

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 April 1997

on the aid granted by Italy to Enirisorse SpA

(Only the Italian text is authentic)

(Text with EEA relevance)

(98/212/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 on the European Economic Area, and in particular point (a) of Article 62(1) thereof,

After giving notice to the parties concerned, in accordance with the aforementioned Articles, to submit their comments,

Whereas:

I

By letter dated 15 January 1996 the Commission informed the Italian Government of its decision to open the procedure pursuant to Article 93(2) of the Treaty in respect of aid given to Enirisorse S.p.A. and the group of companies led by that company (hereinafter referred to as 'Enirisorse').

Enirisorse was 100 % owned by the Italian State holding company ENI and was recapitalised with ITL 1 819 billion in the years 1992-1996. The Commission decided to initiate the procedure with regard to those capital injections. The Commission's decision to open the procedure was published in the *Official Journal of the European Communities*, inviting other Member States and

interested third parties to submit their comments on the matter ⁽¹⁾.

The Italian Government gave its reaction by letters of 3 July 1996, 5 August 1995, and 13 January 1997.

No other Member State nor any interested party submitted comments to the Commission.

II

In its answer to the letter initiating the procedure, the Italian Government, while submitting detailed information as to the restructuring plan of Enirisorse, has expressed the following general opinions:

- (1) the recapitalisations were not undertaken by the State, and public funds were not used for that purpose;
- (2) the recapitalisations undertaken by ENI in favour of Enirisorse pass the private-investor test and are therefore not State aid; and
- (3) the recapitalisations possibly constituted State aid compatible with the common market.

As to point (1), the Italian Government claims that the recapitalisations were not undertaken directly by the State but by ENI, and that operations by ENI in respect of its subsidiary Enirisorse are not automatically attributable to the Italian State.

The Italian Government observes that ENI was transformed in July 1992 from a public economic body into a public limited company. The ENI shares were held by the Ministry of the Treasury.

⁽¹⁾ OJ C 102, 4. 4. 1996, p. 11.

Furthermore, ENI was no longer subject to Government directives.

In November 1995 the Ministry of the Treasury sold 15 % of the ENI shares for a total sum of ITL 6 300 billion on the stock markets of Milan, London and New York.

All the recapitalisations were undertaken by ENI through its own funds deriving from other ENI companies operating in other sectors, and are consequently not derived from State resources.

As to point (2), the Italian Government maintains that the recapitalisations were carried out exclusively with ENI's own funds for the purpose of financing a drastic programme of closures, liquidations and restructuring of companies and/or non-core activities. Furthermore, recapitalisation was the less costly option for the company, as compared with composition proceedings.

The Italian Government argues that the behaviour as to the recapitalisations was in line with the reasoning by the Court of Justice of the European Communities in its judgment in Case 303/88, *Italy v. Commission*⁽¹⁾. The Court held that a holding company might, for a limited period, bear the losses of its subsidiary in order to allow it to cease operating under the best conditions. The Court added that such a decision might be based not only on the likelihood of an indirect material gain, but also on other considerations, such as the safeguarding of the group's image or the re-orientation of its activities.

In the alternative, the Italian Government is of the opinion, set out in point (3), that the recapitalisations were compatible State aid within the meaning of points (a) and (c) of Article 92(3), since they promote the long-term development of disadvantaged regions suffering from industrial crisis and facilitate the restructuring of an important economic activity without adversely affecting trading conditions to an extent contrary to the common interest.

An assessment of the recapitalisations in the light of the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽²⁾ (hereinafter: 'the relevant Community guidelines') leads to the conclusion — the Italian Government claims — that they are in line with the requirements imposed by these guidelines.

III

Enirisorse was set up in 1991 as a non-operating holding company, intended to optimise the economic and finan-

cial resources of the ENI Group and with the basic objective of entrusting the administration of the Group's holdings in the following activities to a single centre of responsibility:

- (a) mining of non-ferrous metals, extraction of pyrites and its vertical integration to sulphuric acid, and the coal mining operations of Carbosulcis, under the control of Agip Miniere (12 companies and 21 production sites);
- (b) coal mining abroad, coke production in Italy and coal and coke marketing both in Italy and abroad, under the control of Agipcoal (25 companies and 11 production sites);
- (c) metallurgy of non-ferrous metals, under the control of Nuova Samim (7 companies and 12 production sites);
- (d) inorganic chemistry in the sectors of barium, boron and chlorine/caustic soda/potash and of abrasives and synthesized products, and research into advanced materials, under the control of Samatec (5 companies and 9 production sites).

ENI and its shareholder decided in 1991 to disengage from the non-core business, so as to make the core business profitable again by separating it from loss-making activities and, finally, to sell the profitable parts.

To that end, Enirisorse formulated a plan of one-off aids, involving a series of measures:

- (a) for the activities formerly controlled by Agipcoal (coal and coke), which were achieving generally satisfactory economic results, a complete privatisation, entailing, in the case of coke, closure of one production site which would have enabled the best value to be obtained from the activity;
- (b) for the activities formerly controlled by Agip Miniere:
 - (1) the selling-off of those companies/holdings abroad which were economically viable or otherwise of interest to private operators;
 - (2) the liquidation, with the closure of production sites, of all the mining activities in Italy, notwithstanding the high cost of making good environmental damage and of severance packages, since these were activities in a state of structural loss (mining of non-ferrous metals, pyrites and coal);
 - (3) the restructuring, at a modest investment cost, of the sulphuric acid operation, which as a result could be upvalued and sold off.
- (c) for the activities formerly controlled by Samatec (inorganic chemicals and abrasives);

⁽¹⁾ [1991] ECR I-1443, at paragraph 21.

⁽²⁾ OJ C 368, 23. 12. 1994, p. 12.

- (1) the liquidation of the activities with closure of the production sites, in a state of structural loss (abrasives);
- (2) the selling-off of the activities which could be administered by other operators and whose closure would, in any event, have entailed substantial costs for making good environmental damage (barium, boron, chlorine/caustic soda/potash, artificial diamonds);
- (d) For the activities formerly controlled by Nuova Samim (metallurgy):
 - (1) the selling-off of companies/areas of business which had aroused evident interest on the part of other operators and which would otherwise have given rise to heavy liquidation/closure expenditure;
 - (2) the restructuring of primary metallurgy for the purposes of subsequent privatisation;
 - (3) the liquidation of unsaleable marginal activities.

At the same time, Enirisorse planned to carry out a series of company-rationalisation schemes, made possible by concentrating other companies which had previously headed its sectors or areas of the ENI Group in a single centre of responsibility.

On the basis of this plan, the following action has been taken:

- (a) company reorganisation, the leading companies for the various areas of operation (Agip Miniere, Agipcoal, Nuova Samim, Terfin, Samatec) and other minor companies (Temav, Ardisia, Unicoke, etc) being merged by way of incorporation into Enirisorse. The administration headquarters were reduced from 14 to 2; the associated staff were reduced from 650 to 216 as of 31 March 1996;
- (b) closure of a total of 16 uneconomical metallurgical, miscellaneous and mining industrial sites which could not be put back in order, and closure of 5 minor metallurgical production lines;
- (c) liquidation of uneconomical mining and miscellaneous companies which could not be rescued from the standpoint of the private operator (SIM, Carbosulcis, Mineraria Campiano, Attività Meridionali, Simur and other minor companies) and of commercial and financial companies that no longer served their purpose (Nonfermet, Eurobatex, Nuova Samim Metals, Agipcoal International and other minor companies);
- (d) selling-off all companies and interests in operating companies in the coal and coke sector (Agipcoal USA,

Agipcoal South Africa, Agipcoal Australia, Carbones del Guasare, Nuova Italiana Coke and other minor companies);

- (e) selling-off/liquidation of all the inorganic chemicals and abrasives companies (Società Chimica di Lardello, Società Sali di bario, Eurosic, Supradiamant, Karl Hertel);
- (f) selling-off all the operations (companies and areas of business) in the sector of aluminium (Sacal), secondary processing of copper (plants at Moncalieri, Pieve Vergonte and Sulmona), steel-works flue-gas processing (Ponte Nossa) and secondary lead (plants at Paderno Dugnano and Marcianise);
- (g) selling-off Comerint (engineering and training services) and the company Manifatture Cotoniere del Mezzogiorno.

As a result of the sell-offs, the mergers by way of incorporation into Enirisorse of companies no longer serving any purpose, and the liquidation of companies, the number of companies still operating was reduced over the period from 1992 to March 1996 from 60 to 3: Pertusola Sud, Nuova Solmine, both controlled by Enirisorse, and Enirisorse itself.

The number of production sites in operation has been reduced from 56 to 5 as of 31 March 1996, of which three are under the direct control of Enirisorse (integrated complex of Portovesme/San Gavino: zinc and primary lead; the Porto Marghera plant: copper; and the bronze/brass division of Paderno Dugnano), one under the control of Pertusola Sud (Crotone: zinc) and one under the control of Nuova Solmine (Scarlino: sulphuric acid).

The number of jobs has fallen by 10 200 as of 31 December 1991 to about 2 800 as of 30 April 1996 (including the employees of companies in liquidation or no longer operational).

The companies mentioned above and the 5 plants constitute the core business of Enirisorse (copper, lead, zinc and sulphuric acid). Under the plan, the core business is to be made profitable by selling and closing some of these companies/plants, leaving only two production sites.

The current situation is as follows:

- (a) the bronze/brass division of Paderno Dugnano has now been sold;
- (b) with regard to the Porto Marghera plant, a letter of intent has been signed with a potential buyer;
- (c) Pertusola Sud will either be closed and scrapped by the end of 1997 or sold to an interested buyer who will turn the complex into a production unit — probably for producing nickel.

This leaves the production sites of Portovesme/San Gavino (zinc and lead) and Scarlino (sulphuric acid) as the final core business of Enirisorse.

Over the five-year period 1992-96, Enirisorse will have received from its shareholder, by way of recapitalisation, ITL 1 819 billion, used to implement the plan.

Over the same period Enirisorse expects, through its selling-off of companies and areas of business, to receive payment of about ITL 840 billion.

The breakdown of the receipts from sales is as follows (including the estimated income from sell-offs now taking place):

- (i) ITL 454 billion deriving from selling-off the companies in the coal and coke sector;
- (ii) ITL 220 billion from selling-off the participating interests held in ENI International Holding, Sofid, Padana Assicurazione;
- (iii) ITL 107 billion from selling-off the metallurgical areas of business (formerly Nuova Samim);
- (iv) ITL 58 billion from selling-off minor companies in the other sectors.

The total of the resources derived from payments by the shareholder and income from the sales amounts to ITL 2 658 billion and is used as follows over the five-year period:

- (a) ITL 448 billion for reducing the initial indebtedness of Enirisorse and Nuova Samim, merged into Enirisorse, primarily towards the financing companies of the ENI Group;
- (b) ITL 822 billion to cover the deficit, including the previous losses, of the mineral and miscellaneous companies which have been placed in liquidation or whose operating activities have ceased. The costs of the liquidations relate primarily to the personnel costs for employees retained until the date of departure, the costs of redeploying or providing severance payments to staff and environmental expenses (restoration of sites and removal of slag).

The breakdown of the necessary contribution to cover the requirements of liquidation is as follows:

- (i) ITL 425 billion to companies controlled by the former Agip Miniere (SIM, SIMUR, Mineraria Campiano, Agip Australia);

(ii) ITL 160 billion to Carbosulcis;

(iii) ITL 115 billion to Samatec;

(iv) ITL 113 billion to companies in the miscellaneous area (formerly Terfin);

(v) ITL 9 billion to minor companies.

(c) ITL 53 billion, for the restructuring of Nuova Somine, undertaken in the period 1992-93, by way of the termination of the pyrites extraction operations, closure of the mines, commencement of activities to repair environmental damage, reconversion of the plants for the production of sulphuric acid from sulphur (with reduction of production capacity) and redeployment or redundancy of surplus personnel. Nuova Solmine, restructured on this basis, has been producing profits from 1995: ITL 10 046 million in 1995, ITL 5 312 million in 1996 and is expecting ITL 7 057 million in 1997 and ITL 10 590 million in 1998.

(d) ITL 973 billion, for restructuring (including the losses for the period) the metallurgical operations formerly controlled by Nuova Samim and subsequently incorporated into Enirisorse. The payments for this restructuring of metallurgical operations is broken down as follows:

(1) ITL 93 billion to companies liquidated or sold off;

(2) ITL 280 billion to Pertusola Sud (Crotone), including ITL 123 billion to cover maintenance investments and operating losses (ITL 77 billion for the two-year period 1992-93; ITL 33 billion for the two-year period 1994-95; ITL 13 billion for 1996); the residue of ITL 157 billion being made up of the extraordinary charges that appear in 1992-96, including those allowed for the current year (severance payments to personnel of ITL 26 billion, costs of slag removal and repair of environmental damage of ITL 95 billion and devaluation of sources of income ITL 36 billion);

(3) ITL 600 billion for the former Nuova Samim metallurgical activities, including ITL 200 billion for the extraordinary charges for the period (ITL 100 billion for voluntary redundancies and ITL 100 billion for environmental action), plus ITL 400 billion for the period 1992-1996 for operating losses (ITL 243 billion) and investments (ITL 157 billion).

(e) ITL 362 billion to cover the general, financial and extraordinary costs of the Enirisorse holding company. Of this total, ITL 117 billion is attributable to extraordinary charges (mainly severance payments to personnel) and ITL 245 billion to general costs and financial charges.

To sum up: the restructuring of Enirisorse has mainly entailed the abandonment of a large part of its activities, involving the closure/liquidation of subsidiaries and sites and the sale of subsidiaries and sites to third parties. The restructured Enirisorse was then (in March 1996) based on Pertusola Sud and Nuova Solmine, both controlled by Enirisorse and Enirisorse itself. The number of production sites had been reduced from 56 to 5. Enirisorse controlled directly the integrated complex of Portovesme/San Gavino, the Porto Marghera plant and the bronze/brass division of Paderno Dugnano; Pertusola Sud controlled the Crotone production site and Nuova Solmine the Scarlino site.

These production units together with the central management constituted the core of the restructured Enirisorse.

In order to reach profitability a further shrinking of the corebusiness is necessary. This will entail relinquishment of the Marghera plant, the Paderno Dugnano plant and

Pertusola Sud. These plants and companies are to be sold or closed in 1997. Only the Portovesme/San Gavino production site (lead and zinc) of Enirisorse and the sulphuric acid production by Nuova Solmine are to be continued for the moment, although with the clear intention to privatise these as well.

The whole operation has diminished Enirisorse's activities significantly. This is illustrated by the reduction of the annual turnover of the group: from ITL 1 867 billion in 1992 to ITL 810 billion (expected) in 1997.

A reduction of capacity has also taken place for the core-business and is still continuing. This is demonstrated by the following tables on the evolution of the production capacity for lead, zinc, copper and sulphuric acid and on the employment situation in these sectors:

Evolution of production capacity

	1992	1993	1994	1995	1996	1997
Lead	(*) ⁽¹⁾ (*) ⁽²⁾	(*) (*)	(*) (*)	(*) (*)	(*) (*)	(*) —
Zinc	(*)	(*)	(*)	(*)	(*)	(*)
Copper ⁽³⁾	(*)	(*)	(*)	(*)	(*)	—
Sulphuric acid	(*)	(*)	(*)	(*)	(*)	(*)

(*) Business secrets (Text omitted at request of Italian Government).

⁽¹⁾ Primary.

⁽²⁾ Secondary.

⁽³⁾ Copper cathodes, alloys and tubes.

Evolution of the employment situation

	1992	1993	1994	1995	1996
Lead	618	564	513	442	297
Zinc	1 636	1 542	1 398	1 310	1 284
Copper	518	558	345	318	202
Sulphuric acid	346	274	252	209	187
Total	3 118	2 938	2 508	2 279	1 970

The restructuring efforts described above have resulted in a substantial decrease in Enirisorse's losses. For an overview of the fall of losses, see the table below:

(ITL billion)

	Normal business activity	Extraordinary costs resulting from restructuring	Total
1992	(*)	(*)	(*)
1993	(*)	(*)	(*)
1994	(*)	(*)	(*)
1995	(*)	(*)	(*)
1996	(*)	(*)	(*)
1997	(*)	(*)	(*)
1998		(*)	(*)
1999		(*)	(*)

(*) Business secrets (Text omitted at request of Italian Government).

The loss of ITL 48 billion in 1997 is caused by Pertusola Sud producing zinc. This company will either be closed or sold to an interested buyer in 1997. The potential buyer, if the sale goes ahead, is planning to turn production away from zinc and into nickel. Also for Portovesme, a binding offer has been received from a potential buyer. In the case of Nuova Solmine negotiations are taking place with the prospective buyer.

Forecasts on Portovesme/San Gavino, lead and zinc, and Nuova Solmine, sulphuric acid, are looking good. Nuova Solmine has been making profits over the past years and is expected to continue its profit-making line. Prospects for the lead and zinc production of Enirisorse are also satisfactory. World forecasts for these products in terms of prices, consumption and diminished stocks are positive for the coming three years. After that the cycle takes a more downward trend. In 1997 a profit of ITL 11 288 billion is expected, in 1998 ITL 49 675 billion, in 1999 ITL 80 710 billion and in 2000 ITL 47 046 billion.

IV

In order to ascertain whether State aid is included in the recapitalisations, the Commission examines the flow of capital between the Italian State, the ultimate shareholder, and Enirisorse in the light of the marker-investor principle as set out in the Commission's communication to the Member States on public undertakings⁽¹⁾. According to this principle State aid is involved if the financial

transaction would not have been undertaken by a private investor operating under normal market economy conditions.

On the basis of the information provided to the Commission, the amount invested by the Italian State, through its holding company ENI, in Enirisorse amounts to ITL 1 819 billion for the five-year period 1992-1996.

Until very recently 100 % of the shares of ENI were held by the Italian Ministry of the Treasury. The meeting of the shareholders, namely the Ministry of the Treasury, appointed the board of directors of ENI, in accordance with Italian civil law. One of the members of the board is an official of the aforementioned Ministry. This was the situation in 1991/1992 when the decision to restructure Enirisorse was taken.

The capital injections have been financed by proceeds that otherwise would have benefited the shareholder of ENI, the Italian State.

Consequently, the funds that ENI has made available to Enirisorse are considered to be State resources within the meaning of Article 92(1) of the Treaty.

The injections of capital made by ENI with the intention of financing the restructuring process of Enirisorse suffer from a lack of sufficient financial return on these injections, since the restructuring consists, in essence, of outright privatisations, liquidations and privatisations following investments. A profitable return in relation to the amount of the recapitalisation was therefore not to be expected. Because of this lack of sufficient return it cannot be claimed that ENI acted as a private investor.

⁽¹⁾ OJ C 307, 13. 11. 1993, p. 3.

Also, Enirisorse has suffered heavy losses over more than five years. This is, in terms of the Court's judgment in Case 303/88, *Italy v. Commission* ⁽¹⁾, too long a period to be classified as limited in time. A private operator would have restructured or liquidated Enirisorse at an earlier stage in order to avoid an ongoing cumulation of losses.

Enirisorse was active in different sectors, like mining of non-ferrous metals, coal, cokes, lead, zinc, metallurgy of non-ferrous metals and inorganic chemicals. These sectors or products are traded within the Community and even on a global scale. An injection of ITL 1 819 billion into Enirisorse threatens to distort competition and affects intra-Community trade.

It should therefore be concluded that the total amount of the recapitalisations in the years 1992-1996 constitute State aid within the meaning of Article 92(1) of the Treaty and Article 61(1) of the EEA Agreement.

Article 92(2) and (3) of the Treaty define certain types of State aid that are compatible with the common market.

Given the nature of the operation, Article 92(2) and (3), point (b), of the Treaty is not applicable to the State aid in question. Given the diversity of the group's operation and locations, and since the financial measures have no regional objective, only the derogation under point (c) of Article 92(3) of the Treaty, in so far as it concerns aid to facilitate the development of certain economic activities, could be taken into consideration.

The recapitalisations have been made available to Enirisorse to finance a restructuring project envisaging a final liquidation of Enirisorse.

The Commission's approach to State aid for restructuring is outlined in the relevant Community guidelines ⁽²⁾.

In those guidelines, the Commission has pointed out that it takes a strict approach in assessing the compatibility of this kind of aid, since it might otherwise end up by transferring without reason social or industrial problems from one Member State to another.

For this reason, before the Commission will approve restructuring aid to a company, its restructuring must satisfy the following basic conditions:

- (1) it must restore the long-term viability of the company within a reasonable time;

- (2) it must avoid unduly distorting competition;
- (3) it must be in proportion with the restructuring costs and benefits;
- (4) it must be fully implemented;
- (5) it must be subject to monitoring and reporting requirements.

Only if these basic requirements are fulfilled may the effects of the aid be considered to be in keeping with the common interest under point (c) of Article 92(3) of the Treaty.

1. Restoration of viability and privatisation

As a general rule, the *conditio sine qua non* of all restructuring plans is that they must restore long-term viability and health to the company in question.

In the case of Enirisorse the restructuring plan was aiming at liquidation of companies through closure, sale and restructuring, followed by privatisation.

As has been shown, these measures have resulted in an important decrease of the losses of Enirisorse over the years in which the plan has been executed: for ordinary business activity, the losses declined from ITL 551,2 billion in 1992 to ITL 98,6 billion in 1996. The expected loss of ITL 48 billion in 1997 is attributed to the zinc producer Pertusola Sud, which will either be closed and scrapped in 1997 or sold to a buyer that has expressed interest. It will, however, not produce zinc any more. One of the reasons for opening the procedure was the preliminary conclusion of the Commission that the financial situation of Enirisorse had not been rectified after various liquidations and sales of companies. This was true at the time of opening the procedure, but the restructuring was at that time still in progress and had not yet yielded all its benefits. As has been said, the financial situation of Enirisorse has changed considerably in the sense that its indebtedness has decreased and that the only loss-making activity left (the zinc producer Pertusola Sud) is to be privatised in the course of 1997. After this privatisation, Enirisorse will be composed of only Portovesme and Nuova Solmine, both profit-making entities.

Enirisorse has thus managed to part from all its non-core business activities and is now still engaged in the process of reducing the size of the core-business. It has been able, thanks to this process, to reduce its debts and with the selling or closing of Pertusola Sud it will have shed its last loss-making company.

⁽¹⁾ [1991] ECR I-1443, at paragraph 21.

⁽²⁾ OJ C 368, 23. 12. 1994, p. 12.

It is also shown by the Italian authorities that the restructuring has not stopped short of the 'core business' of Enirisorse, as was asserted at the time of the opening of the procedure. After the first phase of abandoning a large part of its activities, Enirisorse consisted of only three companies that were considered to be the core business. The process of privatising these companies is under way and will be completed in the near future. In fact, after the sale of the Porto Marghera plant and the Paderno Dugnano plant together with the company Pertusola Sud, the remaining core business is profitable. It therefore no longer holds true that the core business is draining resources from ENI. The restructuring effort made *vis-à-vis* the core business has had repercussions in terms of reduced production capacity and reduced levels of employment.

In addition, the Italian authorities have communicated to the Commission their commitment to carry out a privatisation of the two remaining companies. In fact the process of privatising them has been launched and binding offers have been received from the interested buyers. These are private companies. After completion of these privatisations Enirisorse will be liquidated, contrary to the assumption made at the time when the procedure was initiated, when it was not clear whether or not the restructuring would lead to a continuation of Enirisorse's activities. In these circumstances of full privatisation and a total liquidation of Enirisorse, it will be the task of the new owners to ensure the ultimate viability of the companies concerned, without State assistance.

The privatisation will result in a severing of the direct financial links between Enirisorse and the Italian State and subsequently the companies will no longer enjoy constant State financing.

2. Prevention of undue distortion of competition

A further condition set on restructuring aid is that measures are to be taken to offset, as far as possible, adverse effects on competitors. Otherwise, aid would be contrary to the common interest and not eligible for the exemption under point (c) of Article 92(3) of the Treaty.

Enirisorse's restructuring represents a considerable effort to reduce its productive capacity across its product range. Figures on the annual turnover, which went from ITL 1 867 billion in 1992 to ITL 810 billion in 1997, are a clear expression of such a reduction. When opening the procedure, the Commission was not aware of the massive reductions of capacity planned for the core business of

Enirisorse, and it held the view, on the basis of the information available at the time, that the restructuring had had no effect on these activities of Enirisorse. In its answers to the opening of the procedure the Italian Government has pointed out that the restructuring also involved the core business, giving consistent reductions: lead was reduced by 45 %, zinc by 40 %, copper by 100 % and sulphuric acid by 38 %.

The reduction in personnel working in these sectors has also been remarkable: for lead from 618 in 1992 to 297 in 1996, for zinc from 1 636 in 1992 to 1 284 in 1996, for copper from 518 in 1992 to 202 in 1996, and for sulphuric acid from 346 in 1992 to 187 in 1997.

In the light of the above, the Commission concludes that the restructuring of Enirisorse will not affect competition to an extent contrary to the common interest.

3. Proportionality of the aid in relation to the restructuring

As has been shown, the capital injections made over the past years have been used to cover the costs related to reducing the indebtedness of Enirisorse, the liquidation and closure of companies and plants, and the restructuring of several other companies and plants.

It is noted that the beneficiary contributed significantly to the financing of the restructuring and liquidation plan by using the income it derived from the sale of assets and subsidiaries for those very purposes. Doubts existed at the time of opening the procedure as to the existence of these contributions. The Commission has received full confirmation from the Italian Government that the income derived from the sales has been used to co-finance the other elements of the restructuring. As has been demonstrated, the total costs for the restructuring so far are ITL 2 658 billion. Enirisorse has been able to pay for these costs through capital injections amounting to ITL 1 819 billion and through the sales proceeds amounting to ITL 840 billion. The costs of the restructuring would not have been met if Enirisorse had not used the income from the various sales for the restructuring purposes. The final privatisation of Enirisorse's restructured business area will contribute further to these costs. This contribution is the maximum possible to be given by the beneficiary.

Under these circumstances, the aid granted may be considered not to provide Enirisorse or its still operating subsidiaries/plants with surplus cash which could be used for aggressive, market-distortive activities unrelated to the restructuring process, nor to finance new investment not required by the restructuring.

4. Full implementation of restructuring plan

One of the other conditions imposed by the relevant Community guidelines is that the company must fully implement the restructuring plan submitted to and accepted by the Commission. As has been described, this plan consists in selling and liquidating most of the companies owned by Enirisorse, the restructuring of the core-business of Enirisorse in order to privatise the relevant companies, followed by the privatisation of these companies and, finally, the liquidation of Enirisorse. The Italian Government has undertaken to carry out this plan in its entirety. The Commission concludes therefore that this condition will be complied with by the Italian Government.

5. Monitoring and reporting

The further implementation of the privatisation underway (Pertusola Sud) and the privatisations of Portovesme/San Gavino and Nuova Solmine are to be monitored by the Commission. For this purpose, periodic reports will have to be submitted by the Italian authorities concerning the progress of those privatisations, the financial situation of Enirisorse and the income derived from the privatisations as such,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted by Italy in the period 1992 to 1996 in favour of Enirisorse S.p.A., in the form of recapitalisations amounting to ITL 1 819 billion and aimed at its restructuring in accordance with the plan is compatible with the common market and the EEA Agreement by virtue of point (c) of Article 92(3) of the Treaty and point (c) of Article 61(3) of the Agreement, provided that the Italian Government complies with the conditions laid down in Articles 2 and 3 of this Decision.

Article 2

Italy shall comply with its commitment to privatise the remaining companies and production sites of Enirisorse S.p.A. and to commence the final liquidation of Enirisorse S.p.A. The privatisations shall take place by 31 December 1998. The proceeds obtained by these privatisations shall not be used to invest in other companies owned by ENI but shall be used to defray any further liquidation costs of Enirisorse S.p.A.

Article 3

1. Italy shall cooperate fully with the monitoring of this Decision by the Commission, and shall provide the Commission with half-yearly reports, including in particular:

- (a) the progress of the outstanding privatisations and the proceeds derived from them;
- (b) the progress of the final liquidation of Enirisorse S.p.A. and any further liquidation costs;
- (c) an update on the financial situation of Enirisorse S.p.A.

2. The first report shall reach the Commission by 1 October 1997 and the reports thereafter shall be submitted at six-monthly intervals.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 April 1997.

For the Commission

Karel VAN MIERT

Member of the Commission