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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 December 1994

amending the Protocol on the Statute of the Court of Justice of the European Community

(94/993/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 188 thereof,

Having regard to the request of the Court of Justice of 29 April 1994,

Having regard to the opinion of the Commission of 7 October and 3 November 1994,

Having regard to the opinion of the European Parliament of 28 October 1994,

Whereas, following the entry into force of the Treaty on European Union and the Agreement on the European Economic Area, certain provisions of Title III of the Protocol on the Statute of the Court of Justice of the European Community should be amended,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol on the Statute of the Court of Justice of the European Community shall be amended as follows:

1. in Article 17:

- (a) in the first paragraph, 'entitled to practise before a Court of a Member State' shall be deleted;

(b) the following second paragraph shall be added:

'The States, other than the Member States, which are parties to the Agreement on the European Economic Area, and also the EFTA Surveillance Authority referred to in that Agreement, shall be represented in same manner.';

(c) the second paragraph becomes the third paragraph, and 'entitled to practise before a Court of a Member State' shall be deleted;

(d) the following fourth paragraph shall be added:

'Only a lawyer authorized to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area may represent or assist a party before the Court.';

(e) the third, fourth and fifth paragraphs become the fifth, sixth and seventh subparagraphs respectively;

2. the first paragraph of Article 19 shall be replaced by:

'A case shall be brought before the Court by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party or names of the parties against whom the application is made, the subject-matter of the dispute, the form of order sought and a brief statement of the pleas in law on which the application is based.';

3. Article 20 shall be replaced by the following text:

'In the cases governed by Article 177 of this Treaty, the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court shall be notified to the Court by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court to the parties, to the Member States and to the Commission, and also to the Council or to the European Central Bank if the act the validity or interpretation of which is in dispute originates from one of them, and to the European Parliament and the Council if the act the validity or interpretation of which is in dispute was adopted jointly by those two institutions.

Within two months of this notification, the parties, the Member States, the Commission and, where appropriate, the European Parliament, the Council and the European Central Bank, shall be entitled to submit statements of case or written observations to the Court.

The decision of the aforesaid court or tribunal shall, moreover, be notified by the Registrar of the Court to the States, other than the Member States, which are parties to the Agreement on the European Economic Area and also to the EFTA Surveillance Authority referred to in that Agreement which may, within two months of notification, where one of the fields of

application of that Agreement is concerned, submit statements of case or written observations to the Court.';

4. in Article 37:

(a) the following third paragraph shall be added:

'Without prejudice to the preceding paragraph, the States, other than the Member States, which are parties to the Agreement on the European Economic Area, and also the EFTA Surveillance Authority referred to in that Agreement, may intervene in cases before the Court where one of the fields of application of that Agreement is concerned.';

(b) the third paragraph becomes the fourth paragraph and shall read as follows:

'An application to intervene shall be limited to supporting the form of order sought by one of the parties.'

Article 2

This Decision shall enter into force on 1 April 1995.

Done at Brussels, 22 December 1994.

For the Council

The President

H. SEEHOFER

COMMISSION

COMMISSION DECISION

of 3 November 1994

authorizing the granting of aid by Portugal to the coal industry in 1994

(Only the Portuguese text is authentic)

(Text with EEA relevance)

(94/994/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry⁽¹⁾, and in particular Articles 2 (1) and 9 thereof,

Whereas:

I

By letter of 5 August 1994 Portugal submitted to the Commission, in accordance with Article 8 (1) of Decision No 3632/93/ECSC, an activity-reduction plan for the Portuguese coal industry.

By the same letter Portugal informed the Commission, in accordance with Article 9 (1) of Decision No 3632/93/ECSC, of the financial measures it intended to take to support the coal industry in 1994.

Pursuant to Decision No 3632/93/ECSC the Commission is to:

- deliver an opinion as to whether the activity-reduction plan is in conformity with the general and specific objectives of the Decision,

— give its decision on the following financial measures:

- aid to the Carbonífera do Douro company totalling Esc 358 651 000 for 1994 to cover operating losses,
- aid to the Carbonífera do Douro company of up to Esc 700 000 000 for 1994, to cover exceptional social-welfare expenditure to compensate workers who lose their jobs as a result of measures taken to restructure the Portuguese coal industry.

The support measures for the coal industry proposed by Portugal meet the requirements of Article 1 (1) of Decision No 3632/93/ECSC. The Commission must therefore give a decision on those measures pursuant to Article 9 (4) of the Decision as regards their conformity with the aims and criteria set out in the Decision and their compatibility with the proper functioning of the common market.

II

The activity-reduction plan notified by Portugal must be examined in the light of the general objectives set out in Article 2 (1) of Decision No 3632/93/ECSC and the specific criteria and objectives set out in Article 4 thereof.

Coal production in Portugal is concentrated almost exclusively in the hands of the Carbonífera do Douro company, which is responsible for operations in the Pejao and San Pedro da Cova coalfields. Since the late 1980s, the company has suffered operating losses which have been covered by State aid. The losses are due mainly to

⁽¹⁾ OJ No L 329, 30. 12. 1993, p. 12.

geological conditions, gradual exhaustion of resources, difficulties in disposing of the output and poor quality coal. All these factors combined affect the economic viability of the operation. Furthermore, the main — and almost only — client, Electricidade de Portugal, will be converting the Tapada do Outeiro thermal power station to natural gas, so there will no longer be an outlet for the coal produced.

On 4 October 1994, the Portuguese Council of Ministers examined Carbonífera do Douro's business strategy. The aim is gradually to reduce the output and workforce of the Germunde mine between 1990 and 1994, when final closure is planned. At the same time the Council of Ministers approved an action plan to create new activities which would help to improve the employment situation in the Castelo de Paiva region and thereby offset the job losses resulting from the closure of the mine.

The activity-reduction plan for the Portuguese coal industry notified by Portugal in its letter of 5 August 1994 confirms the strategy of Carbonífera do Douro, forwarded to the Commission of 16 April 1991 further to its request, pursuant to Decision 91/2/ECSC⁽¹⁾.

This activity-reduction plan provides for final closure of the Germunde mine in 1995. This is a year later than the date given in the business strategy plan, owing to a corresponding delay in the conversion of the thermal power station to natural gas.

As the Carbonífera do Douro company is not in a position to improve its economic viability by reducing production costs, as stipulated in Article 3 (2) of the Decision, it must reduce its activities. Pursuant to Article 4 of the Decision, if the aid covering the company's production costs is to be considered compatible with the common market, it must, as well as satisfying the conditions laid down in Article 3 (1) of the Decision, be granted within the framework of a closure plan with a deadline occurring before the expiry of Decision No 3632/93/ECSC.

Given that those conditions have been fulfilled, the activity-reduction plan notified by Portugal is compatible with the general objectives and the specific criteria and objectives of Decision No 3632/93/ECSC.

⁽¹⁾ OJ No L 5, 8. 1. 1991, p. 25.

III

For 1994 the Carbonífera do Douro company has provided for an operating loss of Esc 358 651 000 for that part of its activities involved in the production of 140 000 tonnes of coal.

The aid intended to cover operating losses must be viewed in the light of the objectives of Decision No 3632/93/ECSC, and in particular those of Article 2 (1) thereof, as part of the activity-reduction plan for the Portuguese coal industry, as notified to the Commission.

The aid is intended to help solve the social and regional problems created by the reduction in the activity of the production units, in accordance with the second indent of Article 2 (1) of the said Decision.

In 1994 production dropped by 15 % and the workforce was reduced by 16 % by comparison with 1993. This trend corresponds to the reduction of activity provided for in the closure plan.

The proposed aid will cover the difference between projected average costs and projected average revenue. It will not exceed expected operating losses and therefore complies with the conditions laid down in the first indent of Article 3 (1) of the Decision. The Commission has checked compliance with the other conditions laid down in Article 3 (1).

The matching of the level of aid to falling coal output, its transient nature and the implementation of a clearly-defined closure plan are in line with the conditions of implementation laid down in Article 4 of Decision No 3632/93/ECSC. Aid to cover operating losses will facilitate the execution of the activity-reduction plan for the Portuguese coal industry.

In view of the foregoing and of the information supplied by the Portuguese authorities, the aid to be granted in 1994 to the current production of the Portuguese coal industry is compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

IV

Aid to cover exceptional social costs, totalling Esc 700 000 000, is intended to provide partial cover for the compensation to be paid to some 450 employees of the Carbonífera do Douro company who will lose their jobs before 31 December 1994 as a result of implementation of the plan to close the company's mining operations in 1995.

This aid is not connected to current production and must be regarded as covering inherited liabilities. In accordance with Article 5 (1) of Decision No 3632/93/ECSC, such aid, which is explicitly defined in the Annex to the Decision, namely the cost of paying social welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age, other exceptional expenditure on workers who lose their jobs as a result of restructuring and rationalization, and the payment of pensions and allowances outside the statutory system to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such payments before the restructuring, may be considered compatible with the common market provided that the amount paid does not exceed costs.

V

In view of the foregoing, the aid to be granted by Portugal to the coal industry in 1994 is compatible with the proper functioning of the common market.

Pursuant to the second indent of Article 3 (1) and to Article 9 (2) and (3) of Decision No 3632/93/ECSC, the Commission must ensure that the aid authorized for current production is used exclusively for the purposes set out in Article 4 of the Decision. It must therefore be informed of the amounts of the payments and the manner in which they are apportioned,

HAS ADOPTED THIS DECISION:

Article 1

Portugal is hereby authorized to grant aid totalling Esc 1 058 651 000 to its coal industry for the 1994 calendar year.

This amount shall be broken down as follows:

- aid to the Carbonífera do Douro company amounting to Esc 358 651 000 to cover operating losses,
- aid of up to Esc 700 000 000 to provide funds to compensate workers who lose their jobs as a result of the progressive closure of the mining operations of the Carbonífera do Douro company.

Article 2

Portugal shall inform the Commission, by 30 June 1995 at the latest, of the actual amount of aid paid in respect of 1994.

Article 3

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 3 November 1994

For the Commission

Marcelino OREJA

Member of the Commission

COMMISSION DECISION

of 3 November 1994

ruling on financial measures by the United Kingdom in respect of the coal industry in the
1994/95 and 1995/96 financial years

(Only the English text is authentic)

(Text with EEA relevance)

(94/995/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Commission Decision No
3632/93/ECSC of 28 December 1993 establishing
Community rules for State aid to the coal industry ⁽¹⁾,
and in particular Articles 2 (1) and 9 thereof,

Whereas:

I

In a letter dated 5 September 1994 the United Kingdom
notified the Commission, pursuant to Article 9 (1) of
Decision No 3632/93/ECSC, of the financial measures
which it intends to take in respect of the coal industry in
the 1994/95 and 1995/96 financial years. In a letter dated
29 September 1994 the United Kingdom also sent the
additional information requested by the Commission.

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

- aid not exceeding £ 40 million in the 1994/95
financial year and £ 130 million in the 1995/96
financial year to the Coal Authority, a public-sector
body, to cover liabilities for the environmental and
physical damage caused by the production activities
of the coal industry before the privatization of the
British Coal Corporation,
- aid not exceeding £ 2 million for the 1995/96
financial year to cover compensation for workers and
former workers of the British Coal Corporation for
hearing loss during that part of their employment in
the Corporation falling between 26 March 1989 and
the date of privatization of the Corporation and aid
not exceeding £ 30 million for 1995/96 to cover

compensation for other industrial injury and damage
to health suffered by workers and former workers of
the British Coal Corporation during that part of their
employment in the Corporation falling between 1947
and the date of privatization of the Corporation,

- aid not exceeding £ 1 million for the 1995/96
financial year for concessionary fuel entitlement to
coal or smokeless fuel or, in certain cases, cash-in-lieu
to British Coal Corporation workers who have retired
or been made redundant as a result of the
restructuring, rationalization and modernization of
the coal industry in the United Kingdom, and their
dependants, for that part of their employment in the
Corporation falling between 31 March 1990 and the
date of privatization of the Corporation,

- aid not exceeding £ 183 million for the 1995/96
financial year for contributions to pension schemes
for former British Coal Corporation workers
including workers granted early retirement as a result
of the restructuring, rationalization and
modernization of the coal industry in the United
Kingdom,

- aid not exceeding £ 635 million for the 1994/95
financial year and £ 26 million for the 1995/96
financial year to the British Coal Corporation to
cover exceptional social-welfare payments to or in
respect of workers who have been made redundant or
been transferred to other production units as a result
of the restructuring, rationalization and
modernization of the coal industry in the United
Kingdom,

- aid not exceeding £ 70 million for the 1995/96
financial year to the British Coal Corporation to
cover the costs arising from residual activities prior to
dissolution of the Corporation following
privatization,

- a financial measure for the 1994/95 and 1995/96
financial years to the British Coal Corporation to

⁽¹⁾ OJ No L 329, 30. 12. 1993, p. 12.

reflect the heavy burden of restructuring costs funded by loans and the fall in the value of the Corporation's assets in recent years, not exceeding the difference between the loans on the balance sheet at the end of the 1994/95 financial year, expected to be approximately £ 1 700 million, and the eventual proceeds of the sale of the regional coal companies and the mines under care and maintenance.

The financial measures which the United Kingdom intends to take fall within the scope of Article 1 (1) of Decision No 3632/93/ECSC.

The Commission must therefore give a ruling pursuant to Article 9 (4) of the Decision on whether these measures comply with the objectives and implementing criteria set out in the Decision and are compatible with the proper functioning of the common market.

II

By Decision 94/574/ECSC ⁽¹⁾ the Commission approved the modernization, rationalization and restructuring plan notified by the United Kingdom as complying with the general objectives and with the specific criteria and objectives set out in Decision No 3632/93/ECSC.

The priority objectives set by the plan notified are to make the United Kingdom coal industry fully competitive on the world market and to privatize the British Coal Corporation in the near future.

Over the last 10 years the United Kingdom coal industry has undergone extensive restructuring, rationalization and modernization. In the first phase of the restructuring, the number of underground mines operated by the British Coal Corporation was cut from 169 in March 1985 to 75 in March 1990, while the workforce was reduced from 171 000 to 66 000 miners.

Aid for the financial restructuring of the Corporation was authorized by Commission Decisions 90/634/ECSC ⁽²⁾ and 91/221/ECSC ⁽³⁾.

The lack of markets for British coal in the Community made it necessary to start a second phase of restructuring at the end of 1992. As a result, by September 1994 the number of underground mines operated by the British

Coal Corporation had fallen to 16 and their workforce to under 8 000.

On 5 July 1994, the Coal Industry Act 1994 received royal assent. The Act defines a new legal framework for the British coal industry, enabling British Coal to be fully privatized.

The British Coal Corporation's mining activities will be split and sold as a maximum of five regional coal companies, each with the mines and coal resources needed to ensure the continuity of the successor company's activities. In addition, the mines recently mothballed are being offered for sale.

The Coal Industry Act 1994 provides for the establishment of a public-sector body, designated 'The Coal Authority', on which will be conferred rights over unworked coal and over coal mines in the United Kingdom owned hitherto by the British Coal Corporation, together with other responsibilities for the environmental impact of the intensive coalmining pursued in the United Kingdom over the last 200 years. The Coal Authority may engage in no commercial mining activities. Mine operators must have a lease or other property interest in the coal and the associated mines. They must also hold an operating licence which, in future, will be granted by The Coal Authority.

III

The aid which the United Kingdom intends to grant to The Coal Authority covers liabilities for the environmental and physical damage caused by underground production activities before privatization of the British Coal Corporation, which are to be transferred to the Authority. Part of these liabilities — not exceeding £ 35 million in the 1994/95 financial year and £ 60 million in the 1995/96 financial year — are for damage caused on the surface by subsidence. The other liabilities, not exceeding £ 5 million for the 1994/95 financial year and £ 70 million for the 1995/96 financial year, include the rehabilitation of abandoned mine sites and tips, methane venting and water pumping from old workings.

The successor companies will assume responsibility for the obligations connected with the working of the resources or mines transferred to them. The operating licences granted to the successor companies will define areas of responsibility within which companies will be liable for subsidence claims after privatization. The Coal Authority will be responsible only for subsidence damage outside these areas; such damage will be the result of past

⁽¹⁾ OJ No L 220, 25. 8. 1994, p. 12.

⁽²⁾ OJ No L 346, 11. 12. 1990, p. 22.

⁽³⁾ OJ No L 98, 19. 4. 1991, p. 16.

mining activities in abandoned zones of working, and hence is not related to current production.

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

IV

The aid not exceeding £ 32 million to cover compensation for workers and former workers of the British Coal Corporation in the 1995/96 financial year is designed to cover payments for hearing loss, industrial injury and damage to health in the course of their employment in the Corporation before privatization. The United Kingdom Government will assume responsibility for these liabilities. After the date of privatization, the successor companies will have to assume all the liabilities relating to hearing loss, industrial injury and damage to health suffered by the workers which they employ for that part of their employment falling after privatization.

To compensate workers and former workers of the British Coal Corporation for hearing loss arising from employment between 26 March 1989 and privatization of the Corporation, the United Kingdom proposes to pay aid not exceeding £ 2 million for the 1995/96 financial year. As regards compensation for hearing loss arising from employment prior to 26 March 1989, Commission Decision 90/634/ECSC authorized the United Kingdom to grant aid totalling £ 500 million to the British Coal Corporation to constitute a provision to cover this. The Commission takes note of the fact that from the 1995/96 financial year, the Department of Trade and Industry will replace the British Coal Corporation, in anticipation of its dissolution, for the payment of the aid, direct to the beneficiaries.

To compensate workers and former workers of the British Coal Corporation for industrial injury and damage to health suffered in the course of employment between 1947 and privatization of the Corporation, the United Kingdom proposes to pay aid not exceeding £ 30 million for the 1995/96 financial year.

These financial measures are for compensation for workers who have been made redundant, have retired or who will be transferred to the successor companies.

This aid is intended to cover the costs arising from or having arisen from the modernization, rationalization or restructuring of the coal industry which are not related to current production (inherited liabilities). In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely residual costs to cover former miners' health insurance, may be considered compatible with the common market provided that the amount paid does not exceed the costs.

V

The aid for concessionary fuel entitlement to coal or smokeless fuel or, in certain cases, cash-in-lieu to former workers or their dependants meets the British Coal Corporation's obligations under the agreements signed with the mining trade unions. The responsibility for these entitlements for the Corporation's former workers or their dependants will be transferred to the United Kingdom Government.

In the future, the successor companies will have to bear the cost of the obligation to supply fuel to British Coal Corporation workers transferred to them, including the obligation to supply them after they leave the industry. To cover the obligations to supply former workers who left the industry before privatization, or their dependants, stemming from employment before 31 March 1990, Decision 90/634/ECSC authorized the United Kingdom to grant aid not exceeding £ 2 000 million to the British Coal Corporation for constitution of a provision. The Commission takes note of the fact that from the 1995/96 financial year, the Department of Trade and Industry will replace the British Coal Corporation, in anticipation of its dissolution, for the payment of the aid, direct to the beneficiaries.

To cover the obligations to supply fuel to British Coal Corporation workers who have retired or been made redundant, or to their dependants, for that part of their employment running from 31 March 1990 to privatization of the Corporation, the United Kingdom intends to pay aid not exceeding £ 1 million for the 1995/96 financial year.

These financial measures meet the obligations to supply workers who retired or were made redundant in the

process of restructuring, rationalization and modernization of the United Kingdom coal industry or their dependants and cannot therefore be considered as related to current production (inherited liabilities).

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

VI

The aid for pension schemes for British Coal Corporation workers meets the Corporation's obligations with regard to the pensions of some 600 000 members for the part of their employment spent with the Corporation. From privatization, the United Kingdom Government will act as guarantor.

In the future the pension entitlements for British Coal Corporation workers who continue to work for the successor companies will be incorporated in similar new industry-wide schemes.

To cover the unexpectedly large numbers of early retirement payments to workers made redundant as a result of the restructuring, rationalization and modernization of the coal industry, the United Kingdom intends to pay £ 180 million to the pension schemes for the 1995/96 financial year. In addition, the United Kingdom Government intends to pay a total of £ 3 million for the 1995/96 financial year to cover contractual obligations *vis-à-vis* former British Coal Corporation workers not covered by the main pension schemes.

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

In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely the cost of paying social-welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age, the payment of pensions and allowances outside the statutory

system to workers who lose their jobs as a result of restructuring and rationalization and to workers entitled to such payments before the restructuring, can be considered compatible with the common market provided that the amount paid does not exceed the costs.

VII

The aid to cover exceptional costs arising from the closure of British Coal Corporation mines meets the Corporation's obligation to pay compensation to workers who have been made redundant or been transferred to other mines as a result of the restructuring, rationalization and modernization of the United Kingdom coal industry.

To cover these costs, the United Kingdom Government intends to grant the British Coal Corporation aid not exceeding £ 635 million for the 1994/95 financial year and £ 26 million for 1995/96.

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

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

VIII

The aid to cover the costs arising from the British Coal Corporation's residual activities between privatization and the dissolution of the Corporation meets the Corporation's obligation to cover certain residual activities not related to current production, such as the closure of mines neither included in the regional coal companies nor sold.

To cover the costs of those residual activities, the United Kingdom Government intends to grant the British Coal Corporation aid not exceeding £ 70 million for the 1995/96 financial year.

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

In accordance with Article 5 of Decision No 3632/93/ECSC, this aid, which is explicitly mentioned in the Annex to the Decision, namely residual costs resulting from administrative, legal or tax provisions and additional underground safety work resulting from restructuring, may be considered compatible with the common market provided that the amount paid does not exceed the costs.

IX

The British Coal Corporation's restructuring and rationalization programme has been necessary to bring the Corporation's production capacity into line with the continuous contraction of the market and to take account of the falling prices on the world market, but has given rise to substantial costs in terms of loss in the value of fixed assets and closure costs and social measures uncompensated by aid. Restructuring costs — mainly redundancy payments — borne by the British Coal Corporation since 1990 but not covered by Government grant have totalled about £ 500 million and have been funded by loans. These costs and the fall in the earning power of the Corporation's assets have added to its debt burden to such an extent that, even without privatization, further financial restructuring would be essential in order to restore a balance between the Corporation's debts and its earnings potential, taking into account that the activities of the British Coal Corporation are financed exclusively through loans.

As loans from the United Kingdom Exchequer to the public sector cannot be transferred to private-sector companies, the successor companies will have to arrange other forms of funding through own resources and/or loans. It is estimated that, by the end of the 1994/95 financial year, the United Kingdom Exchequer will have granted the British Coal Corporation loans totalling £ 1 700 million, which will have to be extinguished. The proceeds from the sale of the British Coal Corporation will partially offset the amount extinguished.

The sale of British Coal's colliery and opencast mining operations is being conducted by competitive tender. It is expected that the sale will be completed in December 1994 and will realize proceeds amounting to hundreds of millions of pounds. The method of this operation guarantees that the assets will be sold at their market price.

The sale will not entirely cover the extinguishment of debt, since the contraction of the British Coal Corporation's production activities, combined with the prospects as regards the United Kingdom coal's market share and coal price trends, suggest that the book value of the Corporation's assets is significantly higher than their market value. In the financial years 1992/93 and 1993/94 the assets of the Corporation were written down, net overall, by £ 617 million. Following a detailed analysis of the prospects for the United Kingdom coal industry, it must be concluded that British Coal Corporation's assets must still be considered overvalued and a further write down can be anticipated this year. The procedure of this operation ensures that the assets will be sold at their market value.

The aid planned by the United Kingdom covers the difference between the total loans which will be extinguished and the proceeds from the sale of the British Coal Corporation's regional coal companies and the mines under care and maintenance.

The aid reflects the heavy burden of restructuring costs funded by loans and the fall in the Corporation's asset values over recent years, both as described above.

The aid foreseen in the framework of the privatization of the British Coal Corporation will facilitate restructuring, rationalization and modernization of the United Kingdom coal industry.

The aim to make coal produced in the United Kingdom fully competitive with imported coal and hence to abolish all aid to current production meets the objective of the first indent of Article 1 of Decision No 3632/93/ECSC, namely to make, in the light of coal prices in international markets, further progress towards economic viability with the aim of achieving degression of aids.

The extinguishment of the debts, partially compensated by the proceeds of the sale by auction of the mining activities of the company, represents an aid which corresponds to an exceptional intrinsic depreciation of the assets of the company resulting from its restructuring, as well as the exceptional expenditure on workers who lose their jobs, which are covered by Decision No 3632/93/ECSC.

In accordance with Article 5 of Decision No 3632/93/ECSC these measures may be considered compatible with the common market provided that the amount paid does not exceed the costs.

X

With respect to the new legal and regulatory framework established for the United Kingdom coal industry by the Coal Industry Act 1994, the United Kingdom Government will ensure that the aid granted pursuant to this Decision gives rise to no discrimination between producers, purchasers or users on the Community coal market.

In the light of foregoing and based on the information supplied by the United Kingdom, the aid and measures proposed in respect of the coal industry are compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market.

This Decision shall apply without prejudice to the compatibility with the Treaties of any contracts which could be concluded between coal producers and electricity generators,

HAS ADOPTED THIS DECISION:

Article 1

The United Kingdom is hereby authorized to grant to the coal industry for the 1994/95 financial year:

- aid not exceeding £ 40 million to the Coal Authority, a public-sector body, to cover liabilities for environmental and physical damage caused by coal production activities before the privatization of the British Coal Corporation,
- aid not exceeding £ 635 million for the 1994/95 financial year to the British Coal Corporation to cover exceptional social-welfare payments to or in respect of workers who have been made redundant or been transferred to other production units as a result of the restructuring, rationalization and modernization of the coal industry in the United Kingdom.

Article 2

The United Kingdom is hereby authorized to grant to the coal industry for the 1995/96 financial year:

- aid not exceeding £ 130 million to The Coal Authority, a public-sector body, to cover liabilities for

environmental and physical damage caused by coal production activities before the privatization of the British Coal Corporation,

- aid not exceeding £ 2 million to cover compensation for workers and former workers of the British Coal Corporation for hearing loss arising from that part of their employment in the Corporation running from 26 March 1989 to the date of privatization of the Corporation and aid not exceeding £ 30 million to cover compensation for other industrial injury and damage to health suffered by workers and former workers of the British Coal Corporation during that part of their employment in the Corporation falling between 1947 and the date of privatization of the Corporation,
- aid not exceeding £ 1 million for concessionary fuel entitlement to coal or smokeless fuel or, in certain cases, cash-in-lieu to British Coal Corporation workers who have retired or have been made redundant as a result of the modernization, rationalization and restructuring of the coal industry in the United Kingdom, and their dependants, for that part of their employment in the Corporation running from 31 March 1990 to the date of privatization of the Corporation,
- aid not exceeding £ 183 million for contributions to pension schemes for British Coal Corporation workers, including those granted early retirement as a result of the restructuring, rationalization and modernization of the coal industry in the United Kingdom,
- aid not exceeding £ 25 million to the British Coal Corporation to cover exceptional social-welfare payments to workers who have been made redundant or who have been transferred to other production units as a result of the restructuring, rationalization and modernization of the coal industry in the United Kingdom,
- aid not exceeding £ 70 million to the British Coal Corporation to cover the costs arising from residual activities prior to dissolution of the Corporation following privatization.

Article 3

The United Kingdom is hereby authorized to take, for the 1994/95 and 1995/96 financial years, a financial measure in favour of the British Coal Corporation to reflect restructuring costs funded by loans and the fall in the Corporation's assets value in recent years, not exceeding the difference between the loans on the balance sheet at

the end of the 1994/95 financial year, expected to be approximately £ 1 700 million, and the eventual proceeds of the sale of the regional coal companies and the mines under care and maintenance, carried out in accordance with the modernization, rationalization and restructuring plan approved by the Commission.

Article 4

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

Article 5

The United Kingdom shall inform the Commission by 30 September 1995 at the latest of the amount of aid

actually paid in the 1994/95 financial year and by 30 September 1996 of the amount of aid actually paid in the 1995/96 financial year.

Article 6

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

Done at Brussels, 3 November 1994.

For the Commission

Marcelino OREJA

Member of the Commission

COMMISSION DECISION

of 30 November 1994

concerning the transfer by the Netherlands of a pilot school to the Royal Dutch Airline
KLM (C31/93)

(Text with EEA relevance)

(Only the Dutch text is authentic)

(94/996/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement establishing the European Economic Area, and in particular Article 62 (1) (a) thereof and Protocol 27 thereto,

Having, in accordance with the abovementioned Article of the Treaty, given notice to the parties concerned to submit their comments and having regard to those comments,

Whereas:

I

By letter of 17 May 1991 and subsequent letters, the Commission was notified of a complaint by the Association of Dutch Aviation Undertakings (hereinafter referred to as 'VNLO') against aid granted by the Netherlands in respect of the privatization and sale of the Public Aviation School (Rijksluchtvaartschool — hereinafter referred to as 'RLS') to the Royal Dutch Airline (hereinafter referred to as 'KLM').

The aid was registered as non-notified aid on 18 July 1991.

On 14 August 1991 the Commission requested the Netherlands to communicate the financial agreements entered into with KLM during the transfer of the RLS to the private sector. The Netherlands has duly replied to the Commission's request for information.

The Commission requested supplementary information on 26 November 1991, 28 January and 15 June 1992. This information was provided by letters registered on 16 January, 28 February and 21 August 1992 respectively.

The Netherlands provided the Commission with:

- the text of the amendments to the privatization agreement,
- several valuation reports on the flying school.

On 10 February 1993 the Commission held a meeting in Brussels with representatives of the Netherlands. In reply to the Commission's oral requests, the Netherlands provided further information by letter of 15 April 1993.

On the basis of the information in its possession the Commission decided to open the Article 93 (2) procedure and informed the Netherlands of this decision by letter of 15 October 1993. The letter was published in the Official Journal ⁽¹⁾ and third parties were invited to comment on the case within one month of publication. KLM and VNLO commented on the case and their comments were duly transmitted to the Netherlands. The Netherlands replied by letter of 6 April 1994. Additional information was provided by the Netherlands in a number of meetings, the last of which was held on 9 November 1994 in Brussels by the Netherlands, KLM and the Commission. Further to the meeting the Netherlands provided the Commission with further information by letter of 11 November 1994.

II

The RLS was created shortly after the Second World War to meet the training requirements for highly qualified pilots; it operated in the public sector until July 1991. The school pursued mainly the following activities:

- organizing and providing a high grade course of training to qualify students as airline pilots in international and national civil aviation,
- providing services (training and transport) on behalf of the Royal House and the Government.

Besides those activities the school at present provides aircraft maintenance and servicing (including repair and air taxi services).

⁽¹⁾ OJ No C 293, 29. 10. 1993, p. 4.

In 1985 the Netherlands Council of Ministers decided to carry out a feasibility study on the privatization of the RLS.

On 26 February 1991 the Netherlands Government and Koninklijke Luchtvaartschool bvio (hereinafter referred to 'KLS') lawfully represented by KLM, concluded the contract for the privatization of the RLS (hereinafter referred to as 'the contract'). As a consequence of the contract, on 1 July 1991 the RLS was transferred to KLS, a company formed and entirely owned by KLM.

VNLO applied to the Arrondissementsrechtbank (District Court) of the Hague for an injunction to restrain the Dutch Government from giving effect to the agreement concluded with KLM on the privatization of the school. The President of the Dutch Court, by judgment of 5 July 1991, rejected the complainant's application ⁽¹⁾.

The Netherlands Government has imposed on KLM the condition that it shall maintain the existing staff levels (some 150 employees as of 1 July 1992) and conditions of employment for a period of five years (1991 to 1996).

Furthermore, the contract imposes the following obligations on KLM (Article 2):

- (a) to provide *high-grade pilot training* (Article 2.2a);
- (b) to provide a *course of retraining for flight engineers* of KLM to qualify them as airline pilots (Article 2.2b);
- (c) to provide services and make goods available for the *training of military pilots and instructors of the Koninklijke Marine (Dutch Royal Navy)* (Article 2.2c and 2.2d);
- (d) to carry out *flights for the Government and the Royal House* (Article 2.2e);
- (e) to carry out *test flights for the privatized Directie Luchtverkeersbeveiliging (Air Traffic Control Directorate) of the Rijksluchtvaartdienst (State Aviation Service)* (Article 2.2f);
- (f) to provide a course for *retraining military pilots* for commercial flying.

At present the services mentioned in (c), (d), (e), and (f) are rendered by KLM at commercial rates.

The contract provides for considerable financial facilities for both KLM and the school:

- (i) KLM will take over all the assets of RLS for the symbolic sum of Fl 1 (Article 3.3);
- (ii) payment of FL 17 000 000, as a contribution to the estimated deficits of the school over the first five years (Article 5.1). The contribution is to be paid in five instalments:
 - 1991: 7 700 000,
 - 1992: 3 000 000,
 - 1993: 2 100 000,
 - 1994: 2 100 000,
 - 1995: 2 100 000;
- (iii) payment of a lump sum of Fl 9 700 000 into the Guarantee Fund (Article 6.9 of the contract as amended on 14 May 1992) with the proviso that, should the fund cease to exist, the remaining balance would revert to the State. The purpose of the fund is to help students to meet their financial commitments provided that they are not able to finish the training or have not, through no fault of their own, found a suitable employment after the completion of the training;
- (iv) payment of a sum of Fl 5 700 000 transferring the contributions from students selected in 1990 and 1991 (totalling some 50 students), from the State to KLS. The sum was to be paid in two equal instalments in December 1991 and December 1992 (Article 7). This sum represents the amount of the students' contributions for the intake of students selected in 1990 and the first intake of 1991;
- (v) the Netherlands has committed itself to pay the pension commitments for all personnel who have already reached pensionable age before taking service with the school (Article 8.8). The amount of these payments is FL 13 500 000, to be paid in five annual instalments of Fl 2 700 000.

III

The Commission decided to open the Article 93 (2) procedure because it considered that the contribution by the Netherlands to the operating deficits made over five years by the school was aid and that the FL 1 transfer price contained aid elements. Moreover, the Commission had doubts as to the compatibility of such aid measures with the common market.

The comments made by the Netherlands and by KLM in the course of the Article 93 (2) procedure may be summarized as follows:

- the purchase price correctly reflects the negative going concern value of the school as of the transfer date,

⁽¹⁾ The Commission cannot attach great importance to this judgment since it was delivered in the context of summary proceedings where the complainant merely sought an interim measure. Given the complexity of the case, the President of the Dutch Court was not in a position to address the substance of the case and appreciate all the merits of the applicant's arguments based on Article 92 of the Treaty and Article 61 of the EEA Agreement.

- the fixed amount of FL 17 000 000 was agreed with KLM, after rigorous negotiations, to compensate the negative cashflows that the school is forecast to generate. This amount is meant to offset contributions to be made by the purchaser,
- the Netherlands decided to privatize the school on the assumption that the school would continue to be located in Eelde, which is an economically depressed area compared with the rest of the country,
- the evaluation of the school should not be carried out on the basis of the liquidation method because the Netherlands has never considered the option of winding-up. The evaluation must take place on a going-concern basis. In any case it is wrong to assume that the school had a liquidation value of FL 17 000 000 since this amount does not take into account the expenses involved in the liquidation, such as those necessary to lay off the staff.

IV

Article 92 (1) of the Treaty and Article 61 (1) of the EEA Agreement (hereinafter referred to as the Agreement) provide that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States and the Contracting Parties, be incompatible with the common market and the Agreement.

The Commission does not regard as aid measures:

- payment of a lump sum of Fl 9 700 000 into the guarantee fund. This contribution is a social measure which represents a direct advantage for the students and is not an aid to KLM,
- payment of a sum of FL 5 700 000 transferring the contributions from students selected in 1990 and 1991, from the State to KLS. The Commission is of the opinion that the payment of this sum does not constitute aid because it aims at refunding the school the students' contributions for the aforementioned intakes, which were paid to the State as former owner of the school,
- payment of the pension commitments. The Commission does not consider this payment to be aid, because it refers exclusively to the past, that is to pension rights that were accumulated before the personnel were re-assigned to the new owner.

With regard to the payment of Fl 17 000 000 as a contribution to the estimated deficits of the school, the Commission considers that this amount is not justified

when compared with the obligations imposed on the school. The obligation mentioned in Chapter II, point (a), namely maintaining high-grade pilot training, appears to be a false obligation. It goes without saying that the maintenance of high grade training is mostly in KLM's interest because all the students of the school are offered employment by KLM as pilots.

These conclusions are also valid for the obligation contained in Chapter II, point (b), which refers to KLM's engineers to be retrained as airline pilots according to an agreement between KLM and the Netherlands.

The obligations mentioned in Chapter II, points (c), (d), (e) and (f) represent genuine burdens imposed on KLM. In order to assess the cost burden of these public service obligations on KLM, the Commission requested from the Netherlands information on the actual cost of those services. The Netherlands, which has not forwarded information on the specific costs of the services, has informed the Commission that the services are rendered by the school at market rates and are being paid separately. The possibility that KLM makes a profit in implementing the aforementioned obligations cannot be ruled out.

The Commission is therefore of the opinion that the payment of FL 17 000 000 represents aid for the school. However, KLS belongs to and is run by KLM as the school where a significant number of its pilots and engineers are trained. KLS has no decision-making autonomy because it is entirely owned and controlled by KLM (Article 1.5 of the contract provides that KLM shall be the sole shareholder of KLS). Therefore all subsidies for the benefit of the school would represent indirect aids to KLM, which should be considered the final beneficiary of the aid.

As regards the FL 1 purchase price, it must be recalled that the Commission's policy as regards ascertaining whether the privatization of State-owned companies gives rise to aid is now well established. If the sale takes place as the result of an open and unconditional bidding procedure⁽¹⁾ then, generally, no aid is involved in the disposal process. However, if the sale is made on any other basis or if conditions are attached thereto, then a presumption of aid arises.

Similarly, the Commission has to consider what a market economy investor would do in circumstances similar to

⁽¹⁾ See Commission decisions in the cases of DEKO N 11/91, Treuhandanstalt NN 108/91 and E 15/02 and Portuguese privatization programme NN 140/91.

those faced by the Netherlands in February 1991. Such an investor, which in this case is the Netherlands State, being the sole shareholder of RLS, would have to make a decision either to sell the school or to seek its liquidation. According to the Netherlands, the liquidation value should not be taken into account, as the State has never considered the option of winding up the school, such option being unacceptable in the Dutch socio-economic environment. The Commission considers that for the purpose of the application of the market economy investor principle the behaviour of the State must be compared to that of a private owner of a company, and thus the considerations of the State as public authority must be disregarded. The private owner who wants to dispose of a company may either wind up the company or sell it off. In normal commercial circumstances this private owner will choose the more profitable option. In the present case, the Netherlands State has chosen to sell the school even though, on the basis of the information available to the Commission, this would appear to be the more expensive option and which, therefore, would not presumably have been accepted by a market economy investor.

This is demonstrated by the fact that the Netherlands decided to grant Fl 17 000 000 to KLM to cover RLS's operating losses for the first five years following its sale rather than immediately liquidating the school. In the light of information provided by the Netherlands, such a liquidation could have raised, on the other hand, some FL 16 920 000 for the Netherlands.

This amount is based on the depreciated replacement cost of the school's assets as at July 1991, calculated by the Ministry of Finance's Land Inspectorate, which amounted to FL 48 400 000 million. To this sum must be added a flight simulator belonging to the school, whose replacement cost was FL 8 000 000. The total of FL 56 400 000 has then to be reduced by an appropriate factor to reflect the forced nature of a liquidation sale and then by a further amount to take account of the school's liabilities.

The Netherlands has stated in its correspondence that if the State had decided to liquidate the school it would have had to bear the redundancy costs imposed by Dutch law. These costs, whose amount would exceed the value of the assets, are related to the compensation of the civil servants who would be dismissed if the school were liquidated, and to the other legal claims linked to the liquidation (e.g. the claims of the students who would not have been able to finish their training). The Netherlands has neither proved that the school had

outstanding legal liabilities nor provided the Commission with the amount of those alleged liabilities as at July 1991. Lacking such evidence, the Commission has to consider that the value of the school's liabilities as of 1 July 1991 was zero. Then, in order to calculate the liquidation value of the school, it is simply necessary to reduce the gross value of the assets of FL 56 400 000 noted above to their direct realizable value. Given the special business of the school it is unlikely that many purchasers would be interested in buying such equipment and a sizeable discount factor is therefore necessary. Consequently, a factor of 70 % is believed to be an appropriate ratio by which to reduce the depreciated replacement cost of the school's assets to their liquidation value.

On the basis of the above reasoning the Commission considers that the Netherlands has not reacted in the same way as a market economy investor in deciding to dispose of its interest in RLS.

Consequently, it is necessary to investigate the disposal process in greater detail and, specifically, to consider whether the price for which the school was sold represented its market value.

In the present case, although discussions were held with several interested parties during 1987, no open bidding procedure was followed to establish a market value for RLS. Furthermore, the Netherlands has imposed a condition on KLM that it shall retain the school's existing level of staff with their current conditions of employment until 1996.

However, the additional operating costs of this condition are presumably negated by the operating aid of FL 17 000 000 referred to above. Moreover, KLM plans to increase the output of pilots trained by the school, by 1996, from 40 a year to 60 a year. The effect of this increase is to improve staff utilization and productivity and thereby decrease the unit cost of training by 1996. On this basis KLM believes that the school will be viable by this date and therefore KLM will have acquired an asset on which it will not have had to meet any restructuring costs or to incur any of its operating losses before it becomes profitable.

Therefore, according to the Commission's established principles there is a presumption that State aid has been

granted to KLM by allowing this company to purchase a State asset at a bargain purchase price.

The determination of a market value for a company is always a subjective and difficult matter. In the present case a number of valuations have been presented by the complainant and the Netherlands to justify the actual sales price of FL 1.

— Valuation by complainant

According to the complainant a bid of FL 30 000 000 was made on the same conditions as that of KLM. However, the Commission has to treat this bid with caution as it was submitted after the closing date for the submission of bids. Therefore, its use in establishing a value for RLS is limited.

— Valuation by KLM

KLM commissioned a firm of external consultants to value RLS. This was completed on the basis of the present value of future cashflows and was calculated to be — FL 43 000 000, i. e. KLM should have been paid to acquire RLS from the State.

The Commission has doubts regarding such a valuation. The school has regularly generated a negative cashflow due to the fact that revenues from student pilots have not matched the costs of their training.

Furthermore, this value has been based on a 20-year time-scale notwithstanding the fact that KLM can reform the school's structure, and therefore its cost and revenue structure, with effect from 1996. Finally, such a value does not take into account any strategic considerations KLM may have had for acquiring the school.

— Depreciated replacement cost value

As stated above the school's assets were valued, as at July 1991 by the Ministry of Finance's Land Inspectorate, at FL 48 400 000. To this must be added the replacement cost of a flight simulator, belonging to the school, of FL 8 000 000, giving a total of FL 56 400 000.

This amount does not represent the open market value of the business but rather the cost of replacing its assets by replacement equipment having had the same degree of wear and tear as the existing assets. Consequently, this is also considered by the Commission to be an inappropriate value.

— Sales price of FL 1

As this is a nominal amount neither representing the value of the assets nor the worth of the business it may be discounted.

The Commission considers that the school should have been valued on an open-market going-concern basis, i.e. the value of the company to a willing buyer who would continue in the same business. This would be calculated taking into account the purchaser's strategic interest in the business and foreseen growth for the school. Such a value has not been submitted to the Commission by the Netherlands and consequently the Commission is unable to comment thereon.

However, the Commission, at this stage, is able to assess the aid content in the bargain purchase price of FL 1. Given that it is believed that the school had a liquidation value, as at July 1991, of FL 16 920 000, as indicated above, it is possible to conclude that this would be the minimum value of the business to KLM at the date from which it is free to sell the school's assets, namely 1996. As all business losses incurred by the school will be covered by the State between 1991 and 1996 it can be assumed that no further diminution in the value of these assets will occur.

In accordance with the position taken by the Commission in its letter opening the procedure, it is also necessary to take account of the time value of money, i.e. the fact that KLM will not receive the proceeds until 1996. Using a discount factor of 9 % (the Dutch 'reference rate' for 1991) the present value of FL 16 920 000 receivable in 1996 amounts to FL 11 000 000.

According to the Netherlands, the Commission, in calculating the liquidation value, should take into account the costs and expenses involved in the liquidation, such as those linked to the lay-offs. In particular, KLM would be obliged to offer redundancy payments to at least 61 employees on 1 July 1996. For these employees KLM, in order to avoid separate legal claims, should develop a social plan in agreement with the unions. The Netherlands has demonstrated to the Commission that, according to the methodology approved by the Netherlands courts, the minimum amount of these redundancy payments, including social charges, would be FL 5 750 000. Moreover, KLS would be confronted with several other claims, in particular from the students who would not be able to complete their training because of the liquidation of the school.

The Netherlands has not provided any estimate of the value of these claims in order to enable the Commission to assess the cost.

The Commission considers that the payments to the 61 employees would represent legal liabilities for KLM to be met in case of liquidation of the school. Therefore, in order to estimate the liquidation value of the school this amount must be deducted from the value of the assets (FL 16 920 000 - FL 5 750 000 = FL 11 170 000). Using the 9 % discount factor (see above) the present liquidation value in 1991 is FL 7 260 000. This may therefore be taken to represent the benefit to KLM of its being granted a bargain purchase price and therefore the amount of aid involved. This is aid to KLM, as this company benefits from the fact that it would not have to bear the full cost of an asset acquired from the State.

Therefore, the Commission considers that the total amount of aid, granted by the Netherlands to KLM at date of transfer of the school, is FL 7 260 000 (present value of the aid involved in the FL 1 transfer price) plus FL 17 000 000 (contribution to the operating subsidies of the school), giving a total of FL 24 260 000.

The aid measures in question distort competition, as the competitive position of other European air carriers which run their own schools without receiving subsidies or which have to bear the full cost of their pilots' training will be harmed by the acquisition and the covering of the losses. In other Member States (for example Belgium, Germany and the United Kingdom) pilot schools, even those in which national airlines hold shareholdings, are not subsidized.

In the liberalized EEA an aid to an air carrier operating European routes has an effect on trade.

On the basis of the information available to the Commission, the aid, which does not fall within the scope of an approved aid scheme, should have been notified to the Commission according to Article 93 (3) of the Treaty. The Netherlands, by not notifying the aid in advance, before putting it into effect, has granted the aid illegally and failed to fulfil its obligations pursuant to Article 93 (3).

The aid to KLM cannot be considered compatible with the common market and the Agreement pursuant to Article 92 (2) of the Treaty and Article 62 (2) of the

Agreement, as the aid does not correspond to any of the contingencies envisaged in those provisions.

Article 92 (3) of the Treaty and Article 61 (3) of the Agreement list those aids which may be considered compatible with the common market and the Agreement. Article 92 (3) (a) and (c) of the Treaty and 61 (3) (a) and (c) of the Agreement provide for exemptions in respect of aid to promote or facilitate the development of certain regions. However, whilst a major element of the aid granted is to maintain employment at the school, the aid does not qualify for the exemption laid down in Article 92 (3) (a) of the Treaty and Article 61 (3) (a) of the Agreement. Neither Schiphol airport nor Eelde, where the school is located, are zones where the standard of living is abnormally low or where there is serious underemployment. Nor can the aid be described as intended to facilitate the development of certain economic areas, as provided in Article 92 (3) (c) of the Treaty and Article 62 (3) of the Agreement, since they are not located within a region eligible for regional aid, as specified in the Commission guidelines for regional aid. In any case the aid is not linked to any open regional aid scheme and its purpose does not consist in promoting a lasting development of the region of Eelde.

As for Article 92 (3) (b) of the Treaty and Article 61 (3) (b) of the Agreement the evidence suggests that the aid in question was not intended to promote the execution of an important project of common European interest nor to remedy a serious disturbance in the Dutch economy. Indeed, the Netherlands has not cited this provision.

With regard to the exception pursuant to Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement for aid to facilitate the development of certain economic activities, the Commission follows certain specific criteria for the evaluation of State aid in the aviation sector. A number of conditions have to be met if aid is to be considered compatible with the common market and the Agreement as aid to facilitate the development of the air transport sector. In the present case the aid is in favour of KLM, but is aimed at financing the restructuring of the pilot school KLS, which is a small non-core unit within the KLM group. In fact, inside the KLM group, the economic importance of the school is negligible if compared with the core air transport activity. For these reasons, the restructuring of the school cannot be treated as a restructuring of the KLM group. The Commission considers that the conditions provided for in the Treaty and the Agreement as applied by the Commission in the

air transport sector for evaluating the compatibility of aid pursuant to Article 92 (3) (c) of the Treaty and Article 61 (3) of the Agreement should be interpreted in order to take into account the particular circumstances of this case. In this respect it should be noted that the conditions refer in principle to the general restructuring of airlines, which is why they should be adapted for the assessment of certain activities which, as in this case, are peripheral to air transport, such as pilot training. The Commission may consider restructuring aid to be compatible with the common market if it meets a number of conditions. Those conditions must be seen essentially in the context of the two main principles enshrined in Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the Agreement — namely that the aid must be required for developing the activity from the standpoint of the EEA and that the aid may not adversely affect trading conditions to an extent contrary to the common interest.

In the course of the procedure the Netherlands provided information to the effect that the aid is linked to a restructuring plan devised and carried out by KLS since the date of transfer. The programme objective is to create a full market-economy enterprise as from 1 July 1996. The programme which is to be finalized by 1 July 1996 aims at lowering costs and increasing productivity. By successfully implementing the programme KLS will employ less than 75 employees (155 employees before the privatization) and will train more than 70 pilots per year (less than 40 trained pilots per year before the privatization).

The programme provides for the following measures:

1. Consultancy services: Since the date of transfer consultants have been working with KLS management in areas in which KLS did not have expertise. These areas involve personnel and organization, logistics, business planning, function re-evaluation, and other organization studies. The cost of these services, which was borne in 1991/92, amounted to FL 1 250 000.
2. Restructuring ground-training: The previous class teaching method was replaced by individual training by means of audio-visual training tools. The cost was met in 1991/92 and amounted to FL 200 000.
3. Computer-based training: KLS will invest in hardware and software to improve the theoretical training programme. The investment will be carried out in 1995/96 and the cost is estimated at FL 1 300 000.
4. System for selecting military pilots: In 1993 KLS bought Frasca simulators to provide standardization and cooperation with the Ministry of Defence on the selection of military pilots. The cost was FL 540 000.
5. Accommodation: Most of the accommodation dates from the beginning of the 1950s and must be demolished, reconstructed and developed. The expenses will be met in 1995. In particular:
 - (i) the cost of demolition and removal of buildings and materials is estimated at FL 1 500 000;
 - (ii) a central building will be created in which all the primary functions will be housed, of which the estimated cost is FL 8 500 000;
 - (iii) KLS is a campus and the increasing number of students, as a consequence of the increase in productivity due to the restructuring, will require several investments in housing and student facilities. The forecast cost is FL 3 000 000.
6. Platform: As a consequence of the shifting of the central building, the adjustment of the platform requires an investment, to be made in 1995, whose cost is estimated at FL 600 000.
7. Replacement of flight simulator: The training programme which will be based on the newly standardized JAR-Flight Crew Licensing, will be run on a second-hand Boeing 737 simulator, which requires an estimated investment of some US \$ 8 000 000. The present simulator (C-500) will be sold. The expected selling price will be some US \$ 1 500 000. Including replacement and instalment, the net cost to be met in 1995 is estimated at US \$ 6 500 000, equivalent to FL 11 700 000.
8. Social plan: As a result of the restructuring, KLS will develop a social plan with the unions, providing for redundancy payments. The estimate cost is FL 3 000 000.
9. Outplacement and re-training of redundant personnel. The costs to be borne in 1994/95 are estimated at FL 950 000.

The Commission considers that all the expenses are necessary to achieve the objectives of the restructuring programme. The total of the restructuring costs is FL 32 540 000. In order to compare this value with the value of the aid measures one has to compare the present value of the costs as at 1991 with the present value of the aid measures at the same date. The present value of the restructuring costs as at 1991, FL 24 000 000, using the 9 % discount factor is higher than the present value as at 1991 of the aid measures involved in the privatization of the school (FL 22 560 000). Therefore the aid is not disproportionate to the restructuring needs of the school.

The Commission considers that the restructuring programme may restore the economic viability of KLS, without further aid. The maintenance in operation of efficient pilot schools which can provide high-standard training courses, maintaining a high standard of safety, can only promote the mobility of pilots within the EEA. This could offset the current shift in pilot training to countries outside the EEA, thereby promoting the development of EEA-based pilot training, and thus facilitating the development of an economic activity in conformity with Article 92 (3) (c) of the Treaty and Article 61 (3) (c) and the Agreement.

The aid, the amount of which is lower than the restructuring costs, is a contribution by the State, exclusively addressed and restricted to the expenses necessary for restructuring the school. The restructuring of the school, where students will be able to pursue their training as pilots, is in conformity with the common interest. The restructuring plan foresees a considerable reduction in personnel. KLM is firmly committed to maintaining the school in operation. This is evidence that KLM will not incorporate the school's activity into its own business or use its assets to expand the scale of its operations to the detriment of its competitors. On the basis of all these elements the Commission has reached the conclusion that the aid is compatible with the common market since it does not affect trading conditions to an extent contrary to the common interest.

The Commission has to ensure that the aid is effectively used to finance the restructuring of KLS and not to cross-subsidize KLM's core air transport business. For this reason, the Commission requires the Netherlands to provide by June 1996 a report on the progress of the restructuring programme, demonstrating that it has been executed as planned and as communicated to the Commission, in accordance with this Decision.

Accordingly, the Commission considers that the aid measures granted by the Netherlands to KLM in connection with the privatization of KLS are aid to facilitate the development of an economic activity, pursuant to Article 92 (3) of the Treaty and Article 61 (3) of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The payment of FL 17 000 000 by the Netherlands to the pilot school KLS, by way of contribution to the operating deficits incurred by the school over the period 1991 to 1996, and the said elements involved in the transfer price of FL 1 paid by KLM for the school assets are aid measures which have been illegally granted; however, they are compatible with the common market and the EEA Agreement as aid to facilitate the development of certain economic activities according to Article 92 (3) (c) of the Treaty and Article 61 (3) (c) of the EEA Agreement.

Article 2

By June 1996, the Netherlands shall provide the Commission with a report demonstrating that the restructuring programme has been implemented in accordance with this Decision.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 30 November 1994.

For the Commission

Marcelino OREJA

Member of the Commission

COMMISSION DECISION

of 30 November 1994

concerning the approval of the revised figures of Aer Lingus's seat capacity restrictions set out in Decision 94/118/EC

(Only the English text is authentic)

(Text with EEA relevance)

(94/997/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community, and in particular Articles 92 and 93 thereof,

Having regard to Commission Decision 94/118/EEC of 21 December 1993, concerning aid to be provided by the Irish Government to the Aer Lingus group, an undertaking mainly providing air transport services⁽¹⁾, and in particular Article 1 (h) thereof,

Whereas, during September 1994, by agreement between the Commission and Ireland, independent assessors were appointed to review actual and prospective performance for 1994 and prospective performance for 1995 on the routes between Ireland and the United Kingdom and London-Heathrow and Dublin;

Whereas on the basis of the forecast growth figures, the revised capacity restrictions, using the actual figures for the calendar year 1993 as a base, are the following:

Routes	Aer Lingus capacity 1993	1994 revised restrictions	1995 revised restrictions
DUB-LHR	1 397 325	1 451 821	1 621 684
IRL-UK	3 214 010	3 570 765	3 845 714

Whereas the Commission considers that the assessors' study provides sufficient assurances that the estimated growth figures are reliable,

Article 1

The seat capacity restrictions imposed on Aer Lingus by Decision 94/118/EC 21 December 1993 in State aid No C 34/93, for the routes between Ireland and the United Kingdom and Dublin and London-Heathrow, are adjusted according to Article 1 (h) of the Decision to reflect the corresponding market growth in 1994 and 1995, as follows:

- DUB-LHR:
 - 1994: 1 451 821 seats,
 - 1995: 1 621 684 seats,
- and
- IRL-UK:
 - 1994: 3 570 765 seats,
 - 1995: 3 845 714 seats.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 30 November 1994.

For the Commission

Marcelino OREJA

Member of the Commission

⁽¹⁾ OJ No L 54, 25. 2. 1994, p. 30.