

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 15 July 1997

concerning State aid in favour of 'Grupo de Empresas Alvarez' (GEA)

*(notified under document number C(1997) 2615)*

**(Only the Spanish text is authentic)**

**(Text with EEA relevance)**

(98/364/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 establishing the European Economic Area, and in particular the first subparagraph of Article 62(1)(a) thereof,

Having given notice in accordance with Article 93 to interested parties to submit their comments to it,

Whereas:

## I

On 15 November 1995, the Commission decided to open the Article 93(2) proceeding against aid which was awarded to GEA. GEA manufactures and sells tableware made of porcelain, earthenware and glass; it also produces bottles. GEA was in the past one of the most important Spanish tableware manufacturers. During the last five years, GEA's market share amounted to an average of 11,6 % within the Spanish market and of 0,64 % within the EU market. GEA has a workforce of 1 029. Its annual turnover amounted to approximately ESP 2 500 million in 1995 and 1996. The group is located in Vigo, province of Pontevedra in Galicia, a Spanish region in which the shipping, fishing and car industry are dominant and

which suffers, owing to the problems these industries are facing, a serious economic crisis and high unemployment. The region is considered an Objective 1 zone and eligible for regional aid within the meaning of Article 92(3)(a). After Citroen, GEA is the second-largest industrial employer in this area.

Until June 1991, GEA was wholly owned by the Spanish public holding INI. INI then decided to privatise the enterprise. One condition, however, was that INI should first clean up GEA, which had made significant losses during the previous years. Thus, INI paid aid which amounted to ECU 24 million in order to leave GEA free of debts. That aid, although not notified, was approved by the Commission in 1992 (State aid NN 15/92, doc. SEC(92) 1655). The approval was justified on the grounds of a marked decrease in production capacity, the severance of GEA's ties with INI and the fact of its location in an Article 92(3)(a) area.

After this approval, which was not subject to the fulfilment of any conditions, GEA had received further aid from INI which was not notified to, nor approved by, the Commission. This aid comprised a guarantee in 1992 which, at that time, entailed a potential risk of ESP 1 620 million and a direct grant of ESP 983 million in 1994 which was paid in order to discharge the earlier guarantee. In addition, the Commission was informed that the

regional authorities of Galicia were prepared to award a new guarantee amounting to ESP 2 500 million.

The Commission seriously doubted whether all the aid which evidently fell within the scope of Article 92(1) complied with the derogations as set out in Article 92(3); it therefore decided to initiate the Article 93(2) procedure in respect of:

- the guarantee amounting to ESP 1 620 million, awarded in 1992,
- the subsidy granted in 1994, amounting to ESP 983 million, and
- the probable new guarantee to be awarded by the regional authorities of Galicia amounting to ESP 2 500 million.

## II

By letter dated 26 January 1996, the Spanish authorities responded to the Commission's decision to commence the Article 93(2) proceeding. According to the Spanish authorities, neither the guarantee awarded in 1992 nor the payment of the lump sum in 1994 constituted aid within the meaning of Article 92(1) of the EC Treaty and Article 61 of the EEA Agreement. In both cases, INI acted as any private investor would have done under market conditions. In 1992, the risk of bankruptcy of GEA would have been very slight and the guarantee had only served to support the restructuring process of the enterprise by financing investment. As to the 1994 payment, the Spanish authorities admitted that GEA had been in a serious economic crisis since its privatisation in 1992 which had deteriorated in particular in 1994 since all efforts to render GEA viable had failed. Even at this stage, efforts to restructure the firm such as an early and smooth reduction of workforce and production capacities had been undertaken. The payment of ESP 983 million was designed to support these early efforts. Since those early efforts had failed, a restructuring plan would be drafted proposing drastic measures to restore the firm's viability. Once this plan was finalised, it would be immediately submitted to the Commission for a thorough assessment. The Spanish authorities considered, nevertheless, that the payment of ESP 983 million in 1994 was an advantageous deal for INI, since it relieved INI of any obligation to pay ESP 1 620 million by way of guarantee.

As regards the guarantee of ESP 2 500 million, the Spanish authorities stressed that, even though such grant could not be ruled out, no such guarantee had been

awarded yet and, if the autonomous regional authorities were to decide to do so, the Spanish authorities would notify it.

## III

By letter dated 30 July 1996, the Commission transmitted to the Spanish authorities the comments of the third parties (four different Spanish competitors of GEA and the Liaison Office of the European Ceramic Industry) which it had received on the occasion of the publication of the Commission's decision to initiate Article 93(2) proceedings<sup>(1)</sup>.

All the parties were of the opinion that the aid which GEA had received had led to important distortions of competition, since it had allowed GEA to offer its products at artificially low prices over a long period. They themselves as competitors could not compete anymore with these prices since they did not receive any support by the State. In support of this thesis, one competitor enclosed copies of advertisements of supermarket chains in which GEA's products were indeed offered at cheap prices.

One competitor, in addition, alleged that GEA in the meantime had received further aid in the form of guarantees covering loans totalling ESP 1 000 million. Those guarantees had not been notified to the Commission and would have to be added to the aid for which the Commission had opened the proceeding.

## IV

By letters dated 15 October 1996 and 24 October 1996, the Spanish authorities replied to the comments of the third parties. They confirmed that the regional authorities of Galicia, in April, had provided rescue aid in the form of guarantees covering credits up to a total of approximately ESP 700 million in order to keep GEA in business until the Commission had taken its final decision. Furthermore, another ESP 350 million had been awarded on guarantees to cover outstanding payments for the employees' salaries. The duration of those guarantees was first fixed at six months and then extended until June 1997, since the Commission had not yet arrived at a final decision. This aid would, however, have absolutely no effect on the market since it only served to cover credits which were necessary to cover the firm's running costs. According to the Spanish authorities, this rescue aid was based on the regional authorities' decree N 309/1995 of 23 November 1995 on incentives for the economic development and the promotion of entrepreneurial activities of the autonomous region of Galicia. This decree was notified to and approved by the Commission (State aid N 21/1995, Commission Decision of 31 December 1995). A precondition of the Commission's approval, however, was that rescue aid for firms exceeding the SME criteria (which is the case with GEA) would have to be notified individually.

<sup>(1)</sup> OJ C 144, 16. 5. 1996, p. 3.

For the rest, the Spanish authorities stressed again that both INI's guarantee in 1992 and the payment in 1994 should not be considered as aid within the meaning of Article 92(1) of the EC Treaty, since INI had acted as any private investor would have done. The Spanish authorities also emphasised that the guarantee amounting to ESP 2 500 million which the Commission had included in its proceeding had not been awarded yet.

As regards the alleged price-undercutting policy on the part of GEA, the Spanish authorities pointed out that GEA always sold its products at prices which matched its costs. In order to support this allegation, the Spanish authorities enclosed copies of GEA's bills to its clients, which demonstrated that the prices were higher than those charged by the supermarket chain for the product. According to the Spanish authorities, the cheap offers of GEA's products by the supermarkets might therefore have been part of a campaign to attract clients. For them, at least, these offers afforded no evidence that GEA was undercutting prices.

## V

In the meantime, several meetings between the Commission and the Spanish authorities had taken place, in which the Spanish authorities had submitted new documentation concerning GEA's economic state. The main objective was to inform the Commission about GEA's difficult economic situation and the plans of the regional government of Galicia to restore the firm's viability along the lines of the already announced restructuring plan which was, after early and unsuccessful attempts to render the firm viable, worked out in early 1996 and submitted to the Commission in August and enlarged in November 1996 and February 1997.

According to the documentation which was provided by the Spanish authorities, GEA had been making heavy losses after its privatisation in 1991. The company's overall debt was ESP 14 000 million in November 1996, whilst its equity was exhausted. The Spanish authorities stressed that, despite the situation, and owing to social considerations arising from the dramatic labour-market situation in Vigo, the regional authorities had felt obliged to keep the company in business, since GEA was, after Citroen, the second industrial employer in that area.

The restructuring plan which was submitted to the Commission aims at rationalising and restoring the viability of GEA for the future. In order to achieve this objective, the plan proposes, since the other gentler attempts to render the firm viable and to which the payment of ESP 983 million in 1994 was related had failed, drastic measures which can, in essence, be summarised as follows:

1. out of the six currently producing plants, two will be closed. One plant which is producing glass bottles and which is profit-making will be sold. The remaining three factories will be independent of each other;
2. significant reduction of debts and generation of funds, as follows:
  - (a) reduction of debts actually amounting to ESP 14 000 million, of which ESP 7 000 million are public debt through a suspension of payment proceeding in which the public and private creditors waive their claims by 50 % (the Spanish authorities had submitted a survey prepared by an independent lawyer which confirmed that a waiver of claims to such an extent is quite realistic and common practice in Spain in similar cases);
  - (b) two of the remaining factories which are situated in urban areas will be moved to other areas outside the centre of Vigo. The company's installations in Vigo will be sold at an estimated ESP 5 000 million (an appraisal of the premises which was submitted to the Commission and drafted by two different independent consultants even arrived at a figure of ESP 5 900 million). The negotiations for the sale of the land have already started;
  - (c) sale of the profit-making plant for ESP 1 000 million;
3. drastic cuts, as follows:
  - (a) reduction of workforce by 43 %, from 1 029, to 587 which will lead to a decrease of the share of personnel costs from 93 % of sales in 1995 to an estimated 40 to 45 % in 1997 and 1998;
  - (b) reduction of production capacity by 32 % from 23,7 million items to 16,1 million items;
  - (c) introduction of a central management structure for the three remaining undertakings in order to decrease management and commercial costs;
  - (d) further cost reduction due to a switch in the energy sources (tableware production is highly energy-intensive) from electricity to natural gas which will be possible in Vigo from 1997 onwards.

Through the implementation of the above measures, the plan expects the restructured group to break even between 1997 and 1998 and to yield positive results in the financial years thereafter, amounting to ESP 91 million in 1998 and ESP 200 million in 1999. The plan assumes sales of which the volume is expected to be the same as in the bad previous years (12 million units instead of 16 million in the better years) and a constant turnover amounting to an average of ESP 2 500 million. The overall restructuring costs are ESP 3 500 million. They consist mainly of costs for indemnities, complementary social costs for dismissed employees and costs for the transfer of the two factories to sites outside Vigo. The generation of funds through the sale of GEA's premises in Vigo and the waiver of debts will allow the firm to cover the restructuring costs completely by using the firm's own financial resources.

By letter dated 13 March 1997, the Spanish authorities informed the Commission that GEA was negotiating several contracts with altogether eight major customers (the names of the different firms is confidential) which would ensure long-term orders for a period of at least three years at a total of approximately ESP 3 500 million. In the same letter, the Commission was informed that GEA was going to be sold to a major porcelain producer, which was a private company — which demonstrated that there was confidence in GEA's future on the part of the private market. All this suggests that GEA's restructuring plan and its objectives regarding sales and turnover are realistic.

By letter dated 25 April 1997, the Commission was informed that the firm had renounced its claim on the regional authorities of Galicia for the guarantee worth ESP 2 500 million, and this is also the subject of the Article 93(2) proceeding. This demonstrated that the private banks which would have to provide GEA with new loans would trust in the firm's ability to implement a successful restructuring plan and to restore its viability. In the same letter, the Commission was informed that the regional authorities of Galicia had agreed to notify individually any future aid to GEA even if such aid was based on already approved general aid schemes.

Finally, by letter of 22 May 1997, the Spanish authorities informed the Commission that the regional authorities now had even gone beyond their commitment as communicated in their letter 25 April 1997, by refraining from granting any further financial aid to GEA in the future.

## VI

The Article 93(2) proceeding confirmed the Commission's view in commencing the procedure, namely that the guarantee which was awarded to GEA in 1992 amounting to ESP 1 620 million, and the subsidy of ESP 983 million for releasing the guarantee in 1994, constitute aid which may distort or threaten to distort competition within the meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement. No private investor would have awarded a guarantee to a loss-making enterprise like GEA without any security, as INI did in 1992. Moreover, it is hardly to be expected that a private enterprise which had just rid itself of a loss-making company would again invest in such a company.

Nevertheless, the current proceeding has also revealed that both the guarantee and the payment of the subsidy were closely linked since the payment enabled INI to discharge itself from the 1992 undertaking entered into on the granting of the guarantee, namely the risk of being obliged to pay ESP 1 620 million. From an economic view, this behaviour has to be regarded as a single event, and it cannot be denied that the payment of ESP 983

million, representing only 60 % of the risk which INI had undertaken in granting the guarantee, was behaviour such as any private company would have adopted in such a situation. Accordingly, the amount of aid to GEA which has to be taken into account when examining the guarantee given in 1992 is reduced to the payment of ESP 983 million, the amount which was actually paid by the guarantor.

It has also to be borne in mind that the guarantee of ESP 2 500 million, to be provided by the autonomous authorities of Galicia which was also covered by the scope of the procedure commenced by the Commission may be ignored, since it has been cancelled.

The aid could distort competition and affect trade between Member States. There is a brisk trading of goods in the tableware industry between Spain and other Member States. According to the information provided by Eurostat, in 1993, Spain exported 7 272 tons of tableware to other Member States, worth ECU 24,5 million, whereas it imported 5 813 tons of tableware worth ECU 27,5 million. In 1994, Spain exported 7 917 tons worth ECU 29 million and imported 6 577 tons worth ECU 28,5 million. Between January and October 1995, Spain exported 8 546 tons of tableware products worth ECU 32,6 million and imported between January and September 1995 7 844 tons worth ECU 43,3 million. Spain's share in the overall intra-Community trade in tableware goods stands at roughly 3 %. GEA, although not one of the EU's major producers of tableware, participates in this market. Thus, any grant may improve GEA's position in the common market to the detriment of other competitors which do not receive any State aid.

Since the aid was not part of any approved aid scheme, it was notifiable individually according to Article 93(3) of the Treaty. Spain did not comply with this requirement. Consequently, the aid was awarded illegally.

As to whether the aid qualifies for the exemptions under Article 92(2) or (3) of the EC Treaty, it has to be held that the exceptions set out in Article 92(2) do not apply in this case in view of the aid's specific features, and indeed of the fact that it does not even seek to satisfy the qualifying conditions.

As regards the exception under Article 92(3)(a) of the EC Treaty, GEA's location certainly is in an area where there is serious underemployment and where the standard of living is abnormally low. Aid to promote the economic development of those areas may, according to Article 92(3)(a), be considered to be compatible with the common market. In this case, however, the aid was certainly unable to contribute to the promotion of the economic development of the region, since it served to support unsuccessful attempts to enable the firm to stay in business without

further restructuring measures rather than to provide investment or to create jobs.

Nevertheless, the exception under Article 92(3)(c) of the Treaty indicates that the aid may be considered compatible with the common market, since it complies with the Community guidelines on State aid for rescuing and restructuring firms in difficulty<sup>(1)</sup>.

The aid which was awarded to GEA certainly has no immediate link with the restructuring plan now being proposed. It has, however, to be borne in mind that the efforts to make the firm viable started immediately after the firm's privatisation and the Commission's subsequent approval in 1992, and that the drastic restructuring plan now being proposed is only a consequence of the earlier and gentler measures, whose implementation obviously did not meet with success. The aid, therefore, has to be regarded in the context of a process in which the present restructuring plan represents the final, and most ambitious, effort to restore the firm's viability. Here, it has also to be remembered that the proposed restructuring will be carried out without any further commitment from public bodies.

The present restructuring plan proposes drastic cuts in costs. In addition, there is a strong reduction in capacity which, according to point 3.2.2(ii) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, is necessary in this case since the tableware market is suffering from overcapacity caused by a significant decline in consumption in 1992 and 1993 and an increased import penetration (Panorama of EU Industry 1997, point 9.20). The most significant cost saving will be achieved through the reduction of personnel by 43 %, from 1 029 to 587. This will lead to a reasonable proportion of personnel costs, namely 45 % of the firm's overall sales. Furthermore, production capacity will be reduced by 32 % from 23,7 million items to 16,1 million. The company also pointed to the opportunity for the reduction of structural costs such as energy costs. Thus the improvement in viability will, as is required by point 3.2.2(i) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, mainly result from the firm's own efforts and internal measures rather than from external factors such as price and demand increases, over which the company has no control.

Both the reduction of cost and the reduction of capacities will enable the firm to become profitable and viable again. The restructuring plan's assumption as to future turnover is based on the average turnover obtained in the past and should therefore be quite realistic. The fact that GEA is negotiating major contracts confirms this assumption. The restructuring plan's assumptions as to price increases use only normal inflation rates. Similarly, the

anticipated reduction of debt and the generation of funds appear quite realistic although they are based on external factors over which the company has no control. As regards the reduction of debts by waiver of claims, the Spanish authorities have provided evidence that in comparable cases creditors waive up to 50 % of their claims. The value of GEA's land and of the profit-making plant were estimated and confirmed by independent consultants. Nevertheless, it has to be observed that both the waiver of claims and the sale of the land which are now being negotiated are indispensable conditions for the success of the restructuring.

Another convincing sign that the firm may recover its viability is the fact that the firm has renounced the new guarantee amounting to ESP 2 500 million and will be in a position to finance the restructuring out of its own resources obtained by the generation of funds through the sale of land and the formal suspension of payments. At the same time, the waiver of the guarantee demonstrates that the banks which would have to provide GEA with further loans during the restructuring process have faith in the measures which will be carried out by the firm. This view is also confirmed by the fact that there is a new private company which was willing to take over the management and thus the entrepreneurial risk in GEA.

As to the ratio between the aid and the financial contribution by the investor, one has to conclude that there was, and will be, a significant financial contribution from the firm's own resources. Thus the immediate restructuring costs will amount to ESP 3 500 million and will be covered completely by the firm's own financial resources which it will obtain by the implementation of the restructuring plan, which entails the generation of funds (suspension of payment proceeding which will significantly reduce the firm's debt, sale of the firm's premises in Vigo and sale of the profit-making plant). Compared to this financial contribution and all the financial efforts the enterprise will have to make, the aid of ESP 983 million is fairly low.

Furthermore, one has to consider the social impact and the fact that GEA is one of the most important employers in a depressed area as contemplated in Article 92(3)(a). After Citroen, GEA is the second industrial employer in this region and the demise of GEA in this area would also mean a disappearance of important industrial activities there and would cause a chain reaction since, certainly, many of GEA's suppliers would be forced to shut down as well. Therefore, the maintenance of approximately 500 directly employed industrial staff (from the original number of 1 029), who will thereby maintain their purchasing power without resorting in future to public aid (the Spanish authorities have confirmed officially that there will be no further State aid to GEA), will also have

<sup>(1)</sup> OJ C 368, 23. 12. 1994, p. 12.

a knock-on effect on the survival of GEA's suppliers, who in turn will maintain their purchasing power; all this has to be taken into account if the Commission is to assess the consequences which sustaining a firm like GEA will have for the economic development of an Article 92(3)(a) area such as Vigo.

Furthermore, it has to be taken into account that, in the case of GEA's bankruptcy, the Commission would certainly not object to new aid in favour of any investor taking over the company's assets, if this new aid were based on approved aid schemes and would not exceed the permitted aid ceilings for the Article 92(3)(a) region of Vigo. In such an event, any new investor taking over GEA could obtain up to 60 % of regional investment aid. The regional authorities consider that such a procedure cannot be employed in this case, not only for political and/or social reasons but also because the company would, in the meantime, lose its customers and consequently lose any chance to regain viability. Nevertheless, the aid, ultimately amounting to ESP 983 million, is equal to less than 30 % of the immediate overall restructuring costs of ESP 3 500 million. The aid intensity is thus far lower than the aid that would be granted for a new investment, with far less serious social repercussions.

Moreover, it has to be borne in mind that GEA's market share is fairly low. In the Spanish market, it has averaged 11,6 % during the last five years, and in the Community market it was 0,64 % during the same period. Thus, the aid measures in favour of GEA are unlikely to have a major impact on the common market.

On top of that, it has to be taken into account that the Spanish authorities have confirmed that the autonomous government had withdrawn its promise to award the guarantee worth ESP 2 500 million and that, after a preliminary undertaking to notify individually any future aid to GEA in April 1997, it officially confirmed by letter dated 22 May 1997 that there will be no more State aid to the company. Accordingly, it is ensured that GEA will have to act in the market like any other private company. Future distortions of competition through injections of public money should therefore be excluded.

## VII

The rescue aid in the form of guarantees covering loans amounting to ESP 700 million and salary costs of ESP 350 million, awarded in 1995 pending termination of the Article 93(2) proceeding, also constitutes aid within the meaning of Article 92(1).

Contrary to the Spanish authorities' opinion, this aid was notifiable individually. The Commission's decision under which Decree 309/95 — the legal basis for the guarantees

— was approved, expressly stated that rescue aid to large enterprises had to be notified individually. This requirement was repeated in Article 8.5 of the Decree itself.

Nevertheless, although illegal as to its form, this aid may be approved as to substance, since it served to keep the company in business until the Commission had adopted a final Decision in its Article 93(2) proceeding. There are precedents in which the Commission has agreed to rescue aid (for example, in Nino Textile, State aid N 540/95, letter SG(93) D/16433, of 5 October 1993) because it was aware that the enterprise involved in the Article 93(2) proceeding would not survive economically and would consequently have to file for bankruptcy before the final decision on the aid if it was not supported by the State. A prerequisite for such an approval, however, is that the rescue aid complies with the Community guidelines on State aid for rescuing and restructuring of firms in difficulty. This requirement is fulfilled in the present case, since the aid, in substance, is based on an approved aid scheme of which the conditions for awarding rescue aid themselves comply with the guidelines. The duration of the guarantees was first envisaged to be six months, as is required in the guidelines. Since the Commission, owing to the complexity of the restructuring plan submitted by the Spanish authorities and to the need to enlarge it, would not arrive at a final decision within that period, the Spanish authorities extended their duration until June 1997. Moreover, it has to be borne in mind that the Spanish authorities expressly promised that the duration of the guarantees would not exceed the duration of the Commission's proceeding.

## VIII

Since GEA may restore its viability by the implementation of drastic restructuring measures and that it is located in a depressed area for the purposes of Article 92(3)(a), both the guarantee awarded in 1992 which was discharged by the payment of ESP 983 million in 1994 and the rescue aid totalling ESP 1 050 million can be accepted under the derogation in Article 92(3)(c), read in combination with the Community guidelines on State aid for rescuing and restructuring of firms in difficulty. Since GEA, however, has received aid as part of its privatization in 1991 the approval will be accompanied by the imposition of drastic conditions. A rigorous approach will have to be followed in respect of any new grant of State aid to the company. 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,

HAS ADOPTED THIS DECISION:

*Article 1*

The 1992 guarantee amounting to ESP 1 620 million which was discharged by the payment in 1994 of ESP 983 million, and the 1996 guarantees totalling ESP 1 050 million which were provided by the Spanish authorities to the enterprise Grupo de Empresas Alvarez (GEA) constitute illegal aid for the purposes of Article 93(3) of the EC Treaty because they were not notified to the Commission prior to their award. They 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.

The Spanish authorities shall submit to the Commission, until 31 December 2000, half yearly reports on the progress of the implementation of the restructuring plan as well as on GEA's economic data (business plans, profit and loss accounts) in order to enable it to verify if the

estimates contained in the plan are being adhered to and if the Spanish authorities' undertaking to refrain from granting any further State aid to the firm is being observed. The reports shall be submitted to the Commission at half yearly intervals in March or October at the latest.

*Article 2*

The Spanish authorities shall inform the Commission, within two months of notification of this Decision, of the measures they have taken to comply therewith.

*Article 3*

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 15 July 1997.

*For the Commission*

Emma BONINO

*Member of the Commission*