II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 11 April 2000
on the aid granted by Italy to Centrale del Latte di Roma

(notified under document number C(2000) 1173)

(Only the Italian text is authentic)

(2000/628/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, and in particular Article 88(2) thereof,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ([1]), and in particular Article 37 thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ([2]) and having regard to their comments,

Whereas:

I

PROCEDURE

(1) On 4 December 1996 the Commission received a complaint in respect of the decision of the Rome Municipal Council of 8 July 1996 concerning the privatisation of Azienda Comunale Centrale del Latte (ACCL) by direct agreement. The complaint also mentions the fact that between 1992 and 1994, ACCL recorded huge operating losses (amounting to ITL 156,6 billion), which were written off by the Municipality of Rome. According to the plaintiff, the above operations constitute State aid to ACCL that is incompatible with the rules on competition in the Treaty.

(2) By letter of 25 March 1997 the Commission requested the Italian authorities to provide further information concerning the alleged State aid. By letter of 25 July 1997, recorded as received on 31 July 1997, the Permanent Representation of Italy to the European Union forwarded the additional information requested.

(3) Having received no State- aid notification in accordance with Article 88(3) of the Treaty regarding the writing-off of sums owed by ACCL or its privatisation, the Commission decided to enter the case in the register of non-notified aid measures under NN 185/97.

(4) By letter SG (98) D/3692 of 8 May 1998, the Commission informed Italy of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid measures to write off ACCL's operating losses, the aid to Lazio milk producers and the privatisation of ACCL and possible aid to the buyer through the privatisation process. The case was entered in the register under Aid C 28/98.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ([3]). The Commission called on interested parties to submit their comments on the measures in question.

(6) By letters of 6 and 26 July 1998, recorded as received on 7 and 28 July 1998 respectively, the Italian authorities submitted their observations to the Commission on the aid measures in question. In reply to a further Commission letter of 21 September 1999, Italy forwarded new information by letter of 13 January 2000, recorded as received on 19 January 2000.

([1]) OJ L 160, 26.6.1999, p. 48.
([2]) OJ C 206, 2.7.1998, p. 6.
([3]) See footnote 2.

(7) The Commission has received no comments from other interested parties.

II

DESCRIPTION

(8) On 10 December 1992 the Azienda Comunale Centrale del Latte was set up to produce and sell packaged fresh milk and dairy products (cream, yoghurt and long-life UHT milk). Legally speaking, ACCL was established as a public service, so all operating losses were to be written off by the owner (Municipality of Rome). ACCL was not in fact a private company, but simply a separate body of the Municipality of Rome for accounting purposes.

(9) ACCL bought fresh milk from local producers and processed and packaged it under the brand name 'Centrale del Latte'. It also produced long-life milk and yoghurt. The products were sold on a local, albeit significant, market (Rome and surrounding area) comprising about 4 million consumers.

(10) Traditionally ACCL's production focused on fresh milk, which originally accounted for almost 100 % of sales. That percentage has declined steadily over time, however, with the development of other dairy-product lines. In 1996 fresh milk accounted for 85 % of total sales. Over the same period, there was a rise in sales of secondary products (such as yoghurt and long-life UHT milk). Although they accounted for only around 6 % of income in 1994, sales doubled in the first half of 1995 when a new line of products was launched. In 1996 new markets opened up, bringing growth of 129 % in long-life UHT milk sales. Over the same time, sales of yoghurt and fresh cream rose by 45,3 % and 34,8 % respectively. At the time it was privatised, ACCL still had a significant, albeit constantly declining, share (60 %) of the Rome market for its main product (fresh milk). At the time its share of the market in other products was marginal (e.g. between 1 % and 2 % for long-life milk).

(11) From the outset ACCL could be regarded as a company in difficulty systematically producing operating losses. The main reasons for its difficult economic and financial situation seem to lie in its oversize production structures and severely underutilised capacity. ACCL's labour costs were high and its workforce did not have the necessary skills for the specialised activities required by the market. As a result, turnover and productivity per employee were half the average for the sector. The company also suffered from management problems and confrontational labour relations.

Writing-off of operating losses

(12) Since 1992 the company's annual turnover has been around ITL 170 billion, with net losses of ITL 45,3 billion in 1992 and ITL 30,7 billion in 1993. Net losses reached ITL 75,6 billion in 1994 as a consequence of reducing the workforce (141 jobs cut) and other one-off losses. Overall losses amounted to ITL 30,0 billion in 1995 and ITL 33,5 billion in 1996 (including ITL 23,7 billion for one-off losses in those years). The forecasts for 1997 [4] put the expected operating loss at ITL 17,664 billion.

(13) All these operating losses were written off each year by the Municipality of Rome in accordance with Article 23(6) of Law No 142 of 8 June 1990 on the provisions governing local authorities. Consequently, at the time of initiation of the Article 88(2) procedure, the Commission put the overall debt written off in 1992 to 97 at ITL 215,1 billion.

(14) At the time the procedure provided for in Article 88(2) of the Treaty was initiated, the Commission took the view that the assistance granted by the Municipality of Rome in writing off ACCL's operating losses constitutes State aid within the meaning of Article 87(1) of the Treaty. The aid is likely to cause distortion of competition because it involves writing off operating losses of a company operating in a sector (dairy products) where there is a considerable intra-Community trade.

(15) On the substance of the case, the Commission concluded that the aid was operating aid, which it regards, in accordance with its practice in applying Articles 87, 88 and 89 of the Treaty, as not compatible with the common market since by its nature it does not lead to any development of the sector or the region [5].

(16) The Commission noted that, in view of ACCL's 'structural' operating losses, the company could be regarded as 'in difficulty' by reference to the relevant Community guidelines applicable at the time of initiation of the Article 88(2) procedure [6]. The Commission considered that the losses written off necessarily involved expenditure connected with a restructuring programme (job cuts, investments and production conversion). However, in the Commission's opinion, two of the three main conditions for allowing restructuring aid under those guidelines (prevention of undue distortions of competition brought about by the aid and proportionality in terms of restructuring costs as compared with benefits) were not fulfilled.

(17) According to the Commission's assessment, the aid fell within the purview of Article 87(1) of the Treaty but did not qualify under any of the exceptions in Article 87(2) and (3) thereof.

(4) These were the most recent data available on the date of initiation of the procedure provided for in Article 88(2) of the Treaty.
(5) Judgment of the Court of First Instance in Case T-459/93 *Siemens SA v Commission of the European Communities* [1995] ECR II-1675.
(6) OJ C 283, 19.9.1997, p. 2.

(18) When assessing whether the aid complied with the rules on State aid, the Commission concluded that in this case account should also be taken of the fact that the company's debts were written off under the rules governing 'public service'. The Municipality of Rome was in fact managing what was defined as a 'public service' that involved the collection, processing and marketing of milk for human consumption through a special undertaking ('Azienda Speciale'). The Municipality of Rome was required to settle the 'social costs' of such special undertakings by virtue of the fact that they provided a 'public service'.

(19) In accordance with Article 86(2) of the Treaty, undertakings entrusted with the operation of services of general economic interest are subject to the Treaty rules, in particular on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. According to the information available, ACCL's activities did not exhibit any particular special characteristics warranting a derogation under Article 86(2) of the Treaty ([7]).

(20) Furthermore, the Commission held that companies producing and marketing products listed in Annex I to the Treaty and covered by a common organisation of the market cannot be regarded as undertakings entrusted with the operation of services of general economic interest within the meaning of Article 86(2). The operation of the common market in milk and milk products (and in the other products subject to common organisation of the market) is incompatible with State intervention in the market through companies pursuing objectives other than economic profitability.

(21) Consequently, the Commission concluded that Articles 87 and 88 of the Treaty were fully applicable to the assistance granted by the Municipality of Rome in writing off ACCL's operating losses.

Aid to Lazio milk producers

(22) One of the reasons why the company was granted the status of a 'public service' was that it provided support to local milk producers. According to the information available at the time of initiation of the Article 88(3) procedure, ACCL had signed supply contracts with Lazio milk-producer cooperatives under which it took delivery, at prices favourable to the producers, of larger quantities of milk than it could have sold on the free market. Moreover, there were allegations that Italian 'government authorities' required ACCL to buy milk at higher prices in 'less-favoured' areas.

(23) Under the common organisation of the market, milk prices are set by the market. Accordingly, differences between prices offered by processors should reflect the free interplay of supply and demand, the company's commercial policy and its financial soundness. Since ACCL was incurring significant operating losses each year, it seems to have been able to maintain high prices and ensure outlets to local producers thanks only to its 'public service' status whereby the State would write off debts outstanding each year.

(24) The Commission considers that granting ACCL the status of a 'public service' and public financing of milk bought at favourable prices constitute State aid to Lazio milk producers within the meaning of Article 87(1). In substance, the aid partly entails the total operating losses suffered by ACCL since its establishment in 1992. For the reasons mentioned with regard to the writing-off of ACCL's operating losses, the Commission regarded the aid as incompatible with the common market. The Commission also took the view that those measures could involve a breach of the provisions in force on the common organisation of the market in milk and milk products ([8]).

(25) In view of the uncertainty regarding the exact rules governing, and the amounts of, such aid, the Commission called on the Italian authorities to forward all information that could be relevant to assessing the overall aid granted by the Italian Government to Lazio milk producers since 1992, the date of ACCL's establishment. In particular, the Commission asked for statistics of deliveries by Lazio milk producers, the prices paid by ACCL, the average prices and, if possible, the prices paid by other market operators, together with all relevant legislation.

Privatisation of ACCL

(26) In June 1995 the Municipality of Rome launched the procedure to privatise ACCL. In November 1995 the Municipality of Rome selected J. P. Morgan as consultants and entrusted them with the task of drawing up an industrial plan. At the end of March 1996 the Consultants presented an evaluation of the company and a proposal for organising the sale.

(27) On 8 July 1996 the Rome Municipal Council decided to amend the 'public service' status of ACCL and turn it into a joint stock company (SpA or 'societa per azioni') with a view to its privatisation. The decision also dealt with the sales procedure, which was to involve direct negotiations subject to certain criteria connected with State control of the procedure and protection of the interests of the workers and local milk producers. By that decision, ACCL's assets were transferred to Centrale del Latte di Roma SpA, 95 % of whose registered capital

([7]) Judgment of the Court of Justice in Case C-179/90 *Merci convenzionali porto di Genova SpA* v *Siderurgica Gabrielli SpA* [1991] ECR I-5889.

([8]) See footnote 1.

of ITL 200 million was assigned to the Municipality of Rome and the remaining 5 % to the company Risorse per Roma SpA, the latter being entirely owned by the Municipality of Rome. Privatisation was to involve an increase in capital by the buyer(s). ACCL's liabilities continued to be entered in the balance sheet of the company, which was to be wound up.

(28) Under the sales procedure, a notice inviting companies to bid for shares of Centrale del Latte SpA was published in two leading Italian newspapers on 2 and 3 October 1996. Within the time limit laid down the consultants received 25 bids from individual companies and joint ventures. On 30 December 1996 the consultants sent invitations to tender to all interested parties. On the receipt of four full proposals, the Consultants submitted a report recommending that direct negotiations start with all four bidders. From 5 March to 6 May 1997 the consultants undertook a final round of negotiations with the shortlisted companies.

(29) Meanwhile, on 22 May 1997 the company was valued by an independent expert designated by the President of the Tribunale di Roma (in accordance with Article 2343 of the Italian Civil Code). In his report, the expert valued Centrale del Latte di Roma SpA at ITL 75,272 billion.

(30) Following the final round of negotiations with the bidders, the consultants presented a report to the Municipality of Rome recommending the sale of Centrale del Latte di Roma SpA to Company A* ([9]), which had made the best bid. Company A had offered ITL 75,472 billion for 75 % of the shares of Centrale del Latte di Roma SpA and ITL 106,6 billion for 100 % of the capital. The other bidders offered significantly less: Company B* offered ITL 55,105 billion, Company C* ITL 43,944 billion and Company D* ITL 37,5 billion for 75 % of the shares of Centrale del Latte di Roma SpA. As for the 20 % share earmarked for local fresh-milk producers, the Municipality of Rome decided that the price offered by the main buyer of 75 % of the shares would apply to these producers. The Consultants also said that:

— Company A*'s bid included an industrial plan for investments equalling ITL 59,409 billion over the next five years (ITL 21,003 billion for modernising plant and equipment and ITL 38,406 billion for marketing); the other bidders intended investing smaller amounts over the same period: Company B* – ITL 58,014 billion; Company C* – ITL 55,405 billion and Company D* – ITL 41,345 billion,

— Company A* intended to maintain 200 of the existing 392 jobs for the next five years; the other offers were: Company B* – 300; Company C* – 256 and Company D* – 142,

— Company A undertook to buy at least 80 % of its raw materials from Lazio milk producers (one of the bidders was not prepared to make such a commitment); it also agreed not to transfer the plant from its present site in Rome.

(31) On 26 June 1997 the Municipality of Rome decided to sell 75 % of the shares of Centrale del Latte di Roma SpA to Company A* for a total of ITL 75,472 billion. The remaining 25 % was subsequently sold to the same company, bringing the overall price to ITL 106,6 billion.

(32) In accordance with its longstanding practice, the Commission considers that the privatisation of a publicly-owned company does not involve State aid within the meaning of Article 87(1) of the Treaty where:

— the company is sold by a competitive tender that is open to all comers, transparent and unconditional, or an equivalent procedure,

— the company is sold to the highest bidder,

— bidders have enough time and information to carry out a proper valuation of the assets on which to base their bids ([10]).

(33) The Commission notes that the Municipality of Rome decided not to organise a public invitation to tender. This seems to have been a deliberate choice made to ensure continuity of production, supplies from local producers and the company's stability. In the case in point, the Commission notes that public notices were published in only two newspapers distributed nationwide. Since interest in the privatisation among other European companies cannot be ruled out, the Commission considers that this procedure may not have been sufficient to ensure broad participation from companies operating outside Italy.

(34) As regards publication, the Commission concludes that potential bidders had sufficient time and information under the privatisation procedure to submit offers.

(35) As far as acceptance of the highest bid is concerned, the Commission notes that the successful bidder offered a much higher price than its competitors (ITL 106,6 billion). The bid was also significantly higher than the company's real value, as assessed by an independent expert (ITL 75,272 billion), notwithstanding the fact that the successful bidder also made various substantial commitments.

([9]) In order to safeguard commercial information, the names of companies/joint ventures have been replace by letters plus asterisks.

([10]) Points 402 et seq. of XXIIIrd Report on Competition Policy (1993).

(36) Even if the company was sold to the highest bidder for a price significantly higher than its estimated value, an element of State aid may, in the Commission's view, have been involved if the private investor paid a lower price than it would have had such conditions not been imposed. The Commission believes that the market value of the company would have been the price a private investor would have paid had the sale been subject to no conditions, particularly those relating to the maintenance of a certain number of jobs and the supply of raw materials from local producers.

(37) In view of the foregoing and on the basis of the information available at the time, the Commission was unable to rule out the possibility that the buyer of the company benefited from aid through the privatisation procedure.

(38) After considering whether any aid was granted to the buyer through the privatisation procedure, the Commission went on to analyse the impact of the conditions of sale, which favour Lazio milk producers. The Commission noted that bidders had to undertake to buy at least 80 % (or other percentage as laid down by the legislation in force) of their supplies of raw materials from Lazio milk producers for five years at the price obtaining on the market.

(39) For a company whose main product is fresh milk, distance from raw-materials suppliers must have an impact on the production/marketing process. Lazio milk producers enjoy this 'natural' competitive advantage over other Italian and Community producers. If this competitive edge did not suffice to offset other disadvantages, the Commission held that the producers must be less efficient in general than other EC producers. Accordingly, the fact that a condition was imposed on the company requiring it to buy at least 80 % of its supplies from Lazio milk producers implies that this would not be the case under normal market conditions.

(40) Furthermore, the possibility of reducing the 80 % of milk supplied locally to another percentage as provided for by the legislation in force is mysterious to the Commission since it is not aware of any such provisions under the common organisation of the market. The Commission has called on the Italian authorities to provide any information that may help in evaluating this clause by forwarding any provisions on the subject.

(41) The condition on the buyer to purchase at least 80 % of its raw materials from local producers involves preferential treatment that constitutes both State aid in their favour and a breach of the relevant common market organisation rules.

III

COMMENTS FROM ITALY

(42) The Italian authorities submitted their comments by letters of 6 and 26 July 1998 and 13 January 2000.

Writing-off of operating losses

(43) Italy disputes the figure (ITL 215,1 billion) for the total debts written off and the fact that the Commission based its calculation on the period 1992 to 1997. It contends, first, that 1992 should be discounted (ACCL was established in December 1992) and the company's winding-up significantly affected expenditure in 1997. Likewise, a large percentage of the overall losses incurred (ITL 99,25 billion) was covered by ACCL's own funds while ITL 5 billion is still outstanding. Consequently, Italy puts the total sum written off in 1993 to 1996 at not more than ITL 96,654 billion.

(44) According to the Italian authorities, by writing off the sums concerned the Municipality of Rome sought to restore ACCL's viability with a view to its forthcoming privatisation. The principle governing the private investor in a market economy was therefore abided by.

(45) The Italian authorities point out that the measures do not affect trading conditions. In this connection, Italy claims that ACCL was mainly active on the market for fresh milk, which, owing to the legal constraints applying, can only be marketed up to four days from packaging. In practice, therefore, the product can only be sold relatively close to the area of production. As a consequence, the Italian fresh-milk market is typically a market of regional scope and there is no trade with other Member States, but only with some regions of northern Italy.

(46) Were the Commission to regard the writing-off of these sums as State aid within the meaning of Article 87(1) of the Treaty, Italy believes that the conditions for a derogation under Article 87(3)(c) of the Treaty would be met since such aid would comply with the Community Guidelines on State aid for rescuing and restructuring firms in difficulty [11].

(47) Italy holds that the measures in favour of ACCL comply fully with the conditions laid down in the applicable guidelines, since they were implemented under a restructuring programme intended to restore the company's efficiency and viability without unduly distorting the conditions of competition and in compliance with the principle of proportionality.

(48) ACCL was a company in difficulty in accordance with the relevant guidelines. From Italy's viewpoint, this conclusion is self evident having regard to the annual need to write off operating losses.

[11] OJ C 283, 19.9.1997, p. 2.

(49) With a view to any future privatisation of the company, a restructuring plan was drawn up for the period 1995 to 1997 (the 'business plan') by a group of experts in the sector to restructure and relaunch the company and improve production and marketing. The business plan provided for three consecutive phases involving restructuring in 1995, consolidation in 1996 and diversification of production in 1997.

(50) The plan comprised internal restructuring measures to restore ACCL's long-term viability. The main measures involved:

— rationalising general expenditure and industrial costs,

— substantially reducing the workforce (from 610 in 1993 to 402 in 1997),

— investments to replace plant and equipment (ITL 10 billion) with a view to improving efficiency and reducing the impact on the environment without increasing capacity,

— restructuring and improving efficiency of distribution,

— a shift in the product range to products with higher added value (long-life milk, special milk, yoghurt, fruit juice, etc.).

(51) These internal measures were geared to restoring the company's viability in reasonable time. The implementation of the restructuring plan allowed the company to generate a positive balance (ITL 1,5 billion according to the 1998 balance sheet).

(52) As regards the prevention of undue distortion of competition, the Italian authorities stress that the measures sought solely to improve ACCL's viability without adversely affecting the position of its competitors. All measures taken had the sole effect of substantially reducing staff, improving the efficiency of production plant and diversifying to products with higher added value. To back up this argument, Italy cites the fact that the Italian antitrust authorities, who looked into the acquisition of ACCL in the light of Articles 81 and 82 of the Treaty, concluded that the measures in favour of ACCL had no adverse impact on competition in the market for milk. Italy also stresses that ACCL did not adopt an aggressive marketing policy or secure a 'captive' consumer base for itself.

(53) The Italian authorities add that the restructuring plan was commensurate with the objective sought, i.e, to sell ACCL under the best possible conditions. They also state that ACCL contributed significantly to the restructuring process with its own resources (ITL 44 billion). Italy also notes that if the Municipality of Rome had chosen to wind up the company, it would have had to bear much higher costs.

(54) According to the Italian authorities, the validity of the restructuring process was confirmed by the fact that the private buyer followed the guidelines and the industrial plan after taking control of the company.

(55) Should the Commission regard the aid as not compatible with Article 87(3)(c) of the Treaty, it should be borne in mind that the beneficiary is ACCL, a company in liquidation, and not Centrale del Latte di Roma SpA. Since the sales procedure complied fully, in Italy's view, with conditions on the market, Centrale del Latte di Roma SpA and its buyer did not benefit in any way from the aid granted previously. ACCL, not Centrale del Latte di Roma SpA, should accordingly be asked to reimburse any aid to be recovered.

Aid to Lazio milk producers

(56) According to Italy, not only did ACCL never buy milk from local producers at above the market price but the quantities it bought never exceeded its processing requirements. As far as the prices it paid to producers are concerned, Italy claims that ACCL applied Italian Law No 88 of 16 March 1988 laying down rules on interbranch agreements and contracts for the cultivation and sale of agricultural products.

(57) In support of that claim, Italy provided statistics comparing the prices paid by ACCL and a private operator in the Lazio Region.

(ITL/kg)

Year	1993	1994	1995	1996	1997
ACCL	661	700	700	700	725
Private operator	677	687	772	742	725

(58) As regards the quantity of raw materials bought by ACCL, Italy claims that the raw materials were purchased on the basis of supply contracts with producers' groups. It has supplied information demonstrating that the total quantity of milk bought by ACCL declined steadily from 1993 to 1997 while the ratio of packaged products to milk delivered was stable over the same period (at between 90 % and 93 %).

Privatisation of ACCL

(59) According to the Italian authorities, ACCL was privatised under Italian Law No 474/94 on the sale of public assets, which allows such sales to take place by private contract. According to the Italian authorities, the relevant Community legislation does not require a public invitation to tender to be held in such cases, but this does not call the sales procedure applied into question.

(60) The privatisation was carried out with the assistance of consultants selected in accordance with the procedure provided for in Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public services contracts ([12]). The consultants chosen were J. P. Morgan, a highly reputed international merchant bank.

(61) In the Italian authorities' view, the publication of the notice on ACCL's privatisation in two national newspapers was sufficiently well publicised, witness the 25 bids received. As for the fact that no notices were published in the international press, Italy holds that, given the special features of the freshmilk market and the privatisation, it had assumed that only Italian companies and foreign companies already operating in Italy were likely to be interested. The Italian authorities rule out any interest on the part of operators not established in Italy at the time and they point out that any foreign operators interested in establishing themselves in Italy were unlikely not to consult the main financial newspaper in which one of the notices was published on a regular basis.

(62) As regards acceptance of the highest bid, the Italian authorities quote the Commission when it initiated the Article 88(2) procedure: 'the Commission noted that the successful candidate offered an amount of capital significantly higher than its competitors (ITL 106,6 billion). This offer was also significantly higher than the company's value, as judged by an independent expert (ITL 75,272 billion), notwithstanding that the successful candidate also gave a series of onerous undertakings'. In their view, that assessment, together with the degree of openness and transparency of the bidding procedure, is an ample guarantee that no State aid within the meaning of Article 87(1) of the Treaty was granted to the buyer.

(63) The Commission's claim that, 'Even if the company was sold to the highest bidder for a price significantly higher than its estimated value, an element of State aid may, in the Commission's view, have been involved if the private investor paid a lower price than it would have had such conditions not been imposed' is based, in its view, on pure conjecture and speculation of no practical relevance.

(64) The Italian authorities consider that the general principle that a privatisation must not be subject to special conditions must not be viewed as absolute. The conditions laid down may be compatible with the principle governing the private investor in a market economy (as an example, Italy cites the fact that Rolls Royce was sold by one private undertaking to another).

([12]) OJ L 209, 24.7.1992, p. 1.

(65) Italy also argues that the Commission does not have any factual evidence that the conditions under which the privatisation took place had any — much less than a significant effect — on the market value of the company. The Italian authorities stress that the expert opinion that served as a basis for determining the market value of the company did not take any conditions into account and that the final price was 29 % higher than that estimated. Furthermore, Italy emphasises that the final price offered by the buyer (ITL 106,6 billion) was equal to that offered by another bidder who was unwilling to accept those conditions.

(66) The Italian authorities say that one of the conditions for the application of Article 87(1) of the Treaty is not met and that, in their opinion, the buyer was granted no advantage under the privatisation procedure.

(67) Secondarily, the Italian authorities argue that, even if the Commission considers that the buyer did receive aid under the privatisation procedure, any such aid must be deemed compatible with Article 87(3)(c) of the Treaty in so far as it seeks to encourage privatisation and eliminate distortion of competition for which State-owned companies are normally responsible.

(68) As regards the clause requiring the buyer of Centrale del Latte di Roma SpA to purchase at least 80 % of its raw materials from local milk producers, Italy argues that this does not constitute State aid since the clause in question also requires the milk to be bought at market prices.

IV

ASSESSMENT

Applicability of Article 87(1) of the Treaty

(69) In accordance with Article 87(1) of the Treaty, 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 is incompatible with the common market in so far as it affects trade between Member States.

(70) Article 37 of Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ([13]) stipulates that, save as otherwise provided in that Regulation, Articles 87, 88 and 89 of the Treaty are to apply to the production of and trade in the products listed in Article 1 of the Regulation, which includes virtually the whole output of ACCL (fresh milk, long-life milk, yoghurt and other dairy products).

([13]) See footnote 1.

(71) Consequently, Articles 87, 88 and 89 of the Treaty apply in full to the assistance granted by the Municipality of Rome to ACCL. In order to assess whether State aid within the meaning of Article 87(1) of the Treaty was involved, the Commission considered the three measures separately, i.e. the operating losses written off, the assistance to Lazio milk producers and the aid granted under the privatisation process.

Writing-off of operating losses

(72) The Commission accepts the Italian authorities' argument that the overall debt written off should be put at ITL 96,6 billion. First, the years 1992 (ACCL was established in December 1992) and 1997 (the company was sold in June 1997) should be disregarded. Secondly, the Commission agrees that a significant proportion of ACCL's debt was covered by its own funds (ITL 99,25 billion) and that ITL 5 billion was never written off.

(73) Consequently, from 1993 to 1996 the Municipality of Rome systematically wrote off operating losses totalling ITL 96,6 billion on behalf of ACCL. The debts written off must accordingly be regarded as aid granted from the public purse (the Municipality of Rome is a public authority) to a particular food-industry undertaking, which indisputably enjoyed an undue economic and financial advantage to the detriment of other competitors in Italy and other Member States who did not receive the same contribution.

(74) The measures concerned definitely have an effect on trade between the Member States: there is substantial intra-Community trade in milk. In 1998 Italy's milk imports from other EU Member States totalled 4,34 million tonnes, while its exports to the rest of the EU totalled 20 391 tonnes. In the same year, Italy produced milk to the value of ECU 4,2 billion, while EU output as a whole was worth ECU 38,5 billion [14].

(75) No specific data are available at Community level on trade in ACCL's main product (fresh milk). Its share of the Rome market in this product in 1997 was 60 %. However, Italy denies that the measures in question affect trade between the Member States because of the special characteristics of the fresh-milk market (strict limitation on shelf life and marketing at regional level).

(76) In the Commission's view, however, the relevant market for consideration in the case in point is the EU milk market as a whole. This covers all types of milk with which fresh ACCL's milk is or may be in competition, as well as products that could replace fresh milk in consumers' buying patterns (in particular long-life UHT milk). Furthermore, the Court of Justice has ruled that aid to an undertaking may be such as to affect trade between the Member States and distort competition where that undertaking competes with products from other Member States even if the undertaking concerned does not itself export its products. A similar situation may arise even where there is no excess capacity in the sector concerned. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased, with the result that undertakings established in other Member States have less chance of exporting their products to the market in that Member State. Such aid is therefore likely to affect trade between Member States and distort competition [15].

(77) The Commission therefore concludes that the measures to write off ACCL's operating losses fall within the scope of the prohibition in Article 87(1) of the EC Treaty.

Aid to Lazio milk producers

(78) When initiating the procedure under Article 88(2) of the Treaty, in view of the allegations about higher prices paid to local producers or higher quantities delivered, the Commission held that the way ACCL was operated as a 'public service', entailing the writing-off of operating losses each year, constituted State aid to Lazio milk producers.

(79) According to the Italian authorities, there are no specific provisions requiring ACCL to buy milk from Lazio milk producers. Furthermore, the Commission notes that the price policy followed by ACCL in the past involved aligning prices on those laid down by the interbranch agreements on milk. Statistical data provided show clearly that prices paid by ACCL have systematically been lower than those paid by a large private company operating in the same sector. Likewise, the statistics show that the quantities purchased were always commensurate with ACCL's production.

(80) Consequently, on the basis of the information supplied by the Italian authorities and given the lack of evidence that such a positive price policy in favour of Lazio milk producers exists, the Commission concludes that ACCL's activity from 1993 to 1997 did not involve State aid within the meaning of Article 87(1) of the EC Treaty to Lazio milk producers.

Privatisation of ACCL

(81) When initiating the procedure under Article 88(2) of the Treaty, on the basis of the information available at the time the Commission was unable to rule out the possibility that aid had been granted to the buyer under the privatisation procedure.

(82) The Commission's concerns spring from two different sources. First, the notice announcing the privatisation of ACCL was published in two Italian newspapers only while possible interest in the privatisation among other European companies could not be ruled out. Secondly,

(14) *Source*: Eurostat.

(15) Judgment of the Court of Justice in Case 102/87 *French Republic* v *Commission of the European Communities* [1988] ECR 4067.

even if the company was sold to the highest bidder for a price significantly higher than its estimated value, the sale was subject to certain conditions. An element of State aid may have been involved if the price the private investor paid was lower than it would have been had those conditions not applied, namely the maintenance of certain numbers of jobs and continuing purchase of supplies of raw materials from local producers.

(83) Italy disputed the Commission's approach in initiating the Article 88(2) procedure and claims that the privatisation did not involve any grant of State aid within the meaning of Article 87(1) of the Treaty to the buyer.

(84) As regards the specific reasons for the Commission's doubts, the Italian authorities argue that the publication of the privatisation notice was sufficiently well publicised, witness the 25 bids received. In addition, Italy regards as pure conjecture and speculation the argument that the conditions attaching to the privatisation deal had an impact on the market value of the company, and denies that there is any factual evidence that those conditions influenced the price of the company. Italy accordingly claims that no use was made of State resources.

(85) In its preliminary examination of the aid, the Commission followed its established practice with regard to the sale of public assets (see recital 32.). It considers at this stage that the initial assessment must be supplemented by an assessment of the privatisation procedure in the light of the Commission Communication on State aid elements in sales of land and buildings by public authorities ([16]).

(86) In accordance with the communication, sales of public land and buildings following a well-publicised, open and unconditional bidding procedure do not entail State aid. This does not apply in the case in point, since the sale of the company was not unconditional.

(87) The communication lays down rules for determining whether State aid exists where a sale does not take place under an unconditional bidding procedure. In such cases, the market value of an asset is to be determined by an independent expert prior to the sale negotiations. A price may be deemed to be in line with the market value where it does not differ by more than 5 % from the value so determined. Furthermore, in the public interest special obligations relating to the land and buildings concerned and not to the buyer or his economic activities may attach to the sale, provided that all potential buyers are required and able to fulfil them.

(88) It follows from the abovementioned communication that in sales of public assets, Member States are not obliged to organise formal invitations to tenders or to apply the rules governing open invitations to tender. Consequently, whether or not it has been actively and widely publicised, the sale of public assets by direct agreement is acceptable under Community rules.

(89) As regards the price at which the company is sold in the case of sales where no formal tender is organised, the Commission normally only requires the selling price to be in line with the market value of the assets as determined by an independent expert.

(90) First, a valuation was carried out by an independent expert prior to the final round of negotiations in accordance with Article 2343 of the Italian Civil Code. The expert, who was designated by the President of the Tribunale di Roma, estimated the value of Centrale del Latte di Roma SpA as totalling ITL 75,272 billion. The Commission notes that the company was sold to the bidder submitting the best offer in financial terms. That offer (ITL 106,6 billion) was also 29 % higher than the company's market value as determined by the independent expert.

(91) As regards the conditions governing the sale, the Commission notes, first, that the sale of public assets on special conditions is acceptable under Community law where those conditions do not discriminate among the potential buyers. In the sale in question, none of the conditions (safeguarding of jobs, implementation of a business plan, obligation to buy at least 80 % of raw materials from local producers, and obligation not to transfer the place of production for five years) discriminates among the potential buyers. The Commission also takes the view that some of the conditions may affect the real market price of the company. As regards the maintenance of jobs, the Commission notes that the buyer has undertaken to maintain only 200 of the 392 existing workforce. In the light of the other bids and the estimates in the business plan, that workforce seems sufficient for the company to operate satisfactorily. The buyer has also undertaken to implement an industrial plan for a total of ITL 59,409 billion, which is higher than that proposed by the other bidders. The other conditions seem to be designed to ensure the continuation of the company's production model. Accordingly, the Commission agrees with the Italian authorities that the effect of those conditions on the market price cannot be calculated and it may be neutralised by the fact that the selected bidder's offer is substantially higher than the value of the company, as determined by the independent expert (42 %).

([16]) OJ C 209, 10.7.1997, p. 3.

(92) Consequently, the Commission's initial concern that State aid within the meaning of Article 87(1) of the Treaty may have been granted to the buyer under the privatisation procedure has been allayed.

(93) In view of the foregoing conclusion, the Commission considers that a further examination of the conditions of sale in the light of Articles 87, 88 and 89 of the Treaty is no longer called for.

Possible derogations pursuant to Article 87 of the Treaty

(94) In view of the initial assessment, the Commission has concluded that State aid within the meaning with Article 87(1) of the Treaty is confirmed only in respect of one of the three original grounds for initiating the Article 88(2) procedure (the writing-off of ACCL's operating losses).

(95) None the less, the prohibition on State aid contained in Article 87(1) is not unconditional. The exemptions listed in Article 87(2) clearly do not apply given the nature of the aid measures concerned and their objectives. Moreover, Italy has not invoked the application of Article 87(2) to those measures.

(96) Article 87(3) specifies the circumstances under which State aid may be considered to be compatible with the common market. Compatibility with the common market must be assessed from the point of view of the Community and not of the individual Member State. With a view to ensuring that the common market functions properly, the exemptions from the ban on State aid must be interpreted restrictively.

(97) Article 87(3)(a) clearly does not apply since the aid is not intended to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment.

(98) As regards Article 87(3)(b), the aid in question is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the Italian economy.

(99) This aid is not intended to achieve or suitable for achieving the objectives referred to in Article 87(3)(d).

(100) Under Article 87(3)(c) of the Treaty, aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the common market provided that it does not adversely affect trading conditions to an extent contrary to the common interest.

(101) To start with, the Commission notes that from the end of 1992 to its sale in mid-1997 ACCL operated as a 'public service' under arrangements whereby any outstanding operating losses were to be covered by the Municipality of Rome. On the substance of the case, the Commission would normally consider such debt write-offs as operating aid that does not lead to any development of the sector or the region ([17]).

(102) Italy claims, however, that the aid qualifies under the derogation provided for in Article 87(3)(c) of the Treaty in so far as it is compatible with the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ([18]). Initially, the Commission assessed these provisions having regard to the Community guidelines in force at the time the aid was granted and the procedure provided for in Article 87(2) of the Treaty was initiated. Those Guidelines were subsequently consolidated in mid-1999 ([19]). In accordance with point 7(5)(b) of the new Guidelines, the Commission is to examine the compatibility with the common market of any rescue or restructuring aid granted before their entry into force on the basis of the guidelines in force at the time the aid was granted.

(103) As ACCL was incurring systematic annual losses, it may be regarded as meeting the conditions for consideration as a firm in difficulty within the meaning of point 2.1 of the applicable guidelines.

(104) In the Commission's view, the debt write-offs by the Municipality of Rome do not comply with the general objective of rescuing firms in difficulty, which is simply to offer companies in difficulty a brief respite while a long-term solution is worked out. In order to be authorised, rescue aid must:

— consist of liquidity support in the form of loan guarantees or reimbursable loans granted at interest rates equivalent to those on the market,

— be limited to the amount needed to keep the firm in business (e.g. by covering the costs of wages and salaries and routine supplies),

— be paid only for the time needed (generally not exceeding six months) to determine the restructuring measures necessary,

— be warranted on the grounds of serious social difficulties and have no unduly adverse effects on the industrial or agricultural situation in other Member States,

— in principle be one-off operations.

([17]) See footnote 5.
([18]) See footnote 11.
([19]) OJ C 288, 9.10.1999, p. 2.

(105) The above annual write-offs do not imply a return on capital at interest rates equivalent to those on the market and they are not one-off operations. They cannot therefore be considered to fulfil the conditions in the Guidelines on State aid for rescuing and restructuring firms in difficulty.

(106) Under the applicable guidelines, restructuring aid can only be approved where the following general conditions are fulfilled.

a) *Restoration of viability*

All restructuring plans must enable the firm's long-term viability to be restored within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions. The improvement in viability must derive mainly from internal measures and may be based on external factors only to the extent that assumptions regarding the way those factors will develop are widely accepted. To fulfil the viability criteria, restructuring plans must enable the company to cover all its costs, including depreciation and financial charges, and to generate a minimum return on capital such that the firm can compete in the marketplace on its own merits.

b) *Preventing undue distortion of competition brought about by the aid*

Measures should be taken to mitigate as far as possible the adverse effects on competitors. Where an objective assessment of the supply and demand situation shows an excess of production capacity, the restructuring plan must make a contribution that is commensurate with the aid received to the restructuring of the relevant EC market by irreversibly reducing or abandoning capacity.

c) *Proportionality of aid in terms of restructuring costs and benefits*

In rate and amount the aid must be kept to the bare minimum needed for restructuring and must be commensurate with the benefits anticipated at Community level. Aid beneficiaries will be expected to make a significant contribution to the restructuring programme from their own resources or using external financing at market conditions. In order to limit distortion, the amount of the aid or the form in which it is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive, market-disturbing activities.

d) *Full implementation of restructuring plan and observance of conditions*

The company must fully implement the restructuring plan approved by the Commission and must discharge all the obligations provided for in the Commission's decision.

e) *Monitoring and annual reports*

Granting of restructuring aid must be monitored at regular intervals on the basis of adequate reports.

(107) In general there is no obvious link between ‘public service’ status for the coverage of operating losses and any restructuring measures undertaken within the company. Indeed, debts have been written off since 1992, while implementation of the restructuring plan (1995 to 1997 business plan) only started in 1995.

(108) As far as restoring viability within a reasonable timescale is concerned, the business plan provides for the following measures:

— a 5,6 % reduction in industrial costs through more efficient processing,

— a 37,5 % reduction in general processing costs, to be achieved largely through cutting the workforce and general administrative costs. The business plan provides for staff to be cut by almost 200 (from an existing pre-plan workforce of 488 to a target of 280 in 1997). The attendant reduction in operating costs was estimated to amount to ITL 15 billion/year,

— the implementation of an investment plan for ITL 9,8 billion a year until 1997, with the main aim of updating the existing processing lines, and in particular the long-life UHT milk processing line,

— the business plan relied on a shift in the product range. It provides for an overall increase of 6 % in sales of packaged milk products. Overall this corresponds to a 5 % decrease in production of fresh milk and a substantial increase for other types of dairy products, namely cream (+60 %), yoghurt and long-life milk (300 %). By 1997 the company turnover was expected to increase by 37 %;

— restructuring of distribution, which was held to be inefficient, and development of a new marketing policy.

(109) ACCL's business plan contains an important set of core internal measures that could be considered a restructuring plan in accordance with the Community guidelines. However, from the outset the plan did not actually anticipate a return to viability but rather an improvement in the trading results (from – ITL 13,0 billion in 1995 to – ITL 5,9 billion in 1997), which would simply have prepared the ground for a return to profit. Accordingly, it did not seek to restore viability in accordance with the guidelines, i.e. by generating sufficient profits to cover all costs and ensure some return on capital. Even if the company did produce a profit (ITL 1,5 billion) in 1998 following its privatisation, in the Commission's view, seeing that ACCL was sold, the new company can

no longer be regarded as a firm in difficulty (see recital 25 of this Decision and point 7 of the new Community Guidelines on State aid for rescuing and restructuring firms in difficulty ([20]). Moreover, that income appears to derive from the implementation of a further set of measures. Even taking certain extraordinary costs related to ACCL's liquidation into account, the trading results for 1997 were clearly negative (– ITL 57,1 billion), which suggests that the business plan (as confirmed by Italy) was not fully implemented. Consequently, the Commission does not consider that the first condition of the guidelines on restructuring has been fulfilled.

(110) As far as the second condition is concerned, ACCL's business plan for 1995 to 1997 makes no provision for any measures to mitigate as far as possible any adverse effects on competitors. In addition, restructuring aid in sectors where there is structural overcapacity at European level must contribute to the restructuring effort of the sector by irreversibly reducing or eliminating capacity. ACCL was active in the milk and dairy-products sector, where there is significant overcapacity at Community level. This is demonstrated by the existence (during the period when the restructuring took place) of strict sectoral limits on investments both in primary production (Article 6 of Council Regulation (EC) No 950/97 on 20 May 1997 on improving the efficiency of agricultural structures ([21])) and in the processing and marketing of milk products (point 2.3 of the Annex to Commission Decision 94/173/EC ([22]). Neither the business plan nor the Italian authorities' remarks hint at eliminating production or marketing capacity. In the Commission's view, therefore, the second condition of the Guidelines on restructuring is not fulfilled.

(111) The third condition relates to proportionality, i.e. the cost of the restructuring aid as set against the benefits to the Community. This condition is not fulfilled since, given the form of the aid (writing-off of operating losses), in the Commission's view the aid was not kept to the bare minimum necessary for restructuring. On the contrary, the debt write-offs under which the company was operating provided a constant supply of liquidity that exceeded what was required for restructuring (recital 107).

(112) The Commission accordingly holds that the aid measure does not comply with the applicable guidelines on rescuing and restructuring firms in difficulty.

([20]) OJ C 288, 9.10.1999, p. 2.
([21]) OJ L 142, 2.6.1997, p. 1.
([22]) Commission Decision on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agricultural and forestry products and repealing Decision 90/342/EEC (OJ L 79, 23.3.1994, p. 29).

Applicability of Article 86(2) of the Treaty

(113) When it initiated the procedure provided for in Article 88(2) of the Treaty, the Commission considered that ACCL's activities did not exhibit special characteristics allowing it to be considered for derogation under Article 86(2) of the Treaty ([23]). Furthermore, the Commission held that companies producing and marketing products listed in Annex I to the Treaty and covered by a common market organisation could not be regarded as undertakings entrusted with the operation of services of general economic interest within the meaning of Article 86(2) of the Treaty.

(114) In their reply, the Italian authorities did not dispute the Commission's position.

(115) The Commission accordingly maintains its previous position to the effect that Article 87(2) of the Treaty cannot apply to a company producing and marketing dairy products.

V

CONCLUSIONS

(116) The Commission considers that the measures for writing off ACCL's operating losses from 1992 to 1997 constitute State aid within the meaning of Article 87(1) of the Treaty.

(117) However, in the Commission's view the abovementioned measures in favour of Lazio milk producers do not constitute State aid within the meaning of Article 87(1) of the Treaty. Likewise, the Commission holds that the ACCL privatisation procedure does not involve State aid within the meaning of Article 87(1) of the Treaty.

(118) The Commission deplores the fact that Italy has unlawfully applied the abovementioned aid in breach of Article 88(3) of the Treaty.

(119) For the reasons set out above, none of the exemptions provided for in Article 87(2) or (3) of the Treaty can apply to aid satisfying the requirements of Article 87(1). Likewise, the derogation provided for in Article 86(2) of the Treaty is not applicable to that aid, which is therefore incompatible with the common market.

(120) That conclusion is without prejudice to any position that the Commission may adopt pursuant to Articles 87, 88 and 89 of the Treaty on the relevant provisions of Italian Law No 142 of 8 June 1990 on the provisions governing local authorities.

([23]) See judgment cited in footnote 7.

(121) In cases like that in point, where non-notified aid is granted before the Commission has taken a final decision, the binding nature of the rules of procedure laid down in Article 88(3) of the Treaty, the direct effect of which has been recognised by the Court of Justice in its judgments in Case 77/72 (*Carmine Capolongo* v *Azienda Agricola Maya*) ([24]), Case 120/73 (*Gebr. Lorenz GmbH* v *Federal Republic of Germany*) ([25]) and Case 78/76 (*Steinicke und Weinlig* v *Federal Republic of Germany*) ([26]), prevents any retrospective legitimation of the aid (judgment in Case C-354/90 (*Fédération nationale du commerce extérieur des produits alimentaires and others* v *France*) ([27])).

(122) Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty ([28]) provides that where a negative decision is taken in a case of unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary. Recovery is necessary in order to restore the previous situation by removing all financial advantages unduly gained by the beneficiary since the date of granting of the aid.

(123) Article 14(2) of Regulation (EC) No 659/1999 states that the sums to be recovered are to bear interest at an appropriate rate set by the Commission. Interest is payable from the date on which the unlawful aid is made available to the beneficiary until the date of its recovery.

(124) The aid is to be repaid in accordance with the rules of procedure laid down by Italian law. The aid is to include interest from the date on which it was granted until its actual recovery. The interest is calculated on the basis of the reference rate used to calculate the grant equivalent of regional aid ([29]).

(125) In the case in point, the party from whom the aid is to be recovered must also be specified. From 1992 to 1997, ACCL received overall aid amounting to ITL 96,6 billion to write off operating losses. By decision of the Municipality of Rome of 8 July 1996, ACCL's assets were transferred to Centrale del Latte di Roma SpA. The latter company was subsequently sold at normal market rates, an operation that, compared with conventional liquidation, allowed the State to obtain the best possible financial return for its assets. Under the circumstances, the Commission takes the view that the operation should be regarded as an 'asset deal' in which Centrale del Latte di Roma SpA was simply an instrument. Furthermore, the buyer (a major private industrial group) has not received any benefit from the aid granted previously, since it no longer has an independent legal status and is thus not liable to repay the aid. The aid should accordingly be reimbursed by ACCL.

(126) This Decision is without prejudice to any conclusions that the Commission may draw as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

([24]) [1973] ECR 611.
([25]) [1973] ECR 1417.
([26]) [1977] ECR 595.
([27]) [1991] ECR I-5505.
([28]) OJ L 83, 27.3.1999, p. 1.
([29]) OJ C 74, 10.3.1998, p. 9.

HAS ADOPTED THIS DECISION:

Article 1

1. The measures for the writing-off of the operating losses incurred by Azienda Comunale Centrale del Latte di Roma from 1992 to 1997 do not constitute State aid within the meaning of Article 87(1) of the Treaty to Lazio milk producers.

2. The procedure for the privatisation of Azienda Comunale Centrale del Latte di Roma does not involve State aid within the meaning of Article 87(1) of the Treaty.

3. The measures for the writing-off of the operating losses of Azienda Comunale Centrale del Latte di Roma between 1992 and 1997 are incompatible with the common market.

Article 2

1. Within two months of notification of this Decision, the Italian authorities shall take all measures necessary to recover from the beneficiaries the aid referred to in Article 1(3) that was unlawfully granted to them.

2. The aid shall be recovered in accordance with the procedures laid down by Italian law. The sums to be recovered shall bear interest from the date on which they were made available to the beneficiaries until their actual recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 3

Within two months of notification of this Decision, Italy shall inform the Commission of the measures it has taken to comply with it.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 April 2000.

For the Commission

Franz FISCHLER

Member of the Commission