II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 November 1988

on aid decided by the Italian Government for investments in the public flat-glass industry (Veneziana Vetro)

(Only the Italian text is authentic)

(89/373/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given notice in accordance with the above Article to interested parties to submit their comments, and having regard to those comments,

Whereas :

I

In 1985, a regrouping took place in the Italian public glass industry. The public holding Ente Participazioni e Finanziamento Industria Manufatturiera (EFIM) took over the shares held by another public holding Ente Nazionale Idrocarburi (ENI) in the glass industries Società Italiana Vetro (SIV), Veneziana Vetro, Veneziana Conterie and Foschi. From 2 October 1985 on, EFIM was the only shareholder in these companies. Within the framework of this new capital structure and following ministerial instructions, SIV became the leader of the public-sector glass Group. The regrouping was completed on 28 July 1986, when SIV took over Veneziana Vetro from their mutual shareholder EFIM.

On 28 November 1985, the Italian Government authorized EFIM to issue bond loans in the amount of Lit 510 000 million, Lit 41 000 million of which for investments in the glass industry [1]. The legal basis for this authorization was Law-Decree 547 of 19 October 1985 [2] later converted into Law 749 of 20 December 1985 [3], earmarked for increasing investment funds in annual instalments corresponding to capital shares repaid by the State upon expiry. The interest on prefinancing as well as that on the bond issue and all other charges are paid by the State. On 16 December 1985 EFIM passed on Lit 20 500 million of the proceeds of these bond loans to SIV in the form of an advance on future increase in share capital. An additional Lit 19 475 million were passed on to SIV in the same form in the beginning of 1986.

On 18 September 1987, the Italian Government again authorized EFIM to issue bond loans, this time in the amount of Lit 150 000 million, Lit 50 000 million of which for the construction of a float line for the production of flat glass by Veneziana Vetro [4].

Neither the first nor the second authorization by the Italian Government to EFIM to issue bonds at State expense in favour of investments in the public glass industry were notified to the Commission pursuant to Article 93 (3) of the EEC Treaty.

[1] *Gazzeta Ufficiale della Repubblica Italiana* No 6, 9. 1. 196, p. 40.
[2] *Gazzetta Ufficiale della Repubblica Italana* No 248, 21. 10. 1985, p. 7555.
[3] *Gazzetta Ufficiale della Repubblica Italiana* No 299, 20. 12. 1985, p. 9180.
[4] *Gazzetta Ufficiale della Repubblica Italiana* No 245, 20. 10. 1987, p. 36.

II

The Commission, having learned of the Italian Government's decision to regroup the public glass industry and to provide funds for a four-year investment plan, requested all necessary information on these financial transfers by telex dated 12 March 1986.

The Italian Government replied by telex dated 2 June 1986, indicating that the 1985-1988 glass plan resulted from the regrouping in this sector, that the public glass industry had been profitable since 1974 and that the provision of funds mentioned by the Commission was a normal shareholder's investment operation.

The Commission, being still unable to assess the financial transfers in question, then requested detailed information on their form, amounts, destination, objectives and year of payment as well as on the corresponding investments and restructuring measures.

The Italian Government replied by letter of 13 October 1986 stating that in 1985 EFIM had taken over ENI's 50 % stake in SIV as well as ENI's 100 % shareholdings in the three smaller companies Veneziana Vetro, Veneziana Conterie and Foschi. The price for this take-over had been established by arbitrators at Lit 95 400 million, this being the sum of Lit 121 300 million for the stake in SIV and minus Lit 25 900 million for Veneziana Vetro and Foschi. EFIM had then provided Lit 41 000 million additional capital to SIV for investments in the flat glass sector amounting to Lit 266 400 million in 1986-1988. These investments would include Lit 60 500 million for a processing plant for the motor-car industry in Spain and Lit 91 000 million for Veneziana Vetro. The Italian Government enclosed SIV's annual report for 1985.

The Commission, taking note of Veneziana Vetro's apparently unhealthy financial position and alarmed by reports on the effect of this company's investments on production capacity for basic flat glass, then requested the last three annual reports and the restructuring plan for Veneziana Vetro as well as information on the effect of its investments on production capacity and trade, by letter dated 6 November 1986.

The Italian Government replied by telex dated 20 January 1987, stating that the favourable situation in the public glass industry did not call for a restructuring plan, that there had been no financial intervention by the Government and that any future intervention would be notified in advance to the Commission. The Italian Government therefore did not consider it necessary to provide the requested information on investments and financial results to the Commission. It was furthermore stressed that the negative valuation of Veneziana Vetro could not be equated with debts, other reasons for this 'bad will' being the obsolete state of this company's plants and lack of adequately trained manpower.

On the basis of the incomplete information thus obtained from the Italian Government and from public sources, the Commission took the view that the subscription of Lit 41 000 million new capital to the flat glass industry, an unspecified amount of which appeared to be destined for Veneziana Vetro's Lit 91 000 million investment, contained elements of State aid, in view notably of the bad financial position of Veneziana Vetro ; this company had made a loss of Lit 300 million in 1982, Lit 8 500 million in 1983, Lit 4 300 million in 1984 and Lit 6 300 million in 1985. The Commission believed that these aid elements were likely to distort competition and affect trade between Member States within the meaning of Article 92 (1), the more float line for the production of flat glass at Porto Marghera, which would increase this company's production capacity. As the Italian Government had provided no justification for the aid, the Commission was not able to determine whether one of the exemptions to the general incompatibility with the common market provided for in Article 92 might be applicable to the aid. The Commission therefore decided to initiate the procedure provided for in Article 93 (2) and, by letter dated 7 April 1987, gave notice to the Italian Government to submit its observations.

III

The Italian Government submitted its observations under the procedure by letter dated 21 July 1987, by a Memorandum dated 19 November 1987 and by letter dated 14 December 1987.

The Italian Government denied the existence of any link between the grant of capital to SIV and the losses of Veneziana Vetro and believed that the Commission was not taking into account the importance of SIV's Investments, among others for the restructuring and rationalization of Veneziana Vetro's flat glass production.

The Italian Government specified the details of the 1985 take-over of ENI's stake in the glass sector by EFIM and the subsequent transfer of EFIM's stake in Veneziana Vetro to SIV. It was explained that between 2 May 1985 and 28 July 1986, i.e. the period in which EFIM was the direct owner of Veneziana Vetro. Lit 8 200 million of the bad will transferred by ENI had been used by EFIM to cover Veneziana Vetro's losses. The remaining Lit 18 700 million 'bad-will' had been transferred to SIV together with Veneziana Vetro on 28 July 1986. SIV had used Lit 1 200 million to cover additional losses incurred by Veneziana Vetro and had used an additional Lit 16 000 million to increase that company's capital. Apart from the 'bad-will' obtained from ENI, EFIM had received Lit 41 000 million through a bond loan and had provided Lit 40 000 million thereof to SIV as new capital ; the remaining Lit 1 000 million would cover the cost of the emission and administration of the loan. The gradual

redemption of the loan would be refunded by the State via an increase in EFIM's 'endowment fund'. SIV had decided to invest Lit 246 000 million in the period 1986-1988, to be financed by means of Lit 40 000 million capital, Lit 100 000 million commercial loans and Lit 96 000 million self-financing. The Investments in question were aimed at improvements in the productive structure, product development, renovation and modernization of existing plant and diffusion of innovative product and process technology. For Veneziana Vetro in particular, the interventions planned concerned restructuring, substitution of new plant for obsolete installations, training of personnel and the use of new advanced technology, thereby hardly altering productive capacity,

In its letter dated 14 December 1987, the Italian Government claimed that SIV intended to invest Lit 530 000 million of which Lit 80 000 million for the renovation of a float line, Lit 140 000 million for automation and modernization of existing plant and Lit 310 000 million investment as a follow-up to development activities within the group. EFIM had decided to raise Lit 75 000 million on the private capital market in 1988 for the financing of this four-year investment programme, Lit 40 000 million of which by issuing shares and Lit 35 000 million by issuing a debenture loan. The Italian Government furthermore submitted information to show that there would be a need for additional flat glass production plant.

In the context of the consultation of other interested parties, the Governments of five other Member States, an industry federation and two manufacturing groups in the same sector and the beneficiary SIV, submitted observations. A technical discussion with representatives of EFIM and SIV took place on 6 October 1987.

On 20 October 1987, the *Gazzetta Ufficiale della Repubblica Italiana* carried the Italian Government's decision to authorize EFIM to issue additional bonds at the expense of the State, of which an amount of Lit 50 000 million would be destined for the construction of Veneziana Vetro's float line at Porto Marghera.

This decision had never been mentioned by the Italian Government, by EFIM or by SIV within the framework of the Article 93 (2) procedure. The Commission therefore requested information regarding this new decision by letter dated 27 October 1987.

Still not having received the requested information, the Commission decided on 16 March 1988 to extend the procedure provided for in Article 93 (2), which it had opened regarding the Lit 41 000 million, in order to cover the additional Lit 50 000 million for Veneziana Vetro as well. The Commission took the opinion that both interventions seemed to contain elements of State aid relating to the same investment, that these elements were likely to distort competition and affect trade between Member States within the meaning of Article 92 (1) and that none of the exemptions to the general incompatibility of such aid with the common market appeared applicable to it.

By letter dated 29 March 1988, the Commission gave notice to the Italian Government to submit its observations within the framework of the Article 93 (2) procedure.

IV

The Italian Government at first belatedly replied to the Commission's request for information regarding the second intervention by letter dated 29 March 1988. The Italian Government expressed its opinion that an increase of EFIM's endowment fund, financed by means of a debenture loan at the expense of the State, does not contain elements of State aid and need therefore not be notified on the basis of Article 93 (3). The transfer of these funds to Veneziana Vetro — which had not yet taken place — would certainly be compatible with the Treaty, in view of this company's positive performance.

By letter dated 26 July 1988, the Italian Government submitted its observations within the framework of the extended procedure. For the first time it presented the last three annual accounts of Veneziana Vetro and an overview of the financial relations between SIV and Veneziana Vetro in order to prove that no part of the Lit 41 000 million raised by EFIM in 1985/86 had been transferred to Veneziana Vetro in any form other than as a loan on conditions identical to those prevailing on the market.

With respect to the Lit 50 000 million decided in 1987, the Italian Government repeated that this sum so far had only been used to increase EFIM's endowment fund and therefore could not have affected trading conditions within the Community.

It was also stated that SIV had spilt up Veneziana Vetro into two separate companies: the old Veneziana Vetro with no economic activity and a new Società Veneziana Vetro, established on 15 April 1987, to which the old Veneziana Vetro's assets were transferred on 1 August 1987.

SIV and the old Veneziana Vetro merged in December 1987, thus permitting SIV to take advantage fiscally of Veneziana Vetro's cumulated losses of the last five years which amounted to almost Lit 15 000 million.

In the context of the consultation of other interested parties within the extended procedure, the Governments of three other Member States, an industry federation and two manufacturing groups in the same sector submitted information.

V

The provision of public funds to companies in the form of subscriptions of capital may involve elements of State aid. In order to verify whether such a provision of public funds is aid in the case where the undertaking is owned by the public authorities, it would be appropriate, ignoring any social elements or regional or sectoral policy, to consider whether under similar circumstances a private shareholder would go ahead with such an injection of capital in the same conditions on the basis of expected profitability.

In this context the Commission notes the differences between the financial situation of SIV and that of Veneziana Vetro.

SIV made a profit of Lit 1 100 million in 1982, Lit 400 million in 1983, Lit 200 million in 1984, Lit 2 000 million in 1985 and Lit 13 200 million in 1986, representing 0,5 %, 0,2 % 0,1 %, 0,6 % and 3,6 % of its corresponding annual turnover. SIV's value was established at Lit 242 600 million by arbitrators in 1985.

Veneziano Vetro made losses ammounting to Lit 300 million in 1982, Lit 8 500 million in 1983, Lit 4 300 million in 1984, Lit 6 300 million in 1985 and Lit 1 700 million in 1986, representing 2,5 %, 30,7 %, 14,8 %, 21,2 % and 6,8 % of its corresponding annual turnover. These losses were covered by its public shareholder, first ENI, then EFIM, then SIV. Its value was established at minus Lit 24 900 million by arbitrators in 1985, in view of expected losses and restructuring costs. The Italian Government itself pointed out to the Commission the obsolete nature of Veneziano Vetro's plant and its unqualified manpower for modern machinery.

It is the Commission's opinion that the provision of additional capital out of public funds to a company in such circumstances is likely to involve elements of State aid, as follows from the reflections set out in the Commission's communication to the Member States of 17 September 1984 concerning the application of Articles 92 and 93 of the EEC Treaty to public holdings in company capital.

With respect to the authorization to EFIM by the Italian Government on 28 November 1985 to issue Lit 41 000 million bonds, the proceeds of which were earmarked for investment in the public glass industry, the Commission notes that EFIM used Lit 39 975 million of this sum to increase SIV's share-capital. Within the framework of the Article 93(2) procedure, the Italian Government submitted evidence showing that — quite apart from the remainder of the bad-will taken over from ENI via EFIM — SIV made Lit 43 361 million available to Veneziana Vetro in 1987, but only in the form of loans at an interest rate equal to that on loans at an interest rate equal to that on loans Veneziana Vetro obtained from banks in the same year.

It is the Commission's opinion that the provision of Lit 39 975 million by EFIM to SIV in the form of additional share-capital does not differ from the behaviour of private investors in view of SIV's basically sound financial position and its increasing profitability in relation to itsinvestment needs. Consequently, in accordance with the views in the Commission communication to the Member States of 17 September 1984 concerning the application of Articles 92 and 93 of the EEC Treaty to public holdings in company capital, this provision of share-capital is not aid within the meaning of Article 92 (1) of the EEC Treaty.

Neither can the provision of Lit 43 365 million by SIV to Veneziana Vetro in the forms of loans at market conditions as described by the Italian Government in its letter of 26 July 1988 be considered to contain elements of State aid. The Commission reserves the right, however, to reconsider its position should there be any change in the terms of the loans.

With respect to the Italian Government's authorization to EFIM in 1987 to provide Lit 50 million to Veneziana Vetro in the form of share-capital, it is the Commission's opinion that such an intervention would involve elements of State aid, in view of Veneziana Vetro's weak financial position, notably its losses and its equity in relation to its investment needs.

Within the framework of the procedure, the Italian Governement repeatedly stated that EFIM so far had only used the proceeds from the Lit 50 000 million debenture-loan to increase its own endowment fund, without however altering the final destination of this sum, this being the financing of a new float line for the production of flat glass by Veneziana Vetro.

Consequently, the authorization to EFIM of 18 September 1987 to issue Lit 50 000 million bonds at the expense of the Italian Government to be used for investments by Veneziana Vetro implies elements of State aid within the meaning of Article 92 (1) of the EEC Treaty because it enables Veneziana Vetro to be relived, by means of State resources, of part of the cost of investment which it would normally have to bear.

By not notifying its decision as a draft to the Commission, the Italian Government failed to fulfil its obligations pursuant to Article 93 (3) of the EEC Treaty. At least since 7 April 1987, when the Italian Government was informed of the reasons why the Commission had decided to initiate the Article 93 (2) procedure regarding the provision of Lit 41 000 million to the Italian public flat glass industry, this Government knew that the Commission regarded injctions of capital out of public sources for Veneziana Vetro as aid. The aid decded is thus impropre rin any event for breach of procedure ; it is moreover incompatible with the common market within the meaning of Article 92.

VI

Whereas SIV mainly produces and processes float glass, especially for the motor-car and construction industries, Veneziana Vetro before the construction of its float line only produced drawn glass.

Flat glass is traded between Member States ; Italy exported 143 000 tonnes of flatglass (drawn glass, float glass, insulating glass, safety glass, glass mirror, Nimexe codes 70.05-70.09) to nine other Member States, Spain and Portugal in 1983, 150 000 tonnes in 1984, 179 000 tonnes in 1985 and 193 000 tonne in 1986, whereas the corresponding imports amounted to 141 000 tonnes, 160 000 tonnes, 141 000 tonnes and 152 000 tonnes. The SIV group — which now incldes Veneziana Vetro — participates in this trade by exporting half of its production mainly to other Member States.

There is competition between flat glass manufacturers. According to the information available to the Commission, there were in 1987 29 float lines in the Community of twelve, belonging to six main groups, one of which is SIV ; there were also five sheet tanks (drawn glass). Six float lines and one sheet tank were located in Italy ; one of these float lines had stopped producing. Veneziano Vetro's last sheet glass tank also stopped production in 1987 and its new float line commenced production in 1988.

Where financial assistance from the State strengthens the position of certain enterprises compared with that of others competing with them in the Community, it must be deemed to affect those other enterprises.

Consequently, the aid which the Italian Government has decided to grant to Venzao Vetro will affect trade between Member States and distort or threaten to distort competition within the meaning of Article 92 (1).

Article 92 (1) provides that, in principle, any aid fulfilling the criteria set out therein is incompatible with the common market.

The exceptions to this principle set out in Article 92 (2) of the Treaty are inapplicable in this case in view of the nature and objectives of the proposed aid.

Article 92 (3) of the Treaty lists the aid which may be considered compatible with the common market. Compatibility with the Treaty msut be viewed in the context of the Community as a whole and not in that of a single Member State. In order to ensure the proper functioning of the common market and taking into account the principles laid down in Article 3 (f) of the Treaty, the execptions to the principle of Article 92 (1) set out in paragraph 3 of that Article must be interpreted strictly when any aid scheme or any individual aid award is examined.

In particular, they may be applied only where the Commission establishes that, without the aid, market forces alone would be insufficient to induce potential recipients to act in such a manner as to contribute to the attainment of one of the objectives sought.

To apply the exceptions to cases which do not contribute to the attainment of such an objective, or where the aid is not essential to that end, would be tantamount to granting undue advantages to the industries or firms of certain Member States, the financial position of which would be bolstered, and might affect trade between Member States and distort competition without this being justified in any way by the common interest within the meaning of Article 92 (3).

The Italian Government has been unable to give, or the Commission to discover any justification for a finding that the aid in question falls into any of the categories of exception provided for in Article 92 (3).

With regard to the exceptions provided for in Article 92 (3) (a) and (c) for aid that promotes or facilitates the development of certain areas, it should be noted that the Italian Government has not advanced any considerations of a regional nature for the grant of the aid in question. With respect to the construction of the new float line at Porto Marghera, it should be noted that the standard of living there is not abnormally low and that there is no serious underemployment there within the meaning of the exception provided for in Article 92 (3) (a), nor is the area in which Porto Marghera is located at present included among those receiving special reigonal assistance within the meaning of the exception provided for in Article 92 (3) (c).

As to the exceptions provided for in Article 92 (3) (b), the aid in favour of the construction of a new float line is intended neither to promote the execution of an important project of common European interest nor to remedy a serious distrubance in the Italian economy ; neither has the Italian Government advanced any arguments in favour of a possible application of these exceptions.

As to the exceptions provided for in Article 92 (3) (c) in favour of aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, it should be noted that after years of under-utilization of capacity and heavy price competition, demand for flat glass at present equals potential supplies and that profitability in this sector has increased markedly ; SIV's results bear witness to this development.

Future demand for flat glass depends very much on the requirements of its two principal outlets, the motorcar and construction industries. Future supply of flat glass will be influenced by new productive capacity under construction of or planned in Luxembourg, France, the United Kingdom and Spain, as well as in countries outside the Community.

Within the framework of the procedure, the Italian Governmentat first claimed that the construction of the new float line at Porto Marghera would leave productive capacities unchanged, later that capacities would increase by only 10 % without however providing any figures to substantiate these statements.

In the present situation, every new float line adds 2-3 % to installed capacity in the Community. Even if one takes into account the closure of an obsolete 90 tonnes per day sheet tank of Veneziana Vetro in February 1986 and the closure of its second 75 tonnes per day sheet tank in 1987, the new float line at Porto Marghera will clearly increase productive capacity in quantitative and qualitative terms, as it can produce 350 tonnes per day in various ranges. SIV's yearly report on 1986 also confirms that there will be an increase in capacity, but does not believe that it will disrupt the market. SIV will process most of Veneziana Vetro's output, partly in new processing plant in Spain and Belgium, mainly for the motorcar industry.

It has been the consistent policy of the Commission to ensure that structural development in the flat glass sector, given its vulnerability, is not perturbed by State aid. The Commission therefore determined by Decisions 84/487/EEC (1) and 84/507/EEC (2) that aid measures proposed respectively by the Netherlands and Luxembourg Government for the setting-up of additional flat glass production and processing plant were incompatible with the common market and should therefore not be granted. Neither did the Commission find aid measures for the renovation of eisting float lines compatible with the common market and therefore, by Decisions 86/593/EEC (3) and 87/195/EEC (4) required that the Belgian Government refrain from granting aid to such renovations, even despite the innovatory aspects of the investments concerned. The validity of this approach was confirmed by the Court of Justice in its recent Judgment of 8 March 1988 in Joined Cases 62 and 72/87.

The aid will alter trading conditions in the Community. SIV itself, having become the leader of the newly formed public sector glass Group, stated in its report on 1985: 'The restructuring of what has become EFIM-controlled Veneziaqna Vetro is particularly significant to the Group. Since this company is now included in SIV's development plans, it will give SIV an important production and marketing base in northern italy ready to supply European markets'.

Even with the improved situation in the flat glass industry, it is the Commission's finding that the aid which the Italian Government has decided to grant to Veneziana Vetro, given its effects on production and on intra-Community trade, cannot be considered to facilitate the development of this sector without adversely affecting trading conditions to an extend contrary to the common interest.

Consequently, the Italian Government's aid does not satisfy the conditions necessary for the application of one of the exceptions set out in Article 92 (3) of the EEC Treaty.

Lastly, it should be noted that, in view of the assurances given by the Italian authorities by letter dated 26 July 1988, the Commission has based this Decision on the assumption that the Italian Government decided to grant the aid in question of Lit 50 000 million to Veneziana Vetro but has not actually paid out this sum, not even indirectly through EFIM. There would therefore appear to be no grounds for inluding any obligation to recover the aid, the sole requirement being that the Italian Government refrain from implementing the measure in question.

HAS ADOPTED THIS DECISION:

Article 1

The Italian Government may not award the aid of Lit 50 000 million, published in the *Gazzetta Ufficiale della Repubblica Italiana* of 20 October 1987, to the undertaking Veneziana Vetro at Porto Marghera.

Article 2

The Italian Government shall inform the Commission within two months of the date of notification of this Decision of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 November 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission

(1) OJ No L 276, 19. 10. 1984, p. 37 (Maasglas).
(2) OJ No L 283, 27. 10. 1984, p. 39 (Luxguard).
(3) OJ No L 342, 5. 12. 1986, p. 32 (St Roch).
(4) OJ No L 77, 19. 3. 1987, p. 47 (Glaverbel).