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## Information and Notices

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## I

(Information)

## COMMISSION

Rate of interest applied by the European Monetary Cooperation Fund for its operations in ecus: 5,75 % for June 1994

Ecu (\*)

1 June 1994

(94/C 151/01)

Currency amount for one unit:

Belgian and Luxembourg franc	39,7213	United States dollar	1,17397
Danish krone	7,58150	Canadian dollar	1,62595
German mark	1,92942	Japanese yen	122,797
Greek drachma	285,744	Swiss franc	1,64321
Spanish peseta	159,096	Norwegian krone	8,36865
French franc	6,59771	Swedish krona	9,21097
Irish pound	0,793223	Finnish markka	6,39931
Italian lira	1868,95	Austrian schilling	13,5711
Dutch guilder	2,16374	Icelandic krona	83,0114
Portuguese escudo	200,268	Australian dollar	1,58430
Pound sterling	0,775307	New Zealand dollar	1,97472
		South African rand	4,26533

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day. Users of the service should do as follows:

- call telex number Brussels 23789;
- give their own telex code;
- type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the écu;
- the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

*Note:* The Commission also has an automatic telex answering service (No 21791) and an automatic fax answering service (No 296 10 97) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

(\*) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).  
 Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).  
 Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).  
 Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).  
 Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).  
 Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

## Average prices and representative prices for table wines at the various marketing centres

(94/C 151/02)

(Established on 31 May 1994 for the application of Article 30 (1) of Regulation (EEC) No 822/87)

Type of wine and the various marketing centres	ECU per % vol/hl	Type of wine and the various marketing centres	ECU per % vol/hl
<b>R I</b>		<b>A I</b>	
Heraklion	No quotation	Athens	No quotation
Patras	No quotation	Heraklion	No quotation
Requena	No quotation	Patras	No quotation
Reus	No quotation	Alcázar de San Juan	2,023
Villafranca del Bierzo	No quotation (1)	Almendralejo	No quotation (1)
Bastia	No quotation	Medina del Campo	No quotation (1)
Béziers	3,096	Ribadavia	No quotation
Montpellier	3,107	Villafranca del Penedés	No quotation
Narbonne	3,132	Villar del Arzobispo	No quotation (1)
Nîmes	No quotation	Villarrobledo	No quotation (1)
Perpignan	3,021	Bordeaux	No quotation
Asti	No quotation	Nantes	No quotation
Florence	No quotation	Bari	1,978
Lecce	No quotation	Cagliari	No quotation
Pescara	2,066	Chieti	1,758
Reggio Emilia	2,374	Ravenna (Lugo, Faenze)	2,198
Treviso	2,154	Trapani (Alcarno)	1,846
Verona (for local wines)	2,550	Treviso	2,154
Representative price	2,931	Representative price	1,992
<b>R II</b>			
Heraklion	No quotation		
Patras	No quotation		
Calatayud	No quotation		
Falset	No quotation		
Jumilla	No quotation (1)		
Navalcarnero	No quotation (1)		
Requena	No quotation		
Toro	No quotation		
Villena	No quotation (1)		
Bastia	No quotation	<b>A II</b>	
Brignoles	No quotation	Rheinfalz (Oberhaardt)	42,890
Bari	1,978	Rheinhessen (Hügelland)	40,885
Barletta	No quotation	The wine-growing region of the Luxembourg Moselle	No quotation (1)
Cagliari	No quotation	Representative price	42,071
Lecce	No quotation		
Taranto	No quotation		
Representative price	1,978		
	ECU/hl	<b>A III</b>	
		Mosel-Rheingau	No quotation
<b>R III</b>		The wine-growing region of the Luxembourg Moselle	No quotation
Rheinfalz-Rheinhessen (Hügelland)	No quotation	Representative price	No quotation

(1) Quotation not taken into account in accordance with Article 10 of Regulation (EEC) No 2682/77.

## STATE AID

C 12/94 (NN 11/94)

Italy

(94/C 151/03)

(Text with EEA relevance)

*(Articles 92 to 94 of the Treaty establishing the European Community)***Commission notice pursuant to Article 93 (2) of the EC Treaty to other Member States and other parties concerned regarding aid which Italy has decided to grant to Enichem SpA**

By means of the letter reproduced below, the Commission informed the Italian Government of its decision to open the Article 93 (2) procedure.

The Commission was informed from press reports in November 1992 that the public holding ENI was going to recapitalize its chemical subholding Enichem with an injection of Lit 1 000 billion.

The Commission sent a letter dated 26 November 1992 to the Italian authorities, requesting information about the said operation.

The Italian authorities replied claiming that the injection was simply the fulfilment of a legal obligation set out in the agreement constituting Enimont (now Enichem). The Commission opposed this argument, as the injection appeared a free choice of the shareholder, who had had in fact the possibility to escape such an obligation.

The Italian authorities finally replied with letters dated 19 November 1993, 31 December 1993 and 5 January 1994, providing the Commission with information regarding the measure concerned, the situation of the company and of the market. Further elements were submitted in several meetings held with representatives of Enichem in Brussels and Rome.

Enichem belongs to the companies to be monitored, during the next three years, in their debt-reduction process, according to the Andreatta-Van Miert Agreement of July 1993 concerning certain public undertakings in Italy. However, this agreement foresees that, as far as restructuring and debt-reduction are concerned, which are likely to involve State aid, the individual treatment of such cases within the Community's State aid rules is not prejudiced.

**1. General situation of Enichem**

Enichem is the chemical subgroup of Italy's State holding ENI. It is active in the production and distribution of a large range of chemical products, from basic

to fine and speciality chemicals. The major business is in basic chemicals, materials, fibres, elastomers and detergents, where the company is among the main European producers.

In 1992 Enichem exported about 55 % of its production, of which about 43 % was to other European countries.

The share capital of Enichem SpA is about 99,8 % indirectly held by ENI. From its side, the company is controlling some 100 companies, of which half are foreign.

The following table contains the main consolidated figures of the last three years, showing the poor overall condition of the Enichem group.

	<i>(Lit billion)</i>		
	1990	1991	1992
Total turnover	15 060	13 424	11 155
Net operative margin	743	77	- 308
Net loss	- 68	- 722	- 1 542
Equity	5 179	4 496	3 935
Total debt	14 526	13 257	14 207
Net financial debt	8 375	7 908	8 083

In December 1992 the company employed about 33 000 people.

**2. Recapitalization measures**

Enichem SpA was recapitalized with Lit 1 000 billion in October 1992 by its major shareholders ENI and SCI. A further injection of Lit 794 billion was carried out recently in December 1993.

**3. Assessment**

In assessing the measure described above, the Commission will apply the market economy investor principle on the evaluation of money flows between the

State/owner and its public companies as developed in its communication on public undertakings of 28 July 1993 <sup>(1)</sup>.

### 3.1. Existence of the aid

#### Public nature of the funds invested

Enichem is owned, since November 1990, by ENI, partly directly and partly through Società Chimica Internazionale (SCI), an investment holding company in the ENI Group, 99 % of whose share capital is held by AGIP and SNAM, and 1 % by ENI. AGIP and SNAM are wholly owned by ENI. A minor part of the share capital of Enichem is floating on the market (0,57 % until September 1993, even less at today, after a public offer of purchase launched by ENI).

ENI is an industrial holding 100 % owned by Italy's Ministry of Treasury. Therefore any decision of ENI to invest in its subsidiaries and any subsequent lack of return on such investments produces a corresponding effect on the return that ENI can provide to its State shareholder.

The public nature of the funds invested in Enichem's different recapitalizations can therefore be presumed.

#### Comparison with the behaviour of a market economy investor

As largely confirmed by the historic approach of the Commission and by Community Jurisprudence <sup>(2)</sup>, the test used to ascertain the existence or otherwise of State aid in a transaction is that of the market economy investor principle. This states that aid is present in a transaction where it would not have been undertaken by a private investor operating under normal market economy conditions.

As concerns especially public participations in the share capital of a company, the Commission considers that there is a presumption of aid when the financial situation of the company, and particularly the structure and the amount of its indebtedness are such as to preclude a normal return (in either dividends or capital gains) from the invested capital within a reasonable time <sup>(3)</sup>.

The Enichem's recapitalizations made by the public shareholder must be considered in the light of the circumstances as outlined above. On the one hand, the ENI financial holding situation was historically not substantially negative; on the other hand, however, Enichem's financial structure and activity forecast were poor, also taking into account the market situation in which the company is operating.

To that extent it is necessary to underline the overall difficult status of the chemical industry, which has lasted since the end of the 1980's.

The overall reduction in demand, accompanied by the relatively higher costs of energy and labour and by the resulting increase in the competition of non-European products has produced a situation of overcapacity in the west European market. All major European producers were affected in different degrees from this situation, which obliged the undertakings to a thorough restructuring of the production units with an inevitable reduction in their respective capacities.

The negative situation of Enichem which is caused by the insufficient adaptation to the abovementioned changes in the market is summarized in the figures set out in the preceding paragraph. The high losses have led to a critical financial situation, expressed by the worsening of the debt equity ratio index. The injections made have partly rebalanced the situation, but are insufficient to solve the basic economic problem of the company, as long as the basic economic structure is not rationalized.

The future perspectives of the company may and must be linked to a thorough restructuring at commercial, organization and productive levels, which should lead to a global repositioning of the company on the market.

It appears from the information in the hands of the Commission that such a process was already the intention of the company at the time of the capital injection of 1992, which amounted to a total of Lit 1 000 billion. However it seems that no sufficient restructuring actions which could justify the investment of such an amount were then carried out. This appears, at least in a major part, as being rather more a financial support aiming to cover losses and to relieve the poor finances of the company. In this respect any presumed aid should be considered as operating aid.

The last injection of Lit 794 billion appears to be a further relief to the company's accounts after the losses estimated for 1993. However the Commission is aware of the fact that a global plan of restructuring for the group is being elaborated. Nevertheless a detailed

<sup>(1)</sup> OJ No C 307, 13. 11. 1993.

<sup>(2)</sup> See Commission Communication to the Member States of 28 July 1993 on State aids to public undertakings — OJ No C 307, 13. 11. 1993.

<sup>(3)</sup> See Commission Communication to the Member States on public participations — EC Bulletin No 9, 1984.

restructuring plan, demonstrating the future viability of the company, has not been submitted, so far, to the Commission.

In this respect, even considering the normal relationship between a holding (ENI) and a subsidiary (Enichem), it is justified to question if a private investor would decide to invest his capital, without assuring himself of the sufficiency and viability aspects of such a plan.

General information has been provided to the Commission, showing future radical changes in the structure, in the capacity and in the position of Enichem on the market. This should allow the company on the one hand to reduce significantly the fixed costs, on the other hand to reduce its indebtedness and consequently the financial charges.

The assessment of the presence of State aids in the total recapitalization, as for its comparison with the behaviour of a private investor in the same situation, is based on the analysis of a return on invested capital. In this respect the Commission does not have, at this stage, the necessary elements allowing it to apply the usual evaluations. However considering the present situation of the company, the losses, which were also significant in 1993, and the probable amount of the costs of a restructuring plan, a sufficient level of return on the total injected capital, under normal conditions and in an overall long run view, appear to be doubtful. Also the Commission cannot, on the basis of the information available, verify that the restructuring would lead to viability at a reduced level of activity, so that part of the injected capital could find a return acceptable to a private market economy investor.

#### Effect on Community trade

Enichem is the major Italian chemical company, and ranks among the 10 major European chemical producers. It has a position of west European market leader in several products, being olefines, materials, fibres, elastomers. Its consolidated figures for 1992 show that 43,1 % of the total production, i.e. Lit 4 300 billion, was exported to other European countries.

Given the size of the company and the important trading between Member States in these products, it can be concluded that the measure does affect intra-Community trade.

In conclusion, the decision to recapitalize Enichem is doubtful to have been taken under conditions acceptable to a private investor in a market economy. As the funds were invested by the public shareholders to restructure a

company trading under heavy economic and financial difficulties, in a sector suffering from overcapacity, such an operation is likely to distort trade in the common market. Therefore, on the basis of the information presently at the disposal of the Commission, the global amount of Lit 1 794 is presumed to be a State aid as defined in Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement.

#### 3.2. *Compatibility of the aid with the common market*

Article 92 of the EC Treaty, in subparagraphs 2 and 3, foresees certain types of aid that are compatible with the common market.

Given the nature of the operation, Articles 92 (2) and 92 (3) (b) are not applicable to the aids in question.

Given the diversity of the group's operations and locations, and as the measures have no regional objective, only the derogation foreseen in Article 92 (3) (c), in so far 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 aids specifically aiming to permit Enichem to continue in business and to finance a restructuring project to restore the company's viability. The Commission must then examine and assess such measures under the specific rules on the matter.

The above measures do not seem to fulfil the requirements to be considered as rescue aids.

They have therefore to be considered as restructuring aids. Thus, the assessment of the Commission about their compatibility is based on elements like the restoration of the viability of the company, the evolution of the market share and the contribution of the beneficiary of the aid to the financing of the restructuring plan.

In the context of the restructuring, the Italian authorities provided certain figures about the closures of productive sites with significant reductions of capacity and of the workforce. However further information is needed to ascertain that the company will achieve viability at the end of the restructuring process. Therefore, a derogation in this respect is to be excluded, at this stage.

#### 4. Conclusions

In summary, the two recapitalizations of Enichem, globally amounting to Lit 1 794 billion, are at this stage presumed to be State aid within the meaning of Article 92 (1) of the EC Treaty and of Article 61 (1) of the EEA Agreement, and must therefore be inquired in order to verify their existence. Furthermore such measures cannot, at this stage, be assessed as being compatible with the common market or with the functioning of the EEA Agreement, for lack of information in sufficient detail. Given their nature, such compatibility could only be possibly established pursuant to Article 92 (3) (c). They would moreover be illegal aid as they were implemented before the Commission had come to a final decision.

The Commission has therefore decided to initiate the procedure provided for in Article 93 (2) in respect of the aid measures granted to Enichem.

The Commission hereby gives the Italian government notice, as part of the Article 93 (2) EC procedure, to submit its comments within 30 days from the date of the present letter. Moreover, the Commission requests that the Italian authorities provide it with a copy of a restructuring plan as approved by Enichem's shareholders. Furthermore, detailed financial forecasts (broken down across all expense categories) for the Group as a whole (for a period which is sufficient to enable a judgement of the financial viability of the Group to be made); financial forecasts for each major operating segment; indications of factory production capacities and actual production; complete and detailed assumptions underlying all the projections; analyses of the costs and benefits of the restructuring measures; an assessment of Enichem's current and future markets split between products and geographic areas; full details of all investment plans; analyses of any other agreements with third parties having a significant impact on Enichem's viability should be provided.

The Commission reserves the right to request further information once it has received and analysed these items.

The Commission would also take this opportunity to remind the Italian government that, in the event of a non- or incomplete response to a request for information, at either the initiation or extension of an Article 93 (2) procedure, such non-compliance could result in the taking of a negative decision.

The Commission would further inform the Italian government that it is giving the other Member States, the EFTA States and third parties concerned, by publishing a notice in the *Official Journal of the European Communities*, notice to submit their comments.

The Commission would draw the Italian government's attention to the letter it sent all Member States on 3 November 1983 on the subject of their obligations pursuant to Article 93 (3) of the EC Treaty and the communication it published in the *Official Journal of the European Communities*, No C 318 of 24 November 1983, page 3 in which it reminded Member States that where they grant aid unlawfully, i.e. before the Article 93 (2) procedure has resulted in a final decision, the Commission may require them to recover it.'

The Commission hereby gives the other Member States and other parties concerned notice to submit their comments on the measures in question within 30 days of the date of publication of this notice to:

Commission of the European Communities,  
200, rue de la Loi,  
B-1049 Brussels.

*The comments will be communicated to Italy.*



## STATE AID

C 13/94 (NN 13/94)

Italy

(94/C 151/04)

(Text with EEA relevance)

*(Articles 92 to 94 of the Treaty establishing the European Community)***Commission notice pursuant to Article 93 (2) of the EC Treaty to other Member States and other parties concerned regarding aid which Italy has decided to grant to Enichem Agricoltura SpA**

By means of the letter reproduced below, the Commission informed the Italian Government of its decision to open the Article 93 (2) procedure.

'The Commission has learnt from press reports in June 1993 of a capital injection, decided by Enichem Agricoltura's (from now on EA) shareholders' assembly, whose aim was to compensate for the losses of the year 1992 and to reset the share capital to an amount of Lit 200 billion.

The Commission sent a letter dated 28 June 1993 to the Italian authorities, requesting information about the said operation.

The Italian authorities replied officially with three letters from the Permanent Representation, dated respectively 23 September 1993, 3 December 1993 and 5 January 1994.

The Commission received further clarifications in several meetings with the company's representatives.

EA belongs to the companies to be monitored, during the next three years, in their debt-reduction process, according to the Andreatta-Van Miert Agreement of July 1993 concerning certain public undertakings in Italy. However, this agreement foresees that, as far as restructuring and debt-reduction are concerned, which are likely to involve State aid, the individual treatment of such cases within the Community's State aid rules is not prejudiced.

**1. General situation of Enichem Agricoltura**

EA is active in the production and distribution of goods, services and technologies for agriculture, in the framework of ENI's chemical sector. More than 90 % of its activity is concentrated in the fertilizer industry, the remaining part concerns activities in pesticides, machinery, seeds and various services. In 1992 it exported about 26 % of its production, 10 % to other EC countries.

The share capital of EA is 100 % indirectly held by ENI.

EA controls a number of companies, which realized an aggregated turnover of about Lit 306 billion in 1992.

The following table contains the main consolidated figures of the last three years, showing the poor overall condition of the EA group:

	<i>(Lit billion)</i>		
	1990	1991	1992
Total turnover	722	1 220	1 192
Net operative margin	- 35	- 169	- 235
Net loss	- 124	- 472	- 666
Equity	81	- 95	- 459
Total debt	522	1 560	1 817
Net financial debt (Enichem Agricoltura SpA)	281	1 032	1 274

In December 1992 the company employed 4 404 people.

**2. Recapitalization measures**

EA was subjected, in recent years, to various capital injections, more precisely Lit 198 billion in 1991, Lit 316 billion in 1992 and Lit 756 billion in 1993.

In total EA was recapitalized with Lit 1 270 billion during this period.

**3. Assessment**

In assessing the measure described above, the Commission will apply the market economy investor principle on the evaluation of money flows between the State/owner and its public companies as developed in its communication on public undertakings of 28 July 1993 <sup>(1)</sup>.

<sup>(1)</sup> OJ No C 307, 13. 11. 1993.

### 3.1. Existence of the aid

#### Public nature of the funds invested

EA is wholly owned since 4 October 1991 by Società Chimica Internazionale (SCI), an investment holding company in the ENI Group, 99 % of whose share capital is held by AGIP and SNAM, and 1 % by ENI. AGIP and SNAM are wholly owned by ENI. From November 1990 up to 4 October 1991 the whole capital of EA was held by Enichem Partecipazioni SpA, the same company being wholly owned by ENI, partly directly and partly through SCI.

ENI is an industrial holding 100 % owned by Italy's Ministry of Treasury. Therefore any decision of ENI to invest in its subsidiaries and any subsequent lack of return on such investments produces a corresponding effect on the return that ENI can provide to its State shareholder.

The public nature of the funds invested in EA's different recapitalizations can therefore be presumed.

#### Comparison with the behaviour of a market economy investor

As largely confirmed by the historic approach of the Commission and by Community Jurisprudence<sup>(1)</sup>, the test used to ascertain the existence or otherwise of State aid in a transaction is that of the market economy investor principle. This states that aid is present in a transaction where it would not have been undertaken by a private investor operating under normal market economy conditions.

As concerns especially public participations in the share capital of a company, the Commission considers that there is a presumption of aid when the financial situation of the company, and particularly the structure and the amount of its indebtedness are such as to preclude a normal return (in either dividends or capital gains) from the invested capital within a reasonable time<sup>(2)</sup>.

The EA's recapitalization made by the public shareholders must be considered in the light of the circumstances as outlined above. On the one hand, the ENI financial holding situation was historically not substantially negative; on the other hand, however, EA's financial structure and activity forecasts were poor, taking also into account the market situation in which the company is operating.

To that extent, it is necessary to underline the difficult status of the fertilizer industry in all developed countries, and especially in the EC.

The reduction in the consumption of fertilizers is considered to be chronic, and destined to continue in the next few years at a significant rate, mostly as a consequence of the new CAP which provides for a strong reduction of the production surpluses and a renewed push towards extensive cultivation. At the same time the increasing pressure of the East and extra-European countries has produced a situation of overcapacity, which affected in different degrees all major European producers, obliging the undertakings to a thorough restructuring of the production units with an inevitable reduction in their respective capacities.

The negative situation of EA, which is caused by the insufficient adaptation to the abovementioned changes in the market, is summarized in the figures set out in the preceding paragraph. The high losses have led to capital-deficits (negative share capital) and to indebtedness increases partially but not sufficiently compensated by continuous recapitalizations.

The future perspectives of the company may and must be linked to a thorough restructuring at commercial, organization and productive levels, which should lead to a global repositioning of the company in a still evolving sector.

It appears from the information in the hands of the Commission that such a process was already the intention of the company at the time of the capital injections of 1991 and 1992, which amounted to a total of Lit 514 billion. However, in practice, no sufficient restructuring plan which could justify the investment of such an amount has been carried out. This appears, at least in a major part, as being rather more a financial support aiming to cover losses and to ensure the survival of a company which otherwise would go bankrupt, and is therefore to be considered as an operating aid.

The last injection of Lit 756 billion appears essentially due to the need to cover the loss of the years 1992 and 1993. However the Commission is aware of the fact that a global plan of restructuring for the group is being elaborated. Nevertheless a detailed restructuring plan, demonstrating the future viability of the company, has not been submitted, so far, to the Commission.

<sup>(1)</sup> See Commission Communication to the Member States of 28 July 1993 on State aids to public undertakings — OJ No C 307, 13. 11. 1993.

<sup>(2)</sup> See Commission Communication to the Member States on public participations — EC Bulletin No 9, 1984.

In this respect, even considering the normal relationship between a holding (ENI) and a subsidiary (EA), it is justified to question if a private investor would decide to invest his capital, without assuring himself of the sufficiency and viability aspects of such a plan.

General information has been provided to the Commission, showing future radical changes in the structure, in the capacity and in the position of EA on the market, which should allow the company to achieve a position of limited but stable profitability in the framework of a reduction of its activities on the foreign market and a confirmation of its share in the Italian one. Moreover some estimates concerning the future results of EA at the end of the restructuring process, have been provided by the Italian authorities.

The assessment of the presence of State aids in the total recapitalization, as for its comparison with the behaviour of a private investor in the same situation, is based on the analysis of a return on invested capital. In this respect the Commission does not have, at this stage, the necessary elements allowing it to apply the usual evaluations. Nevertheless even considering a rough evaluation, based on the flow of economic results, partly final and partly estimated on the basis of the information provided by the Italian authorities, a sufficient level of return on the total injected capital, under normal conditions and in an overall long run view, does not appear to be possible. As a matter of fact the funds injected appear to have been mostly used to cover the past losses and to reconstitute the share capital. Also the Commission cannot, on the basis of the information available, verify that the restructuring would lead to viability at a reduced level of activity, so that part of the injected capital could find a return acceptable to a private market economy investor.

#### Affect on Community trade

EA's consolidated figures for 1992 show that 10,1 % of the total production, i.e. Lit 121 billion, was exported to other EC countries.

On the Italian fertilizer market, EA accounts for 50 % of the total demand. At EC level EA is placed amongst the seven largest operators, which cover together about 80 % of the Community production. Its Community market share can be estimated as being around 10 % (including Italy).

All this considered, it can be concluded that the measure does affect intra-Community trade.

In conclusion, the decision to recapitalize EA appears not to have been taken under conditions acceptable to a private investor in a market economy. As the funds were invested by the public shareholders to rescue and restructure a company trading under heavy economic and financial difficulties, in a sector suffering from over-

capacity, such an operation is likely to distort trade in the common market. Therefore the global amount of Lit 1 270 has to be considered a State aid as defined in Article 92 (1) of the EC Treaty and Article 61 (1) of the EEA Agreement.

#### 3.2. *Compatibility of the aid with the common market*

Article 92 of the EC Treaty, in subparagraphs 2 and 3, foresees certain types of aid that are compatible with the common market.

Given the nature of the operation, Articles 92 (2) and 92 (3) (b) are not applicable to the aids in question.

Given the diversity of the group's operations and locations, and as the measures have no regional objective, only the derogation foreseen in Article 92 (3) (c), in so far 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 aids specifically aiming to permit EA to continue in business, avoiding bankruptcy, and to finance a restructuring project to restore the company's viability. The Commission must then examine and assess such measures under the specific rules on the matter.

The above measures do not seem to fulfil the requirements to be considered rescue aids.

They have therefore to be considered as restructuring aids. Thus the assessment of the Commission about their compatibility is based on elements like the restoration of the viability of the company, the evolution of the market share and the contribution of the beneficiary of the aid to the financing of the restructuring plan.

In the context of the restructuring, the Italian authorities provided certain figures about the closures of productive sites with significant reductions of capacity and of the workforce. They moreover provided some estimate concerning the future results of EA. However further information is needed to ascertain that the company will achieve viability at the end of the restructuring process. Therefore a derogation in this respect is to be excluded, at this stage. Only the presentation and the realization of

a detailed restructuring plan, which could secure the future viability of the company without affecting the trading conditions to an extent contrary to the common interest, could justify a derogation.

#### 4. Conclusions

In summary, the several recapitalizations of EA, globally amounting to Lit 1 270 billion, are to be considered State aid within the meaning of Article 92 (1) of the EC Treaty and of Article 61 (1) of the EEA Agreement. Such measures cannot, at this stage, be assessed as being compatible with the common market or with the functioning of the EEA Agreement, for lack of information in sufficient detail. Given their nature, such compatibility could only be possibly established pursuant to Article 92 (3) (c). They are moreover to be considered illegal aid as they were implemented before the Commission had come to a final decision.

The Commission has therefore decided to initiate the procedure provided for in Article 93 (2) in respect of the aid measures granted to EA.

The Commission hereby gives the Italian government notice, as part of the Article 93 (2) EC procedure, to submit its comments within 30 days from the date of the present letter. Moreover, the Commission requests that the Italian authorities provide it with a copy of the restructuring plan as approved by EA's shareholders. Furthermore, detailed financial forecasts (broken down across all expense categories) for the Group as a whole (for a period which is sufficient to enable a judgement of the financial viability of the Group to be made); financial forecasts for each major operating segment; indications of factory production capacities and actual production; complete and detailed assumptions underlying all the projections; analyses of the costs and benefits created by each of the restructuring measures; an assessment of EA's current and future markets split between products and geographic areas; full details of all investment plans; analyses of any other agreements with third parties

having a significant impact on EA's viability should be provided.

The Commission reserves the right to request further information once it has received and analysed these items.

The Commission would also take this opportunity to remind the Italian government that, in the event of a non- or incomplete response to a request for information, at either the initiation or extension of an Article 93 (2) procedure, such non-compliance could result in the taking of a negative decision.

The Commission would further inform the Italian government that it is giving the other Member States, the EFTA States and third parties concerned, by publishing a notice in the *Official Journal of the European Communities*, notice to submit their comments.

The Commission would draw the Italian government's attention to the letter it sent all Member States on 3 November 1983 on the subject of their obligations pursuant to Article 93 (3) of the EC Treaty and the communication it published in the *Official Journal of the European Communities*, No C 318 of 24 November 1983, page 3 in which it reminded Member States that where they grant aid unlawfully, i.e. before the Article 93 (2) procedure has resulted in a final decision, the Commission may require them to recover it.<sup>7</sup>

The Commission hereby gives the other Member States and other parties concerned notice to submit their comments on the measures in question within 30 days of the date of publication of this notice to:

Commission of the European Communities,  
200, rue de la Loi,  
B-1049 Brussels.

*The comments will be communicated to Italy.*

**Prior notification of a concentration**  
**(Case No IV/M.460 — Holdercim/Cedest)**

(94/C 151/05)

(Text with EEA relevance)

1. On 24 May 1994, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>(1)</sup> by which Holdercim controlled by 'Holderbank' (Financière Glorus AG (HOFI)), itself controlled by Thomas Schmidheiny, acquires within the meaning of Article 3 (1) (b) of the Regulation control of 84,5 % of the shares of Cedest (Ciments et Engrais de Dannes et de l'Est) held by CGIP (Compagnie Générale d'Industrie et de Participation), by a share purchase. The fertilizer and abrasive granule activities of Cedest will be sold to CGIP before the acquisition, Holdercim retaining the construction materials business (cement, ready-to-use concrete and granulates).

2. The business activities of the undertakings concerned are:

- for Holdercim: production of cement, concrete, granulates and chemical additives for cement,
- for Cedest: construction materials (cement, ready-to-use concrete and granulates), fertilizers, abrasive granules.

3. Upon preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (fax No (32 2) 296 43 01) or by post, under reference number IV/M.460 — Holdercim/Cedest, to the following address:

Commission of the European Communities,  
Directorate-General for Competition (DG IV),  
Merger Task Force,  
Avenue de Cortenberg 150,  
B-1049 Brussels.

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<sup>(1)</sup> OJ No L 395, 30. 12. 1989; Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

**Prior notification of a concentration**  
**(Case No IV/M.443 — Voith/Sulzer)**

(94/C 151/06)

(Text with EEA relevance)

1. On 26 May 1994, the Commission received a notification of a proposed concentration pursuant to Article 4 of a Council Regulation (EEC) No 4064/89<sup>(1)</sup> by which the undertakings J. M. Voith GmbH and Sulzer AG acquire within the meaning of Article 3 (1) (b) of the Regulation joint control of Voith-Sulzer Papiertechnik GmbH by way of purchase of shares in a newly created company constituting a joint venture.

2. The business activities of the undertakings concerned are:

- for J. M. Voith GmbH: papermaking machinery manufacturing and pulp preparation technology, water turbines, ship engines, propulsion technology,
- for Sulzer AG: surface technology, medical technology, weaving machines, pumps, turbomachinery, hydraulics, building technology, environmental technology, substance flow.

3. Upon preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (fax No (32 2) 296 43 01) or by post, under reference number IV/M.443 — Voith/Sulzer, to the following address:

Commission of the European Communities,  
Directorate-General for Competition (DG IV),  
Merger Task Force,  
Avenue de Cortenberg 150,  
B-1049 Brussels.

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<sup>(1)</sup> OJ No L 395, 30. 12. 1989; Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.

## II

*(Preparatory Acts)*

## COMMISSION

**Proposal for a Council Regulation (EC) on measures to be taken in dealing with certain beneficiaries of operations financed by the Guarantee Section of the EAGGF**

(94/C 151/07)

COM(94) 122 final — 94/0015(CNS)

*(Submitted by the Commission on 26 April 1994)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the proposal from the Commission,

Whereas, at its meeting on 21 and 22 June 1993 in Copenhagen, the European Council stressed the importance of pursuing the campaign against fraud and irregularities affecting the Community budget; whereas there should be a reinforcement of those measures designed to ensure that the Community funds intended for the implementation of the CAP are not granted to persons or companies which do not offer all the guarantees of reliability as to the proper execution of the operations concerned;

Whereas Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy<sup>(1)</sup>, as last amended by Regulation (EEC) No 2048/88<sup>(2)</sup>, lays down, in particular, that Member States are under an obligation to take the measures necessary to ensure that transactions financed by the Fund are actually carried out and are properly executed, and to prevent and deal with irregularities;

Whereas Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field, and repealing Regu-

lation (EEC) No 283/72<sup>(3)</sup>, lays down, among other things, that with a view to systematically ascertaining the nature of fraudulent practices and to recovering sums wrongly paid, cases of irregularity and the judicial or administrative procedures against persons who have committed irregularities are to be communicated at regular intervals to the Commission by the Member States;

Whereas these provisions need to be supplemented by a Community system allowing the national authorities to identify, in particular in connection with tendering procedures, the grant of export refunds or sales at reduced prices of intervention products, operators who have deliberately or as a result of serious negligence committed an irregularity prejudicial to Community funds or who are suspected on solid grounds of having done so; whereas, on that basis, there must be determined, in the light of the seriousness of the offence and depending on whether it has been established or suspected, a series of varied measures ranging from reinforced controls to the exclusion of the operators concerned from taking part in operations to be determined when their fraudulent actions are established;

Whereas, while providing operators with a maximum of guarantees, it is necessary to lay down that Member States take the necessary measures to ensure that their provisions relating to the confidentiality of judicial investigations are adapted, if necessary, so as not to prevent this Regulation from being effectively applied;

Whereas the present system must be a supplement to the specific provisions already existing or to be adopted in the future under the common agricultural policy with a view to preventing irregularities, in particular those provisions relating to controls and sanctions established by the Commission as part of its powers confirmed by the Court of Justice,

<sup>(1)</sup> OJ No L 94, 28. 4. 1970, p. 13.

<sup>(2)</sup> OJ No L 185, 15. 7. 1988, p. 1.

<sup>(3)</sup> OJ No L 67, 14. 3. 1991, p. 11.

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A Community system is hereby established designed to identify and make known to the competent authorities of the Member States, as rapidly as possible, operators presenting, on the grounds of experience acquired with them as to the proper execution of their previous obligations, a risk of non-reliability in connection with operations financed by the Guidance Section of the EAGGF and in particular with tendering procedures, export refunds and sales at reduced prices of intervention products.

2. For the purposes of this Regulation, 'operators presenting a risk of non-reliability' means:

- (a) operators, whether natural or legal persons, who have deliberately or through serious negligence committed an irregularity in respect of relevant Community provisions and who have unjustly benefited from a financial advantage or who have attempted to benefit therefrom, and
- (b) those who are the subject of well-founded suspicions in this respect.

*Article 2*

The identification procedures and the rules relating to notification shall be implemented at the initiative of the Member State in which the risk of the operator's non-reliability was identified or, where appropriate, at the Commission's initiative.

*Article 3*

1. Member States shall take the following measures to deal with the operators referred to in Article 1 (2) (a):

- (a) intensified checking of the operations pursued by the operator;

or

- (b) suspension of the payment of the amounts in respect of operations in progress to be determined and, where appropriate, of the release of the security relating thereto, until an irregularity within the meaning of Article 1 (2) (a) has been determined;

or

- (c) their exclusion for a period and from operations to be determined.

2. In the case of operators as referred to in Article 1 (2) (b), only the measures set out in the previous paragraph under (a) and (b) shall apply.

3. Where, within a tendering procedure, the Commission itself awards a contract, it shall, as appropriate, take one or other of the measures set out in paragraph 1.

*Article 4*

1. The measures referred to in Article 3 must comply with the following principles:

- (a) the prior hearing and the right of appeal of the operator concerned;
- (b) proportionality between the irregularity, whether committed or suspected, and one or other of the measures referred to in Article 3 (1), subject to the provisions to be established in accordance with the procedure laid down in Article 5;
- (c) non-discrimination among operators.

2. The provisions of Article 10 (1), (2) and (4) of Regulation (EEC) No 595/91 on the observance of the principle of confidentiality and professional secrecy shall be applicable under this Regulation.

3. In the case of operators as referred to in Article 1 (2) (b), Member States shall take the necessary measures to ensure that national provisions providing for the confidentiality of judicial investigations are adapted, if necessary, so as not to prevent this Regulation from being applied effectively.

*Article 5*

The detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 13 of Regulation (EEC) No 729/70. They shall include provisions on notifications to be made by the Member State.

*Article 6*

This Regulation shall be supplementary to the specific provisions under the common agricultural policy.

*Article 7*

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.



## III

*(Notices)*

## COMMISSION

## EUROPEAN ECONOMIC INTEREST GROUPING

Notices published pursuant to Council Regulation (EEC) No 2137/85 of 25 July 1985 <sup>(1)</sup> —  
Formation

(94/C 151/08)

1. **Name of grouping:** Société Interrégionale Caritas  
GEIE
2. **Date of registration of grouping:** 18. 3. 1994
3. **Place of registration of grouping:**
  - (a) **Member State:** L
  - (b) **Place:** L-1017 Luxembourg
4. **Registration number of grouping:** D 8
5. **Publication(s):**
  - (a) **Full title of publication:** Amtsblatt des Großherzogtums Luxemburg
  - (b) **Name and address of publisher:** Amtsblatt des Großherzogtums Luxemburg, Recueil spécial des sociétés et associations
  - (c) **Date of publication:** 18. 4. 1994

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<sup>(1)</sup> OJ No L 199, 31. 7. 1985, p. 1.

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## CORRIGENDA

**Corrigendum to Phare — computer system — Notice of invitation to tender issued by the Commission of the European Communities on behalf of the Czech and Slovak Republic for a project financed by the Phare Programme**

*(Official Journal of the European Communities No C 125 of 6 May 1994)*

(94/C 151/09)

On page 7 the following points in the text are altered as follows:

**Project title and number: 9107 0103 002**

Laboratory Equipment for the Office of Standards of the Czech Republic

**2. Subject**

Supply, an additional 4 lots:

lot 5: laser base for diagnostics and comparison of fundamental parameters of lasers;

lot 6: equipment for comparison of laser-interferometric system;

lot 7: equipment for standardization of the moment of force;

lot 8: equipment for the primary standard of the AC voltage ratio.

**3. Invitation to tender dossier**

The complete tender dossier may be obtained free of charge from:

c) Ministry of Economy, Centre for Foreign Assistance, for the attention of Mr Kazimour, Staroměstské nám. 6, CZ-110 01 Prague 1.

**4. Tenders**

Should arrive, at the latest, on 4. 7. 1994 (10.00), local time, at: Ministry of Economy, Centre for Foreign Assistance, for the attention of Mr Kazimour, Staroměstské nám. 6, CZ-110 01 Prague 1.

They will be opened in public session on 4. 7. 1994 (14.00), local time, at:

Ministry of Economy, Centre for Foreign Assistance, Staroměstské nám. 6, CZ-110 01 Prague 1.

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