

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 February 1999

concerning State aid which the Spanish Government has granted to the company Hijos de Andrés Molina SA (Hamsa)

(notified under document number C (1999) 41)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(1999/484/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 given notice to the parties concerned to submit their comments in accordance with the above Article,

Whereas:

(3) Under the abovementioned procedure, the Commission invited the Spanish Government to submit its comments.

(4) The Commission also issued a notice to the other Member States and interested parties to submit their comments, which it published in the *Official Journal of the European Communities* ⁽¹⁾.

(5) Spain submitted comments by letters dated 4, 11 and 23 July and 21 August 1997 informing the Commission that Hamsa had also been granted other State aids.

I. PROCEDURE

(1) By letter dated 1 July 1996, the Office of the Spanish Permanent Representative notified the Commission, in accordance with Article 93(3) of the EC Treaty, of aid granted to Hijos de Andrés Molina SA (hereinafter called Hamsa). Since these aids had been granted prior to being notified, they were transferred to the register of non-notified aids.

(2) By letter SG(97) D/3294 dated 29 April 1997, the Commission notified the Spanish Government of its decision to initiate the procedure provided for in Article 93(2) of the Treaty against the aids granted to Hamsa which fell within the scope of Article 92(1) of the Treaty without appearing to qualify for any of the exceptions provided for in paragraphs 2 and 3 of that Article.

(6) Other interested parties submitted comments by letters dated 27 January, 6 February, 26 May, 28 May and 22 July 1997. These were forwarded to the Spanish Government by letter dated 13 January 1998. By letter dated 16 March 1998, the Spanish Government in turn submitted its comments on the comments submitted by the other interested parties.

(7) By letter SG(97) D/8336 dated 10 October 1997, the Commission informed the Spanish Government of its decision to extend the procedure provided for in Article 93(2) of the Treaty against the aids granted to Hamsa after the Commission's letter dated 29 April 1997 which fell within the scope of Article 92(1) of the Treaty without appearing to qualify for any of the exceptions provided for in paragraphs 2 and 3 of that Article.

⁽¹⁾ OJ C 196, 26.6.1997, p. 10.

- (8) Under the extension of the abovementioned procedure, the Commission invited the Spanish Government to submit its comments.
- (9) The Commission also issued a notice to the other Member States and interested parties to submit their comments, which it published in the *Official Journal of the European Communities* ⁽¹⁾.
- (10) Spain submitted comments by letters dated 19 December 1997. The other interested parties submitted comments by letters dated 15 and 23 December 1997, which were transmitted to the Spanish Government by letter dated 13 January 1998. By letters dated 2 March, 16 March, 16 July, 8 September and 21 October 1998, the Spanish authorities submitted their comments on the comments submitted by the other interested parties and also sent other information.
- (ii) three loans for:
- ESP 350 million, granted on 11 July 1995 and paid on 24 October 1995, for four years,
 - ESP 125 million, granted on 2 October 1995 and paid on 24 October 1995, for one year,
 - ESP 25 million, granted on 28 September 1995 and paid on 27 October 1996, for one year,
- at an interest rate of 6% (converted on 9 April 1996 to MIBOR plus 0,5%) (these loans have not been repaid; the loans for ESP 125 million and 350 million have been capitalised, no interest has been paid);

(b) restructuring aid, between January 1996 and June 1996, in the form of:

II. DESCRIPTION OF THE MEASURES

- (11) The notification from the Spanish authorities on 1 July 1996 concerns the aid granted to Hamsa between 5 May 1995 and June 1996. According to the Spanish authorities, this aid is an individual example of aid N 462/94, authorised by Commission letter dated 20 February 1995. However, aid N 462/94 introduces a rescue and restructuring aid scheme for SMEs only. Aids to other firms had to be notified to the Commission in advance in each specific case. Hamsa cannot be considered an SME, either on the basis of its turnover (ESP 7 612 million in 1994) or on the basis of the number of its employees (632 on 31 December 1994) ⁽²⁾.
- (12) According to the Spanish authorities' notification, between May 1995 and June 1996 Hamsa received the following aid from the Instituto de Fomento de Andalucía (hereinafter called the 'IFA'), a body dependent on the Regional Government of Andalusia:
- (a) rescue aid, between May and December 1995, in the form of:
- (i) two guarantees approved on 16 June 1995, one for ESP 100 million for one year granted on 16 August, and the other for ESP 50 million for 10 months granted on 14 September 1995 (premiums of 1,2% not paid, the guarantees are still in force);
- (ii) loans for ESP 1 739 million, granted on 10 December 1995 and paid on 30 December 1995 for one year, at MIBOR plus 0,5%, and ESP 850 million granted on 28 May 1996 and paid on 11 July 1996, for five years at an interest rate of 10,5% (the loans have not been repaid but have been capitalised, interest not paid).
- (13) Before May 1995, Hamsa had received other State aids not covered by the Spanish notification, as follows:
- (a) a loan of ESP 375 million for two years at 10% interest, approved on 25 May 1993 and paid on 12 August 1993 (loan not repaid, interest not paid) and a guarantee for ESP 375 million, approved on 25 May 1993 and granted on 18 June 1993 (guarantee called in, no premium paid);
- (b) a loan of ESP 550 million at 6% interest, approved on 26 May 1994 and paid on 28 June 1994 (loan not repaid, interest not paid) and a guarantee for ESP 200 million, approved on 28 April 1994 and granted on 28 June 1994 (guarantee called in, 1,2% premium not paid).

⁽¹⁾ OJ C 361, 27.11.1997, p. 3.

⁽²⁾ A small and medium-sized enterprise is defined as an enterprise employing no more than 250 people with a turnover of no more than ECU 20 million (see point 3.2.4 of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (94/C 368/05)(OJ C 368, 23.12.1994, P. 12)).

- (14) Between the notification by the Spanish authorities on 1 July 1996 and the Commission's letter of 29 April 1997 informing them of its decision to open the procedure provided for in Article 93(2) of the Treaty, Hamsa received other State aids, in particular:
- (a) a four-year loan of ESP 1 100 million at MIBOR plus 0,5%, approved on 1 October 1996 and paid on 5 November 1996 (loan not repaid, all but ESP 7 million capitalised, interest not paid);
 - (b) a four-year loan of ESP 700 million at MIBOR plus 0,5%, approved on 3 April 1997 and paid in two instalments, the first of ESP 400 million on 2 June 1997 and the second of ESP 300 million on 31 July 1997 (loan not repaid and still running, interest not paid) and two guarantees, approved on 3 April 1997, one for ESP 450 million granted on 6 February 1998, and one for ESP 300 million granted on 2 May 1997 (guarantees still in force, 1,2% premium not paid);
 - (c) in addition, on 2 August 1996, the IFA, through its public-sector company Sociedad para la Promoción y Reconversión de Andalucía SA (hereinafter called Soprea), took over the debt of ESP 275 951 288 arising from a ESP 300 million loan granted to Hamsa by the financial institute Caixa d'Estalvis i de Pensions de Barcelona (hereinafter called 'La Caixa'), (payable from acquisition, without interest).
- (15) Following the Commission's letter of 29 April 1997 informing the Spanish authorities of its decision to open the procedure provided for in Article 93(2) of the Treaty, Hamsa's creditors held a meeting on 28 May 1997 to discuss the firm's debts at the time of the declaration of cessation of payments in May 1995. At that meeting various State bodies granted the following remissions:
- (a) the IFA granted a remission of ESP 2 192 754 000 on a debt of ESP 2 211 154 000;
 - (b) the Andalusia Regional Executive (Junta de Andalucía) granted a remission of ESP 69 000 000 on a debt of ESP 87 489 000;
 - (c) the Municipality of Jaén granted a remission of ESP 158 800 000 on a debt of ESP 177 199 000;
 - (d) the tax authorities granted a remission of ESP 338 589 000 on a debt of ESP 927 876 000;
 - (e) the Ministry of Labour granted a remission of ESP 789 938 000 on a debt of ESP 1 479 000 000 incurred through non-payment of social security contributions.
- (16) In addition, on 28 May 1997 the IFA capitalised ESP 4 680 million, part of the amount Hamsa owed it from the period after May 1995.
- III. SPAIN'S COMMENTS FOLLOWING OPENING OF THE PROCEDURE**
- (17) By letters dated 4, 11 and 23 July and 21 August 1997, the Spanish authorities submitted their comments on the Commission's decision to open the Article 93(2) procedure against the aid granted to Hamsa. Those comments are summarised in recitals 18 to 38 of this Decision.
- (18) Hamsa consists of five different production divisions:
- (a) meat products (prepared meat products, preserves, smoked sausage, pâté, cured ham) producing 12 100 (10th largest in Spain);
 - (b) slaughtering, with two slaughterhouses (ranking 43rd in Spain for pig slaughter);
 - (c) pig production, with five pig units (two being leased to the Molina family), with around 10 000 sows producing 175 000 piglets a year for slaughter (12 150 t);
 - (d) animal feedingstuffs, with two units (one rented to the Molina family), with a capacity of 100 000 t; and
 - (e) cheesemaking.
- (19) Under an agreement concluded on 6 March 1995 between the Molina family (shareholders in Hamsa) and the IFA, the bare ownership of all Hamsa shares was transferred to the IFA for the symbolic price of ESP 1 from 5 May 1995 to 31 December 1997. On that date, the shares were to be transferred automatically back to their former owners. Relations between the Molina family and the IFA during that period were strained and resulted in a number of court cases.
- (20) On 28 May 1997, Hamsa increased its capital by ESP 4 680 million by capitalising part of the debt to IFA and a reduction in the capital to ESP 500 million. These operations left the former owners, the Molina family, with a reduced shareholding of 20% and the IFA owning the remaining 80% of the company's shares.
- (21) Before 1993 Hamsa had employed 1 000 people. That number was reduced to 750 in 1993. The workforce was restructured (early retirement) in 1994 and again in the last quarter of 1995, reducing the number of Hamsa employees to 450.

- (22) The Spanish authorities claim that they had not notified the Commission of the aids granted before May 1995 because they had been granted under two general aid schemes already notified to and authorised by the Commission. Specifically:
- (a) the ESP 375 million loan and the guarantee for ESP 375 million (called in on 29 September 1996 in an amount of ESP 401 932 206) were approved on 25 May 1993. The loan was paid on 12 August 1993 and the guarantee granted on 18 June 1993, under aid scheme N 624/92, approved by the Commission by letter dated 16 December 1992;
- (b) the ESP 550 million loan approved on 26 May 1994 and paid on 28 June 1994 and the guarantee for ESP 200 million (called in on 29 January 1996 in an amount of ESP 207 578 082), approved on 28 April 1994 and granted on 28 June 1994 under aid scheme N 428/93, approved by the Commission by letter dated 2 September 1993.
- (23) According to the Spanish authorities, the aid granted after May 1995 complied with the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.
- (24) Rescue aid was granted between July and December 1995 to keep the firm running while the restructuring plan was being prepared. The 6% interest rate on the loans granted on 24 October 1995 was converted on 9 April 1996 to the MIBOR rate plus 0,5% to bring it into line with the market rate.
- (25) With regard to the restructuring aid, the restructuring measures in the plan involved improved and more professional management of the organisation and operation of the company (introducing computerised systems, a management board for each production division, etc.), investing in replacements, freezing the staff salaries (increases linked to productivity), introducing a production strategy, reorganising product supply in line with demand, reducing overheads and selling off unproductive assets. As for economic and financial equilibrium, although it will not be possible to achieve a positive accounting result, the planned measures are intended to achieve a level of activity and profitability that at least provides a positive cash flow to facilitate privatisation.
- (26) The plan made the following provision for the different production divisions:
- (a) for the cheesemaking division to achieve positive results, or at least to break even, production would have to be increased to 90 t/month, requiring investments worth ESP 26 million;
- (b) for the feedingstuffs division and farms, the only viable alternative would be to relaunch production on the farms of pigs for slaughter at Hamsa's slaughterhouse. This would require investments worth ESP 50 million and working capital of ESP 280 million;
- (c) for the slaughterhouse and cutting plant to be profitable, slaughters would have to be increased to 19 000 to 20 000 yearlings monthly, requiring financing worth ESP 320 million;
- (d) for the meat-products division to be profitable, production would have to be increased to 1 250 t/month, at a cost of ESP 450 million;
- (e) commercial network: if the company is to have a future, the production divisions must be geared to the market. The commercial network would have to be reorganised, a commercial policy introduced and new policies developed for products, ranges and remuneration;
- (f) creation of a joint service division responsible for general, financial and human resource management.
- (27) The plan makes the following forecast for the output of the different production divisions:

Division	Situation in 1995 (when the plan was drawn up)	Plan forecasts
Slaughter	8 500 piglets per month	18 000 piglets per month
Pigs	—	Relaunch production
Meat-products	900 t/month	1 250 t/month
Fresh meat	150 t/month	Reduced to the surplus
Animal feedingstuffs	500 t/month	1 700 t/month
Cheese	39 t/month	90 t/month
Cured ham	—	Relaunch production

- (28) Fresh funds were needed to finance the operating fund, pay creditors and redundancy payments and cover continuing losses during restructuring.
- (29) A loan of ESP 1 100 million, granted on 1 October 1996, was earmarked to finance the additional costs incurred because of swine fever and payments made to creditors with secured loans.
- (30) An ESP 700 million loan approved on 3 April 1997 and guarantees for ESP 450 million and ESP 300 million approved on 3 April 1997 were earmarked to pay creditors under the agreement reached at the meeting of creditors held on 28 May 1997, to finance an increase in stocks of cured ham caused by supply outstripping demand, to cover additional costs incurred because of swine fever (an increase in pig prices and additional costs amounting to ESP 131 million), to cover investments needed to maintain the plants and to pay consultancy fees.
- (31) The IFA, through Soprea, acquired ESP 275 951 288 of the debt arising from a ESP 300 million loan by the financial institute La Caixa on 2 August 1996 to prevent Hamsa from losing its main farm, which was mortgaged under that loan.
- (32) The Spanish authorities take the view that the aids in question meet the conditions laid down in the Community Guidelines on State aid for rescuing and restructuring, as set out in recitals 33 to 38.
- (33) The restructuring plan was drawn up in December 1995 to restore Hamsa's viability. It was based on the information available at that date, which was incomplete, insufficient and unreliable. The plan was also subject to the unforeseeable results of the suspension of payments procedure. The balance sheet therefore does not reflect the firm's real situation. For these reasons, a report was drawn up in April 1997 on the firm's situation at 31 December 1996. This report is not a new restructuring plan, but a revision of the 1995 plan. The management measures taken began to show results in the 1996 financial year, with sales increasing by 26%, operating losses down by 31% and cash flow up by 37%. Losses in 1996 amounted to ESP 1 370 million, as against ESP 2 479 million in 1995, while the operating losses were ESP 2 337 million in 1996 as against ESP 3 702 million in 1995. In particular:

Percentage	1995	1996
Gross profit/sales	18,32%	29,03%
Operating margin/sales	-16,13%	2,76%
Result/sales	-43,71%	-22,09%
Cash flow/sales	-29,83%	-11,29%

- (34) Nevertheless the balance sheet at 31 December 1996 shows that sales and stocks failed to reach the predicted levels and expenditure was higher (1,96%) than predicted.
- (35) The report on the firm's situation at 31 December 1996 made the following forecasts for the different production divisions.
- (a) The sales projected for the cheesemaking division were not achieved and stocks increased sharply. Production was accordingly reduced to 55 t/month. Investments worth ESP 33 million would also be necessary.
- (b) For the feedingstuffs division and pig farms, relaunching pig production was a success since it mitigated the effects of the increase in pig prices. Production was lower than expected (5 388 pigs/month instead of 6 500). At 17 000 t/month, the production of feedingstuffs was close to full capacity.
- (c) For the slaughterhouse and cutting plant, it was planned to reduce the number of slaughters because of the expected reduction in the company's overall sales. Investments of ESP 67 million would be needed to bring down costs. However, this division is expected to make a loss.
- (d) For the meat-product division, production was geared to demand and amounted to 15 341 t. The investment required was calculated at ESP 224 million, and a profit of some ESP 100 million was expected.
- (e) The sales network was to be reorganised, with incentive pay and marketing measures.
- (36) In addition, the suspension of payments procedure was completed in June 1997, when the creditors reached the agreement required to restore the firm's viability.
- (37) With regard to the adoption of measures to minimise the negative impact on competition, the Spanish authorities take the view that there is no overcapacity on the market in meat products, which is highly fragmented and strongly influenced by consumer habits. However, under the restructuring plan Hamsa gave up selling fresh products and concentrated all its production capacity on prepared meat products. It followed the same price policy after 1995 as before, and therefore did not cut prices. The gross margin increased from roughly 30% in 1995 to about 39% in 1997.
- (38) With regard to the requirement that restructuring aid be in proportion to costs and benefits, the agreement to

transfer bare ownership was intended not to benefit the Molina family but to enable the IFA to take control of the firm until its restructuring was complete. The IFA agreed to capitalise part of its loan to Hamsa (ESP 4 680 million) accounting for 80% of the shares, thereby reducing the Molina family's holding to 20%. Furthermore, Hamsa's employees contributed to the restructuring exercise through the reduction of the workforce, as did its creditors by cancelling its debts.

IV. SPAIN'S COMMENTS FOLLOWING EXTENSION OF THE PROCEDURE

- (39) By letter dated 19 December 1997, the Spanish authorities submitted their comments on the Commission's decision to extend the Article 93(2) procedure against the aid granted to Hamsa. Those comments are summarised in recitals 40 to 50 of this Decision.
- (40) IFA's decision to capitalise part of Hamsa's debt (ESP 4 680 million) by converting loans granted after 1995 and then reducing the firm's capital to ESP 500 million, was taken on 29 April 1997, that is, before the creditors' meeting held on 28 May 1997. The capitalisation concerned all the existing loans not included in the suspension of payments procedure at that date, except for ESP 32 502 853 that was not included due to a miscalculation. This operation required no injection of new capital and was the only legal alternative to Hamsa's declaring bankruptcy, since its deficit in own resources at 31 December 1995 amounted to ESP 4 304 million, against a share capital of ESP 1 140 million. If the firm had gone bankrupt, its creditors would probably have lost 80% all of the money owing to them. In addition, the capitalisation left the IFA owning 80% of Hamsa's shares. According to the Spanish authorities, such behaviour is that of a private investor.
- (41) According to the Spanish authorities, the actions of the public authorities in the context of the suspension of payments procedure cannot be regarded as State aid within the meaning of Article 92(1) of the Treaty. The remission of debts was approved under the legal procedure for suspension of payments, with legal authorisation, in the context of general economic

measures applicable to all firms in all sectors of the economy. They acted as private creditors would have done in similar circumstances. Moreover, the social security and tax authorities are permitted by law to conclude individual agreements with creditors. The Spanish authorities take the view that the public authorities used the same criteria in their dealings with Hamsa that a private investor would have done to recover a maximum of assets under the best conditions.

- (42) Hamsa's debt to the IFA comes from State aids granted prior to May 1995 in the form of loans amounting to ESP 375 and 550 million (which have not been repaid, nor has the interest been paid) and guarantees amounting to ESP 375 and ESP 200 million (which were called in) plus interest. According to the Spanish authorities, since the IFA already owned 80% of Hamsa's shares on 28 May 1997, any remission of debts amounts to indirect capitalisation of 80% of the cancelled amount, i.e. the shares are revalued in exactly the same way as if that percentage were applied to the remitted amount. The IFA's remission of the debt is therefore equivalent to increasing capital by offsetting the remitted portion of the loan and then reducing the capital by the same amount. Since the firm's deficit at 31 December 1996 amounted to ESP 6 814 million and, after capitalisation on 29 April 1997, to ESP 4 680 million, a deficit of ESP 2 134 million still remained; if the IFA had not written off Hamsa's debts, the firm would have remained in the same state of bankruptcy as in December 1996. Consequently, the IFA acted as any private creditor would have done who was at the same time also the majority shareholder.
- (43) According to the Spanish authorities, the other public creditors apart from the IFA behaved in the same way as private creditors with similar debts. Of the private creditors, the Banco Atlántico held mortgage guarantees and public loans, the social security held mortgage guarantees worth ESP 630 million and the Junta de Andalucía held mortgage guarantees worth ESP 21 million. As for the creditors who did not hold mortgage guarantees (both privileged creditors like the State and normal creditors), because of the firm's deficit and the mortgage charges soaking up all its assets, their guarantees were practically worthless. The details of the debt remission by the major creditors are given below.

Creditors	Debt (in ESP)	Remission	Percentage of remission	Mortgage guarantees
Banco Atlántico ⁽¹⁾	25 818 000	14 629 000	56,66%	yes
Molina family	53 000 000	34 600 000	65,28%	no
Gedeco	55 079 000	36 679 000	66,59%	no

Creditors	Debt (in ESP)	Remission	Percentage of remission	Mortgage guarantees
Ray lech	29 631 000	17 341 000	58,52%	no
Prats Nadal	16 037 000	8 274 000	51,59%	no
Productos Cárnicos la Estrella	12 310 000	5 852 000	47,54%	no
Roura y Cia	11 981 000	5 638 000	47,06%	no
Cepsa	10 901 000	4 936 000	45,28%	no
Remission by private creditors	214 757 000	127 949 000	59,58%	—
Municipality of Jaén	177 200 000	158 800 000	89,62%	no
Tax authorities	927 876 000	338 589 000	36,49%	no
Junta de Andalucía	87 489 000	69 089 000	78,97%	yes
Social security	1 479 053 000	789 938 000	53,41%	yes
Confederación Hidrográfica del Guadalquivir	11 221 000	5 144 000	45,84%	no
Remission by public creditors (other than the IFA)	2 682 839 000	1 361 580 000	50,75%	
Remission resulting from the creditors' meeting			53,24%	
IFA	2 211 154 000	2 192 754 000	99 %	no
Remission by public creditors (including the IFA)	4 893 993 000	3 554 334 000	%	—

(¹) Individual agreement concluded outside the creditors' meeting.

(44) The Spanish authorities have the following views on the applicability of the Community criteria to assessment of the aid in question:

(a) since the Commission does not refer explicitly to the rules on farms in difficulty, the Spanish authorities have no information with which to assess whether the aid is compatible;

(b) like the Commission, they do not consider that the rules on rescue aid apply to the aid in question;

(c) their opinion as to applicability of the rules on restructuring aid is as follows.

(45) With regard to restoring viability, the increase in capital and the remission of debts are provided for in the December 1995 restructuring plan. Although the aid had not yet been quantified at that time, the plan provided for the necessary external financing by increasing capital and referred to the importance of settling the suspension of payments procedure. Moreover, the capitalisation and debt remission restored some financial viability to the firm by substantially

reducing its financial costs. Lastly, the IFA became owner of 80% of Hamsa, which will enable it to sell the firm to the private sector in the short term.

(46) With regard to reducing the negative impact on competition:

(a) Hamsa closed one of its slaughterhouses (with a capacity of 240 pigs/hour, – a reduction of approximately 15% in production capacity) and one of its two cutting plants (with a capacity of 3 870 t/month, i.e. a 15% reduction in production capacity). It also closed its pâté production line, which had a production capacity of 430 t/month. It uses its slaughterhouse for its own requirements, its production of meat products accounts for under 1% of the national total and the region has a shortage of slaughter capacity compared to other regions (there are only three slaughterhouses in Andalusia; Catalonia has 75 to serve a similar population). The cost of animal and meat transport has a major impact on price, so any excess capacity is only relative. In this connection, point 2.10 of the Annex to Commission Decision 94/173/EC(¹) provides that

(¹) OJ L 79, 23.3.1994, p. 29.

- the exclusion of pigs, cattle, sheep and poultry should not apply in Objective 1 regions where there is insufficient capacity.
- (b) One of the firms manufacturing feedingstuffs, with a capacity of 2,5 million kg/month, was allotted to the Molina family by court order for sale, resulting in a 25% reduction in Hamsa's production capacity.
- (c) There has been no surplus production capacity for pigs since 1995, since world demand for pigmeat is on the increase.
- (d) Moreover, the Commission's Guidelines provide for a smaller reduction in capacity in less-favoured regions like Andalusia.
- (47) As regards the criterion that aid must be in proportion to the restructuring costs and benefits, all the private creditors, including the Molina family, contributed to the financial restructuring of Hamsa by remitting its debts.
- (48) By letter dated 16 March 1998, the Spanish authorities informed the Commission of future plans for Hamsa:
- (a) to recover the farms rented to the Molina family;
- (b) to liquidate unproductive assets;
- (c) to transfer the manufacture of meat products to a new factory in the Molina industrial complex, without increasing production capacity;
- (d) to vacate the current meat-products factory;
- (e) to negotiate the cancellation of a loan to Hamsa by the financial institute 'la Caja General de Ahorros de Granada' by selling it Hamsa's meat-products factory and concluding an agreement to lease the factory to Hamsa for at least eight years.
- (49) By letter dated 8 September 1998, the Spanish authorities sent the Commission the following information:
- (a) The aid granted before May 1995 was regional in nature: owing to recent investments, the firm needed funds to refinance its liabilities. The Spanish authorities asked the Commission to examine separately the compatibility of the aid granted between 1993 and 1994 and that granted between 1995 and 1997, in order not to establish a cause and effect link between the two groups.
- (b) The results achieved fully match the forecasts in the restructuring plan and the firm is now operating smoothly, with no need for further financial assistance. The ultimate goal of the restructuring plan is for the firm to be returned to the private sector under market conditions. Its purchaser would take over the guarantees currently granted by the IFA to Hamsa, and the IFA would recover the loans to Hamsa which are still in force. In addition, the cash accruing from the sale of Hamsa's productive and unproductive assets would enable it to pay off the rest of its debts and liquidate the firm. The workforce would be maintained at 450 and the buyer would undertake to make investments worth ESP 4 000 million. Consequently, the restructuring has been a success and, in view of the investments to be made by the party buying the productive assets, it will contribute to development in the region. The aids granted therefore meet the conditions laid down in the Guidelines for restructuring aid.
- (c) If the Commission decides that this aid is illegal and incompatible, and if the amount to be repaid exceeds the firm's resources, its administrators will have to inform the monitoring committee that it will be impossible to implement the agreement reached with the creditors under the suspension of payments procedure, endorsed and approved by the judge on 3 November 1997. In that case, the monitoring committee would have to become a liquidation committee. Another alternative would be for the administrators to file for voluntary bankruptcy of the company. Either of these alternatives would make it very difficult for the firm to continue to operate and would almost certainly result in the loss of 450 jobs.
- (50) By letter dated 21 October 1998, the Spanish authorities forwarded to the Commission the balance sheet and the following information:

	1995	1996	1997	(in million ESP) first quarter of 1998
Total sales	5 299	6 695	7 400	3 553
Gross margin	1 156	2 103	2 750	1 575
Total costs	3 437	4 099	3 518	1 557

	1995	1996	1997	(in million ESP) first quarter of 1998
Cash flow	-2 281	-1 996	-768	18
Depreciation	948	694	735	144
Net outturn ⁽¹⁾	-3 229	-2 690	-1 503	-126

⁽¹⁾ Not including exceptional expenditure and income.

- (a) Hamsa's operating income was ESP 13 300 million in 1992, ESP 5 300 million in 1995, ESP 7 100 million in 1996 and ESP 7 400 million in 1997.
- (b) The redundancy payments for staff reductions in the last quarter of 1995 were paid in the first quarter of 1996.
- (c) A firm in the sector has made an offer for Hamsa's fixed assets relating to its meat processing activities and has an option on a farm. The offer is as follows.
- (i) The purchaser would take over Hamsa's floating liabilities up to the value of the current assets given to offset the liabilities taken over (under no circumstances may the floating liabilities exceed the current assets).
- (ii) The price for the fixed assets would be ESP 840 million, with payment staggered as follows: ESP 42 million on purchase, ESP 252 million on 31 December 1999, ESP 252 million on 31 December 2000 and ESP 294 million on 31 December 2001.
- (iii) The purchaser would make the necessary investments, estimated at ESP 4 000 million, over a four-year period starting in January 1999.
- (iv) The purchaser would undertake to keep the workforce at its current size and keep the centre of industrial operations in Jaén.
- (v) Moreover, the purchaser would require assurances that if the Commission reaches a negative decision on the aid granted to Hamsa, the purchaser will not be required to reimburse the aid.
- (vi) The purchaser would not be held liable for any amounts arising from Hamsa's debts to the social security or tax authorities, the Municipality of Jaén or Hamsa's own shareholders.

V. COMMENTS FROM INTERESTED PARTIES

- (51) The Asociación Española de Empresas de la Carne (hereinafter called Asocarne), provided the Commission with information on the State aid granted to Hamsa. The association takes the view that these aids do not meet the conditions laid down in the Guidelines for rescue and restructuring aid, affect trade between Member States and distort competition by favouring a certain company to the detriment of other companies in the sector. They are therefore contrary to Article 92(1) of the Treaty and do not qualify for exemption under Article 92(3). Accordingly, they should be declared incompatible and recovered.
- (52) The Asociación Nacional de Almacenes Frigoríficos de Carnes y Salas Despiece (National Association of Cold Meat Stores and Stripping Plants) shares the views of Asocarne.
- (53) The Spanish authorities, in their comments to the third parties' comments, expressed surprise at the nature of the information Asocarne gave the Commission, which was highly confidential to the firm. They believe that the information must have been obtained illegally or supplied by one of Hamsa's administrators acting in breach of his duty of confidentiality.

VI. EVALUATION

Application of Article 92(1) of the Treaty

- (54) Under Article 92(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.

Characteristics of the aid granted to Hamsa

- (55) In the Commission's view, Hamsa has benefited from aid granted by the State or through State resources in the form of guarantees, loans, capital injections and remission of debts.
- (56) In the case of aid in the form of guarantees, the Commission regards all guarantees given by the State directly or by delegation through financial institutions as falling within the scope of Article 92(1) of the EC Treaty⁽¹⁾ in so far as the fact of receiving a guarantee, even if it is never called on, may enable a firm to continue trading, perhaps forcing competitors who do not enjoy such facilities to go out of business. Given Hamsa's financial difficulties at the time they were granted (rescue aid in 1995, indebtedness in 1996, see recital 42 of this Decision), the firm would not have been able to obtain such guarantees on the market. Hamsa must therefore be deemed to have benefited from support to the detriment of competitors, in other words it received aid which adversely affected competition⁽²⁾. The guarantees granted to Hamsa by the IFA therefore fall within the scope of Article 92(1) of the Treaty.
- (57) In the case of the aid granted in the form of loans, the Commission takes the view that a firm has received aid if the perceived risk inherent in the loan is high and if this fact is reflected neither in the interest rate applied nor in the securities required before the loan can be contracted. Similar considerations apply where the assets of a company pledged by a fixed or floating charge would be insufficient to repay the loan in full⁽³⁾. A firm in Hamsa's position (on the brink of bankruptcy since 1995) would have been unable to secure a loan at any interest rate at all. The loans granted to Hamsa by the IFA did not offer the guarantees required to secure loans and the interest rates applied did not reflect the perceived risk inherent in the loans. Thus, Hamsa's assets were insufficient to repay the loans in full. The Commission takes the view that the IFA's loans to Hamsa therefore fall within the scope of Article 92(1) of the Treaty.
- (58) The Commission regards the provision of capital as State aid when the injection of new capital into a firm is made in circumstances which would not be acceptable to an investor operating under normal market conditions. This occurs when:
- (a) the financial position of the firm, and particularly the structure and volume of its debt, is such that a normal return cannot be expected within a reasonable time from the capital invested;
 - (b) because of its inadequate cash-flow the firm would be unable to raise the funds needed for an investment programme on the capital market.
- (59) There is a presumption that aid is involved where the financial intervention by the public authorities takes the form of acquisition of a holding combined with other types of intervention which need to be notified pursuant to Article 93(3) of the Treaty⁽⁴⁾.
- (60) Hamsa's financial situation and its volume of debt (see recital 42 of this Decision), together with the financial intervention by the public authorities combining the acquisition of a holding with other types of intervention, lead the Commission to regard the capital injection as State aid. The State did not behave as a private investor, since in the absence of a valid and reliable restructuring plan, it had no prospect of any return on its capital, even in the long term⁽⁵⁾, all the more so when the ultimate purpose of the operations was the rapid liquidation of the company (see recital 49 of this Decision). The IFA's capitalisation of Hamsa's debt is therefore tantamount to State aid and cannot be regarded as intervention in accordance with the principles of private investment. Capitalising debts worth ESP 4 680 million to acquire 80% ownership of a company with a share capital of ESP 500 million can hardly be considered the normal behaviour of a private investor.
- (61) With regard to the remission of debts, various State organisations cancelled part of Hamsa's debts: the IFA, the Municipality of Jaén, the tax authorities, the Junta de Andalucía, the social security and the Confederación Hidrográfica del Guadalquivir. Generally speaking, where funding is provided or guaranteed by the State to a firm in financial difficulties, the Commission presumes that the financial transfers involve State aid⁽⁶⁾. Writing off debts is a form of financing. In addition, Hamsa was clearly in financial difficulties, since the only alternative

⁽¹⁾ Letter SG(89) D/4328, of 5 April 1989, from the Commission to the Member States.

⁽²⁾ Commission communication to the Member States (OJ C 307, 13.11.1993, point 38).

⁽³⁾ Commission communication to the Member States (OJ C 307, 13.11.1993, points 39 and 40).

⁽⁴⁾ Points 3.3 and 3.4, Public authorities' holdings in company capital – Bull. EC 9-1984.

⁽⁵⁾ Judgement of the Court of Justice of 21 March 1991 in Case C-303/88, Italy v. Commission, [1991] ECR I-1433, at paragraphs 21 and 22.

⁽⁶⁾ Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 368, 23.12.1994, p. 12, and OJ C 283, 19.9.1997, p. 2, at point 2.3).

to the cancellation of most of its debts would have been bankruptcy.

accounted for only 8% of its total debt (ESP 2 682 839 000).

(62) According to the Spanish authorities, the cancellation of debts by public bodies does not constitute State aid. The IFA's cancellation of 99% of Hamsa's debt would be normal behaviour for a private investor who is the majority shareholder and wishes to ensure the survival of the company. The Spanish authorities also point out that the other official bodies cancelled Hamsa's debts as part of a general operation involving both public and private creditors. The percentage of debt written off by public creditors (other than the IFA) was 50,75%, lower than the percentage written off by private creditors (59,58%). Under these circumstances, the cancellation of debts by public bodies should be seen as normal behaviour by private investors and cannot therefore be regarded as State aid.

(b) Of all the private creditors, only the Banco Atlántico was protected by mortgages. However, this debt accounted for only 0,5% of Hamsa's total debt. In addition, the Spanish authorities failed to provide the Commission with information on the amount of the mortgage which guaranteed the loan, on whether other mortgages had been taken out on the same assets or on the terms of payment of the amount of debt remaining uncanceled.

(c) The Commission takes the view that for public loans to be written off in accordance with the criteria of private investors and not to constitute State aid, the concomitant cancellation by private creditors must also be significant and real.

(63) The arguments in recital 62 cannot be accepted.

(66) Taking into account:

(64) The IFA's cancellation of debts, together with Hamsa's capitalisation, was one of two parts of a plan for the financial recovery of Hamsa. Both operations were carried out within a month of each other. Under these circumstances, the Spanish authorities cannot justify the cancellation of debts by concluding that the IFA was acting as a Hamsa shareholder. Moreover, the Commission takes the view that a distinction must be drawn between the behaviour of the State as owner of share capital and its behaviour as a public authority⁽¹⁾. Private companies and their private shareholders do not have the option of cancelling their debts towards the State. Consequently, the cancellation of the above debts cannot be regarded as being in conformity with the criteria of a private investor⁽²⁾. The Commission therefore considers that the IFA's cancellation of Hamsa's debts constitutes State aid within the meaning of Article 92(1) of the Treaty. However, for the reasons explained in point 89 of this Decision, the amount of this aid should not be taken into account when calculating the aid granted to Hamsa.

(a) the proportion of public debt in relation to private debt referred to above;

(b) the respective percentages of debt cancelled by the public and private creditors (see the table in recital 43 of this Decision, particularly the fact that the IFA cancelled 99% of the largest debt);

(c) the priority given to creditors of the State and its various territorial bodies in liquidation procedures;

(d) the mortgage guaranteeing the large social security debt;

(65) With regard to the cancellation of debts by public bodies other than the IFA, the following points should be noted.

(a) Hamsa's debt to the private sector (ESP 214 757 000) accounted for only 4,4% of its total debt (ESP 4 893 993 000). Even if its debt to that IFA is ignored, Hamsa's debts to the private sector

the Commission concludes that the sacrifice made by the public creditors (insured or at least privileged, and which, in the case of the largest debt, involved writing off almost the entire amount) is very substantial, while that of the private creditors (in most cases not insured) is negligible or non-existent. These private creditors had practically no hope of recovering even a part of their loans if the firm went into liquidation, unlike the privileged or insured public creditors. Comparing the different types of creditors in this way makes it possible to dismiss the claim that the behaviour of public and private creditors are the same and that the remission of the firm's debts to the public authorities was therefore carried out in accordance with private investment criteria.

⁽¹⁾ Judgment of the Court of Justice of 14 September 1994 in Case C-278/92, Spain v. Commission, [1994] ECR I-4103, at paragraph 22.

⁽²⁾ See the fifth indent of point 3.3 of the communication on public authorities' holdings in company capital – Bull. EC 9-1984.

Under these circumstances, the Commission takes the view that the behaviour of private investors cannot be used to rule out the presumption that the cancellation of debts by public bodies constitutes State aid.

Effects of the aid on competition

- (67) These aids distort or threaten to distort competition and clearly afford to Hamsa advantages not enjoyed by other firms in the sector which have not received State aids. In addition, taking into account the value of the trade in

products of the sector in which Hamsa concentrated its activity in 1997 and Spain's production as compared to that of the other Member States, this aid is likely to affect trade between Member States in so far as it favours national production to the detriment of production in the other Member States.

Declarant: Spain Partner: EU 1997	Quantity in tonnes		Value in thousand ECU	
	Imports	Exports	Imports	Exports
Cheese	79 500	17 599	283 938	52 938
Pigmeat	54 399	165 424	116 077	346 644
Ham, offal, liver, bacon	8 569	29 030	7 552	62 804
Pigs	466 000 head	708 000 head	31 049	89 660
Animal feedingstuffs	498 200	394 355	89 544	69 634

- (68) For the reasons stated above, the Commission regards the aid granted to Hamsa as meeting the conditions laid down in Article 92(1) of the Treaty. Spain failed to fulfil its obligations under Article 93(3) of the Treaty, both by granting aid without having previously notified it to the Commission and, in the cases where it notified the aid, by granting it before the Commission could decide on its compatibility with the common market.

by the Commission (aid N 71/88). That scheme provides for the IFA to grant aid in the form of guarantees generally not exceeding ESP 25 million to cooperatives and worker-owned limited companies and ESP 3 million for self-employed persons. The annual cost of these guarantees amounts to 1,2%; in practice the IFA grants aid to viable companies in the form of loans to finance current assets and refinance liabilities at 11% interest, for a maximum of two years. The loans for working assets are to supplement loans for financing fixed assets. The aid granted to Hamsa does not meet these conditions, and cannot therefore be regarded as having been authorised by the Commission under aid scheme N 624/92.

Calculation of the amount of aid granted to Hamsa

- (69) Having examined the information provided by the Spanish authorities, the Commission considers that the factors dealt with in recitals 70 to 96 of this Decision must be taken into account when calculating the amount of State aid granted to Hamsa.

- (73) On 26 May 1994 the IFA approved a loan of ESP 550 million, which was paid on 28 June 1994. This loan has not yet been repaid and no interest has been paid.

Before May 1995

- (70) On 25 May 1993 the IFA decided to grant a loan of ESP 375 million, which it paid on 12 August 1993. This loan has not yet been repaid and no interest has been paid.

- (74) On 26 May 1994, the IFA approved a guarantee for ESP 200 million, which was granted on 28 June 1994. Hamsa has not yet paid the 1,2% premium and the guarantee was called in on 29 January 1996 in an amount of ESP 207 578 082.

- (71) On 25 May 1993, the IFA granted a guarantee of ESP 375 million, which was paid on 18 June 1993. No premium was paid for this guarantee, which was executed on 29 September 1996 in an amount of ESP 401 934 206.

- (75) According to the Spanish authorities, this aid was granted under aid scheme N 428/93, which the Commission approved by letter dated 2 September 1993. This argument cannot be accepted, since aid under this scheme can be granted only to SMEs with a workforce of no more than 250, a turnover not exceeding ECU 20 million and a balance sheet of not more than ECU 10 million. Hamsa cannot be considered

- (72) According to the Spanish authorities, these aids were granted under aid scheme N 624/92, which the Commission approved by letter dated 16 December 1992. However, aid scheme N 624/92 concerns only an amendment to the budget for scheme already approved

an SME either on the basis of the number of its employees or on the basis of its turnover. Consequently, the aid granted by the IFA to Hamsa cannot be included under aid scheme N 428/93 and it was therefore not authorised by the Commission.

Between May 1995 and April 1997

Aid in the form of guarantees

- (76) On 16 June 1995 the IFA approved a guarantee for ESP 100 million, which was granted on 16 August 1995. On 19 August 1996 and on 11 November 1997 it was replaced by a guarantee for the same amount which is still in force. The 1,2% premium for these guarantee was never paid.
- (77) On 16 June 1995, the IFA approved a guarantee for ESP 50 million, which was granted on 14 September 1995. On 18 August 1996 and on 11 November 1997 it was replaced by a guarantee for the same amount which is still in force. The 1,2% premium for this guarantee was never paid.
- (78) On 9 April 1996, the IFA approved three guarantees for the following amounts:
- (a) ESP 100 million, granted on 8 October 1996;
 - (b) ESP 75 million, granted on 20 August 1996, and
 - (c) ESP 25 million, granted on 11 November 1997 in an amount of ESP 21 748 150 only.

These guarantees are still in force and the 1,5% premiums have not yet been paid.

- (79) On 3 April 1997, the IFA approved three guarantees for the following amounts:
- (a) ESP 450 million, granted on 6 February 1996, and
 - (b) ESP 300 million, granted on 2 May 1997.

These guarantees are still in force and the 1,2% premiums have not yet been paid.

Aid in the form of loans

- (80) On 11 July 1995 the IFA approved a loan of ESP 350 million, which was paid on 24 October 1995.
- (81) On 2 October 1995 the IFA approved a loan of ESP 125 million, which was paid on 24 October 1995.
- (82) On 28 September 1995 the IFA approved a loan of ESP 25 million, which was paid on 17 October 1996.

(83) On 10 December 1995 the IFA approved a loan of ESP 1 739 million, which was paid on 30 December 1995.

(84) On 28 May 1996 the IFA approved a loan of ESP 850 million, which was paid on 11 July 1996.

(85) On 1 October 1996 the IFA approved a loan of ESP 1 100 million, which was paid on 5 November 1996.

(86) On 3 April 1997, the IFA approved a loan of ESP 700 million, which was paid in two parts: ESP 400 million on 2 June 1997 and ESP 300 million on 31 July 1997.

(87) In addition, on 2 August 1996 the IFA, through its public-sector company Soprea, took over a debt of ESP 275 951 288 from an ESP 300 million loan made to Hamsa by the financial institute 'La Caixa'. Hamsa has not repaid this amount to the IFA. The Commission therefore takes the view that this debt must be considered as a loan to Hamsa for ESP 275 951 288.

None of the above loans has been repaid, or has interest been paid.

Capitalisation of Hamsa's debts and remission of debts by the public authorities

Capitalisation of Hamsa's debts

- (88) On 29 April the IFA capitalised part of Hamsa's debt corresponding to loans granted before May 1995, to the tune of ESP 4 680 million. This operation covered the loans of ESP 350 million (recital 79 of this Decision), ESP 125 million (recital 80), ESP 1 735 million (recital 82), ESP 850 million (recital 83) and ESP 1 000 million, (recital 84), all of which were capitalised, except for ESP 7 million due to an accounting error, and should in principle be treated as State aid. However, since this capitalisation concerns debts arising from loans already included in the total amount of aid granted to Hamsa, if has not been included in the total amount, in order to avoid double accounting.

Remission of debts

- (89) On 28 May 1997, Hamsa received aid from State organisations in the form of remission of debts contracted prior to May 1995 for a total of ESP 3 554 334 000. This remission must be treated as State aid.

(90) However, to avoid double accounting, the IFA's cancellation of ESP 2 192 754 000 is not included in the calculation of the total amount of State aid granted to Hamsa, since the debt relates to the loans made and guarantees called in referred to in recitals 69 to 74 of this Decision, granted by the IFA prior to May 1995, which have already been included in the calculation.

(91) However, the remaining debt remissions, totalling ESP 1 361 580 000, must be included in the calculation of the total amount of State aid granted to Hamsa.

Conclusions

State aid in the form of guarantees

(92) For the purposes of this Decision, the Commission considers that the following State aid, granted to Hamsa in the form of guarantees, must be taken into account:

(a) the guarantee for ESP 375 million granted on 18 June 1993 and called in on 29 September 1996 in an amount of ESP 401 934 206;

(b) the guarantee for ESP 200 million granted on 28 June 1994 and called in on 29 January 1996 in an amount of ESP 207 578 082;

(c) the guarantee for ESP 100 million granted on 16 August 1995 and replaced on 19 August 1996 and 11 November 1997 by a guarantee for the same amount;

(d) the guarantee for ESP 50 million granted on 14 September 1995 and replaced on 19 August 1996 and 11 November 1997;

(e) three guarantees, one for ESP 100 million, granted on 8 October 1996, one for ESP 75 million, granted on 20 August 1996 and one for ESP 21 748 050, granted on 11 November 1997;

(f) two guarantees, one for ESP 450 million, granted on 6 February 1998 and the other for ESP 300 million, granted on 2 May 1997.

(93) The Spanish Government will have to calculate the amount of aid granted in the form of guarantees in accordance with point 38 of the Commission's communication to the Member States (OJ C 307, 13.11.1993), which stipulates that the aid element of guarantees is the difference between the rate which the borrower would pay in a free market and that actually obtained with the benefit of the guarantee, not including any premium actually paid for it. None of the premiums for these guarantees was ever paid.

(94) The aid granted in the form of guarantees before May 1995 must be counted twice: once as aid granted in the form of a guarantee, between the date it was granted and the date it was called in, and again, for the amount of the guarantees which were called in, with interest from the date of calling in.

State aid in the form of loans

(95) For the purposes of this Decision, the Commission considers that the following State aid, granted to Hamsa in the form of loans, must be taken into account:

(a) a loan of ESP 375 million paid on 12 August 1993;

(b) a loan of ESP 550 million paid on 28 June 1994;

(c) two loans, one of ESP 350 million and one of ESP 125 million, paid on 24 October 1995;

(d) a loan of ESP 25 million paid on 17 October 1996;

(e) a loan of ESP 1 739 million paid on 30 December 1995;

(f) a loan of ESP 850 million paid on 11 June 1996;

(g) a loan of ESP 1 100 million paid on 5 November 1996;

(h) a loan of ESP 700 million, paid in two parts: ESP 400 million on 2 June 1997 and ESP 300 million on 31 July 1997;

(i) a loan of ESP 275 951 288, corresponding to the IFA's taking over, through its public-sector company SOPREA, an ESP 300 million loan made by the financial institute 'La Caixa'.

(96) Since these loans have not been repaid and no interest has been paid, they must be treated as aid granted in the form of subsidies from the date on which they were paid. When a loan is made to a company which would normally be unable to obtain one, then that loan is really a grant, and the Commission will treat it as such⁽¹⁾.

⁽¹⁾ Commission communication to the Member States (OJ C 307, 13.11.1993, point 41).

Remission of debts by State organisations

(97) The cancellation by State organisations of part of Hamsa's debts for the amounts detailed below, agreed at the meeting of Hamsa's creditors on 28 May 1997, must also be counted as State aid to Hamsa in the form of grants, as from the date of remission:

— Municipality of Jaén	ESP 158 800 000,
— Tax authorities	ESP 338 589 000,
— Junta de Andalucía	ESP 69 089 000,
— Social security	ESP 789 938 000,
— Confederación Hidrográfica del Guadalquivir	ESP 5 144 000.

Application of Article 92(2) and (3) of the Treaty

(98) There are a number of exceptions to the principle of incompatibility provided for in Article 92(1) of the Treaty.

(99) It is clear, however that the exceptions provided for in Article 92(2) do not apply; nor have the Spanish authorities invoked them.

(100) The exceptions provided for in Article 92(3) must be strictly construed at the time any regional or sectoral aid programme or individual case of application of a general aid scheme is examined.

(101) They apply only in cases where the Commission is able to establish that the aid is necessary for the attainment of one of the objectives in question. To apply any of these exemptions to aid not meeting this condition would be tantamount to allowing trade between Member States to be affected and competition to be distorted without any justification of Community interest and, accordingly, to granting undue advantages to economic operators in certain Member States.

(102) These are not measures to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, within the meaning of Article 92(3)(b).

(103) According to the Spanish authorities, aid was granted to Hamsa under a plan to rescue and restructure the firm in order to facilitate the development of certain economic activities and, in so far as this firm is located in a less-favoured area, namely Andalucía, to promote the development of certain regions; the aid could therefore qualify for the exemptions in Article 92(3)(a) and (c) of the Treaty.

(104) The Commission takes the view that the aid in question was intended not as regional aid to encourage new investment or job creation, nor yet to remedy deficiencies in infrastructure across the board for all companies in the region, but to rescue and restructure a specific company. Consequently, the aid must be treated as sectoral aid and assessed in the light of Article 92(3)(c), which does not require that regional factors be taken into account in this context.

(105) The compatibility of the aid to Hamsa with the common market must therefore be evaluated according to the criteria set out by the Commission in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty. Point 2.2 of the Guidelines stipulates that in the agricultural sector special Commission rules for rescue and restructuring aid may continue to be applied to individual beneficiaries at the discretion of the Member State concerned as an alternative to the Guidelines⁽¹⁾.

Conformity of the aid granted to Hamsa with the Community Guidelines on State aid for rescuing and restructuring firms in difficulty*Rescue aid*

(106) According to point 3.1 of the Guidelines, rescue aid must:

(a) consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates;

(b) be restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies);

(c) be paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan;

(d) be warranted on the grounds of serious social difficulties and have no undue adverse effects on the industrial situation in other Member States.

(107) Although the Spanish authorities notified the aid granted between May and December 1995 as rescue aid, it does not meet the above criteria. Thus, the interest rate on these loans, totalling ESP 500 million, was not the applicable market rate required by the Community criteria, but 6%, while the Spanish reference rate for

⁽¹⁾ The specific guidelines for agriculture applied until 1 January 1998, when a new version of the guidelines entered into force containing the same rules, with amendments.

1995 was 13,2%. The Spanish authorities converted that rate to MIBOR plus 0,5% on 9 April 1996. This change, made a year after the loans were granted, was merely an accounting adjustment. These loans have not been repaid, nor has any interest been paid. Thus, Hamsa had already received other State aid of the same type and for same reason in 1994 and 1995, while the criteria stipulate that such aid may be granted only for the time needed (generally not more than six months) to devise the recovery plan; normally, such aid should be necessary only once. In addition, the guarantees that had already been granted were replaced by others of the same amount, which are still in force.

- (108) This aid therefore does not meet the criteria laid down in the Guidelines for rescue aid.

Restructuring aid

- (109) In the Guidelines, the Commission notes that restructuring aid raises particular competition concerns as it can shift an unfair share of the burden of structural adjustment and the attendant social and industrial problems onto other producers who are managing without aid and to other Member States. The general principle should therefore be to allow restructuring aid only in circumstances in which it can be demonstrated that its approval is in the Community interest. For the Commission to approve such aid, a restructuring plan must be drawn up which satisfies all five of the following conditions:

- (a) restoration of viability within a reasonable timescale;
- (b) avoidance of undue distortions of competition;
- (c) aid in proportion to the restructuring costs and benefits;
- (d) full implementation of the restructuring plan and observance of conditions;
- (e) monitoring and annual report.

Restoration of viability within a reasonable timescale

- (110) According to point 3.2.2 of the Guidelines, the *sine qua non* of all restructuring plans is that they must restore the long-term viability of the firm within a reasonable timescale. The aid must therefore be linked to a viable restructuring plan submitted in adequate detail to the

Commission. The plan must restore the firm to competitiveness within a reasonable period and enable the company to cover all its costs including depreciation and financial charges, and to generate a minimum return on capital such that, after completing its restructuring, the firm will not require further State aid and will be able to compete in the market place on its own merits. Such aid should normally need to be granted only once.

- (111) Hamsa began receiving State aid to cope with its financial difficulties in May 1993. It received yet more State aid for the same reason in May 1994. In May 1995, the IFA obtained bare ownership of Hamsa, after which State aid was granted continuously until May 1997. A restructuring plan was not drawn up for Hamsa until December 1995 – that is, two and a half years after the aid was first granted to help it out of its financial difficulties and, according to the Spanish authorities themselves, the plan was incomplete, being based on insufficient and unreliable information, and subject to the outcome of the suspension of payments procedure, which was impossible to predict.

- (112) Moreover, the plan referred only to the aid already granted between May and December 1995 and to the loan of ESP 1 739 million granted in 1996. It provided for the firm's other financial needs to be met on the market and for the possible grant of further State aid, of an unspecified amount.

- (113) Under the restructuring plan, the firm's profitability was to be restored by substantially increasing the production of all its divisions (see recitals 26 and 27 of this Decision). The Commission considers that it was unrealistic to base the firm's return to viability on an increase in production (without specifying either the reference year or the trend over time) in a sector suffering from structural overcapacity (see recital 119 of this Decision). This assessment was confirmed by the report of 31 December 1996, which provided for the firm's production to be cut back, since sales were lower than forecast (see recital 35 of this Decision). The internal restructuring measures were equally unrealistic because they were based on insufficient and unreliable information.

- (114) The Spanish authorities have shown that the firm's management and results were somewhat better in 1996 than in 1995 and that adjustments were made to increase production and to match it to market demand. However, despite these improvements, when the plan was reviewed in June 1997 (situation at 31 December 1996), following five years of State aid (1993 to 1997),

it was recognised that the only alternative to bankruptcy for Hamsa, which had been on the brink of failure since at least 1994, was to capitalise its debts.

(115) In principle, State aids must be assessed at the time they are granted, not in the light of subsequent developments. In any event, before a firm can be restored to viability, its situation must be remedied. It is therefore not possible in this respect to disregard the company's financial responsibilities, which have absorbed its assets, nor to be satisfied with any recent positive cash-flow, in view of the firm's continual losses (see recitals 40 to 43 of this Decision) ⁽¹⁾.

(116) The Commission acknowledges that the swine fever epidemic mentioned by the Spanish authorities, which broke out in Spain during the restructuring period, might have made Hamsa's restructuring more difficult and justified amending the restructuring plan. However, this factor cannot justify the specific and continual payment of aid to Hamsa while its competitors, faced with the same difficulties, were managing without such aid.

(117) The Spanish authorities, in their letter dated 8 September 1998, stated on the one hand that the firm was operating well without needing any further financial assistance and that restructuring had been successful, while on the other hand they acknowledged:

- (a) that the firm would be going into liquidation;
- (b) that the proceeds of the sale of Hamsa's productive and unproductive assets would be used to pay off its liabilities and that any sums remaining would be shared among the shareholders (the IFA owns 80% of Hamsa's shares);
- (c) that the buyer of the productive assets would be required to carry out investments worth ESP 4 000 million.

(118) By letter dated 21 October 1998, the Spanish authorities forwarded a balance sheet and other information to the Commission. These showed that in the first half of 1998 Hamsa had a positive cash flow of ESP 18 million, but still incurred losses amounting to ESP 126 million. Moreover, in view of Hamsa's track record, the amount of its debts in the past and the amount of aid it has received, a slightly positive cash flow during first half of 1998, without any profits or future prospects, cannot be accepted as sufficient proof that the firm has become viable again. Moreover,

according to the case law established in the Breda Fucine case (see footnote to recital 115 of this Decision), improvements in the operating margin cannot be invoked irrespective of extraordinary charges to demonstrate that the firm has recovered its viability.

(119) In addition, the purchaser's bid for Hamsa's productive assets (which was not preceded by a tendering procedure and could therefore, if accepted, contain elements of State aid to the purchaser ⁽²⁾) was restricted to its current liabilities, provided these did not exceed the current assets, and payment for its fixed assets, set at ESP 840 million, was to be staggered over four years. In addition, the bid was subject to the condition that the purchaser would not be liable for other debts and claims against Hamsa. In the Commission's view, the conditions of this bid for Hamsa's productive assets raise even more doubts as to the current viability of the firm. The Commission also considers that the compensation from the public authorities demanded by the buyer might also constitute State aid.

(120) In their letter dated 21 October 1998, Spanish authorities first informed the Commission that Hamsa's operating income had been ESP 13 300 million in 1992, ESP 5 300 million in 1995, ESP 7 100 million in 1996 and ESP 7 400 million in 1997. However, they did not provide figures for 1993 or 1994, nor explain the reasons for the substantial drop in operating income between 1992 and 1995. On the basis of the information available to it, the Commission finds it reasonable to assume that Hamsa's lost market share might already have been taken by its competitors in 1995. It is not explained whether the increase in operating income between 1995 on the one hand and 1996 and 1997 on the other was due to the restructuring measures or a reduction in the firm's prices made possible by the grant of aid. By contrast, the firm's costs varied little between 1995 and 1998.

(121) In conclusion, the Commission considers that the State aid in question was granted not under a plan to restructure the firm, but specifically and continually each time the firm encountered liquidity problems. It can therefore be concluded that Hamsa's restructuring plan could not and did not help the firm to restore its long-term viability within a reasonable time (it was still suffering losses in the first half of 1998), nor to compete using only its own resources without State aid, nor did it set a firm date by which the firm's viability would be restored.

⁽¹⁾ Judgement of the Court of Justice of 15 September 1998, in Case T-126/96, Breda Fucine, at paragraph 83 (not yet published).

⁽²⁾ 1993 Report on Competition, point 403, p. 255.

Avoidance of undue distortions of competition

- (122) As stated in point 3.2.2(ii) of the Guidelines, measures must be taken to offset as far as possible adverse effects on competitors. The Commission therefore takes the view that, when there is structural excess of production capacity in the Community market served by the recipient of the aid, the restructuring plan must make a contribution, proportionate to the amount of aid received, to the restructuring of the industry by irreversibly reducing or closing capacity.
- (123) Some of Hamsa's activities, particularly feedingstuffs and the farming and slaughter of pigs, are carried out in sectors where the Community market has structural overcapacity, as stated in Commission Decision 94/173/EC of 22 March 1994 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⁽¹⁾, (see in particular the third indent of point 2.1, the first indent of point 2.6, and the second and third indents of point 2.10 in the Annex to that Decision). The Guidelines therefore call for recipients of aid to reduce their production capacity.
- (124) The Spanish authorities informed the Commission, by letter dated 19 December 1997, that production capacity had been reduced as a result of closing a slaughterhouse, a cutting plant, one of the firms producing feedingstuffs and the pâté production line.
- (125) Nevertheless, the Commission notes that none of these reductions in capacity was provided for in the restructuring plan drawn up in December 1995, which on the contrary planned a substantial increase in slaughtering and the production of meat preparations, cheese and animal feedingstuffs, as well as relaunching pig farming and cured ham production. Moreover, these reductions do not seem to apply to capacity actually used by the firm.

Aid in proportion to the restructuring costs and benefits

- (126) In accordance with point 3.2.2(iii) of the abovementioned Guidelines, aid must be in proportion to the costs and benefits of restructuring. The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. Therefore, aid beneficiaries will normally be expected to

make a significant contribution to the restructuring plan from their own resources or from external commercial financing and aid for financial restructuring should not unduly reduce the firm's financial charges.

- (127) In this case, the only party that contributed to the restructuring plan by bringing in new resources was the State. The Molina family, which had owned 100% of Hamsa's shares, had its shareholding reduced to 20% as a result of the IFA's capitalisation of Hamsa's debt to it. This operation was decided not by the Molina family but by the IFA, which had bare ownership of 100% of the shares until 31 December 1997, and the Molina family was not required to provide any resources. Nor did other investors contribute to the restructuring plan. In addition, given Hamsa's financial situation, it would have been unable to obtain external financing without the State's guarantee.
- (128) The Spanish authorities argue that the private creditors, including the Molina family, contributed to restructuring by cancelling their debts. This argument cannot be accepted. In the Commission's view, the cancellation of some of a firm's debts as part of the suspension of payments procedure cannot be regarded as a contribution by that firm to its own restructuring. Even if this were the case, the cancellation of debts by private creditors accounts for only a tiny proportion of the aid granted to Hamsa (see recital 65 of this Decision).
- (129) Finally contrary to the abovementioned Guidelines, the State aid granted to Hamsa in May 1997 in the form of debt remission and capitalisation appears to have unduly reduced the firm's financial charges in relation to its overall debt (on 31 December 1996, Hamsa's liabilities amounted to ESP 6 814 million; on 29 April 1997, ESP 4 680 million were capitalised and in May 1997 Hamsa's public creditors cancelled debts amount to ESP 3 554 million – see recital 42 of this Decision).
- (130) In these circumstances, the Commission cannot consider that the aid granted to Hamsa was in proportion to the costs and benefits of its restructuring.

Full implementation of the restructuring plan and observance of conditions; monitoring and annual report

- (131) Lastly, the Guidelines stipulate that the firm must fully implement the restructuring plan that was submitted to and accepted by the Commission and must discharge any other obligations laid down by the Commission Decision. The implementation and proper progress of the restructuring plan is to be monitored by means of detailed annual reports which must be submitted to the Commission.

⁽¹⁾ OJ L 79, 23.3.1994, p. 29.

(132) The Commission did not receive Hamsa's restructuring plan, drawn up in December 1995, until the Spanish authorities forwarded it by letter dated 4 July 1997, after the Article 93(2) procedure had been opened. The Commission was therefore unable to take a decision at the proper time. The report on the situation at 31 December 1996, drawn up in June 1997, consisted mainly of amendments to the restructuring plan of December 1995, and was also sent to the Commission under the procedure. However, the Commission is forced to note that it received these documents after the aid had been paid, so that it was unable to give an opinion on the restructuring plan or to consider the need to impose certain conditions during its implementation. Moreover, not only was the restructuring plan incomplete, covering only some of the aid granted, and not fully implemented, but it was even amended without prior agreement by the Commission, to take account of developments in Hamsa's business. The Commission must therefore conclude that, until June 1997, Hamsa was not being restructured but merely receiving a string of specific aid payments intended solely to keep the firm in business.

Special conditions applicable to restructuring aid in assisted areas

(133) In their comments, the Spanish authorities stress that Hamsa is located in a less-favoured area, so the aid granted to the firm qualifies for exemption under Article 92(3)(a). Accordingly, the aid must be examined in the light of point 2.3.2 of the Guidelines, which provides for special conditions for restructuring aid in assisted regions.

(134) The Guidelines do indeed require the Commission to take the needs of regional development into account when assessing restructuring aid in assisted areas. The fact that an ailing firm is located in such an area does not, however, justify a wholly permissive approach to aid for restructuring. In the medium to long term it does not help a region to support artificially companies which for structural or other reasons are doomed to failure. Furthermore, given the limited Community and national resources available to promote regional development, it is in the regions' own best interests to apply these scarce resources to develop as quickly as possible alternative activities that are viable and durable. Finally, distortions of competition just be minimised even in the case of aid to firms in assisted areas.

(135) In line with these principles, the Guidelines state that the criteria listed in point 3.2.2, referred to above, are also applicable to assisted areas.

(136) Regarding the criterion of restoration of viability, the Guidelines stipulate that, even in the case of the assisted regions, the result of the restructuring operation must be an economically viable business that will contribute to the real development of the region without requiring continual aid. Hence recurring aid will not be considered more favourably than in non-assisted regions. In this specific case, the Commission takes the view that Hamsa has received recurring aid over five years without that aid having guaranteed that the firm's viability will be restored.

(137) Secondly, the Guidelines require restructuring plans to be implemented correctly and adequately monitored. To avoid undue distortions of competition the aid must also be in proportion to the costs and benefits of restructuring. Nevertheless, for the reasons set out above, the Commission does not believe that these criteria are met in the present case.

(138) Thirdly, the Guidelines state that the Commission may be more flexible with regard to reductions in capacity in the case of markets in structural overcapacity. If regional development needs justify it, the Commission will require a smaller capacity reduction in assisted areas than in non-assisted areas and will differentiate between areas eligible for regional aid under Article 92(3)(a) and those eligible under Article 92(3)(c) to take account of the greater severity of the regional problems in the former areas.

(139) By letter dated 19 December 1997, the Spanish authorities informed the Commission that production capacity had been reduced by closing a slaughterhouse (capacity reduction of approximately 15%), one of its two cutting plants (capacity reduction of approximately 15%), its pâté production line and one of the feedingstuffs businesses (capacity reduction of approximately 25%). With regard to Hamsa's activities in the meat sector, particularly pig production, the manufacture of pigmeat-based products and the sale of fresh pigmeat, the Spanish authorities refer in their comments to Commission Decision 94/173/EC (third indent of point 2.10 in the Annex), which permits investments in the slaughter of pigs, cattle, sheep and poultry in Objective 1 regions if there is a shortage of capacity in the region. The Spanish authorities point out that Andalusia indeed has only three slaughterhouses, while Catalonia, with a similar population, has 75.

- (140) In this respect, it must be remembered that Hamsa's first restructuring plan did not provide for any capacity reduction, but rather for an increase, which in some cases was very substantial. In therefore seems unlikely that the Commission would have approved the plan as it stood in December 1995. The capacity reductions made subsequently were specific adjustments not carried out as part of a restructuring plan.
- (141) In any event, even where the reduction in capacity of some of Hamsa's activities was sufficient, in view of its location in a less-favoured region, the other conditions in the Guidelines have clearly not been met, leading the Commission to conclude that the aid granted to Hamsa does not meet the criteria in the Guidelines for restructuring aid and does not therefore qualify in this connection for the exemptions in Article 92(3)(a) and (c).

Compliance of the aid granted to Hamsa with the special rules applied by the Commission until 1 January 1998 in the agricultural sector for rescue and restructuring

- (142) According to the Commission's practice in the agricultural sector until 1 January 1998, State aid for rescuing or restructuring firms in difficulty may be permitted subject to certain conditions:
- (a) the aid must be intended to reduce the cost of financing loans contracted in respect of earlier investment;
- (b) the cumulated subsidy value of any aid granted when the loans were taken out and of the aid in question may not exceed the rates generally allowed for investments to improve the processing and marketing of agricultural products and investments in primary agricultural production;
- (c) the new aid must follow changes in new loan rates in line with the cost of money (the amount payable may not exceed that corresponding to the change in rate) or be for farms presenting guarantees of viability, notably cases where the financial cost of existing borrowings is at danger level, possibly threatening bankruptcy.
- (143) In their answer to the Commission's letter dated 29 April 1997 and 10 October 1997, the Spanish authorities furnished no information which would enable the Commission to believe that the aid in

question was intended to reduce the costs of financing past investments and thus to meet the abovementioned conditions.

- (144) Not until their letter dated 8 September 1998, did the Spanish authorities first state that the aid granted in 1993 and 1994 was intended to reduce the financial costs of past investments. However, they provided no details in this respect and no other information enabling the Commission to check whether the abovementioned criteria were met.
- (145) The Commission is therefore forced to conclude that the aids in question do not comply with these specific rules.

VII. CONCLUSIONS

- (146) The Commission concludes that the Spanish Government granted the aids in question illegally, without prior notification in some cases and without waiting for the Commission to pronounce on compatibility in others.
- (147) For the reasons set out above, the aids in question, which fulfil the conditions laid down in Article 92(1) of the Treaty, do not qualify for any of the exceptions laid down in Article 92(2) and (3).
- (148) The aids are therefore incompatible with the common market.
- (149) Where aid is incompatible with the common market, the Commission must in principle have recourse to the possibility offered by the judgment of the Court of Justice of 12 July 1993 in Case 70/72, *Commission v. Germany*⁽¹⁾, as confirmed by the judgments of 24 February 1987 in Case 310/85, *Deufil v. Commission*⁽²⁾, and 20 September 1990 in Case C-5/89, *Commission v. Germany*⁽³⁾, and require the Member State to recover all the aid granted illegally from the recipient.
- (150) This measure is necessary in order to restore the *status quo* by removing all the financial benefits which the beneficiaries of the unlawful aid have improperly enjoyed since the date on which the aid was paid.
- (151) The aid must therefore be reimbursed in accordance with the procedures and provisions of Spanish law, with

⁽¹⁾ [1973] ECR 813.

⁽²⁾ [1987] ECR 901.

⁽³⁾ [1990] ECR I-3437.

interest from the date on which the aid in question was granted. The interest must be calculated on the basis of the commercial rate, with reference to the rate used to the calculation of the subsidy equivalent in the context of regional aids⁽¹⁾.

(152) This Decision will not prejudice the conclusions the Commission may draw, if necessary, for the financing of the common agriculture policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

Article 1

The following aid, granted by Spain to the company Hijos de Andrés Molina SA, is illegal due to the fact that it was granted before the Commission had decided on its compatibility at the draft stage. Moreover, it is incompatible with the common market within the meaning of Article 92(1) of the Treaty, without fulfilling the conditions for exemption provided for in Article 92(2) and (3), and shall therefore be abolished.

1. State aid in the form of guarantees:

- (a) the guarantee for ESP 375 million granted on 18 June 1993 and called in on 29 September 1996 in an amount of ESP 401 934 206;
- (b) the guarantee for ESP 200 million granted on 28 June 1994 and called in on 29 January 1996 in an amount of ESP 207 578 082;
- (c) the guarantee for ESP 100 million granted on 16 August 1995 and replaced on 19 August 1996 and 11 November 1997 by a guarantee for the same amount;
- (d) the guarantee for ESP 50 million granted on 14 September 1995 and replaced on 19 August 1996 and 11 November 1997;
- (e) the following three guarantees: one for ESP 100 million, granted on 8 October 1996, one for ESP 75 million, granted on 20 August 1996 and one for ESP 21 748 150, granted on 11 November 1997;
- (f) the following two guarantees: one for ESP 450 million, granted on 6 February 1998 and the other for ESP 300 million, granted on 2 May 1997.

2. State aid in the form of loans:

- (a) a loan of ESP 375 million paid on 12 August 1993;
- (b) a loan of ESP 550 million paid on 28 June 1994;
- (c) two loans, one of ESP 350 million and one of ESP 125 million, paid on 24 October 1995;
- (d) a loan of ESP 25 million, paid on 17 October 1996;
- (e) a loan of ESP 1 739 million, paid on 30 December 1995;
- (f) a loan of ESP 850 million, paid on 11 July 1996;
- (g) a loan of ESP 1 100 million, paid on 5 November 1996;
- (h) a loan of ESP 700 million, paid in two parts: ESP 400 million on 2 June 1997 and ESP 300 million on 31 July 1997;
- (i) a loan of ESP 275 951 288, corresponding to the taking over by the Instituto de Fomento de Andalucía, through its public-sector company Sociedad para la Promoción y Reconversión de Andalucía SA, of an ESP 300 million loan made to Hijos de Andrés Molina SA by the financial institute Caixa d'Estalvis i Pensions de Barcelona.

3. State aid in the form of remission of debts by State organisations:

Cancellation of part of Hamsa's debts by State organisations, approved at the meeting of Hamsa's creditors on 28 May 1997, involving the following amounts:

— Municipality of Jaén	ESP 158 800 000 ,
— Tax authorities	ESP 338 589 000 ,
— Junta de Andalucía	ESP 69 089 000 ,
— Social security	ESP 789 938 000 ,
— Confederación Hidrográfica del Guadalquivir	ESP 5 144 000 .

Article 2

Spain shall, without delay, terminate the loan contracts and revoke the guarantees referred to in Article 1 which are still in force.

⁽¹⁾ Commission communication to the Member States (OJ C 74, 10.3.1998, p. 22).

Article 3

1. Spain shall take the necessary measures to recover the aid referred to in Article 1:

- in the case of the guarantees, the difference between the interest rate granted and the free market rate,
- in the case of the loans, guarantees called in and debts cancelled, 100% of the amounts concerned.

2. Recovery shall be carried out in accordance with the procedures of national law. The sums to be recovered shall attract interest from the date on which the aid in question was granted. The interest must be calculated on the basis of the commercial rate, with reference to the rate used for the calculation of the subsidy equivalent in the context of regional aids.

Article 4

Spain shall inform the Commission within two months from the date of notification of this Decision of the measures it has taken to comply with this Decision.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 3 February 1999.

For the Commission
Franz FISCHLER
Member of the Commission