

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 June 1995

on the aid granted by the Italian State to the company Enichem Agricoltura SpA

(Only the Italian text is authentic)

(Text with EEA relevance)

(96/115/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas :

I

By a letter dated 16 March 1994 the Commission informed the Italian Government of its decision to open the procedure under Article 93 (2) of the Treaty in respect of aid given to Enichem Agricoltura SpA (hereinafter 'Enichem Agricoltura').

The company is mainly active in the production and distribution of fertilizers, as part of the chemical subgroup of the Italian State holding company ENI. It is 100 % owned by ENI, through its financial subholding company SCI and was recapitalized with Lit 198 billion in 1991, Lit 316 billion in 1992 and Lit 756 billion in 1993. The Commission decided to initiate the Article 93 (2) procedure with regard to those capital injections, amounting to Lit 1 270 billion in total. The Commission's decision was

published, inviting other Member States and third interested parties to submit their comments on the matter⁽¹⁾.

After a first meeting held on 15 April 1994 between representatives of the Commission and of the company, the Italian Government answered officially with a letter dated 6 June 1994, in which a detailed restructuring plan for the whole group was presented. In the same letter they informed the Commission of further recapitalization and financing measures in addition of these covered by the abovementioned procedure under Article 93 (2) of the Treaty. Those measures consisted of a capital injection of Lit 648 billion, already carried out, and the planned grant of Lit 900 billion to be injected during 1994 as restructuring costs.

By a letter dated 19 August 1994 the Commission informed the Italian Government of its decision to extend the aforementioned Article 93 (2) procedure to cover those measures, amounting in total to Lit 1 548 billion. That decision was the subject of a Commission communication of 31 August 1994⁽²⁾.

Therefore the total amount covered by both the initiation and the extension of the procedure of Article 93 (2) is Lit 2 818 billion.

In both decisions the Commission — in view of the important trade between Member States in the chemical sector for agriculture (fertilizer industry) and the financial

⁽¹⁾ OJ No C 151, 2. 6. 1994, p. 3.

⁽²⁾ OJ No C 243, 31. 8. 1994, p. 4.

situation of the company, and on the basis of the information in its hands — formed the *prima facie* opinion that the measures in question appeared to be State aid within the meaning of Article 92 (2) of the Treaty and Article 61 (1) of the EEA Agreement. The Commission could not, on the basis of the information at its disposal, consider those measures to be compatible with the common market under Article 92 (3) or with the functioning of the EEA Agreement. The Commission concluded that in any case such compatibility could only possibly be established pursuant to Article 92 (3) (c) of the Treaty.

The Italian Government responded officially to the extension of the procedure by a letter dated 28 September 1994, providing some additional information on the restructuring plan and the additional financing measures.

In the course of the procedure, comments were received by the Commission from the German Government and from a Norwegian company. The comments were submitted to the Italian authorities by letters dated 27 October and 8 November 1994. Two further requests for information were sent by the Commission to the Italian Government on 26 October 1994 and 6 February 1995, regarding the future disposal of the restructured company.

The Italian Government replied to the Commission's letters by two letters dated 29 November 1994 and 14 February 1995, in the first of which they announced that Enichem Agricoltura was to be put into liquidation, as eventually happened on 22 December 1994. On that occasion the company was renamed 'Agricoltura SpA in liquidazione'.

Further meetings and informal contacts with the company's representatives have occurred in the course of the procedure, allowing the Commission to clarify the nature, the scale and the probable effects of the restructuring. In addition, some more documents were provided informally by the company.

Enichem Agricoltura belongs to the group of companies which are being monitored, until the end of 1996, in their debt-reduction procedure, in accordance with the agreement between the Italian Government and the Commission of July 1993 (Annex 3 to the Commission communication of 29 December 1993⁽¹⁾). However, that agreement provides that, as far as operations which are likely to involve State aid are concerned, the case-by-case consideration of such measures under the Community's State aid rules is not prejudiced.

II

In their official answers to the initiation and extension of the Article 93 (2) procedure, the Italian authorities, while submitting details and information about the restructuring plan of Enichem Agricoltura, have expressed the general view that the financing of the company is just an industrial decision, and that the behaviour of the shareholder ENI in this respect has to be considered similar to that of a private investor.

Having examined the poor situation and prospects of the company, ENI decided to invest the funds in question so as to prevent the company's becoming insolvent and to finance the implementation of a restructuring and nationalization scheme. The final purpose of this operation is to minimize the losses that ENI, as Enichem Agricoltura's ultimate 100 % shareholder, would in any case have to bear — even in the absence of the injections — as it would be unlimitedly liable for the company's debts in the event of its becoming insolvent, pursuant to Article 2362 of the Italian Civil Code. It was argued that, in the latter case, the final cost to ENI would be much higher.

Furthermore, the Italian authorities argued that such behaviour was held to be legitimate by the Court of Justice in its judgment in case 303/88, *Italy v. Commission* (?). In this judgment the Court ruled that a holding company might, for a limited period, bear the losses of its subsidiary, in order to allow it to cease operating under the best conditions. The Court added that such decision may be based not only on the likelihood of an indirect material gain, but also on other considerations, such as the safeguarding of the group's image or the re-orientation of its activity.

III

1. As regards the substance of the restructuring the Italian authorities have provided information about the restructuring actions undertaken in the years 1991 to 1993, and a restructuring plan commenced in 1994 for completion before 1997.

In summary, the restructuring and rationalization scheme provides for a radical change in the strategic position of the company in the fertilizer market. The main targets of this plan are as follows:

⁽¹⁾ OJ No C 349, 29. 12. 1993, p. 2.

^(?) [1991] ECR I-1443.

- concentration of trade mainly on the domestic market and reduction of unprofitable foreign sales (being penalized by high transport costs), in order to re-balance supply and demand;
- concentration of production in the integrated sites of Ferrara (urea and ammonia) and Ravenna (CAN and multinutrient NPK fertilizers) only; those sites are more competitive, as they are located in the area with major consumption in Italy; also, they are connected to each other by an ammonia pipeline;
- final relinquishment of the sector by ENI, to be achieved through the creation of partnerships with other European operators and/or through the disposal of the company.

2. The restructuring scheme was motivated by the acknowledgment of a market situation and perspectives which have compelled all European operators to reduce drastically their productive capacity.

The consumption of fertilizer over the coming years is expected to continue decreasing in the west European market, notwithstanding the more favourable present trend forecast at world level. Competitive pressure from eastern European and non-European countries will remain strong, despite a forecast increase in their

domestic demand and in their production costs. These and other factors, such as the revision of the common agricultural policy, the fall in agricultural prices, the opening-up of the market and new GATT rules, as well as new environmental constraints, have obliged the European fertilizer industry to engage in thorough restructuring, in order to reduce excess and inefficient capacity and to re-balance supply and demand.

Accordingly, Enichem Agricoltura's restructuring has mainly entailed the abandonment of a large part of its activity, regarding both intermediate and final products, involving the closure of a number of productive sites and the disposal or liquidation of some subsidiaries and assets (Isagro, Conserv Inc., Terni Industrie chimiche, Sariaf, etc.). As was observed above, the restructured company is now mainly based on two integrated production units, Ferrara and Ravenna, both located in the area of major consumption in Italy. These two units, together with the Barletta site and the central management, administration and commercial services, constitute the final core of the restructured Enichem Agricoltura, and are to be offered for sale according to the restructuring plan. From now on, reference will be made to this part of Enichem Agricoltura as the 'restructured business area'.

The following table shows the company's changing production capacity for the main fertilizers since 1990.

(1 000 tonnes/year)

Site	Plant	Fertilizer intermediate product	Capacity 31. 12. 1989	Capacity 31. 12. 1994	Notes
MARGHERA	Sulphuric acid	intermediate	100	—	closed
	Ammonia	intermediate	170	—	closed
	Urea	intermediate	170	—	closed
	Nitric acid	intermediate	330	—	closed
	Ammonium nitrate	fertilizer	460	—	closed
	NPK	fertilizer	600	—	closed
	SSP	fertilizer	300	—	transferred to Enichem SpA
RAVENNA	Ammonia	intermediate	240	—	closed
	Nitric Acid	intermediate	400	400	to be sold
	Ammonium nitrate	fertilizer	480	500	to be sold
	NPK	fertilizer	400	400	to be sold
FERRARA	Ammonia	intermediate	500	500	to be sold
	Urea	fertilizer	550	500	to be sold
TERNI (Terni Industrie Chimiche SpA)	Ammonia	intermediate	130	130	
	Urea	fertilizer	110	110	Company to be sold
	Nitric acid	intermediate	80	80	
	Calcium nitrate	fertilizer	100	100	
MANFREDONIA	Ammonia	intermediate	350	—	closed
	Urea	fertilizer	550	—	closed

(1 000 tonnes/year)

Site	Plant	Fertilizer intermediate product	Capacity 31. 12. 1989	Capacity 31. 12. 1994	Notes
PRIOLO	Ammonia	intermediate	350	—	closed
	Nitric acid	intermediate	170	—	closed
	NPK	fertilizer	400	—	closed
SAN GIUSEPPE DI CAIRO	Ammonia	intermediate	170	—	closed
	Urea	fertilizer	190	—	closed
GELA	Ammonia	intermediate	100	—	closed
	Sulphuric acid	intermediate	200	200	transferred to Praoil (ENI)
	Phosphoric acid	intermediate	120	120	mothballed (ISAF)
	Sulphuric acid	intermediate	170	170	mothballed (ISAF)
	NPK	fertilizer	350	350	mothballed (ISAF)
CROTONE	Nitric acid	intermediate	100	—	closed
	NPK/SSP	fertilizer	200	—	closed
PORTO, EMPEDOCLE	SSP	fertilizer	100	—	closed
BARLETTA	SSP/NPK (*)	fertilizer	100	100	to be sold
OTHER UNITS (ex Fertigest)	SSP/NPK	fertilizer	200	—	closed
Total fertilizers			5 430	2 060	
Total intermediates			3 680	1 600	

(*) granulating only.

Source: Enichem Agricoltura.

In total, as regards nitrogen fertilizers only, capacity has been reduced by 910 000 tonnes per year for urea, 460 000 tonnes per year for ammonium nitrate, and 1 200 000 tonnes per year for NPK fertilizers.

Closures and sales of capacity, together with internal rationalizations, have resulted in a large reduction of the company's workforce, which has been reduced by 58 % (3 708 employees out of 6 354) over the period 1990 to 1993. Further rationalization and sales of activities will cause further reductions of personnel. The final company's structure, mainly consisting of the Ferrara and Ravenna sites plus the central administration and commercial services, will employ only around 450 people, entailing a global reduction by 93 % from 1990 — a major part of it through permanent redundancies.

3. According to the plan, restructuring is to be completed within the liquidation and privatization scheme of Enichem Agricoltura. In particular, the following are to be settled:

— Gela: three plants (phosphoric acid, sulphuric acid and NPK fertilizer), belonging to the subsidiary ISAF,

are mothballed, as they are not competitive due to high costs of rock phosphate. They will be sold off or closed as part of the liquidation scheme;

- Terni Industrie Chimiche: this subsidiary is up for sale; disposal will be completed within the liquidation process;
- Sariaf: this company (turnover of about Lit 14 billion in 1994) is located in Faenza (Ravenna), and is active in the manufacturing of speciality fertilizers, physical devices for agriculture and formulated pesticides. It is up for sale; disposal will be completed within the liquidation scheme;
- Ferrara and Ravenna: further investment are planned for the years 1995 — 1997, mainly in the maintenance and automation of the plants, in the costs of meeting environmental and safety standards, in production rationalization, and the development of new products adapted to the standards imposed by the market [...](*)

Those two units will hold the major part of Enichem Agricoltura's final capacity and expected production, as following:

(*) Confidential.

<i>(1 000 tonnes per year)</i>			
Site	Plant	Capacity	Production
Ferrara	Urea	500	480
Ravenna	CAN	500	490
	NPK fertilizers :		
	— chemical reaction	400	
	— blends	100	460

Its share is expected to be 35 % of the Italian market (it was 50 % in 1991/92), excluding trading activities. As the production will be largely absorbed by the domestic market, no significant quantities are provided for export within Europe by the end of the restructuring. A considerable reduction in the market share in Europe is therefore anticipated, where Enichem Agricoltura exported around 1 000 tonnes per year in 1991/92.

As is shown by the cost efficiency analysis prepared by [...], Ferrara and Ravenna production plants are ranked at medium/high competitiveness level amongst European fertilizer plants.

In view of the reduced market-share targets, the commercial structure is being rationalized, reduced and concentrated on a smaller number of clients and therefore of stockage and distribution units. Fixed costs are reduced, to the benefit of profitability.

4. As was mentioned in Part I, on 22 December 1994 the company was put into liquidation, with the prospect of being definitively closed and of minimizing the remaining burden on its shareholder ENI.

The liquidation process will mainly be based on the sale by privatization of the restructured business area of Enichem Agricoltura. In addition, the two subsidiaries Terni Industrie Chimiche and Sariaf will be privatized. The remaining assets will be either sold or liquidated and liabilities will be finally paid off.

Until privatization is completed, Enichem Agricoltura's sites have been leased by the liquidator to Enichem SpA, which can better provide for their management. The rent is at commercial conditions and will automatically expire on the entry into force of the sale contract.

The privatization of the restructured business area and of the subsidiaries Terni Industrie Chimiche and Sariaf has been launched with the assistance of independent financial advisors. A call for tenders has been already published in the press. The Italian authorities have communicated to the Commission the date by which privatization should be complete.

5. Financial forecasts for the forthcoming years have been submitted as part of the restructuring scheme; they take into account on the one hand the future financial performances of the restructured activities and on the other the costs of the liquidation process and the proceeds of privatization.

These financial forecasts have therefore been split into two main financial areas, namely the operating activity of the restructured business area (mainly Ravenna, Ferrara and central services) and the 'liquidation' area.

Regarding the first area, the forecasts are based on a scenario which takes into account general macroeconomic indicators for Italy and some data from the World Bank and other specialized companies for this sector (British Sulphur and Fertecon), concerning costs of raw materials, commodities and final products. The restructured business area is expected to achieve a good level of profitability already in 1995, and estimates for 1994 show that a positive result has already been realized in that year, taking advantage of the improved market situation. The restructured business unit will produce a turnover of about Lit 630 billion [...].

The 'liquidation' area embraces the rest of Enichem Agricoltura which is to be sold or liquidated, resulting in expected losses of Lit 900 billion to be covered by the aid. This amount is calculated after deduction of the proceeds from the sale of the restructured business unit and of the subsidiaries Terni Industrie Chimiche and Sariaf.

6. The restructuring and liquidation of Enichem Agricoltura will ultimately have been financed by its shareholders to the extent of Lit 2 818 billion (around ECU 1 500 million), partly in the form of capital injections already granted over the years 1991-1994 (Lit 1 918 billion), and partly through the progressive financing of the liquidation (Lit 900 billion).

The injections of 1991-1993 have been used to cover the losses related to restructuring operations and closures. As seen above, those operations have involved a major shedding of staff, causing considerable social costs. Also, the safety and environmental costs associated with the closures have been considerable.

The grant to finance the liquidation scheme, estimated on the basis of a liquidation plan, will cover Enichem Agricoltura's liabilities as at 22 December 1994 that will not be offset by the proceeds of the sale of assets and activities and of other credits, and the administrative and financial charges due to the management of the liquidation. Also, it covers costs and losses due to the running-down of the operating activities that are being closed.

The final amount of the liquidation losses to be covered by the aid is the result of a cautious estimate, based on the financial situation of Agricoltura, and of future income and losses due to disposals, the write-down of assets, and the incidental costs of the liquidation itself.

IV

In addition to the submissions of the Italian Government, observations were received from the German Government and from a Norwegian company.

The German Government expressed the opinion that the case must be assessed in the long term, by reference generally to the ENI group and to its chemical subsector headed by Enichem. Germany observed that, since 1980, aid had been granted several times to ENI and to Enichem, while their overall financial performance has been negative, and it expressed its general apprehension that the aid in question was likely to distort trade in the common market.

The Norwegian company underlined certain conditions that, in its opinion, should be explicitly stated and imposed, should the aid to Enichem Agricoltura be approved. First, restructuring and closure should be permanent; this should be ensured by the Commission. Secondly, sales of fertilizer plants being closed must only be made to buyers in third countries which the Commission does not see as potential suppliers to the Community market. Furthermore, the proceeds of such sales should reduce that amount of restructuring aid which may be approved, and not become an operative aid for Enichem Agricoltura.

The Italian Government replied to the observations of the German Government by pointing out that ENI's financial situation has always been positive apart from 1992, and that all financial measures mentioned had been subject to the Commission's evaluation under Community State aid rules.

As to the comments submitted by the Norwegian company, the Italian Government replied by confirming that all productive sites declared as closed in the restructuring plan had already been emptied and reclaimed, and that relevant safety measures had already been set up.

Also, they contested the request that plants being closed be sold outside the Community, as this was not a condition envisaged by the Commission in such situations. They finally confirmed that the sale of Enichem Agricoltura's assets would be effected in accordance with the principles highlighted by the Commission decision on the Portuguese privatization law No 11/1990, which was the subject of the communication of 17 September 1993⁽¹⁾, and that proceeds from such sales would offset part of the losses attributed to the liquidation process.

V

1. Confirmation of the existence of aids

In order to ascertain if any aid is included in the measures described above, the Commission will examine the capital passing between the State, as owner, and its public companies in the light of the market economic investor principle as set out in the Commission's communication on public undertakings of 28 July 1993⁽²⁾.

According to this principle, largely confirmed by the Court's case-law and by the practice of the Commission (see the abovementioned communication) aid is involved in a transaction if this would not have been undertaken by a private investor operating under normal market economy conditions.

On the basis of the information provided to the Commission and as stated above, the amount invested by the Italian State in the restructuring of Enichem Agricoltura — through its holding company ENI — finally amounts to Lit 2 818 billion.

The different injections, partly already effected, are summarized in the following table:

(in billion lire)

	1991	1992	1993	1994	1995	Total
Funds granted to Enichem Agricoltura	198	316	756	648	900	2 818

The Commission observes that Enichem Agricoltura's shareholder, ENI, is an industrial holding company which is 100 % owned by the Italian Ministry of Treasury. Therefore, any decision of ENI to invest in its subsidiaries

⁽¹⁾ OJ No C 253, 17. 9. 1993, p. 3.

⁽²⁾ OJ No C 307, 13. 11. 1993, p. 3.

and any subsequent lack of return on such investment produces a corresponding negative effect on the return that ENI should provide to its shareholder. Even if no injection was made into ENI for the purpose of Enichem Agricoltura's restructuring, the restructuring costs have been financed with proceeds which otherwise would have benefited its State shareholder through dividends or increased capital value. In fact, ENI has not provided a sufficient return to the State, as shareholder, in the last decade; therefore the funds it has made available to its subsidiaries are to be considered State resources. Also, ENI's choice continually to recapitalize Enichem Agricoltura despite its constantly deteriorating performance and accounts could not reasonably be possible without the tacit or explicit approval of the State shareholder.

The whole investment by the State for the restructuring of Enichem Agricoltura will not receive an appropriate return in the future. The injections made over the years 1991-1994, before the company was put into liquidation, have been clearly made with the purpose of preventing the insolvency of the company and of carrying out restructuring measures. The funds were invested simply to cover Enichem Agricoltura's losses, without any prospect of a positive return. They were granted before a full coherent restructuring plan aiming at restoring viability had been set up. Given the poor performance of Enichem Agricoltura over the whole period, they have to be regarded as part of a process which has led to the shareholder's decision to liquidate Enichem Agricoltura and to completely divest itself of the business. No private shareholder would have accepted such poor performances over such a period. Also, the positive results expected after Enichem Agricoltura's restructuring are too low, compared to the global injection, and cannot be considered a sufficient return on the State's investment. Thus the Italian authorities' argument that ENI did act as a private investor in this respect can not be accepted, since such investor would have liquidated or thoroughly restructured long before. Also, with regard to the Court's judgment (see Part II), the period over which Enichem Agricoltura has suffered heavy losses is too long (five years), and the amount of these losses too high to justify ENI's behaviour as being similar to that of a private holding company. The whole amount is therefore to be regarded as aid.

The losses attributed to the liquidation process are, by their very nature, aid. They are liabilities guaranteed and finally paid by the shareholder under Article 2362 of the Italian Civil Code, following the company's entry into voluntary liquidation. Such guarantee has been covering Enichem Agricoltura's liabilities over the recent years,

while the company has continued to make heavy losses. Under these conditions a private investor would have tried to limit its engagement with its ailing subsidiary by deciding to put it into liquidation from the moment it could not reasonably expect a restoration of its financial viability and when its assets/liabilities position still showed a surplus. As ENI did not adopt such a rational behaviour and only much later decided voluntarily to liquidate Enichem Agricoltura in order to write off losses and debts and thereby to help the restructuring and reorganization, the cost of such operation must be regarded as aid. The final cost of the liquidation, amounting to Lit 900 billion, is after deduction of ENI's income from the sale of Enichem Agricoltura.

In recent years Enichem Agricoltura has been amongst the seven largest operators in the Community in terms of turnover, exporting a significant part of its production. On the Italian fertilizer market, the company accounted for 50 % of the total demand in 1992 and will have a market share of around 35 % at the end of the restructuring. Therefore, and taking into account the difficult situation of the sector, the Commission concludes that the total of Lit 2 818 billion does distort intra-Community trade, and is therefore State aid within the meaning of Article 92 (1) of the Treaty and Article 61 (1) of the EEA Agreement.

2. Compatibility of the aid with the common market

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

Given the nature of the operation, Article 92 (2) and (3) (b) is not applicable to the aid in question.

Given the diversity of the group's operations and locations, and as the measures have no regional objective, only the derogation under Article 92 (3) (c), insofar as it concerns aid to facilitate the development of certain economic activities, could be taken into consideration.

As stated above, the measures concerned appear to be aid specifically aiming to permit Enichem Agricoltura to continue in business despite its financial difficulties and to finance a restructuring project to restore the company's viability.

The Commission's approach to aid for restructuring companies in difficulties is outlined in the 'Community guidelines on State aid for rescuing and restructuring firms in difficulties', which it adopted on 27 July 1994 (1).

(1) OJ No C 368, 23. 12. 1994, p. 12.

In those guidelines, the Commission has pointed out that it takes a strict approach in assessing the compatibility of this kind of aid, since it might otherwise end up by transferring without reason social or industrial problems from one Member State to another — in particular, by shifting an unfair share of structural industrial adjustment and attendant social problems onto other producers.

For this reason, before the Commission will approve *ad hoc* aid to a company in difficulty, its restructuring must satisfy the following basic conditions: first of all, it must restore the long-term viability of the company within a reasonable time; in addition, it must avoid unduly distorting competition; finally, it must be in proportion with the restructuring costs and benefits. Only if these basic requirements are fulfilled, may the effects of the aid be considered in keeping with the common interest under the Article 92 (3) (c) exemption.

On this basis the documentation and the restructuring plan presented by the Italian authorities have been examined, particularly with regard to such elements as the restoration of the viability of the company, the reduction in productive capacity and the evolution of its competitive position on the market, the proportionality of the aid to the restructuring and the contribution of the beneficiary of the aid to the financing of the restructuring plan, the plans for the company's privatization.

3. Restoration of viability and privatization

As a general rule, the *conditio sine qua non* of all restructuring plans is that they must restore long-term viability and health of the company within a reasonable time and on the basis of realistic assumptions as to its future operating conditions.

As explained in Part I, Enichem Agricoltura was put into liquidation in December 1994, and only certain production sites and businesses, after being restructured, are continuing their operations, subject to ultimate privatization.

The restructuring undertaken, and to be completed over the coming years, along with the liquidation process, can be reasonably expected to lead Agricoltura back to long-term viability. Several secondary businesses have been sold or abandoned, whilst the core business is substantially reduced and limited to those plants and activities which can rely on a good level of competitiveness in the Italian and European market. As seen above, estimates on the 1994 results of the restructured activities are positive and realistic financial forecasts for the years from 1995 to

1998 show that such activities will reach a good level of profitability, acceptable to a private investor.

In addition, the Italian authorities have committed themselves to privatizing the restructured business area of Enichem Agricoltura and they have communicated to the Commission the date at which privatization should be completed. The sale procedure has already been launched, which also involves the subsidiaries Terni Industrie Chimiche and Sariaf.

The commitment to a complete and definitive shedding of Enichem Agricoltura's business is in line with the general privatization programme adopted by the Italian Government. This has also been confirmed in the context of the debt-reduction plan submitted by ENI to the Commission, complying with the provisions of the agreement between the Italian Government and the Commission of July 1993. The implementation of this plan is monitored by the Commission on the basis of regular reports and meetings with ENI's representatives and those of the Italian Government.

The privatization decision has been taken into account by the estimate of the net value of restructuring costs to be covered by the aid. The privatization will eventually result in Agricoltura's not continuing to rely on privileged public assistance, since its present direct links with the State will be definitively cut. In those circumstances, it will be up to the new owner to ensure the company's ultimate viability without further State assistance.

4. Reduction in capacity

A further condition set on restructuring aid is that measures are to be taken to limit possible adverse effects on competitors. Otherwise, aid would be 'contrary to the common interest' and ineligible for exemption under Article 92 (3) (c). Particularly in sectors presenting a structural overcapacity this is done by irreversibly reducing the capacity of the company.

EFMA's document on the fertilizer industry in the Community, published in November 1994, says that at present the industry finds itself with a structural overcapacity of more than 20%. Commission data show that 1993, a relatively poor year in terms of profitability but also one where output is unlikely to be surpassed, saw 8,3 million tonnes of nitrogen equivalent fertilizer produced from a capacity of around 11,5 million tonnes of ammonia, a utilization rate of 74%, in the Community.

Enichem Agricoltura's restructuring provides a considerable effort to reduce its productive capacity across its product range. With respect to 1990, 69% of the company's ammonia capacity has been shut down, 60%

of urea, 48 % of ammonium nitrate, 64 % of NPK. Commission's estimates on Enichem and EFMA's figures show that, in respect of 1991 capacity in the Community, closures account for around 15 % of urea, 5 % of ammonium nitrate and 5 % of NPK. SSP production, too, has been sharply reduced by closures and disposals.

Reduction in personnel is very important. [...] the restructured business area will employ less than 10 % of the company's workforce as at 1990.

In the light of the above considerations, in particular taking into account the significant reduction in Enichem Agricoltura's share in the fertilizers market, which is highly competitive and suffering from overcapacity, the Commission can conclude that the restructuring of the company and its final competitive position on the market will not affect competition to an extent contrary to the common interest.

The Commission stresses that the reduction of capacity resulting from the closures, which the Italian authorities have announced as definitive, must be genuine and irreversible. The relevant plants may not be re-started, not even by new owners, since this would result in aided capacity being reintroduced onto the market, causing a sharp distortion of competition.

The Commission also understands that the site in Gela (phosphoric acid and NPK fertilizer) is mothballed because it is not competitive under present conditions. Any plan to re-start these plants, whether by Enichem Agricoltura or by any purchaser, is therefore likely to involve restructuring measures and further aid which may result in distorting competition. Therefore, before their implementation, such plans will have to be notified to the Commission in order to be assessed under the Community's State aid rules.

5. Proportionality of the aid to the restructuring

As is shown by the information submitted by the Italian Government, the injections made by ENI over the years 1991, 1992 and 1993 have been used to cover the losses arising from closures and liquidation of companies and write-down of assets. Also, the coverage of the liquidation losses of Enichem Agricoltura, as shown in the financial plan associated with the liquidation, are by definition directly linked to closure and restructuring measures.

It is noted that the beneficiary will contribute significantly to the financing of the restructuring and liquidation plan, by reinvesting in it the incomes arising from the sale of assets and subsidiaries and also from the same final privatization of Enichem Agricoltura's restructured

business area. This contribution is the maximum possible to be given by the beneficiary, as the whole business will be shed. Estimates of these proceeds, which are included by deduction in the final liquidation cost of Lit 900 billion, appear reasonable and likely to be confirmed, if account is also taken of the improved market situation and the good results of the subsidiaries and units concerned in 1994.

The Commission underlines that the proceeds shall be used solely to repay part of the outstanding debt of Enichem Agricoltura in liquidation, thus avoiding the creation of further aid to other financially troubled companies or activities in the group which have not yet been sold.

Under these conditions, the aid granted is believed not to provide Enichem Agricoltura with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process, nor to finance new investment not required by the restructuring.

The Commission also observes that, on the basis of the financial plan of Enichem Agricoltura, the future level of the company's financial burdens will not be unduly reduced. Moreover, the company will not benefit from any tax credit attaching to losses covered by any debt write-off financed by the aid.

The commitment of the Italian authorities to sell off Enichem Agricoltura and its subsidiaries by the date communicated to the Commission, is regarded as a condition for the approval of the restructuring plan. Without such sale and without the relevant income being used by ENI to reduce its liabilities due to the liquidation, the contribution of the beneficiary to the financing of the plan would be smaller if not non-existent. Also, a sale by privatization makes viability — the attainment of normal profitability levels — more certain.

Finally, it is noted that the estimate of the final cost of the liquidation, amounting to Lit 900 billion, is uncertain and may vary in the course of the liquidation process. However, given the importance of the reduction in capacity of Enichem Agricoltura, it is considered that an increase of this cost of up to 15 % of Lit 900 billion will not affect the Commission's positive appraisal of the case.

6. Monitoring and reporting

The implementation of the restructuring and liquidation plan requires monitoring by the Commission. For this purpose, periodic reports will have to be submitted by the Italian authorities, summarizing the progress of the restructuring, liquidation and privatization programme.

The Commission will also have the opportunity to follow the implementation of the plan in the course of regular meetings with the Italian authorities as part of the monitoring exercise under the agreement between the Italian Government and the Commission of July 1993, until its actual cessation,

HAS ADOPTED THIS DECISION :

Article 1

1. The aid in favour of Enichem Agricoltura covered by this Decision — namely the capital injections effected in the years 1991 to 1994, totalling Lit 1 918 billion, and the expected final cost of Enichem Agricoltura's liquidation of Lit 900 billion — as well as any increase of the latter amount by not more than 15 % which might arise during the actual implementation of the restructuring plan, fulfils the conditions laid down by the Community guidelines of 27 July 1994 on State aid for rescuing and restructuring firms in difficulty.

The aid is therefore exempted from the prohibition under Articles 92 (1) of the Treaty and 61 (1) of the EEA Agreement, pursuant to Articles 92 (3) (c) of the Treaty and 61 (3) (c) of the EEA Agreement, as being aid compatible with the common market, provided always that the conditions and requirements set out in paragraphs 2 to 5 and in Article 2 hereof are met.

2. The beneficiary undertakings shall carry out all the measures laid down in the liquidation, restructuring and privatization programme submitted to the Commission.

3. The capacity reduction resulting from the closure of the plants of Marghera, Manfredonia, Priolo, San Giuseppe Cairo, Gela (ammonia plant), Crotona, Porto Empedocle, and ex Fertigest units shall be genuine and irreversible. To this end the relevant assets shall be scrapped, rendered incapable of production, or converted to some other use. Any sale of capacity to other competitors shall be for use in countries from which the continued operation of the facilities is unlikely to have significant effects on the competitive situation in the Community. These conditions shall be adhered to until the moment at which the effects of the aid on the competitive situation in the Community will be insignificant.

4. Any plan to re-start mothballed plants, namely the plants for producing phosphoric acid, sulphuric acid and NPK fertilizers, shall be notified to the Commission for prior examination under the Community's State aid rules.

5. Italy shall comply with its commitment to privatize that part of Enichem Agricoltura consisting of the units at Ferrara, Ravenna, Barletta, the central management and the subsidiaries Terni Industrie Chimiche and Sariaf, in accordance with the timetable submitted to the Commission,

and according to the financial plan for ENI's debt reduction presented to the Commission pursuant to the monitoring scheme under the agreement between the Italian Government and the Commission of July 1993.

6. The income obtained through the sale of Enichem Agricoltura's subsidiaries and assets mentioned in paragraph 5, even if higher than forecast in the plan submitted to the Commission, shall be used in full to reduce the indebtedness to be covered by the aid approved. They shall not be invested in such a way as to result in further aid to other financially troubled companies or activities in the group which have not yet been sold.

7. The privatizations shall not be financed by further State aid. They shall be open to all interested parties and unconditional.

Article 2

1. Italy shall cooperate fully with the following arrangement for monitoring this Decision :

(a) it shall provide the Commission with half-yearly reports, including in particular :

- the progress of the liquidation, together with the updated financial situation of Enichem Agricoltura in liquidation, and individual information on its assets and subsidiaries being sold or dismissed ;
- the situation of each individual production plant which has been closed or mothballed and the measures being carried out until its definitive and irreversible closure ;
- the progress of the restructuring and privatization of Enichem Agricoltura and/or of its subsidiaries ;

(b) it shall communicate to the Commission in good time the main steps of the privatization process of Enichem Agricoltura and of its subsidiaries.

2. The first report, presenting the financial situation of Enichem Agricoltura in liquidation at 31 December 1994, shall reach the Commission by 31 August 1995. The following reports shall be submitted every six months starting from 31 December 1995 and shall contain figures updated to six months before.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 21 June 1995.

For the Commission

Karel VAN MIERT

Member of the Commission