the financing arrangements and demonstrating the absence of State aid.

Article 6

1. The Commission may at any time decide that the reports referred to in Article 5 (1) shall be on a quarterly basis if it deems such necessary to fulfil its monitoring tasks. The Commission may at any time decide to mandate an independent consultant, selected with the agreement of Germany, to evaluate the monitoring results, to undertake any research necessary and to report to the Council.

2. The Commission may have any necessary checks made in the aided company in accordance with Article 47 of the ECSC Treaty in order to verify the accuracy of the information given in the reports referred to in Article 5 (1) and in particular compliance with the conditions laid down in this Decision. In the case that a Member State makes a complaint that State aid is enabling the aided

company to under-price, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

3. In assessing the reports referred to in Article 5 (1), the Commission will ensure that the requirements of Article 1 (6), in particular, are being respected.

Article 7

1. Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may require the suspension of payments of aid or the recovery of aid already paid if, on the basis of the information received, at any time it were to find that the conditions laid down in this Decision had not been met. If Germany were to fail to fulfil its obligations under any such decision, Article 88 of the ECSC Treaty shall apply.

2. Moreover, if the Commission establishes, on the basis of the reports referred to in Article 5 (1), that substantial deviations from the financial data, on which the viability assessment has been made, have occurred, it may require Germany to take appropriate measures to reinforce the restructuring measures of the aided company.

Article 8

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 12 April 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

ANNEX**The Commission's information requirements****(a) Capacity reductions**

- date (or expected date) of cessation of production,
- date (or expected date) of dismantling⁽¹⁾ of the installation concerned,
- where installation is sold, date (or expected date) of sale, identity and country of purchaser,
- sale price ;

(b) investments

- details of investments realized,
- date of completion,
- the costs of the investment, the sources of finance and the sum of any related aid involved,
- the date of aid payment ;

(c) workforce reductions

- number and timing of job losses,
- the total costs,
- a breakdown of how the costs are being financed ;

(d) production and market effects

- monthly production of crude steel and finished products per category,
- products sold, including volumes, prices and markets ;

(e) financial performance

- evolution of selected key financial ratios to ensure progress is being made towards viability (the financial results and ratios must be provided in a way allowing comparisons with the company's financial restructuring plan),
- level of financial charges,
- details and timing of aids received and costs covered,
- terms and conditions of any new loans (irrespective of source) ;

(f) Privatization

- selling price and treatment of existing liabilities,
- disposal of proceeds of sale,
- date of sale,
- financial position of company at time of sale ;

(g) creation of a new company or new plants incorporating capacity extensions

- identity of each private and public sector participant,
- sources of their financing for the creation of the new company or new plants,
- terms and conditions of the private and the public shareholders' participation,
- management structure of a new company.

⁽¹⁾ As defined in Commission Decision No 3010/91/ECSC (OJ No L 286, 16. 10. 1991, p. 20).

COMMISSION DECISION

of 12 April 1994

concerning aid to be granted by Portugal to the steel company Siderurgia Nacional

(Only the Portuguese text is authentic)

(94/257/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular the first and second paragraphs of Article 95 thereof,

After consulting the Consultative Committee and with the unanimous assent of Council,

Whereas :

I

The Community steel industry is currently experiencing its most difficult period since the first half of the 1980s. This is due to the general slowdown in the economy, which has had significant effects on industrial activities in general, and on the steel industry in particular, leading to a serious imbalance between supply and demand, accompanied by a collapse in prices. In addition, the international market generally has been weak : there is pressure from imports and there has been a trade dispute with the United States of America affecting substantial Community exports to that market. All these factors have combined to aggravate the financial situation of almost all steel companies in the Community.

II

On 30 July 1993, Portugal notified the Commission of a plan to restructure its steel company Siderurgia Nacional, including the associated financing means, with a request for a decision pursuant to Article 95 of the ECSC Treaty.

The plan aims at restructuring the company in its economic, financial and organizational dimensions, with privatization as the ultimate target. A holding company is to be set up, which will comprise three independent companies, specialized in long products, flat products and services.

Siderurgia Nacional is the only steel company in Portugal with a significant industrial weight. The company has

three plants in two different locations : one in Maia for long products (only rebars) and two in Seixal, one for cold-rolled flat products (galvanized sheets, tinplate and cold-rolled sheets) and the other for long products (rebars, wire rod and sections). At present, the maximum capacity of the company is 275 000 tonnes per year in cold-rolled flat products and 880 000 tonnes per year in hot-rolled long products (360 000 tonnes per year in Maia and 520 000 tonnes per year in Seixal).

The core element of the restructuring plan consists of the replacement of the blast furnace of the Seixal plant for long products by an electric arc furnace DC-EAF 140t. This furnace would be able to produce about 900 000 tonnes per year of liquid steel, which if used to full capacity could almost double the final products. The Portuguese authorities have given undertakings that furnace capacity will not be fully used and that it will be operated only during certain periods to take advantage of lower electricity tariffs, keeping its liquid steel production limited to the mill's production capacity.

The plan also provides for the definite closure of the light and medium section mills in the Seixal plant for long products, by the end of 1995, thus reducing the capacity of the company in hot-rolled products by 140 000 tonnes per year down to 740 000 tonnes per year. After these closures, there will be only one mill per plant. No further reductions are possible without completely closing down one of the plants. In addition, some improvements in the remaining equipment are to be carried out in order to promote quality and a better market response.

The plan also provides for some commercial measures aimed at improving the distribution network. It also contains some environmental investments as well as social and financial measures to ensure the social balancing of necessary redundancies and the future viability of the company.

As regards employment, a reduction in the workforce by 1 798 employees is envisaged, namely from 3 208 at the end of 1992 to 1 410 in 1997, i.e. a reduction of 56,04 %.

The financing of the plan includes aid elements that the Commission considers to be incompatible with the ECSC Treaty and with the provisions of Commission Decision No 3855/91/ECSC ⁽¹⁾ (Steel Aid Code). This aid amounts to a maximum of Esc 60,12 billion, serving for debt write-offs and a necessary injection of fresh capital. The allocation of this amount to the eligible costs might however change in view of the planned privatization.

Additional social and environmental aid up to a maximum of Esc 11,07 billion as well as a required ECSC loan of Esc 18,3 billion will be assessed separately by the Commission.

III

The Commission has assessed the viability of the restructuring plan, applying the same criteria as those imposed by the Commission during the previous restructuring of the Community steel industry. The Commission is of the opinion that, provided the restructuring plan is implemented strictly, it has no reasons to challenge the conclusions of the external consultant's study submitted to it which establishes that the company should achieve viability, under normal market conditions, by the end of 1997.

IV

The extremely difficult Community steel market situation has endangered the sector in several Member States, including Portugal. The aim of providing the Portuguese public steel industry with a sound and economically viable structure contributes towards the achievement of the objectives of the ECSC Treaty, in particular Articles 2 and 3. The Commission considers that the public financial measures decided by Portugal are necessary to achieve these aims. The Commission therefore finds itself faced with a situation not specifically provided for in the Treaty. In these exceptional circumstances, recourse must be made to the first paragraph of Article 95 of the Treaty, so as to enable the Community to pursue the objectives set out in the initial Articles thereof.

At the same time, however, it is essential to ensure that the aid approved is limited to what is absolutely necessary and that it does not adversely affect trading conditions within the Community to an extent contrary to the common interest, particularly given the current difficulties on the Community steel market. It is therefore important that there should be adequate counterpart measures, commensurate with the amount of aid being exceptionally approved, so that a major contribution is made to the structural adjustment required in the sector.

In its assessment of the Portuguese plan and when deciding on the aid proposed under Article 95, in addition to the usual considerations, the Commission also took account of the special situation of Portugal and of the Council Declaration annexed to the conclusions of its industry meeting on 25 February 1993, where the Commission was invited to examine the problems specific to Member States where there is only one small company or where the measures taken produce special negative effects.

V

As regard the capacity reductions envisaged under the plan, it is necessary to require that all the closures are definitively irreversible so that the capacity concerned no longer depresses the Community steel market. The closed installations must therefore be scrapped or sold for use outside Europe. In addition, there should be no increase in remaining capacity for crude steel and hot-rolled finished products under the aided restructuring plan, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last capacity closure, or of the last payment of aid in respect of investments under the plan whichever is later in order to ensure a long-term and real effect on reducing the current imbalance between supply and demand on the Community steel market. It is also essential that the timetable for closures set out in the restructuring plan is complied with.

VI

It is not only necessary to ensure during the whole restructuring period that the aid approved enables the company to return to viability, the aid must also be kept to the amount strictly necessary. In that context, it must also be ensured that the company does not, as a result of the financial restructuring measures, obtain an unfair advantage over other companies in the sector by being provided at the outset with net financial charges below 3,5 % of annual turnover, which is the current average for Community steel companies. It is also appropriate to require that the company or its legal successor is not allowed to claim or be granted tax reduction or relief on past losses covered by aid under the restructuring plan. Furthermore, any additional loans must be on normal commercial conditions and no preferential treatment accorded to any fresh public debts incurred.

VII

The implementation of this Decision requires strict monitoring by the Commission during the whole restructuring period and up until the end of 1998.

⁽¹⁾ OJ No L 362, 31. 12. 1991, p. 57.

In order to carry out this monitoring effectively, the Commission will require the full and close collaboration of Portugal, on whom clear and strict reporting obligations will be imposed.

In particular, the following elements will require close attention :

- compliance with the obligation to close the light- and medium-section mills in Seixal,
- progress towards viability,
- the granting of aid under the present restructuring plan and the source, terms and conditions of any further financing over and above that provided for in the plan,
- the investments carried out,
- reductions in the workforce,
- production and the effects on the market,
- financial performance.

The Commission will submit six-monthly reports to the Council to keep it informed of developments.

It is also necessary to ensure that the aid is not used for the purpose of unfair competition practices. In addition the Commission may require on-the-spot checks made in accordance with the Article 47 of the ECSC Treaty, in order to verify the information provided and in particular compliance with the conditions attached to the authorization of the aid. In that context, should a Member State make a complaint to the Commission that State aid is enabling the company to under-price, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

Furthermore, should the Commission, on the basis of the information provided, find that the conditions laid down in its decisions pursuant to Article 95 had not been met in may require the suspension of payments of aid or the recovery of aid already paid. In the event of failure to comply with such decision, Article 88 of the ECSC Treaty shall apply.

The Commission may decide that all reports should be on a quarterly basis. It may also decide to mandate an independent consultant, selected with the agreement of Portugal, to assist it in its monitoring task.

The Commission will, by exercising all its powers, ensure that the aided company fulfils the conditions of this Decision, including the necessary progress towards viability and its other obligations resulting from the application to the ECSC Treaty. Should the monitoring reports indicate substantial deviations from the financial data on

which the viability assessment has been made, the Commission may require appropriate measures to be taken to reinforce the restructuring measures.

VIII

A decision pursuant to Article 95 of the ECSC Treaty to authorize State aid to extraordinary in character given the provisions of Article 4 (c). In view of all the above, the Commission can exceptionally authorize the aid proposed in this case, subject to observance of the conditions and requirements it lays down. However, the aid involved, which is intended to restore the company to viability by the end of 1997, should be regarded as final. Should a return to viability not be achieved by that date, Portugal shall not request any further derogation under Article 95 for the company.

HAS ADOPTED THIS DECISION :

Article 1

1. The maximum amount of Esc 60,12 billion aid, which Portugal plans to grant to Siderurgia Nacional, may be regarded as compatible with the orderly functioning of the common market provided that the conditions and requirements of Articles 2 to 5 are met. This amount, in an indicative breakdown in view of the intended privatization, is to cover the cost of the new capital injection (Esc 38 billion) and debt write-offs (Esc 22,12 billion).

2. The aid has been calculated to enable the company to return to viability by the end of 1997. In the case that such viability is not attained by that date, Portugal shall not request any further derogation pursuant to Article 95 of the ECSC Treaty for this company.

3. The aid shall not be used for the purpose of unfair competition practices.

4. Without prejudice to the aid measures referred to in this Article under the restructuring plan, any loans to the company must be on normal commercial terms ; and the beneficiary company must not receive debt holidays or friendly treatment of debts to the State.

Article 2

1. The light-section and medium-section mills in Seixal shall be definitively closed down. This represents a total capacity close-down of 140 000 tonnages per year, so that the maximum production capacity in long products will be limited to 740 000 tonnes per year (380 000 tonnes per year in Seixal and 360 000 tonnes per year in Maia).

2. The blast furnace of the Seixal plant for long products shall be closed down and replaced by an electric arc furnace DC-EAF 140t.

3. The capacity closures must be achieved in accordance with the timetable laid down in the restructuring plan, i.e. at the latest by the end of 1995.

4. The finality of the closures referred to in paragraphs 1 and 2 shall be ensured either by the demolition of the installations concerned or by their disposal by sale outside Europe.

5. The beneficiary company shall not increase its remaining capacity for crude steel and hot-rolled finished products under the restructuring plan, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last capacity closure under the plan or the date of the last payment of aid, in respect of investments under the plan, whichever is the later.

6. As long as the capacity limitation referred to in paragraph 5 exists, the liquid steel production of the company (including the new electric arc furnace referred to in paragraph 2) shall not exceed the requirements of the company's hot-rolling production capacity.

Article 3

The approval of aid as outlined in Article 1 is in addition subject to the following conditions:

- (a) the level of net financial charges of the new company at the outset will be set at least at 3,5 % of annual turnover;
- (b) the company or its legal successor will not claim or be granted tax reduction or relief on the basis of past losses which are covered by State aid;
- (c) the beneficiary company shall carry out all the restructuring measures laid down in the restructuring plan as it has been submitted to the Commission, in accordance with the timetable contained therein.

Article 4

1. Portugal shall cooperate fully with the following arrangements for monitoring this Decision:

- (a) Portugal shall supply the Commission twice a year, and not later than 15 March and 15 September respectively, with reports containing full information in accordance with the enclosed Annex, on the beneficiary company and its restructuring. The first report should reach the Commission by 15 March 1994 and

the last report by 15 September 1998, unless the Commission decides otherwise;

- (b) the reports shall contain full information necessary for the Commission to monitor the restructuring process, the creation and use of capacity and show sufficient financial data to allow the Commission to assess whether its conditions and requirements are fulfilled. The reports shall at least contain full information in accordance with the Annex, which the Commission reserves the right to modify in line with its experiences during the monitoring process. It is up to Portugal to oblige the beneficiary company to disclose all relevant data which may, under other circumstances, be considered as confidential.

2. The Commission shall, on the basis of the reports, draw up half-yearly reports which shall be submitted to the Council not later than 1 May and 1 November respectively, in order to allow discussion in the Council, if appropriate. If the beneficiary company envisages investments creating or extending capacity the Commission shall inform the Council on the basis of a report presenting the financing arrangements and demonstrating the absence of State aid.

Article 5

1. The Commission may at any time decide that the reports referred to in Article 4 (1) shall be on a quarterly basis if it deems such necessary to fulfil its monitoring tasks. The Commission may at any time decide to mandate an independent consultant, selected with the agreement of Portugal, to evaluate the monitoring results, to undertake any research necessary and to report to the Council.

2. The Commission may have any necessary checks made in the aided company in accordance with Article 47 of the ECSC Treaty in order to verify the accuracy of the information given in the reports referred to in Article 4 (1) and in particular compliance with the conditions laid down in this Decision. In the case that a Member State makes a complaint that State aid is enabling the aided company to under-price, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

3. In assessing the reports referred to in Article 4 (1), the Commission will ensure that the requirements of Article 1 (4), in particular, are being respected.

Article 6

1. Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may require the suspension of payments of aid or the recovery of aid already paid if, on the basis of the information received, at

any time it were to find that the conditions laid down in this Decision had not been met. If Portugal were to fail to fulfil its obligations under any such decision, Article 88 of the ECSC Treaty shall apply.

2. Moreover, if the Commission establishes, on the basis of the reports referred to in Article 4 (1), that substantial deviations from the financial data, on which the viability assessment has been made, have occurred, it may require Portugal to take appropriate measures to reinforce the restructuring measures of the aided company.

Article 7

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 12 April 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

ANNEX**The Commission's information requirements****(a) Capacity reductions**

- date (or expected date) of cessation of production,
- date (or expected date) of dismantling ⁽¹⁾ of the installation concerned,
- where installation is sold, date (or expected date) of sale, identity and country of purchaser,
- sale price ;

(b) investments

- details of investments realized,
- date of completion,
- the costs of the investment, the sources of finance and the sum of any related aid involved,
- the date of aid payment ;

(c) workforce reductions

- number and timing of job losses,
- the total costs,
- a breakdown of how the costs are being financed ;

(d) production and market effects

- monthly production of crude steel and finished products per category,
- products sold, including volumes, prices and markets ;

(e) financial performance

- evolution of selected key financial ratios to ensure progress is being made towards viability (the financial results and ratios must be provided in a way allowing comparisons with the company's financial restructuring plan),
- level of financial charges,
- details and timing of aids received and costs covered,
- terms and conditions of any new loans (irrespective of source) ;

(f) Privatization

- selling price and treatment of existing liabilities,
- disposal of proceeds of sale,
- date of sale,
- financial position of company at time of sale ;

(g) creation of a new company or new plants incorporating capacity extensions

- identity of each private and public sector participant,
- sources of their financing for the creation of the new company or new plants,
- terms and conditions of the private and the public shareholders' participation,
- management structure of a new company.

⁽¹⁾ As defined in Commission Decision No 3010/91/ECSC (OJ No L 286, 16. 10. 1991, p. 20).

COMMISSION DECISION

of 12 April 1994

concerning aid to be granted by Spain to the public integrated steel company
Corporación de la Siderurgia Integral

(Only the Spanish text is authentic)

(94/258/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular the first and second paragraphs of Article 95 thereof,

After consulting the Consultative Committee and with the unanimous assent of the Council,

Whereas :

I

The Community steel industry is currently experiencing its most difficult period since the first half of the 1980s. This is due to the general slowdown in the economy, which has had a significant effect on industrial activities in general, and on the steel industry in particular, leading to a serious imbalance between supply and demand, accompanied by a collapse in prices. In addition, the international market generally has been weak: there is pressure from imports and there has been a trade dispute with the USA affecting substantial Community exports to that market. All of these factors have combined to aggravate the financial situation of almost all steel companies in the Community.

II

In April 1992, Spain notified the Commission of a plan to restructure the Spanish public integrated steel company Corporación de la Siderurgia Integral (CSI) (incorporating Ensidesa and Altos Hornos de Vizcaya (AHV)) and the associated financing by which it intends to support this plan.

The restructuring plan submitted, as subsequently revised, envisages that AHV and Ensidesa would cease to operate and their activities would be taken over by a new company, to whom their assets and certain liabilities would be transferred; and includes a number of industrial, commercial, social and financial restructuring measures, which would be completed by the end of 1998.

The plan provides for the definitive closure by the end of 1995 of all AHV's steel-making facilities including the hot-strip mill at Ansio, which together with closures at

Ensidesa's plant will involve a total capacity reduction of 2,33 million tonnes (35 %) in pig iron, 1,423 million tonnes (20 %) in liquid steel and 2,3 million tonnes (50 %) in hot-rolled coil.

A new company with majority private sector participation is envisaged to take forward a proposed investment in a compact-strip production unit at Sestao (with a capacity of 1 million tonnes), partially to replace the Ansio hot-strip mill.

The plan envisages a reduction in the workforce of 10 347 persons from 24 489 in 1991 to 14 142 in 1998, i.e. a reduction of 42 %.

The financing of the plan, as revised, includes aid elements that are incompatible with the ECSC Treaty and with the provisions of Commission Decision No 3855/91/ECSC⁽¹⁾ (Steel Aid Code). According to the Commission's estimates this aid amounts to a maximum of Pta 437,8 billion, serving the following purposes :

- a capital injection of up to a maximum of Pta 276,7 billion in the new company by the former public shareholders of AHV and Ensidesa,
- social aid up to a maximum of Pta 54,519 billion,
- up to a maximum of Pta 35,5 billion in the form of capital conversion of an INI credit for that amount to Ensidesa,
- up to a maximum of Pta 9,4 billion to cover contingencies,
- up to a maximum of Pta 61,654 billion in the form of loss compensation to cover additional operating losses and financial charges in 1992 and 1993 over and above those originally forecast in the plan, and reduced turnover arising from bringing forward the Ansio closure.

Additional social aid up to a maximum of Pta 47,35 billion, is being authorized separately by the Commission as compatible with Article 4 (1) of Decision No 3855/91/ECSC.

⁽¹⁾ OJ No L 362, 31. 12. 1991, p. 57.

III

The Commission, assisted by external experts, has assessed the viability of the restructuring plan, applying the same criteria as those imposed by the Commission during the previous restructuring of the Community steel industry. The viability of the plan without the Sestao investment has also been assessed. On the basis of the consultants' findings, the Commission has concluded that, provided the restructuring plan as revised is implemented strictly, the new company should achieve viability, under normal market conditions, by the end of 1996.

IV

The extremely difficult Community steel market situation has endangered the sector in several Member States, including Spain. The aim of providing the Spanish public integrated steel industry with a sound and economically viable structure contributes towards the achievement of the objectives of the ECSC Treaty, in particular Articles 2 and 3. The Commission considers that the public financial assistance measures proposed by Spain are necessary to achieve these aims. The Commission therefore finds itself faced with a situation not specifically provided for in the Treaty. In these exceptional circumstances recourse must be made to the first paragraph of Article 95 of the Treaty, so as to enable the Community to pursue the objectives set out in the initial Articles thereof.

At the same time, however, it is essential to ensure that the aid approved is limited to what is absolutely necessary and that it does not adversely affect trading conditions within the Community to an extent contrary to the common interest, particularly given the current difficulties on the Community steel market. It is therefore important that there should be adequate counterpart measures, commensurate with the amount of aid being exceptionally approved, so that a major contribution is made to the structural adjustment required in the sector.

V

The proposed creation of new hot-rolling capacity at Sestao (partially to replace the hot-strip mill at Ansio) is regarded as delinked from the aided restructuring plan through the creation of a new company, with majority private sector participation, to take forward the project. However, it must be ensured that the majority private sector participation is genuine and unconditional, unsupported by State aid. The authorization of aid in this case will therefore be contingent on the Commission obtaining the necessary verifications in due course.

As regards the capacity reductions envisaged under the plan, as revised, it is necessary to require that all the closures are definitive and irreversible so that the capacity concerned no longer depresses the Community steel market. The closed installations must therefore be scrapped or sold for use outside Europe. In addition, there should be no increase in remaining capacity for crude steel and hot-rolled finished products under the aided restructuring plan, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last capacity closure, or of the last payment of aid in respect of investments under the plan, whichever is the later, in order to ensure a long-term and real effect on reducing the current imbalance between supply and demand on the Community steel market. It is also essential that the timetable for closures is complied with. In particular the closure of the hot-strip mill at Ansio must be achieved at the very latest by 31 December 1995, although Spain should use its best endeavours to bring forward the closure even sooner if possible.

VI

It is not only necessary to ensure during the whole restructuring period that the aid approved enables the company to return to viability by the end of 1996, the aid must also be kept to the amount strictly necessary. In that context, it must also be ensured that the company does not, as a result of the financial restructuring measures, obtain an unfair advantage over other companies in the sector by being provided at the outset with net financial charges below 3,5 % of annual turnover, which is the current average for Community steel companies. It is also appropriate to require that the company or its legal successor is not allowed to claim or be granted tax reduction or relief on past losses covered by aid under the restructuring and that all proceeds from the sale of shares in the new company to the former public shareholders of AHV and Ensidesa are used to repay the remaining debts of the dormant companies as provided for in the restructuring plan. Furthermore any additional loans must be on normal commercial conditions and no preferential treatment accorded to any fresh public debts incurred.

VII

The implementation of this Decision requires strict monitoring by the Commission during the whole restructuring period and up until the end of 1998.

In order to carry out this monitoring effectively, the Commission will require the full and close collaboration of Spain, on whom clear and strict reporting obligations will be imposed.

In particular the following elements will require close attention :

- the reduction of capacity,
- the investments carried out,
- reductions in the workforce,
- compliance with the timetable for closures,
- production and the effects on the market,
- financial performance,
- privatization,
- the creation of new enterprises,
- the genuine character of the majority private sector participation and the absence of State aid to finance the Sestao project,
- the source, terms and conditions of any further financing (including treatment of further debts, credit facilities, etc). over and above that provided for in the plan,
- progress towards viability.

The Commission will submit six-monthly reports to the Council to keep it informed of developments.

It is also necessary to ensure that the aid is not used for the purpose of unfair competition practices. In addition the Commission may require on-the-spot checks made in accordance with the Article 47 of the ECSC Treaty, in order to verify the information provided and in particular compliance with the conditions attached to the authorization of the aid. In that context, should a Member State make a complaint to the Commission that State aid is enabling the company to under-price, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

Furthermore, should the Commission, on the basis of the information provided, find that the conditions laid down in its decisions pursuant to Article 95 had not been met, it may require the suspension of payments of aid or the recovery of aid already paid. In the event of a Member State's failing to comply with such decision, Article 88 of the ECSC Treaty shall apply.

The Commission may decide that all reports should be on a quarterly basis. It may also decide to mandate an independent consultant, selected with the agreement of Spain, to assist it in its monitoring task.

The Commission will, by exercising all its powers, ensure that the aided company fulfils the conditions of this Decision, including the necessary progress towards viability and its other obligations resulting from the financial data on which the viability assessment has been made, the Commission may require appropriate measures to be taken to reinforce the restructuring measures.

VIII

A decision pursuant to Article 95 of the ECSC Treaty to authorize State aid is extraordinary in character given the provisions of Article 4 (c). In view of all the above, the Commission can exceptionally authorize the aid proposed in this case subject to observance of the conditions and requirements it lays down. However, the aid involved, which is intended to restore the company to viability by the end of 1996, should be regarded as final. Should a return to viability not be achieved by that date, Spain shall not request any further derogation under Article 95 for the company,

HAS ADOPTED THIS DECISION :

Article 1

1. The following maximum amounts of aid which Spain plants to grant directly or indirectly to the public integrated steel company Corporación de la Siderurgia Integral, incorporating Ensidesa and Altos Hornos de Vizcaya (AHV), may be regarded as compatible with the orderly functioning of the common market provided that the conditions and requirements of Articles 2 to 5 are met.

- a capital injection of up to a maximum of Pta 276,7 billion in the new company by the former public shareholders of AHV and Ensidesa,
- social aid up to a maximum of Pta 54,519 billion,
- a capital conversion of an INI credit to Ensidesa of up to a maximum of Pta 35,5 billion,
- contingencies up to a maximum of Pta 9,4 billion,
- loss compensation of up to a maximum of Pta 61,654 billion to cover additional operating losses and financial charges in 1992 and 1993 over and above those originally forecast in the plan, and reduced turnover arising from bringing forward the Ansio closure.

2. The aid has been calculated to enable the company to return to viability by the end of 1996. In the case that such viability is not attained by that date, Spain shall not request any further derogation pursuant to Article 95 of the ECSC Treaty for this company.

3. The aid shall not be used for the purpose of unfair competition practices.

4. Without prejudice to the aid measures referred to in this Article under the restructuring plan, any loans to the company must be on normal commercial terms; and the beneficiary company must not receive debt holidays or friendly treatment of debts to the State.

Article 2

1. The following definitive closures of production capacity shall be carried out:

(thousand tonnes)

	Pig iron	Crude steel	Hot-rolled coil
Aviles	2 400		
Gijon		950	
Vizcaya	1 980	1 200	
Ansio			2 300
Total	2 300 ⁽¹⁾	1 423 ⁽²⁾	2 300

⁽¹⁾ Total net reduction after taking into account increase in capacity at Gijon from 2 220 000 tonnes to 4 270 000 tonnes.

⁽²⁾ Total net reductions after taking account increase in capacity at Aviles from 2 573 000 tonnes to 3 300 000 tonnes.

2. All the capacity closures must be achieved in accordance with the timetable laid down in the restructuring plan at the latest, with the exception of the closure of the hot-strip mill at Ansio which must be achieved by 31 December 1995 at the very latest, although Spain should use its best efforts to bring this closure date forward if at all possible.

3. The finality of the closures referred to in paragraph 1 shall be ensured either by the demolition of the installations concerned or by their disposal by sale outside Europe.

4. The beneficiary company shall not increase its remaining capacity for crude steel and hot-rolled finished products under the restructuring plan, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last capacity closure under the plan or the date of the last payment of aid in respect of investments under the plan, whichever is the later.

Article 3

The approval of aid as outlined in Article 1 is in addition subject to the following conditions:

- (a) the proceeds from the sale of shares in the new company to the public shareholders of Ensidesa and AHN are used to repay the remaining debts of the dormant companies,
- (b) the level of net financial charges of the new company at the outset will be set at least at 3,5 % of annual turnover,
- (c) the majority private sector participation in the Sestao project, which is to be delinked from the aided restructuring plan, is undisputably demonstrated to the Commission to be genuine and unconditional in nature, unsupported by State aid,
- (d) the company or its legal successor will not claim or be granted tax reduction or relief on the basis of past losses which are covered by aid under the terms of this Decision,
- (e) the beneficiary company shall carry out all the restructuring measures laid down in the restructuring plan, as revised, in accordance with the timetable contained therein.

Article 4

1. Spain shall cooperate fully with the following arrangements for monitoring this Decision:

- (a) Spain shall supply the Commission twice a year, and not later than 15 March and 15 September respectively, with reports containing full information in accordance with the enclosed Annex, on the beneficiary company and its restructuring. The first report should reach the Commission by 15 March 1994 and the last report by 15 September 1998, unless the Commission decides otherwise;
- (b) the reports shall contain full information for the Commission to monitor the restructuring process, the creation and use of capacity and show sufficient financial data to allow the Commission to assess whether its conditions and requirements are fulfilled. The reports shall at least contain full information in accordance with the Annex, which the Commission reserves the right to modify in line with its experiences during the monitoring process. It is up to Spain to oblige the beneficiary company to disclose all relevant data which may, under other circumstances, be considered as confidential.

2. The Commission shall, on the basis of the reports, draw up half-yearly reports which shall be submitted to the Council not later than 1 May and 1 November respectively, in order to allow discussion in the Council, if

appropriate. If the beneficiary company envisages investments creating or extending capacity the Commission shall inform the Council on the basis of a report presenting the financing arrangements and demonstrating the absence of State aid.

Article 5

1. The Commission may at any time decide that the reports referred to in Article 4 (1) shall be on a quarterly basis if it deems such necessary to fulfil its monitoring tasks. The Commission may at any time decide to mandate an independent consultant, selected with the agreement of Spain, to evaluate the monitoring results, to undertake any research necessary and to report to the Council.

2. The Commission may have any necessary checks made in the aided companies in accordance with Article 47 of the ECSC Treaty, in order to verify the accuracy of the information given in the reports to in Article 4 (1) and in particular compliance with the conditions laid down in its Decision. In the case that a Member State makes a complaint that State aid is enabling the aided company to under-price, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

3. In assessing the reports referred to in Article 4 (1), the Commission will ensure that the requirements of Article 1 (4), in particular, are being respected.

Article 6

1. Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may require

the suspension of payments of aid or the recovery of aid already paid if, on the basis of the information received, at any time it were to find that the conditions laid down in this Decision had not been met. If Spain were to fail to fulfil its obligations under any such decision, Article 88 of the ECSC Treaty shall apply.

2. Moreover, if the Commission establishes, on the basis of the reports referred to in Article 4 (1), that substantial deviations from the financial data, on which the viability assessment has been made, have occurred, it may require Spain to take appropriate measures to reinforce the restructuring measures of the aided company.

Article 7

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 12 April 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

ANNEX**The Commission's information requirements****(a) Capacity reductions**

- date (or expected date) of cessation of production,
- date (or expected date) of dismantling ⁽¹⁾ of the installation concerned,
- where installation is sold, date (or expected date) of sale, identity and country of purchaser,
- sale price ;

(b) investments

- details of investments realized,
- date of completion,
- the costs of the investment, the sources of finance and the sum of any related aid involved,
- the date of aid payment ;

(c) workforce reductions

- number and timing of job losses,
- the total costs,
- a breakdown of how the costs are being financed ;

(d) production and market effects

- monthly production of crude steel and finished products per category,
- products sold, including volumes, prices and markets ;

(e) financial performance

- evolution of selected key financial ratios to ensure progress is being made towards viability (the financial results and ratios must be provided in a way allowing comparisons with the company's financial restructuring plan),
- level of financial charges,
- details and timing of aids received and costs covered,
- terms and conditions of any new loans (irrespective of source) ;

(f) Privatization

- selling price and treatment of existing liabilities,
- disposal of proceeds of sale,
- date of sale,
- financial position of company at time of sale ;

(g) creation of a new company or new plants incorporating capacity extensions

- identity of each private and public sector participant,
- sources of their financing for the creation of the new company or new plants,
- terms and conditions of the private and the public shareholders' participation,
- management structure of a new company.

⁽¹⁾ As defined in Commission Decision No 3010/91/ECSC (OJ No L 286, 16. 10. 1991, p. 20).

COMMISSION DECISION

of 12 April 1994

concerning aid to be granted by Italy to the public steel sector (Ilva group)

(Only the Italian text is authentic)

(94/259/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular the first and second paragraphs of Article 95 thereof,

After consulting the Consultative Committee and with the unanimous assent of the Council,

Whereas :

I

The Community steel industry is currently experiencing its most difficult period since the first half of the 1980s. This is due to the general slowdown in the economy, which has had a significant effect on industrial activities in general, and on the steel industry in particular, leading to a serious imbalance between supply and demand, accompanied by a collapse in prices. In addition, the international market generally has been weak : there is pressure from imports and there has been a trade dispute with the United States of America affecting substantial Community exports to that market. All of these factors have combined to aggravate the financial situation of almost all steel companies in the Community.

II

Under Commission Decisions 89/218/ECSC⁽¹⁾, 90/89/ECSC⁽²⁾ and 92/17/ECSC⁽³⁾ concerning aid that the Italian Government proposed to grant to the public steel sector, the Commission authorized considerable State aid for Ilva, the Italian public steel sector undertaking, during the period 1998 to 1991, so as to help it carry out a restructuring programme providing, in particular, for the closure of 2 700 000 tonnes per year of liquid steel production capacity, 1 180 tonnes per year of hot-rolling capacity and 780 000 tonnes per year of cold-rolling capacity and 385 000 tonnes per year of liquid steel production capacity and 510 000 tonnes per year of hot-

rolling capacity, plus the shedding of 27 196 jobs, equivalent to 38,7 % of the workforce in 1988, all of which was supposed, under normal market conditions and on the basis of strict implementation and rigorous management control, to ensure the viability of the undertaking.

Despite the major restructuring effort, the objective of restoring viability was not achieved over subsequent years by Ilva, which, since 1991, has continued to build up deficits and has experienced difficulties in maintaining its position on the market.

By the end of 1992 the total debts of the Ilva group, including both its ECSC and EEC activities, had reached Lit 7 600 billion, i.e. a debt/equity ratio of 8,24. It may be estimated that, for the financial year 1993, indebtedness will amount to some Lit 10 067 billion, thus exceeding turnover.

The injection by the Istituto nazionale per la ricostruzione industriale (IRI) of Lit 650 billion into the capital of Ilva prompted the Commission, on 8 July 1992, to initiate proceedings pursuant to Article 6 (4) of Commission Decision No 3855/91/ECSC⁽⁴⁾ in respect of the aid contained in that financial transfer, since it could not be deemed to be a genuine provision of risk capital according to usual investment practice in a market economy.

Subsequently, first the continued granting of loans mainly through the unlimited liability of the single shareholder established in Article 2362 of the Italian Civil Code to a group of public sector undertakings such as the Ilva group, whose financial structure is highly imbalanced and which has been showing heavy losses since 1991, and, secondly, the proposed assumption by IRI of the bulk of the Ilva group's indebtedness, prompted the Commission, on 7 July 1993, to extend the proceedings previously initiated to include the aid elements contained in the two aid measures.

In first initiating and then extending proceedings under the abovementioned Article 6 (4), the Commission took

⁽¹⁾ OJ No L 86, 31. 3. 1989, p. 76.

⁽²⁾ OJ No L 61, 10. 3. 1990, p. 19.

⁽³⁾ OJ No L 9, 15. 1. 1992, p. 16.

⁽⁴⁾ OJ No L 362, 31. 12. 1991, p. 57.

the view that all the aid measures referred to above contained elements of illegal State aid that were incompatible with the ECSC Treaty and with the provisions of Decision No 3855/91/ECSC.

By letter dated 13 December 1993, Italy informed the Commission of the new programme for the reorganization and privatization of the Ilva group, endorsed by IRI in September 1993, and also informed it of its commitments concerning the privatization of the group by the end of 1994 and the sale of 100 % of the capital of the companies concerned.

The basic objective of the abovementioned programme is to privatize the steel group by the end of 1994 through the direct sale on the market, in the near future, of Ilva's and IRI's holdings. The programme also provides for the complete closure of the Bagnoli steelplant, a 1,2 million tonnes per year reduction in the capacity for hot-rolled finished products at Taranto by 30 June 1994 and the imposition on the acquirer of the Taranto plant of the requirement that, within a period of six months of the date of the contract of sale, a capacity of 0,5 million tonnes per year of hot-rolled production capacity will be shut down.

The reorganization of the Ilva group will be carried out notably by the splitting of its core business into two new companies, ILP (Ilva Laminati Piani Srl) and AST (Acciai Speciali Terni Srl), whose return on capital employed and return on equity should allow their immediate privatization.

ILP's activities will cover ordinary steel flat products at the Taranto, Novi Ligure, Torino Laf, Genova Cornigliano and Marghera plants.

AST's activities will cover special-steel and stainless-steel flat products at the Terni and Turin plants.

The rest of the group, to be known as Ilva Residua, will be liquidated and will transfer to private operators all the companies and groups that can be sold, such as, for example, Dalmine (tubes), Ise (electricity generation), Cogne (special-steel long products) and Sidermar (sea transport), TDI and ICMI.

In addition, Ilva Residua will take over temporarily all the workforce to be made redundant or retired early. The total number of jobs to be shed is 11 500, equivalent to 28 % of the Ilva group's workforce at 31 December 1992.

In addition to the provision of Lit 650 billion by IRI, the Ilva group will receive other public assistance intended to

finance the abovementioned programme. First, IRI will take over residual indebtedness amounting to Lit 2 943 billion. On completion of the programme, the Ilva group's indebtedness of Lit 10 067 billion will have decreased by only Lit 7 124 billion, i.e. Lit 4 166 billion through the income received from the sale of assets and Lit 2 958 billion through the debts transferred to the companies being sold off.

Secondly, IRI will have to cover expenditure amounting to Lit 1 197 billion involved in continuing Ilva Residua's activities until its liquidation. This means that the total public assistance would amount to Lit 4 790 billion.

III

Applying the same criteria as those imposed by the Commission during the previous restructuring of the Community steel and industry, the Commission has accessed the abovementioned programme in terms of its capacity to ensure the viability of the undertakings. With the assistance of outside experts, it has identified the hot-rolling mills that can be closed without jeopardizing the viability of the newly-created companies. It has specifically identified six options, amongst the options examined, that would not jeopardize viability.

It has concluded, provided the privatization and reorganization programme is implemented strictly, the Ilva group and, more precisely, the new companies ILP and AST would have reasonable chances of being viable by the end of 1994, under normal market conditions.

IV

The sharp deterioration in the Community steel market since mid 1990 has created serious difficulties in the steel industry in several Member States, including Italy. The aim of providing the Italian steel industry with a sound and economically viable structure contributes to achieving the objectives laid down in the ECSC Treaty, and in particular those set out in Articles 2 and 3. The Commission considers that, in terms of compliance with the specific conditions dictated by the Community's common interest a interest and set out in this Decision, the public assistance to be granted by Italy is necessary and proportionate to achieving these aims.

The Community therefore finds itself faced with a situation not specifically provided for in the ECSC Treaty and one in which it is necessary for it to act. Use should accordingly be made of the first paragraph of Article 95 of the ECSC Treaty so as to enable the Community to pursue the objectives set out in the initial Articles thereof.

V

So as to limit the impact on competition to the minimum, it is important that the Italian public steel sector should make a crucial contribution to the structural adjustment still necessary in that sector, through capacity reductions carried out in return for the aid exceptionally approved.

In this respect, the Italian programme provides for the reductions and closures specified above. With regard to the plant at Taranto, the capacity reductions amounting to 1,2 million tonnes per year will be irreversible, involving the demolition of the two reheating furnaces at the hot-wide-strip mill No 1 and the plate-rolling mill respectively.

The closure of the Bagnoli plant will entail either its scrapping or its dismantling and sale outside Europe.

As far as the condition imposed on the acquirer of ILP is concerned, the reduction in capacity of 0,5 million tonnes per year could involve the demolition of a reheating furnace at rolling mill No 2 at Taranto or the demolition of another Italian plant situated elsewhere provided that such a plant has been manufacturing hot-rolled finished products up to the date of privatizing and belongs to the new owner of ILP. The capacity reduction will take place within a period of six months as from the date of the contract of sale.

So as to contribute effectively to the reduction in existing over-capacity in the Community steel sector, it is important that, apart from capacity increases due to productivity gains, the abovementioned reductions and closure should not be offset by any investment liable to increase the remaining production capacity for crude steel and hot-rolled finished products of the undertakings covered by the programme; this should apply for a period of five years as from the date of the last capacity closure or of the last payment of aid in respect of investments under the programme, whichever is the later.

VI

The granting of operating aid must be limited to what is strictly necessary.

Consequently, if the income obtained from the sales is greater than the amounts anticipated, the excess will be used to reduce the indebtedness borne by IRI and thus to reduce the amount of aid. On the other hand, if the income obtained is less than the amounts anticipated, the resulting increase in the amount of aid required could be

deemed to be covered by the abovementioned counter-concessions, in particular by the closure of the Bagnoli plant, provided that such aid does not exceed the ceiling of Lit 750 billion. It should be noted that Italy's strict compliance with its pledges that it will sell 100 % of the capital of the companies covered by the privatization and will carry out such privatization by the end of 1994 will contribute not only to the success of the privatization and reorganization programme through its implementation under the conditions and within the timetable provided for, but will also help to ensure that the amount of aid remains below the abovementioned ceiling.

So as to ensure that the new companies do not receive any further public assistance in the form of a carry-over of tax credit on to future profits, ILP and AST should not be able to claim any tax credits in respect of the losses recorded in the past by the Ilva group, since such losses are to be absorbed through the State aid.

It should also be ensured that the rules of fair competition are complied with as regards the conditions governing privatization. It is therefore necessary that the acquisitions of the undertakings or the acquisitions of majority shareholdings by private investors should not be financed by State aid. In addition, they should be open to all interested parties and should not be subject to discriminatory conditions.

Not only is it necessary to ensure that, throughout the period covered by the privatization and reorganization programme, the aid approved provides sufficient prospects of viability for ILP and AST by the end of the privatization period (end of 1994), but it must also be ensured that these steel undertakings do not, following the financial restructuring of the public steel sector, obtain an unfair advantage over competitors through a reduction in net financial charges to a level below 3,5 % and 3,2 % of turnover respectively, this being the level of the Community average in the ordinary-steel flat-products subsector and in the stainless-steel products subsector respectively. The indebtedness of the Ilva group transferred to the abovementioned undertakings must be set at a sufficiently high level to ensure that the resulting net financing costs are in line with the Community averages referred to above.

Furthermore, the Commission should ensure in particular that, without prejudice to the financing of the privatization and reorganization programme, any financing stemming from loans to the undertakings is granted on normal commercial terms. It must also ensure that there is no remission of debts or any preferential treatment of debts to the State.

Lastly, it should be ensured that the aid approved is not used for purposes of unfair competition and does not affect the conditions of trade in the Community steel industry to an extent that is incompatible with the common interest.

VII

The implementation of this Decision requires strict monitoring by the Commission of the application of the programme until its completion.

For this purpose, Italy should cooperate fully and provide the Commission twice-yearly with detailed reports on:

- the reduction of capacity,
- the investments carried out,
- the reductions in the workforce,
- the effects on the market and production,
- financial performance,
- privatization,
- the creation of the new enterprises.

The first report should reach the Commission by 15 March 1994, and the following reports every six months. The last report should reach the Commission by 15 September 1998.

In order to enable the Member States to monitor the implementation of the programme and the payment of the relevant aid, the Commission will draw up six-monthly reports, on the basis of the reports submitted by Italy, which will be submitted to the Council not later than 1 May and 1 November respectively, in order to allow discussion in the Council, if appropriate. In particular, if an undertaking which has received aid pursuant to Article 95 of the ECSC Treaty intends to participate in an investment creating or extending capacity, the Commission will inform the Council on the basis of a report setting out the financing arrangements and showing that there is no State aid involved.

In addition to the monitoring system established by the reports provided by Italy, the Commission may have any necessary checks made of the recipient undertakings in accordance with Article 47 of the ECSC Treaty, in order to verify the information provided and in particular compliance with the conditions provided for in its decisions.

In that context, should a Member State make a complaint to the Commission that State aid is enabling one of the recipient companies to under-price, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

Furthermore, should the Commission, on the basis of the information provided, find that the conditions laid down in its decisions pursuant to Article 95 have not been met, it may require the suspension of payments of aid and/or the recovery of aid already paid. In the event of Italy's failing to fulfil the obligations imposed on it by any such decision, Article 88 of the ECSC Treaty would have to be applied.

In addition, if, on the basis of the reports from Member States, the Commission finds substantial deviations from the financial data on which the viability assessment was based, it may request that the abovementioned reports be submitted every three months, and it could require Italy to take appropriate measures to reinforce the restructuring of the undertaking receiving the aid.

The Commission may, in respect of each individual case, decide to carry out its monitoring on a quarterly basis. It may also decide to mandate an independent consultant, selected with the agreement of Italy, to evaluate the monitoring results and report on them to the Member States.

VIII

In view of all the above, the Commission may, pursuant to Article 95 of the ECSC Treaty, authorize the abovementioned aid, subject to observance of the conditions and requirements it lays down. However, the aid which, under this Decision, is deemed to be compatible with the proper functioning of the common market has been calculated in such a way as to allow the undertakings concerned to become viable by the end of 1994. Accordingly, should a return to viability not be achieved by that date, Italy will not request any further derogation pursuant to Article 95 for such undertakings.

The Commission will at the same time terminate the proceedings initiated pursuant to Article 6 (4) of Decision No 3855/91/ECSC to the extent that it relates to the authorized aid,

HAS ADOPTED THIS DECISION:

Article 1

1. The following maximum amounts of aid which Italy plans to grant directly or through its public holding IRI to the Ilva steel group, and in particular to Ilva Residua, may be regarded as compatible with the orderly functioning of the common market provided that the conditions and requirements set out in paragraphs 2 to 5 and in Articles 2 to 6 are met:

- (a) a capital injection of Lit 650 billion by IRI into the group;

(b) coverage by IRI of the remaining indebtedness up to a maximum of Lit 2 974 billion. However, if the revenue received from the sale of the undertakings concerned is less than the amounts anticipated, an increase in the residual indebtedness covered by IRI may be accepted provided that it does not exceed the ceiling of Lit 750 billion.

Conversely, if the revenue obtained from such sales exceeds the amounts anticipated, the extra amounts will be used to reduce the indebtedness covered by IRI and thus to reduce the amount of aid;

(c) coverage by IRI of restructuring and liquidation expenditure, up to a maximum of Lit 1 197 billion.

2. The aid has been calculated to enable the undertakings to return to viability by the end of 1994. In the case that such viability is not attained by that date, Italy shall not request any further derogation pursuant to Article 95 of the ECSC Treaty for such undertakings.

3. In addition, such aid shall not be used for the purpose of unfair competition practices.

4. Italy shall comply strictly with its firm pledges to sell 100 % of the capital of the companies being privatized and to carry out such privatization by the end of 1994.

5. Without prejudice to the financing of the privatization and reorganization programme approved by the Commission and described in this Decision, any financing deriving from loans to the undertaking being monitored shall be granted on normal commercial terms. The undertakings in the Ilva group shall not receive debt holidays or friendly treatment of debts to the State.

Article 2

Italy shall ensure that the Ilva group :

1. closes completely and definitively the hot-rolling mill at Bagnoli ;
2. reduces irreversibly by 1,2 million tonnes per year the capacity for producing hot-rolled finished products at Taranto, through the demolition of a reheating furnace at the hot-rolled wide strip mill No 1 and at the heavy plate mill respectively ;
3. reduces capacity by 0,5 million tonnes per year either through the demolition of a reheating furnace at mill No 2 at Taranto or through the demolition of other Italian plant situated elsewhere provided that such plant has manufactured hot-rolled finished products

up to the date of privatization and belongs to the new owner of ILP. It shall take place within a period of six months as from the date of the contract of sale ;

4. closes the Bagnoli plant by either scrapping it or dismantling it and selling it outside Europe ;
5. does not, apart from capacity increases due to productivity gains, increase the remaining production capacity for crude steel and hot-rolled finished products of the undertakings covered by the programme, for a period of five years starting from the date of the last closure or the date of the last payment of aid in respect of investments under the programme, whichever is the later.

Article 3

1. The acquisition of the undertakings by private investors shall not be financed by State aid. It must be open to all interested parties and must not be subject to discriminatory conditions.

2. The income obtained through the sale of the companies in the Ilva group shall be used in full to reduce the indebtedness of the group.

3. The debts taken over by the new companies Ilva Laminati Piani Srl and Acciai Speciali Terni Srl must at the outset put the levels of their net financing costs at 3,5 % and 3,2 % respectively of annual turnover.

4. The undertakings ILP and AST shall not receive any tax credits on past losses of the Ilva group to be covered by State aid.

5. The beneficiary undertakings shall carry out all the measures laid down in the programme for the privatization and reorganization of the Ilva group notified to the Commission, in accordance with the timetable contained therein.

Article 4

1. Italy shall cooperate fully with the following arrangements for monitoring this Decision :

- (a) Italy shall supply the Commission twice a year, and not later than 15 March and 15 September respectively, with reports containing full information in accordance with the enclosed Annex on the undertakings covered by the proposals pursuant to Article 95 of the ECSC Treaty. The first report should reach the Commission by 15 March 1994 and the last report by 15 September 1998, unless the Commission decides otherwise ;

(b) the reports shall contain full information necessary for the Commission to monitor the implementation of the privatization and reorganization programme and in particular contain all the financial data necessary to allow the Commission to assess whether its conditions and requirements are fulfilled. In addition, the reports shall contain full information in accordance with the Annex, which the Commission reserves the right to modify in line with its experience during the monitoring process. It is up to Italy to oblige the beneficiary undertakings to disclose all relevant data which may, under other circumstances, be considered as confidential.

2. The Commission shall, on the basis of the reports, draw up half-yearly reports, which shall be submitted to the Council not later than 1 May and 1 November respectively, in order to allow discussion in the Council, if appropriate. In particular, if an undertaking which has received aid pursuant to Article 95 of the ECSC Treaty plans to participate in an investment creating or extending capacity, the Commission shall inform the Council on the basis of a report presenting the financing arrangements and demonstrating the absence of State aid.

Article 5

1. The Commission may at any time decide that the reports referred to in Article 4 (1) should be on a quarterly basis if it deems such necessary to fulfil its monitoring tasks. The Commission may at any time decide to mandate an independent consultant, selected with the agreement of Italy, to evaluate the monitoring results, to undertake any research necessary and to report on them to the Council.

2. The Commission may have any necessary checks made in the aided companies in accordance with Article 47 of the ECSC Treaty in order to verify the accuracy of the information given in the reports referred to in Article 4 (1) and in particular compliance with the conditions laid down in this Decision. In the case that a Member

State makes a complaint that State aid is enabling one of the companies concerned to under-price, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

3. In assessing the reports referred to in Article 4 (1), the Commission will ensure that the requirements of Article 1 (5), in particular, are being respected.

Article 6

1. Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may require the suspension of payments of aid and/or the recovery of aid already paid if, on the basis of the information received, at any time it were to find that the conditions laid down in this Decision have not been met. If Italy fails to fulfil the obligations imposed on it by any such decision, Article 88 of the ECSC Treaty shall apply.

2. Moreover, if the Commission establishes, on the basis of the reports submitted by Italy, that substantial deviations from the financial data, on which the viability assessment has been made, have occurred, it shall request that the reports referred to in Article 4 (1) be provided quarterly, and it may require Italy to take appropriate measures to reinforce the restructuring measures of the aided company.

Article 7

This Decision is addressed to the Italian Republic.

Done at Brussels, 12 April 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

*ANNEX***The Commission's information requirements****(a) Capacity reductions**

- date (or expected date) of cessation of production,
- date (or expected date) of dismantling⁽¹⁾ of the installation concerned,
- where installation is sold, date (or expected date) of sale, identity and country of purchaser,
- sale price ;

(b) investments

- details of investments realized,
- date of completion,
- the costs of the investment, the sources of finance and the sum of any related aid involved,
- the date of aid payment ;

(c) workforce reductions

- number and timing of job losses,
- the total costs,
- a breakdown of how the costs are being financed ;

(d) production and market effects

- monthly production of crude steel and finished products per category,
- products sold, including volumes, prices and markets ;

(e) financial performance

- evolution of selected key financial ratios to ensure progress is being made towards viability (the financial results and ratios must be provided in a way allowing comparisons with the company's financial restructuring plan),
- level of financial charges,
- details and timing of aids received and costs covered,
- terms and conditions of any new loans (irrespective of source) ;

(f) Privatization

- selling price and treatment of existing liabilities,
- disposal of proceeds of sale,
- date of sale,
- financial position of company at time of sale ;

(g) creation of a new company or new plants incorporating capacity extensions

- identity of each private and public sector participant,
- sources of their financing for the creation of the new company or new plants,
- terms and conditions of the private and the public shareholders' participation,
- management structure of a new company.

⁽¹⁾ As defined in Commission Decision No 3010/91/ECSC (OJ No L 286, 16. 10. 1991, p. 20).

COMMISSION DECISION

of 12 April 1994

concerning aid to be granted by Germany to the steel company Sächsische
Edelstahlwerke GmbH, Freital/Sachsen

(Only the German text is authentic)

(94/260/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European
Coal and Steel Community, and in particular the first and
second paragraphs of Article 95 thereof,

After consulting the Consultative Committee and with
the unanimous assent of the Council,

Whereas :

I

The Community steel industry is currently experiencing
its most difficult period since the first half of the 1980s.
This is due to the general slowdown in the economy,
which has had significant effect on industrial activities in
general, and on the steel industry in particular, leading to
a serious imbalance between supply and demand, accom-
panied by a collapse in prices. In addition, the interna-
tional market generally has been weak : there is pressure
from imports and there has been a trade dispute with the
United States of America affecting substantial Community
exports to that market. All of these factors have combined
to aggravate the financial situation of almost all steel
companies in the Community.

II

On 18 January 1993, Germany notified the Commission
of a plan of the Treuhandanstalt, a public body in charge
of the privatization of the State-owned enterprises of the
former German Democratic Republic, to grant aid to its
steel company Sächsische Edelstahlwerke GmbH, Freital/
Sachsen (hereinafter referred to as 'SEW Freital') in the
framework of its privatization, with a request for the
application of Article 95 of the ECSC Treaty in respect of
the aid measures that cannot be approved under Commis-
sion Decision No 3855/91/ECSC⁽¹⁾ (Steel Aid Code,
hereinafter referred to as 'the SAC').

The company in question was founded in the 19th
century and is held by the Treuhandanstalt since the

German economic, monetary and social unification in
June 1990. The undertaking was offered for sale in an
unconditional and open bidding procedure. Five appli-
cants demonstrated interest in the acquisition of SEW
Freital. Following talks between the Treuhandanstalt and
those five applicants, concrete contractual negotiations
were conducted until October 1992 with three of them.
While one of the remaining three withdrew its offer in
August 1992, the proposal of the second was considered
not to be backed by a reliable financial plan. The private
West-German Boschgotthardtshütte O. Breyer GmbH
(hereinafter referred to as 'BGH') remained as sole bidder.
The purchase contract was signed in December 1992,
inter alia, subject to approval by the Commission.
Through this contract, SEW Freital has been taken over by
SEW Edelstahl GmbH and Co Holding, which is entirely
owned by BGH.

The plan of the purchaser provides for a reduction of the
hot-rolling capacity of the company by at least 160 kt/y
(47 %) and a reduction of the crude-steel capacity by 100
kt/y (33 %) compared to the situation on 1 July 1990.
The company will close down all existing hot-rolling faci-
lities and replace them by a merchant-bar mill with a capa-
city of 180 kt/y of which some parts will be provided to
the company by BGH for free. It will close down all of its
remaining crude-steel facilities and replace them by an
electric arc furnace with a capacity of 200 kt/y. The capa-
city reduction will be accompanied by a substantial reduc-
tion in the workforce, namely by 49 %.

The privatization provisions include aid elements that are
incompatible with the ECSC Treaty and with the provi-
sions of the SAC. According to the Commission's esti-
mates, this aid amounts to a maximum of DM 274
million, serving the following purposes :

- a maximum amount of DM 34 million has been
accorded to cover social charges relating to the release
of 1 056 of 2 166 employees,
- a maximum amount of DM 189 million is to cover
debts accumulated until privatization,
- a maximum amount of DM 42 million which the
Treuhandanstalt will pay to the company for repair
and maintenance of installations,

⁽¹⁾ OJ No L 362, 31. 12. 1991, p. 57.

- a maximum amount of DM 9 million by which the Treuhandanstalt guarantees the valuation of certain assets.

Additional investment aid up to a maximum of DM 47,8 million, a tax allowance of DM 12,8 million and a guarantee covering up to 80 % of the investment loans of DM 100,8 million has been approved by the Commission under the SAC.

III

The restructuring plan on which the purchase agreement is based is considered viable by the Commission since a private investor experienced in the steel sector is prepared to risk a considerable amount of own capital. The investor, chosen after an open and unconditional bidding procedure, has demonstrated his willingness to assume the risk for the company's future viability without further aid than that covered by the purchase contract.

IV

The extremely difficult Community steel market situation has endangered the sector in several Member States, including Germany. The aim of providing the steel industry in the territory of the former German Democratic Republic with a sound and economically viable structure contributes towards the achievement of the objectives of the Treaty, in particular Articles 2 and 3. The Commission considers that the public financial assistance measures proposed by Germany are necessary to achieve these aims. The Commission therefore finds itself faced with a situation not specifically provided for in the Treaty. In these exceptional circumstances, recourse must be had to the first paragraph of Article 95 of the Treaty, so as to enable the Community to pursue the objectives set out in the initial Articles thereof.

At the same time, however, it is essential to ensure that the aid approved is limited to what is absolutely necessary and that it does not adversely affect trading conditions within the Community to an extent contrary to the common interest, particularly given the current difficulties on the Community steel market. It is therefore important that there should be adequate counterpart measures, commensurate with the amount of aid being exceptionally approved, so that a major contribution is made to the structural adjustment required in the sector.

V

As regards the capacity reductions envisaged under the plan, it is necessary to require that all the closures are definitive and irreversible so that the capacity concerned

no longer depresses the Community steel market. The closed installations must therefore be scrapped or sold for use outside Europe. In addition, there should be no increase in remaining capacity for crude-steel and hot-rolled finished products, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last capacity closure, or of the last payment of aid in respect of investments under the plan, whichever is the later, in order to ensure a long-term and real effect on reducing the current imbalance between supply and demand on the Community steel market. It is also essential that the timetable for closures set out in the restructuring plan is complied with.

VI

It is not only necessary to ensure during the whole restructuring period that the aid approved enables the company to return to viability, the aid must also be kept to the amount strictly necessary. In that context, it must also be ensured that the company does not, as a result of the financial restructuring measures, obtain an unfair advantage over other companies in the sector by being provided at the outset with net financial charges below 3,5 % of annual turnover, which is the current average for Community steel companies. It is also appropriate to require that the company or its legal successor is not allowed to claim or be granted tax reduction or relief on past losses covered by aid. Furthermore, any additional loans must be on normal commercial conditions and no preferential treatment accorded to any fresh public debts incurred.

VII

The implementation of this Decision requires strict monitoring by the Commission during the whole restructuring period up and until the end of 1998.

In order to carry out this monitoring effectively, the Commission will require the full and close collaboration of Germany, on whom clear and strict reporting obligations will be imposed.

In particular, the following elements will require close attention :

- the reduction of capacity,
- the granting of aid under the present privatization plan and the source, terms and conditions of any further financing over and above that period for in the plan,

- the investments carried out,
- reductions in the workforce,
- production and the effects on the market,
- financial performance.

The Commission will submit six-monthly reports to the Council to keep it informed of developments.

It is also necessary to ensure that the aid is not used for the purpose of unfair competition practices. In addition the Commission may require on-the-spot checks made in accordance with Article 47 of ECSC Treaty, in order to verify the informations provided and in particular the compliance with the conditions attached to the authorization of the aid. In that context, should a Member State make a complaint to the Commission that State aid is enabling the company to underprice, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

Furthermore, should the Commission, on the basis of the information provided, find that the conditions laid down in its decision pursuant to Article 95 had not been met, it may require the suspension of payments of aid or the recovery of aid already paid. In the event of a Member State's failing to comply with such decision, Article 88 of the ECSC Treaty shall apply.

The Commission may decide that all reports should be on a quarterly basis. It may also decide to mandate an independent consultant, selected with the agreement of Germany, to assist it in its monitoring task.

The Commission will, by exercising all its powers, ensure that the aided company fulfils the conditions of this Decision, including the necessary progress towards viability and its other obligations resulting from the application of the ECSC Treaty. Should the monitoring reports indicate substantial deviations from the financial data on which the viability assessment has been made, the Commission may require appropriate measures to be taken to reinforce the restructuring measures.

VIII

A decision pursuant to Article 95 of the ECSC Treaty to authorize State aid is extraordinary in character given the provisions of Article 4 (c). In view of all the above, the Commission can exceptionally authorize the aid proposed in this case subject to observance of the conditions and requirements it lays down. However, the aid involved, which is intended to restore the company to viability by the end of 1997, should be regarded as final. Should a return to viability not be achieved by that date, Germany

shall not request any further derogation pursuant to Article 95 for the company,

HAS ADOPTED THIS DECISION :

Article 1

1. The following maximum amounts of aid which Germany plans to grant to Sächsishe Edelstahlwerke GmbH, Freital/Sachsen may be regarded as compatible with the orderly functioning of the common market provided that the conditions and requirements of Articles 2 to 5 are met :

- an amount of DM 34 million to cover social charges relating to the release of 1 056 employees,
- an amount of DM 189 million to cover debts accumulated until privatization,
- an amount of DM 42 million for repair and maintenance of installations,
- an amount of DM 9 million by which the Treuhandanstalt guarantees the valuation of certain assets.

2. The aid has been calculated to enable the company to return to viability by the end of 1996. In the case that such viability is not attained by that date, Germany shall not request any further derogation pursuant to Article 95 of the ECSC Treaty for this company.

3. The aid shall not be used for the purpose of unfair competition practices.

4. Without prejudice to the aid measures referred to in this Article under the privatization plan, any loans to the company must be on normal commercial terms ; and the beneficiary company must not receive debt holidays or friendly treatment of debts to the State.

Article 2

1. The following definitive closure of production capacity shall be carried out :

- the existing mill for hot-rolled semi-finished products with a capacity of 90 kt/y, the medium-section mill with a capacity of 170 kt/y and the light-section mill with a capacity of 80 kt/y shall be closed down and replaced by a merchant-bar mill with a capacity of 180 kt/y, parts of which being moved from the BGH plant in Siegen,
- the existing crude-steel production facilities with a capacity of 300 kt/y shall be closed down to be replaced by a new electric arc furnace with a capacity of 200 kt/y.

2. All the capacity closures must be achieved by the end of 1996 at the latest.

3. The finality of the closures referred to in paragraph 1 shall be ensured either by the demolition of the installations concerned or by their disposal by sale outside Europe.

4. The beneficiary company shall not increase its remaining capacity for crude steel and hot-rolled finished products, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last capacity closure under the plan or the date of the last payment of aid in respect of investments under the plan, whichever is the later.

Article 3

The approval of aid as outlined in Article 1 is in addition subject to the following conditions :

1. the level of net financial charges of the new company will be set at least at 3,5 % of annual turnover, at the date of its privatization ;
2. the company or its legal successor will not claim or be granted tax reduction or relief on the basis of past losses which are being covered by State aid ;
3. the beneficiary company shall carry out all the restructuring measures laid down in the restructuring plan as it has been submitted to the Commission, in accordance with the timetable contained therein.

Article 4

1. Germany shall cooperate fully with the following arrangements for monitoring this Decision :

- (a) Germany shall supply the Commission twice a year, and not later than 15 March and 15 September respectively, with reports containing full information in accordance with the enclosed Annex, on the beneficiary company and its restructuring. The first report should reach the Commission by 15 March 1994 and the last report by 15 September 1998, unless the Commission decides otherwise ;
- (b) the reports shall contain full information necessary for the Commission to monitor the restructuring process, the creation and use of capacity and show sufficient financial data to allow the Commission to assess

whether its conditions and requirements are fulfilled. The reports shall at least contain full information in accordance with the Annex, which the Commission reserves the right to modify in line with its experiences during the monitoring process. It is up to Germany to oblige the beneficiary company to disclose all relevant data which may, under other circumstances, be considered as confidential.

2. The Commission shall, on the basis of the reports, draw up half-yearly reports which shall be submitted to the Council not later than 1 May and 1 November respectively, in order to allow discussion in the Council, if appropriate. If the beneficiary company envisages investments creating or extending capacity, the Commission shall inform the Council on the basis of a report presenting the financing arrangements and demonstrating the absence of State aid.

Article 5

1. The Commission may at any time decide that the reports referred to in Article 4 (1) shall be on a quarterly basis if it deems such necessary to fulfil its monitoring tasks. The Commission may at any time decide to mandate an independent consultant, selected with the agreement of Germany, to evaluate the monitoring results, to undertake any research necessary and to report to the Council.

2. The Commission may have any necessary checks made in the aided company in accordance with Article 47 of the ECSC Treaty in order to verify the accuracy of the information given in the reports referred to in Article 4 (1) and in particular compliance with the conditions laid down in this Decision. In the case that a Member State makes a complaint that State aid is enabling the aided company to underprice, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

3. In assessing the reports referred to in Article 4 (1), the Commission will ensure that the requirements of Article 1 (4), in particular, are being respected.

Article 6

1. Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may require the suspension of payments of aid or the recovery of aid already paid if, on the basis of the information received, at

any time it were to find that the conditions laid down in this Decision had not been met. If Germany were to fail to fulfil its obligations under any such decision, Article 88 of the ECSC Treaty shall apply.

2. Moreover, if the Commission establishes, on the basis of the reports referred to in Article 4 (1), that substantial deviations from the financial data, on which the viability assessment has been made, have occurred, it may require Germany to take appropriate measures to reinforce the restructuring measures of the aided company.

Article 7

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 12 April 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

*ANNEX***The Commission's information requirements****(a) Capacity reductions**

- date (or expected date) of cessation of production,
- date (or expected date) of dismantling⁽¹⁾ of the installation concerned,
- where installation is sold, date (or expected date) of sale, identity and country of purchaser,
- sale price ;

(b) investments

- details of investments realized,
- date of completion,
- the costs of the investment, the sources of finance and the sum of any related aid involved,
- the date of aid payment ;

(c) workforce reductions

- number and timing of job losses,
- the total costs,
- a breakdown of how the costs are being financed ;

(d) production and market effects

- monthly production of crude steel and finished products per category,
- products sold, including volumes, prices and markets ;

(e) financial performance

- evolution of selected key financial ratios to ensure progress is being made towards viability (the financial results and ratios must be provided in a way allowing comparisons with the company's financial restructuring plan),
- level of financial charges,
- details and timing of aids received and costs covered,
- terms and conditions of any new loans (irrespective of source) ;

(f) Privatization

- selling price and treatment of existing liabilities,
- disposal of proceeds of sale,
- date of sale,
- financial position of company at time of sale ;

(g) creation of a new company or new plants incorporating capacity extensions

- identity of each private and public sector participant,
- sources of their financing for the creation of the new company or new plants,
- terms and conditions of the private and the public shareholders' participation,
- management structure of a new company.

⁽¹⁾ As defined in Commission Decision No 3010/91/ECSC (OJ No L 286, 16. 10. 1991, p. 20).

COMMISSION DECISION

of 12 April 1994

concerning aid to be granted by Spain to the special steel company Sidenor

(Only the Spanish text is authentic)

(94/261/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular the first and second paragraphs of Article 95 thereof,

After consulting the Consultative Committee and with the unanimous assent of the Council,

Whereas :

I

The Community steel industry is currently experiencing its most difficult period since the first half of the 1980s. This is due to the general slowdown in the economy, which has had a significant effect on industrial activities in general, and on the steel industry in particular, leading to a serious imbalance between supply and demand, accompanied by a collapse in prices. In addition, the international market generally has been weak: there is pressure from imports and there has been a trade dispute with the United States of America affecting substantial Community exports to that market. All of these factors have combined to aggravate the financial situation of almost all steel companies in the Community.

II

In April 1992, Spain notified the Commission of a plan to restructure the Spanish special steels company Sidenor (incorporating Acenor and Foarsa) and the associated financing by which it intends to support it.

The plan involves Acenor and Foarsa ceasing their activities, which would be taken over by Sidenor, and comprises a number of industrial, commercial, social and financial restructuring measures, which are intended to allow Sidenor to achieve, by the end of 1995, adequate operating results to achieve viability.

The restructuring plan, as submitted, provides for the definitive closure of two of Sidenor's six plants at Llodio and Hernani (each comprising electric arc furnaces and rolling mills), resulting in capacity reductions of 505 000 tonnes in liquid steel and 379 000 in hot-rolled products

(a reduction of 31 %). The plan also envisaged reductions in the workforce of 1 845, from 4 725 as at 1990 to 2 880 in 1995.

The financing of the plan includes aid elements that the Commission considers to be incompatible with the ECSC Treaty and Commission Decision No 3855/91/ECSC⁽¹⁾ (Steel Aid Code, hereinafter referred to as 'the SAC'). The Commission estimates that this aid amounts to a maximum of Pta 80,052 billion, serving the following purposes :

- up to a maximum of Pta 26,3 billion for the writing-off of Acenor and Foarsa debts,
- social aids up to a maximum of Pta 7,79 billion,
- new paid-in capital of a maximum of Pta 20,2 billion, and
- up to a maximum of Pta 25,762 billion in the form of loss compensation to cover additional operating losses and financial charges in 1992 and 1993 over and above those originally forecast in the plan.

This aid includes the measures that were the subject of the procedure opened pursuant to Article 6 (4) of the SAC by the Commission in July 1992⁽²⁾, in order to investigate certain aid measures already granted in favour of Acenor illegally, without prior notification to the Commission, allowing the company to continue to operate despite its financial difficulties. The figure for social aid takes into account the possible closure of the Larrondo plant and additional reductions in the workforce at Sidenor's other plants (see below).

Furthermore, additional social aid up to a maximum of Pta 7,79 billion is being authorized separately by the Commission as compatible with Article 4 (1) of the SAC.

III

The Commission, assisted by an external expert, has assessed the viability of the restructuring plan, applying the same criteria as those imposed by the Commission during the previous restructuring of the Community steel

⁽¹⁾ OJ No L 362, 31. 12. 1991, p. 57.

⁽²⁾ OJ No C 234, 12. 9. 1992, p. 5.

industry. On the basis of the consultants' findings, it has concluded that, provided the restructuring plan is followed strictly, Sidenor should achieve viability, under normal market conditions, by the end of 1995 provided that the following additional measures are adopted:

- the disposal or closure of the stainless steel plant at Larrondo (with liquid steel and hot-rolled capacities of 95 000 tonnes per year and 60 000 tonnes per year respectively),
- additional reductions in the workforce of 335 at the remaining plants.

IV

The extremely difficult Community steel market situation has endangered the sector in several Member States, including Spain. The aim of providing Sidenor with a sound and economically viable structure contributes towards the achievement of the objectives of the ECSC Treaty, in particular Articles 2 and 3. The Commission considers that the public financial assistance measures proposed by Spain are necessary to achieve these aims. The Commission therefore finds itself faced with a situation not specifically provided for in the Treaty. In these exceptional circumstances, recourse must be made to the first paragraph of Article 95 of the Treaty, so as to enable the Community to pursue the objectives set out in the initial Articles thereof.

At the same time, however, it is essential to ensure that the aid approved is limited to what is absolutely necessary and that it does not adversely affect trading conditions within the Community to an extent contrary to the common interest, particularly given the current difficulties on the Community steel market. It is therefore important that there should be adequate counterpart measures, commensurate with the amount of aid being exceptionally approved, so that a major contribution is made to the structural adjustment required in the sector.

V

Nonetheless in order to reinforce the viability of the restructuring plan, it is also necessary to require that, as recommended by the independent consultant, the Larrondo plant be sold to the private sector or closed; and that there should be additional reductions in the workforce of 335 posts.

It is essential that all the capacity closures under the plan are definitive and irreversible so that the capacity concerned no longer depresses the Community steel market. The closed installations must therefore be

scrapped or sold for use outside Europe. In addition, there should be no increase in capacity for crude steel and hot-rolled finished products remaining under the aided restructuring plan, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last capacity closure or of the last payment of aid in respect of investments under the plan, whichever is the later, in order to ensure a long-term and real effect on reducing the current imbalance between supply and demand on the Community steel market. It is also essential that the timetable for closures set out in the restructuring plan is complied with.

As regards the Larrondo plant, this must be sold or closed by 30 June 1994 at the latest.

VI

It is not only necessary to ensure during the whole restructuring period that the aid approved enables the company to return to viability by the end of 1995, the aid must also be kept to the amount strictly necessary. In that context, it must also be ensured that the company does not, as a result of the financial restructuring measures, obtain an unfair advantage over other companies in the sector by being provided at the outset with net financial charges below 3,5 % of annual turnover, which is the current average for Community steel companies. It is also appropriate to require that the company or its legal successor is not allowed to claim or be granted tax reduction or relief on past losses covered by aid under the restructuring plan. Furthermore, any additional loans must be on normal commercial conditions and no preferential treatment accorded to any fresh public debts incurred.

VII

The implementation of this Decision requires strict monitoring by the Commission during the whole restructuring period and up until the end of 1998.

In order to carry out this monitoring effectively, the Commission will require the full and close collaboration of Spain, on whom clear and strict reporting obligations will be imposed.

In particular the following elements will require close attention:

- the reduction of capacity,
- the investments carried out,
- reductions in the workforce,
- compliance with the timetable for closures,
- production and the effects on the market,

- financial performance,
- privatization,
- the creation of new enterprises,
- the source, terms and conditions of any further financing (including treatment of further debts, credit facilities, etc.) over and above that provided for in the plan,
- progress towards viability.

The Commission will submit six-monthly reports to the Council to keep it informed of developments.

It is also necessary to ensure that the aid is not used for the purpose of unfair competition practices. In addition, the Commission may require on-the-spot checks made in accordance with the Article 47 of the ECSC Treaty, in order to verify the information provided and in particular compliance with the conditions attached to the authorization of the aid. In that context, should a Member State make a complaint to the Commission that State aid is enabling the company to under-price, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

Furthermore, should the Commission, on the basis of the information provided, find that the conditions laid down in its decisions pursuant to Article 95 had not been met, it may require the suspension of payments of aid or the recovery of aid already paid. In the event of a Member State's failing to comply with such decision, Article 88 of the ECSC Treaty shall apply.

The Commission may decide to mandate an independent consultant, selected with the agreement of Spain, to assist it in its monitoring task.

The Commission will, by exercising all its powers, ensure that the aided company fulfils the conditions of this Decision, including the necessary progress towards viability and its other obligations resulting from the application of the ECSC Treaty. Should the monitoring reports indicate substantial deviations from the financial data on which the viability assessment has been made, the Commission may require appropriate measures to be taken to reinforce the restructuring measures.

VIII

A decision pursuant to Article 95 of the ECSC Treaty to authorize State aid is extraordinary in character given the provisions of Article 4 (c). In view of all the above, the

Commission can exceptionally authorize the aid proposed in this case, subject to observance of the conditions and requirements it lays down. The Commission will at the same time close the procedure opened pursuant to Article 6 (4) of the SAC since it involves the aid authorized. However, the aid involved, which is intended to restore the company to viability by the end of 1995, should be regarded as final. Should a return to viability not be achieved by that date, Spain shall not request any further derogation pursuant to Article 95 for the company.

HAS ADOPTED THIS DECISION :

Article 1

1. The following maximum amounts of aid which Spain plans to grant directly or indirectly to the Spanish special steels company Sidenor, incorporating Acenor and Foarsa, may be regarded as compatible with the orderly functioning of the common market provided that the conditions and requirements of Articles 2 to 5 are met :

- a debt write-off of up to a maximum of Pta 26,3 billion,
- social aid up to a maximum of Pta 7,79 billion,
- new paid-in capital of up to a maximum of Pta 20,2 billion,
- up to a maximum of Pta 25,762 billion in the form of loss compensation to cover additional operating losses and financial charges in 1992 and 1993 over and above those originally forecast in the plan.

2. The aid has been calculated to enable the company to return to viability by the end of 1995. In the case that such viability is not attained by that date, Spain shall not request any further derogation pursuant to Article 95 of the ECSC Treaty for this company.

3. The aid shall not be used for the purpose of unfair competition practices.

4. Without prejudice to the aid measures referred to in this Article under the restructuring plan, any loans to the company must be on normal commercial terms ; and the beneficiary company must not receive debt holidays or friendly treatment of debts to the State.

Article 2

1. The following definitive closures of production capacity shall be carried out :

	(thousand tonnes)	
	Liquid steel	Hot-rolled products
Hernani	228	125
Llodio	277	254
Total	505	379

2. All the capacity closures must be achieved in accordance with the timetable laid down in the restructuring plan at the latest. In addition, the stainless-steel plant at Larrondo must be sold to the private sector or closed by 30 June 1994.

3. The finality of the closures referred to in paragraph 1 shall be ensured either by the demolition of the installations concerned or by their disposal by sale outside Europe.

4. The beneficiary company shall not increase its remaining capacity for crude steel and hot-rolled finished products under the restructuring plan, other than resulting from productivity improvements, for a period of at least five years starting from the date of the last capacity closure under the plan or the date of the last payment of aid in respect of investments under the plan, whichever is the later.

Article 3

The approval of aid as outlined in Article 1 is in addition subject to the following conditions:

- the level of net financial charges of the new company at the outset will be set at least at 3,5 % of annual turnover;
- the company or its legal successor will not claim or be granted tax reduction or relief on the basis of past losses which are covered by aid under the terms of this Decision;
- the beneficiary company shall carry out all the restructuring measures laid down in the restructuring plan as it has been submitted to the Commission, in accordance with the timetable contained therein.

Article 4

1. Spain shall cooperate fully with the following arrangements for monitoring this Decision:

- Spain shall supply the Commission four times a year, and not later than 15 March, 15 June, 15 September and 15 December respectively, with reports containing full information in accordance with the enclosed

Annex, on the beneficiary company and its restructuring. The first report should reach the Commission by 15 March 1994 and the last report by 15 September 1998, unless the Commission decides otherwise;

- the reports shall contain full information necessary for the Commission to monitor the restructuring process, the creation and use of capacity and show sufficient financial data to allow the Commission to assess whether its conditions and requirements are fulfilled. The reports shall at least contain full information in accordance with the Annex, which the Commission reserves the right to modify in line with its experiences during the monitoring process. It is up to Spain to oblige the beneficiary company to disclose all relevant data which may, under other circumstances, be considered as confidential.

2. The Commission shall, on the basis of the reports, draw up half-yearly reports which shall be submitted to the Council not later than 1 May and 1 November respectively, in order to allow discussion in the Council, if appropriate. If the beneficiary company envisages investments creating or extending capacity the Commission shall inform the Council on the basis of a report presenting the financing arrangements and demonstrating the absence of State aid.

Article 5

1. The Commission may at any time decide to mandate an independent consultant, selected with the agreement of Spain, to evaluate the monitoring results, to undertake any research necessary and to report to the Council.

2. The Commission may have any necessary checks made in the aided companies in accordance with Article 47 of the ECSC Treaty, in order to verify the accuracy of the information given in the reports referred to in Article 4 (1) and in particular compliance with the conditions laid down in this Decision. In the case that a Member State makes a complaint that State aid is enabling the aided company to under-price, the Commission will initiate an investigation pursuant to Article 60 of the ECSC Treaty in particular.

3. In assessing the reports referred to in Article 4, the Commission will ensure that the requirements of Article 1 (4) are being respected.

Article 6

1. Without prejudice to any penalties it may impose by virtue of the ECSC Treaty, the Commission may require the suspension of payments of aid or the recovery of aid already paid if, on the basis of the information received, at

any time it were to find that the conditions laid down in this Decision had not been met. If Spain were to fail to fulfil its obligations under any such decision, Article 88 of the ECSC Treaty shall apply.

2. Moreover, if the Commission established, on the basis of the reports referred to in Article 4 (1), that substantial deviations from the financial data, on which the viability assessment has been made, have occurred, it may require Spain to take appropriate measures to reinforce the restructuring measures of the aided company.

Article 7

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 12 April 1994.

For the Commission

Karel VAN MIERT

Member of the Commission

*ANNEX***The Commission's information requirements****(a) Capacity reductions**

- date (or expected date) of cessation of production,
- date (or expected date) of dismantling⁽¹⁾ of the installation concerned,
- where installation is sold, date (or expected date) of sale, identity and country of purchaser,
- sale price ;

(b) investments

- details of investments realized,
- date of completion,
- the costs of the investment, the sources of finance and the sum of any related aid involved,
- the date of aid payment ;

(c) workforce reductions

- number and timing of job losses,
- the total costs,
- a breakdown of how the costs are being financed ;

(d) production and market effects

- monthly production of crude steel and finished products per category,
- products sold, including volumes, prices and markets ;

(e) financial performance

- evolution of selected key financial ratios to ensure progress is being made towards viability (the financial results and ratios must be provided in a way allowing comparisons with the company's financial restructuring plan),
- level of financial charges,
- details and timing of aids received and costs covered,
- terms and conditions of any new loans (irrespective of source) ;

(f) Privatization

- selling price and treatment of existing liabilities,
- disposal of proceeds of sale,
- date of sale,
- financial position of company at time of sale ;

(g) creation of a new company or new plants incorporating capacity extensions

- identity of each private and public sector participant,
- sources of their financing for the creation of the new company or new plants,
- terms and conditions of the private and the public shareholders' participation,
- management structure of a new company.

⁽¹⁾ As defined in Commission Decision No 3010/91/ECSC (OJ No L 286, 16. 10. 1991, p. 20).