II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 April 1997

requiring the Portuguese Government to suspend the aid in the form of a State guarantee granted to the undertaking EPAC — Empresa Para a Agroalimentação e Cereais SA

(Only the Portuguese text is authentic)

(97/433/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 93 (2) and (3) thereof,

Whereas:

I

The Commission received a complaint dated 15 October 1996 about aid to the public-sector undertaking EPAC (Empresa Para a Agroalimentação e Cereais SA, hereinafter referred to as 'EPAC'), in the form of a State guarantee of Esc 30 billion, accompanied by a supplementary loan of Esc 20 billion on special terms.

As the Commission had received no notification pursuant to Article 93 (3) of the Treaty from the Portuguese authorities, a letter was sent on 31 October 1996 asking them whether the aid had been granted, and if so, requesting them to notify the Commission accordingly pursuant to Article 93 (3) of the Treaty so that the aid could be examined pursuant to Articles 92 and 93.

In a letter dated 26 November 1996, recorded as received on 29 November 1996, the Portuguese Permanent Representative to the European Union confirmed the existence of a State guarantee for EPAC. However, the Commission received no notification of the aid pursuant to Article 93 (3) of the Treaty. Consequently, the aid was put on the register of non-notified aid.

II

Before the accession of Portugal to the European Community, the marketing of cereals in Portugal was covered by a public monopoly. EPAC (at that time Empresa Pública de Abastecimento de Cereais) was the public-sector undertaking responsible for managing the market. This public monopoly was gradually dismantled after accession, and EPAC, which was made into a limited company with public capital, became one of a number of operators in the cereals market, which was liberalized in 1991.

By joint decision of the Secretary of State for the treasury and finance and the Secretary of State for food production of 26 July 1996, the board of directors of EPAC was authorized to negotiate the terms of a loan on market conditions up to a total of Esc 50 billion, Esc 30 billion of which would be covered by a State guarantee for a maximum of seven years.

By Finance Ministry Decision No 430/96-XIII of 30 September 1996, the abovementioned guarantee was granted in connection with a loan obtained by EPAC from a group of banks. The loan was equal to EPAC's total debt, which amounted to Esc 48,7 billion on 30 June 1996.

The purpose of the loan is to restructure EPAC's short-term bank debt into medium-term liabilities. The period set is seven years at an interest rate equal to six-month Lisbor for the guaranteed amount and six-month Lisbor + 1,2 % for the remainder (the six-month Lisbor interest rate stood at an annual 5,65 % at the end of

January 1997 according to the information available). Repayments will be made six-monthly in advance as follows: for the amount not guaranteed, in 10 instalments of Esc 1,87 billion, from the fifth half-year onwards; the guaranteed amount will be paid off after repayment of the amount not guaranteed, within seven years at the latest.

III

The Commission decided to initiate the procedure laid down in Article 93 (2) of the Treaty in respect of the aid granted to EPAC; the reasons which led the Commission to take the view that the aid in question did not satisfy the conditions for qualifying as one of the exceptions listed in paragraphs 2 and 3 of Article 92 of the Treaty are set out in the Commission's letter of 27 February 1997 to the Portuguese Government; in the same letter the Commission also required the Portuguese authorities to make all the arrangements necessary to suspend, with immediate effect, the impact of the guarantee on any business EPAC might transact in the cereals market.

The Portuguese Government was given 15 days from receipt of the said letter to inform the Commission of the measures taken to comply with that requirement.

By letter of 21 March 1997 the Portuguese Government stated that the public authorities had not intervened in the negotiation of the loans granted by the banks to EPAC and gave details of some of those loans. The Portuguese Government failed to mention any measure taken to comply with the obligation to suspend the effect of the State guarantee.

IV

The aids granted to EPAC under Ministry of Finance Decision No 430/96-XIII of 30 September 1996 were introduced in contravention of Article 93 (3) of the Treaty, since the Commission was not notified of them in advance at the planning stage; they are therefore illegal since they were granted without the Commission's having had the opportunity of expressing its opinion as to whether they were compatible with the common market.

Pursuant to the conclusions of the Court of Justice in its judgment of 14 February 1990 in Case C-301/87 (Boussac), where an infringement of Article 93 (3) has been committed, the Commission has the right to issue an interim decision requiring Portugal immediately to suspend payment of the aid concerned.

Furthermore, if the Portuguese State does not comply with the decision by suspending implementation of the aid, the Commission may, while continuing the substantive examination of the aid, bring the matter directly before the Court of Justice under the second subparagraph of Article 93 (2) by applying for a declaration that such payment amounts to an infringement of the Treaty.

By reason of the direct effect of Article 93 (3) and the clear and unconditional order to suspend payment of the aid immediately, this decision must be fully applied in the Portuguese legal system.

The Commission has already initiated the Article 93 (2) procedure in respect of the aids granted by Portugal to EPAC since it takes the view that on the basis of the information available the aids are not compatible with the common market.

Whilst continuing its substantive examination of the aids, the Commission, by letter of 27 February 1997, requested Portugal to suspend the impact of the State guarantee granted to EPAC and to inform the Commission within 15 days of the measures taken to comply with that obligation imposed by Article 93 (2). Portugal has failed to comply with the said obligation,

HAS ADOPTED THIS DECISION:

Article 1

Portugal is hereby required to suspend with immediate effect the State guarantee to the undertaking EPAC — Empresa Para a Agroalimentação e Cereais SA — provided for by Finance Ministry Decision No 430/96-XIII of 30 September 1996, granted in contravention of Article 93 (3), and to notify the Commission within 15 days of the measures it has taken to comply with this Decision.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 30 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission