

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 14 May 2002

on the State aid granted to Grupo de Empresas Álvarez

(notified under document number C(2002) 1805)

(Only Spanish text is authentic)

(Text with EEA relevance)

(2002/935/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments <sup>(1)</sup> pursuant to Article 88(2) of the EC Treaty and Article 6(1) of Council Regulation (EC) No 659/1999 <sup>(2)</sup> and having regard to their comments,

Whereas:

### I. PROCEDURE

(1) On 15 July 1997 the Commission adopted Decision 98/364/EC on the State aid granted to Grupo de Empresas Álvarez (GEA) <sup>(3)</sup> (hereinafter the Decision), notified under number C(1997)2615, authorising restructuring aid for GEA, a Spanish manufacturer of porcelain and china in Vigo (Galicia).

(2) The positive assessment was made on the basis of a restructuring plan that provided for drastic capacity

reductions plus an undertaking from the Spanish authorities to refrain from granting further State aid to GEA, including its wholly-owned subsidiary Vidrios Automáticos del Norte (Vanosa). The last recital of the decision reads as follows:

'The Spanish authorities will be informed accordingly that any new State aid in favour of this company will be considered incompatible with the common market and at odds with the undertaking given and it will consequently have repercussions on the aid being approved by this Decision.'

(3) Article 1(1) of the Decision states that a number of measures constitute unlawful State aid. The measures:

'[...] comply, however, with the Community guidelines on State aid for rescuing and restructuring firms in difficulty and are therefore compatible with the common market under Article 92(3)(c) of the Treaty and Article 61(3)(c) of the EEA Agreement, on condition that the Spanish authorities refrain, as they undertook in their letter of 22 May 1997, from granting any new aid to the company in the future and that they fully implement the agreed restructuring plan.'

(4) The Decision also required the Spanish authorities to submit a series of reports to the Commission to enable the latter to check compliance with the restructuring plan and that the Spanish authorities were refraining from granting further aid to the firm.

<sup>(1)</sup> OJ C 336, 30.11.2001, p. 6.

<sup>(2)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(3)</sup> OJ L 164, 9.6.1998, p. 30.

- (5) By letter dated 21 May 1999 the Commission acknowledged receipt of the second report on the implementation of the restructuring plan and informed Spain that 'on the basis of the information, figures and justifications contained in the report, the Commission had not intended to reopen [this file] since the basic lines of the decision are being complied with'. The letter also indicated: 'Nevertheless, in particular taking into account that GEA continues to be loss making, I would like to remind you of your authorities' commitment not to grant any additional State aid to that firm anymore.'
- (6) The report did not contain any indication of the fact that, as will be shown below, GEA and Vanosa had systematically been failing to pay taxes and social security contributions since 1997.
- (7) Following allegations made by a competitor (hereinafter Complainant 1) that Spain had waived claims for a total amount of ESP 17 billion, and in view of the fact that Spain had not submitted the reports for 1999 in time, the Commission informed Spain on 24 September 2000 that it had serious doubts as to whether its Decision of 15 July 1997 was being complied with.
- (8) By letters of 5 October, 7 November and 14 November 2000 Spain sent the requested report and informed the Commission that GEA had not received any fresh aid. It also certified that Spain had not waived a claim for ESP 17 billion.
- (9) By letter dated 9 April 2001 the Commission received a new complaint (hereinafter Complainant 2).
- (10) By letter dated 3 May 2001 a further request for information was sent to Spain.
- (11) By letters dated 15 May, 16 May, 31 May and 12 June 2001 Complainant 1 submitted further allegations.
- (12) By letter received on 29 June 2001, Complainant 2 submitted evidence supporting their allegations that GEA and its subsidiary Vanosa had not paid social security contributions between 1997 and at least January 2001.
- (13) By letter received on 5 July 2001 Spain partially confirmed the information given by Complainant 2.
- (14) On 19 September 2001 the Commission decided to initiate proceedings under Article 88(2) of the Treaty in respect of the aid. Spain was informed by letter on the same day. After asking for more time to reply, Spain replied by letter that reached the Commission on 4 December 2001.
- (15) The publication of that letter in the *Official Journal of the European Communities* did not give rise to any comments from third parties.

## II. DESCRIPTION

### II.1 The complaints

- (16) According to the complainants, GEA and other related companies failed to pay taxes and social security contributions between 1997 and at least January 2001.
- (17) Complainant 1 also raises concerns over the pricing policy applied by the firm: GEA and its related companies are distorting competition on the relevant market by selling their products at prices that are so low they can be explained only by the presence of State aid.
- (18) Complainant 2 submitted several certificates issued by the Tesorería General de la Seguridad Social showing the months during which GEA and one of its related companies had not paid any social security contributions since (at least as regards GEA) 1992. Moreover, Complainant 2 stated that the public creditors had agreed to waive 98 % of its claims on Vanosa under a creditor's agreement.

### II.2 The aid recipient

- (19) GEA manufactures and sells tableware made of porcelain, earthenware and glass; it also produces bottles. GEA was in the past one of the largest Spanish tableware manufacturers. In the period 1993 to 1997, GEA's market share amounted to an average of 11,6 % on the Spanish market and 0,64 % on the EU market. At the time, GEA had a workforce of 1 029 persons and an annual turnover of some ESP 2 500 million in 1995 and 1996.
- (20) On 2 November 1997 GEA and Vanosa filed for bankruptcy with total liabilities of ESP 2 994 million. According to the latest report sent by Spain, the workforce was reduced to 715 in 1998, with operating losses amounting to ESP 2 151 million.

- (21) The group is located in Vigo, in the province of Pontevedra, Galicia, a Spanish region where the shipping, fishing and car industries are dominant and which, owing to the problems these industries are facing, is experiencing a serious economic crisis and high unemployment. The region is classified as an Objective 1 zone and is eligible for regional aid under Article 87(3)(a). Until June 1991, GEA was wholly owned by INI, a Spanish public holding, at which time INI decided to privatise the enterprise.
- (22) GEA is the sole owner of Vanosa, a subsidiary it set up in 1993. Vanosa is present in the glass packaging sector. In 1999, Vanosa achieved a turnover of ESP 1 293 million, of which 5 % in the other Member States, and incurred losses of ESP 119 million. Vanosa employed 116 workers in 1999. It is located in the same assisted area as GEA.

### II.3 The market

- (23) There is a brisk trade in tableware between Spain and other Member States. According to the information provided by Eurostat, between January and October 1995 Spain exported 8 546 tonnes of tableware products worth EUR 326 million and, between January and September 1995, imported 7 844 tonnes worth EUR 433 million. Spain's share of the overall intra-Community trade in tableware goods stands at roughly 3 %. Although GEA is not one of the EU's major producers of tableware, it is present in this market.
- (24) Moreover, there is also considerable overcapacity in the porcelain industry. Production and consumption registered continuing growth between 1984 and 1991, but contracted during 1992/1993. The recovery expected for 1994 did not happen. The trade balance in the last years was positive, but the share of imports increased markedly, in particular for household china. Growth in exports is not sufficient to offset the increasing competition in the sector. On the contrary, strong competition and overcapacities are reinforced due to new market entrants from south-east Asia and

the eastern European countries, in particular the Czech Republic and Hungary, which all benefit from preferential trading arrangements with the European Union. In 1999, Spain imported porcelain tableware from other Member States worth EUR 11 902 000 (EUR 10 773 000 in 2000), whilst intra-Community sales reached EUR 374 399 000 (EUR 372 030 000 in 2000).

- (25) The information at the Commission's disposal confirms that at least 20 % of the sales in Spain of china and porcelain for the hotel/restaurant industry are imported products. The remaining 80 % are broken down as follows:

| Firm                  | Market share |
|-----------------------|--------------|
| CIM                   | 19 %         |
| Porvasal              | 16 %         |
| GEA                   | 5 %          |
| Bidasoa               | 24 %         |
| Capeans               | 7 %          |
| Porcelanas Principado | 9 %          |

- (26) Consequently, GEA's products are in direct competition with the products from Spanish and EU manufacturers.
- (27) Vanosa, for its part, operates in the market for glass packaging.
- (28) With a market share of 13 %, the container glass industry takes third place in the packaging sector, after plastics with 35 % and paperboard with 32 %. The period 1996 to 1998 was affected by a fall in prices. The rapid downward trend in prices continued as a result of competition from other packaging products (PET, cardboard and cans) and the collapse of the Russian market.

- (29) The production of the container glass industry in Europe is as follows:

**Container glass industry in Europe**

| Country                              | 1998 production<br>(in 1 000 tonnes) | Share in % |
|--------------------------------------|--------------------------------------|------------|
| Germany                              | 4 323                                | 24,4       |
| France                               | 3 785                                | 21,3       |
| Italy                                | 3 047                                | 17,2       |
| United Kingdom                       | 1 852                                | 10,5       |
| Spain                                | 1 816                                | 10,2       |
| Belgium+Denmark+ Ireland+Netherlands | 1 501                                | 8,5        |
| Portugal                             | 763                                  | 4,3        |
| Austria                              | 306                                  | 1,7        |
| Norway+Sweden+Finland                | 246                                  | 1,4        |
| Greece                               | 95                                   | 0,5        |
| Community total                      | 17 734                               | 100        |

Source: FEVE Fédération Européenne du Verre d'Emballage.

- (30) Intra-Community trade in the container glass sector is as follows:

| Glass types                   | Container glass | Flat glass<br>(unworked) | Tableware | Reinforcement<br>fibres | Other<br>(including<br>special glass) | Total      |
|-------------------------------|-----------------|--------------------------|-----------|-------------------------|---------------------------------------|------------|
| Production                    | 17 649 815      | 7 499 570                | 1 071 837 | 550 249                 | 1 319 281                             | 28 090 752 |
| Apparent<br>Consumption       | 17 389 493      | 7 676 306                | 1 011 837 | 678 096                 | 1 231 465                             | 27 987 197 |
| Exports Extra-EU              | 712 479         | 712 013                  | 403 604   | 169 404                 | 452 267                               | 2 449 767  |
| Imports Extra-EU              | 452 157         | 888 749                  | 343 604   | 297 251                 | 364 451                               | 2 346 212  |
| Exports Intra-EU              | 2 160 298       | 2 696 283                | 488 974   | 834 457                 | 1 546 548                             | 7 726 560  |
| Imports Intra-EU              | 2 430 098       | 2 358 468                | 1 438 862 | 775 317                 | 1 602 601                             | 8 605 346  |
| Exports/Imports               | 1,58 %          | 0,80 %                   | 1,18 %    | 0,57 %                  | 1,24 %                                | 1,04 %     |
| Import penetration            | 2,56 %          | 11,85 %                  | 32,06 %   | 54,0 %                  | 27,63 %                               | 8,35 %     |
| Intra-EU Imports/<br>Products | 13,77 %         | 31,45 %                  | 134,24 %  | 140,90 %                | 121,48 %                              | 30,63 %    |

Source: Eurostat Combined Nomenclature — CPIV.

- (31) According to Asociación Nacional de Empresas de Fabricación Automática de Envases de Vidrio (the Spanish glass container association), in 1999 container glass imports onto the Spanish market accounted for 8 % of production. France absorbed 98 % of exports. Imports accounted for 12 % of total consumption in the same year. Portugal accounted for 50 % of imports.

### III. SPAIN'S RESPONSE TO THE INITIATION OF PROCEEDINGS

- (32) By letter received on 4 December 2001 Spain answered the Commission's letter of 19 September 2001 with the information set out below in recitals 33 to 37.
- (33) No new aid was granted to GEA/Vanosa after the 1997 decision.
- (34) GEA/Vanosa systematically failed to comply with their tax and social security obligations over a period of three years following the adoption of the 1997 decision.
- (35) On 14 April 1998 the tax authorities granted GEA/Vanosa a partial waiver and accepted a payment rescheduling; the waiver was subject to the firms complying both with the rescheduling terms and with their current tax obligations; on 7 February 2001, almost three years after the granting of the waiver, the tax authorities decided to cancel the waiver and the payment rescheduling on the ground that the firm 'had failed to respect its payment obligations'.
- (36) On 6 November 1998 the tax authorities granted Vanosa a partial waiver and accepted a payment rescheduling; the waiver was subject to Vanosa complying both with the rescheduling terms and with its current tax obligations; on 7 February 2001, more than two years after the granting of the waiver, the tax authorities decided to cancel the waiver and the payment rescheduling on the ground that the company 'had failed to respect its payment obligations'.
- (37) The social security and the tax administrations and made every effort to recover the unpaid amounts by ordering the seizure of GEA and Vanosa's real estate; however, a substantial part of the property was mortgaged to private banks.

### IV. ASSESSMENT OF THE MEASURES

#### IV.1. Existence of State aid within the meaning of Article 87(1)

- (38) Article 87(1) of the Treaty establishes the principle that, save as otherwise provided in the Treaty, any aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.
- (39) As indicated in recitals 23 to 31, the products marketed by GEA are traded between the Member States and there is competition between manufacturers. Moreover, GEA is one of Spain's main manufacturers in the sector concerned. Thus any financial support granted by the State to GEA and Vanosa is liable to affect trade and distort competition on the market where their competitors are concerned.
- (40) As stated above in recitals 23 to 31, Vanosa operates in the market for packaging, which is suffering from structural problems. Any aid to Vanosa was thus liable to affect its position on the market in relation to its competitors in the EU.
- (41) According to the information submitted by Spain, GEA/Vanosa systematically failed to pay social security contributions from the adoption of the 1997 decision until at least January 2001, as follows:

|        |                   |
|--------|-------------------|
| GEA    | EUR 16,15 million |
| Vanosa | EUR 3,36 million  |

- (42) As regards the taxes, no information was submitted on the unpaid taxes despite the fact that the Commission made a specific request. However, according to the documents provided by the Spanish authorities, GEA/Vanosa systematically failed to meet their tax obligations. The amount accumulated over three years must be substantial.
- (43) As regards the social security contributions, it is apparent from the available information that GEA and Vanosa were able for several years to continue trading without meeting their social security obligations.

- (44) The Spanish authorities stated in their letter of 5 July 2001 that the public creditor's behaviour complied with the national laws in force and did not discriminate in favour of the two firms. They also stated that proceedings had been initiated to seize a number of assets. However, they did not state whether other legal means under Spanish law had been applied to stop the continuous and systematic non-payment of social security contributions, such as the separate forced collection procedures which can be adopted with regard to post-suspension debts.
- (45) In line with Decision 1999/509/EC of 14 October 1998 concerning aid granted by Spain to firms in the Magefesa group and their successors<sup>(4)</sup>, upheld by the Court of Justice in its ruling in *Magfesa*<sup>(5)</sup>, the persistent and systematic non-payment of social security contributions and of an unknown but substantial amount of taxes, between at least January 1997 and January 2001, constitutes a transfer of public resources to GEA and Vanosa. Such transfer gives them a competitive advantage since — unlike their competitors, — they are not obliged to defray these costs as would ordinarily be the case. The transfer therefore constitutes aid under Article 87(1) of the Treaty.
- (46) The mere fact that the national legislative provisions relied on by the Spanish Government are applicable to any enterprise subject to a court-supervised recovery scheme, or which has contracted debts to social security and the Treasury, is not sufficient for the measures taken by Spain to avoid being categorised as aid under Article 87 of the Treaty.
- (47) The advantage resulting from the persistent and systematic failure to pay taxes and from the persistent and systematic non-payment of social security contributions between at least January 1997 and January 2001 arises from Spain's failing to take measures available under Spanish law (separate forced collection procedures) to prevent firms from continuing to operate without fulfilling their tax and social security obligations.
- (48) The fact that neither the Treasury nor the social security authorities have formally cancelled the debts does not detract from the fact that the firms have been able to operate without meeting their tax and social security obligations. Over the same period, their competitors have not benefited from such financial advantages.
- (49) The Court confirmed in *Magfesa* that a State aid element may arise, under certain circumstances, as a result of certain measures being taken by the State in the context of insolvency procedures. In the context of a suspension of payments procedure, the State does not act as a public investor. Therefore its conduct cannot be compared to the conduct of a private investor laying out capital with a view to realising a profit in the relatively short term. The Commission must rather examine whether the State has acted as a diligent private creditor trying to maximise the chances of recovering its credit. As the Court held in *Tubacex*<sup>(6)</sup>, a good test is to compare the behaviour of the State with the behaviour of a private creditor. This was upheld by the Court in *DMT*<sup>(7)</sup> with the ruling that a public creditor must be compared with a hypothetical private creditor which, so far as possible, is in the same position vis-à-vis its debtor as the ONSS (the public creditor) and is seeking to recover the sums owed to it.
- (50) The question arises whether the public creditors, in allowing such persistent non-payment of taxes and social security contributions, behaved in the way they did with a view to maximising their chances of recovering unpaid taxes and social security contributions. The Spanish authorities have not stated or suggested that such was the case. On the contrary, the continued operation of the firms concerned has resulted in a considerable increase in the taxes and social security contributions remaining unpaid, which constitutes a fundamental and substantial deviation from the restructuring plan on which the 1997 decision was based.
- (51) The persistent non-payment automatically reduces the company's assets during the suspension of payment period since the debts resulting from the administration of the assets, such as taxes and social security contributions, have to be paid first, taking priority over debts towards other creditors. Given the size of the public claims, it follows that, after the declaration of the statutory suspension of payments on 19 November 1997 (GEA) and on 14 November 1997 (Vanosa), their continued operation without meeting their tax and social security obligations further damaged the interests of the Treasury and the social security department. According to the information submitted by Spain, GEA is still under statutory suspension of payments whereas Vanosa's suspension of payments was lifted in July 2000. Despite that, the debts arising from the persistent non-payment were still unpaid in July 2001.
- (52) The fact that large amounts of social security contributions and an unknown amount of taxes remained effectively unpaid between at least January 1997 and January 2001 shows that GEA's and Vanosa's continued operation has supported economic activities which would otherwise have been unsustainable under normal market conditions.
- (53) Consequently, nothing in the State's behaviour suggests that it acted as a private creditor trying to recover at

<sup>(4)</sup> OJ L 198, 30.7.1999, p. 15.

<sup>(5)</sup> Case C-480/98 *Spain v Commission* [2000] ECR I-8717.

<sup>(6)</sup> ECR [1999] I-2459.

<sup>(7)</sup> ECR [1999] I-3913.

least a marginal amount of unpaid taxes and social contributions. Under the circumstances, and bearing in mind that the original restructuring plan was not being complied with, it is very doubtful that a reasonable creditor would have accepted such high exposure.

(54) The Commission has not been informed of the total amount of tax owed to the Treasury by GEA and Vanosa. In line with Decision 1999/509/EC adopted following the Magefesa case, it is the Spanish Government's responsibility to supply this information.

(55) It must accordingly be concluded that the persistent non-payment of taxes and social security contributions by GEA and Vanosa after the declaration of suspension of payments constitutes aid under Article 87(1) of the Treaty.

#### IV.2 Compatibility of the aid

(56) The Commission notes that Spain has not invoked any of the exceptions provided for by the Treaty, the latter's position being that the case does not involve State aid.

(57) The Commission considers that the measure in question does not qualify for exemption under Article 87(2) as it is not aid having a social character granted to individual consumers, aid to make good the damage caused by natural disasters or aid to compensate for the economic disadvantages caused by the division of Germany.

(58) The exceptions in Article 87(3)(b) and (d) do not apply either as the aid is not designed to promote the execution of an important project of common European interest or to promote cultural and heritage conservation.

(59) The other exceptions provided for in Article 87(3)(a) and (c) are not applicable in this case.

(60) From the information in its possession, the Commission must conclude that the measure in question constitutes operating aid for GEA and Vanosa. Such aid is incompatible with the common market as it is designed to relieve GEA and Vanosa of the costs they would have had to bear on their own under the normal conditions of their day-to-day operation or activities.

(61) Nonetheless, such aid may be granted exceptionally to firms in regions qualifying for exemption under Article 87(3)(a) provided that it is justified in terms of its contribution to regional development and its nature and that its level is proportional to the handicaps it seeks to alleviate.

(62) The Commission notes that Vigo is located in an Article 87(3)(a) region. However, the Commission considers that the measures in question do not fulfil the conditions for operating aid laid down in the guidelines on national regional aid (cf. paragraphs 4.15 to 4.17 of the guidelines). In particular, the Commission notes that the aid in question is not degressive.

(63) The Commission therefore concludes that the aid does not qualify for exemption under Article 87(3)(a).

(64) The question arises whether the aid aims at restoring the long-term viability of an undertaking in difficulty. In order to assess the funding granted to firms in difficulties the Commission has issued specific guidelines on rescue and restructuring aid <sup>(8)</sup> which are applicable to the measures under scrutiny.

(65) The Commission notes that the aid was granted whilst the aid recipient was implementing the restructuring plan that formed the basis of the 1997 positive decision.

(66) In accordance with the restructuring guidelines, the restructuring plan, the duration of which must be as short as possible, should restore the long-term viability of the firm within a reasonable time and on the basis of realistic assumptions as to future operating conditions. Restructuring aid must therefore be linked to a viable restructuring plan, monitored by the Member State concerned.

<sup>(8)</sup> OJ C 288, 9.10.1999.

- (67) In addition to the compensatory measures, the Commission may impose any conditions and obligations it considers necessary in order to ensure that the aid does not distort competition to an extent contrary to the common interest. For example, it may require the Member State, as occurred in the present case, to refrain from granting other types of aid to the recipient firm during the restructuring period.
- (68) By letter dated 21 May 1999 the Commission acknowledged receipt of the second report on the implementation of the restructuring plan and informed Spain that 'on the basis of the information, figures and justifications contained in the report, the Commission does not intend to reopen [this file] since the basic lines of the decision are being complied with'. As stated above, the letter added:
- 'Nevertheless, in particular taking into account that GEA continues to be loss making, I would like to remind you of your authorities' commitment not to grant any additional State aid to that firm anymore.'
- (69) However, the report did not contain any indication of the fact that GEA and Vanosa had been systematically failing to pay taxes and social security contributions since 1997.
- (70) Spain did not suggest at any point in the procedure that the aid was a measure adopted under the approved restructuring plan nor did the reports on the implementation of the restructuring plan indicate the existence of the new aid or *a fortiori* that the measure was an additional action needed to implement the restructuring plan correctly. Moreover, the State granted the partial waiver to GEA and Vanosa provided they complied both with the rescheduling terms and with their current tax obligations. However, it was only on 7 February 2001, almost three years after the granting of the waiver, that the tax authorities decided to cancel the waiver and the payment rescheduling on the grounds that the company 'failed entirely to meet its payment obligations'.
- (71) Thus persistent and systematic non-payment of taxes and social security contributions eventually thus led to the cancellation of one of the measures (the waiver) that were crucial to the proper implementation of the restructuring plan. Such systematic failure, permitted by the State, which did not use all the available legal means to stop it, can therefore hardly be regarded as a measure adopted within the framework of the existing restructuring plan.
- (72) Moreover, in order to prevent firms from being unfairly assisted, restructuring aid should be granted once only. If the firm concerned has in the past already received restructuring aid, and where less than 10 years has elapsed since the restructuring period came to an end, the Commission will normally allow further restructuring aid only in exceptional and unforeseeable circumstances for which the firm is not responsible. An unforeseeable circumstance is one that could not be anticipated when the restructuring plan was drawn up. Spain has not suggested that this was the case nor has it submitted any evidence supporting such a claim.
- (73) Under the circumstances, the Commission concludes that the new aid does not meet the conditions for authorisation set out in the Community guidelines on State aid for rescuing and restructuring firms in difficulty.
- (74) In view of the foregoing, the Commission considers that the aid is not compatible with the common market.

## V. CONCLUSIONS

- (75) The aid in the form of the persistent non-payment of taxes and social security contributions by Grupo de Empresas Alvarez SA and Vanosa following the suspension of payments in November 1997 until January 2001 is incompatible with the common market.
- (76) The Commission concludes that Spain unlawfully implemented the aid in question in breach of Article 88(3) of the Treaty.
- (77) Article 14 of Council Regulation (EC) No 659/1999 stipulates that any unlawful aid which the Commission has deemed to be incompatible with the common market must be the subject of a decision requiring that it be recovered from the beneficiary.
- (78) In order to restore the economic conditions with which the firm would have had to contend if it had not been granted the incompatible aid, the Spanish authorities must take all the necessary steps to withdraw the benefits deriving from the aid and recover them from the beneficiary, in accordance with the Court of Justice Judgment in *España v Commission* <sup>(9)</sup>, although the recovery order addressed to Spain does not include interest arising between the date the aid was granted and when it was recovered.

<sup>(9)</sup> Case C-480/98, [2000] ECR I-8717.

(79) The aid must be recovered in accordance with the procedures laid down in national law,

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of this Decision.

HAS ADOPTED THIS DECISION:

*Article 1*

The aid in the form of the persistent non-payment of taxes and social security contributions by Grupo de Empresas Alvarez SA and Vanosa between the dates on which payments were suspended (19 November 1997 for GEA and 14 November 1997 for Vanosa) and January 2001 is incompatible with the common market.

*Article 2*

1. Spain shall take all the necessary steps to recover from the recipient the aid referred to in Article 1 and unlawfully already made available to the recipient.

*Article 3*

Spain shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply herewith.

*Article 4*

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 14 May 2002.

*For the Commission*

Mario MONTI

*Member of the Commission*