

## STATE AID

C 33/95 (ex NN 35/95)

Spain

(95/C 293/10)

*(Articles 92 to 94 of the Treaty establishing the European Community)***Commission communication pursuant to Article 93 (2) of the EC Treaty to the other Member States and interested parties concerning aid which Spain has granted to the company Carnicas el Sadar**

By the following letter, the Commission informed the Spanish Government of its decision to open the procedure.

In response to a complaint, the Commission requested the Spanish authorities by letter of 6 December 1994 to provide information concerning aid granted by the Navarre Regional Authority to the company Carnicas el Sadar.

That information was sent to the Commission by the Spanish Permanent Representative to the European Union on 8 February 1995.

In accordance with Navarre Regional Law No 12/1994, Carnicas el Sadar received the following aid granted by the Navarre Regional Authority: an interest-free loan of Pta 100 million, a five-point reduction in the interest rate on Pta 200 million and a 99 % rebate on the inheritance tax and stamp duty.

Carnicas el Sadar was established by former employees of the firm Pamplonica SA, which was bankrupt as a result of the financial difficulties of the owner (Corporación Alimentaria Ibérica) and was awarded the lease of the plant and the trademark "Pamplonica SA" by the judge. In this connection, it should be stressed that the Commission encourages the efforts undertaken by the workers safeguard to their jobs.

In the agricultural sector, the Member State can choose between the Community guidelines on State aid for rescuing and restructuring firms in difficulty<sup>(1)</sup> or special rules on aid to agricultural holdings in difficulty as a result of financial burdens connected with past investments. The latter rules do not appear relevant to the aid in question.

As regards the applicability of the guidelines on aid for restructuring referred to and in view of the fact that the recipient company is not Pamplonica SA but the new establishment Carnicas el Sadar, the activity of the firm must be identical before and after the transfer of the company if the guidelines are to apply. In this respect, on the basis of information available and in view of the fact that the company was not operating for a lengthy period, it is not possible to say whether its activity was the same before and after its transfer.

If the guidelines do apply, the aid may only be authorized where certain conditions are met, namely:

- the aid must allow the long-term viability of the firm to be restored within a reasonable time and must therefore be linked to a viable restructuring or recovery plan,
- measures must, in so far as possible, be taken to alleviate conditions unfavourable to competitors,
- the aid must be proportionate with the costs and benefits of restructuring,
- the firm's restructuring plan presented to the Commission must be implemented in full and detailed annual reports on this point must be presented to the Commission.

As regards the first of those conditions, the Commission has no assurances that this condition is satisfied. It does not know the restructuring plans of the company and, more particularly, since Carnicas el Sadar only leases Pamplonica SA's plant and trademark, it is unclear who will become the owner.

As to the second condition, the Navarre Regional Authority is monitoring the utilization of the aid to prevent distortion of competition in this sector.

<sup>(1)</sup> OJ No C 368, 23. 12. 1994, p. 12.

As to the third condition, the Commission has no assurances that the investments financed by the aid are necessary for restructuring.

Lastly, the firm's restructuring plan to be presented to the Commission must be implemented in full and in this respect detailed annual reports are to be submitted to the Commission.

Under these circumstances and in the light of the information available, the aid in question cannot be regarded as meeting the Commission's criteria for this type of aid. Accordingly, the measure in question, which falls within the scope of Article 92 (1) of the Treaty, cannot qualify under any of the exceptions provided for in paragraphs 2 or 3 of that Article.

In the light of the information available, the Commission has accordingly decided that the aid is not compatible with the common market and to initiate the procedure provided for in Article 93 (2) of the Treaty.

The Commission regrets that Regional Law No 12/1994 was not notified pursuant to Article 93 (3) of the Treaty and calls on the Spanish Government to ensure that Article 93 (3) of the Treaty is observed henceforward.

The Commission would draw the attention of the Spanish Government to the letter it sent to all the Member States on 3 November 1983 concerning their obligation pursuant to Article 93 (3) of the Treaty and to the notice published in *Official Journal of the European Communities* No C 318 of 24 November 1983, page 3, which stated that any aid granted illegally, i.e. without a final decision under the procedure laid down in Article 93 (2) of the Treaty having been reached, is likely to be the subject of a request for reimbursement and/or a

refusal to charge to the EAGGF budget expenditure on national measures directly affecting Community measures.

Any reimbursement of such aid, together with payment of any interest which has accrued from the date on which the illegal aid was granted, calculated at the rate used as a reference for assessing regional aid schemes, must be made in accordance with Spanish law.

Pursuant to the Article 93 (2) procedure, the Commission hereby gives notice to the Spanish Government to forward its comments within one month of the date of publication of this notice.

The Commission also calls on the Spanish authorities immediately to inform the company receiving the aid in question that this procedure has been opened and apprise it of the consequences arising from the obligation to refund any undue aid received.

The Commission will be calling on the other Member States and interested parties, by publishing a notice in the *Official Journal of the European Communities*, to forward their remarks within the same time limit.'

The Commission hereby gives the other Member States and interested parties notice to submit their comments on the measures in question within one month from the date of publication of this notice to:

Commission of the European Communities,  
Rue de la Loi/Wetstraat 200,  
B-1049 Brussels.

*The comments will be communicated to the Spanish Government.*

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