II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 December 1993

concerning aid granted by the Spanish Government to Merco, a company

(Only the Spanish text is authentic)

(94/343/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 Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats [1], as last amended by Regulation (EC) No 3179/93 [2], and in particular Article 33 thereof, and the corresponding provisions of the other regulations on the common organization of the agricultural markets,

Having, in accordance with the first subparagraph of Article 93 (2), given notice to the parties concerned to submit their comments and having regard to those comments,

Whereas :

I

By letters dated 17 February and 20 March 1992, the Office of the Spanish Permanent Representative to the European Communities notified the Commission of aid paid to Merco, a company.

By telex messages of 1 April and 24 July 1992, the Commission requested further information. This information was submitted to the Commission by letters dated 27 May, 1 July and 31 July 1992.

By letter dated 27 May 1992, the Spanish authorities informed the Commission that capital of Pta 9 billion had been injected into Merco on 31 March 1992 by the State, which is a shareholder in that company. In addition, it stated that a second instalment of Pta 9 billion and a possible third residual injection of a then unspecified amount were planned. The decision to inject this capital had been taken by the Spanish Government on 23 January 1992 at the same time as a decision to liquidate the company.

By letters dated 1 and 31 July 1992, the Spanish authorities provided additional information indicating that the total liquidation of the company and the cessation of all its activities had been decided on 23 January 1992. They also indicated that liquidation was at a very advanced stage and would be completed in the short term.

They specified that the injections of capital were intended and would be intended to cover compensation payments to staff, accumulated losses and losses on current trading.

On the basis of the information available, the Commission took the view that the injections of capital decided upon as part of the measures for the liquidation of the company could be considered as measures intended, *inter alia*, given the relative size of the sums involved, to cover the losses accumulated by Merco and to pay its creditors, in particular, the financial institutions. This aid, in the form of injections of capital, enabled the latter to remain protected from normal commercial risks by permitting them to recuperate their capital, something which would have been impossible under normal market conditions. The aid therefore constituted an implicit State guarantee to creditors without which they would not have provided the capital required to enable the company to continue its operations. Such aid could be construed as the retrospective payment of operating aid to the company in the form of bank credits granted without any prospect of normal repayment. Under such circumstances, a private operator operating under the normal conditions obtaining in a market economy would not inject such capital. In the

[1] OJ No 172, 30. 9. 1966, p. 3025/66.
[2] OJ No L 285, 20. 11. 1993, p. 9.

opinion of the Commission, therefore, it constitutes aid within the meaning of Article 92 (1) of the Treaty.

Since the Spanish Government did not suspend the measures in question pursuant to Article 93 (3) and did not await a Commission decision before making the first injection of capital of Pta 9 billion on 31 March 1992, the payment of this aid in the form of an injection of capital constitutes an infringement of Article 93 (3) and the aid was therefore granted unlawfully. Since the Commission also considered that the aid referred to in the decision of the Spanish Government of 23 January 1992 did not fulfil the conditions laid down in Article 92 (3) for eligibility for one of the derogations referred to in that Article, the Commission decided to initiate the procedure laid down in Article 93 (2).

By letter dated 22 October 1992, the Commission gave notice to the Spanish Government, the other Member States and other interested third parties to submit their comments (1).

II

The Spanish Government submitted its comments by letters dated 23 November 1992, 4 January 1993 and 8 September 1993 and at meetings held on 8 July 1993 and 8 September 1993. It contended that the injections of capital in question did not constitute State aid within the meaning of Article 92 of the Treaty.

According to the Spanish authorities, the payments were intended and would be intended to be used for a controlled liquidation of the company. They maintain that this has permitted the sale of the company's assets at their maximum value, the payment of compensation to staff for the termination of their contracts, the negotiation and payment of financial credits and the payment of commercial creditors. In particular, according to the Spanish authorities, it has enabled the recovery of assets worth Pta 12 billion, the payment to the creditors, mainly small farmers, of Pta 5 billion and the payment of compensation to the employees of Pta 1,5 billion.

(1) OJ No C 291, 7. 11. 1992, p. 7.

Furthermore, in their letter dated 14 January 1993, the Spanish authorities provided the Commission with a balance sheet for the company showing the following:

(in Pta million)

	31. 12. 1991	30. 9. 1992	difference
Fixed assets	3 429	2 228	– 1 201
Stocks	7 992	739	– 7 252
Creditors	11 080	5 537	– 6 542
Provisions	– 4 545	– 2 608	1 936

The Spanish authorities do not consider these payments to be operating aid since the main aim of the injections of capital is not to finance debts but to recover assets of a greater value. In order to clarify the details given in the letter dated 14 January 1993, meetings between the Commission and the Spanish authorities were held on 8 July and 8 September 1993.

By letter dated 10 September 1993, the Spanish authorities supplied the Commission with additional information. This indicated that a further injection of capital of Pta 9 billion had been made in 1992 and that a decision concerning a further payment of Pta 5,8 billion had been taken.

Furthermore, it also showed that a part of Merco's debt to the financial institutions was a result of the payments it had made to farmers for products supplied to the company.

The Spanish authorities do not consider these injections of capital to constitute an implicit State guarantee to the creditors concerned. According to those authorities, the financial institutions acted as they would have acted with a private company and to claim otherwise is to deny that financial institutions can be mistaken and is to ignore the fact that financial institutions lend additional funds to enterprises of a certain size in economic difficulties for refinancing and to ensure the recovery of all or part of a debt.

With regard to producers, the Spanish authorities state that they did not await the Commission's decision before making the injections of capital because any delay would have led to greater losses and would have placed the company in an untenable position with regard to farmers and to its employees.

III

Mercorsa (Mercados en origen de productos agrarios), a publicly owned company, was set up in 1972 by Ministry of Agriculture Decree No 3178/70 of 15 October 1970. In 1987, it changed its company and trading names to become Merco.

All the shares are held by the public authorities, 69,3 % of the capital being held by the Dirección General del Patrimonio del Estado (Ministry of Finance) and 30,7 % by Forppa (a public body responsible to the Ministry of Agriculture).

Merco was involved in the marketing of agricultural produce. It had capital of Pta 8,782 billion and 900 employees. It operated in the 55 agricultural produce purchasing centres established in the zones of production and selling the agricultural produce concerned both in Spain and abroad.

In 1990, it had a turnover of approximately Pta 71 billion, making it one of the largest companies in Spain.

Under the name of Uteco-Jaen, Merco was the third largest olive-oil bottling company in Spain in 1990 with domestic sales of 29 798 773 litres or 8,9 % of the total.

According to a 1991 report by auditors Price Waterhouse, in 1990 Merco had a deficit of Pta 18,527 billion.

The Merco annual report showed that, on 31 December 1990, the company had a non-trading debt of approximately Pta 33 billion.

On 23 January 1992, the Spanish authorities decided that the company should cease trading and be liquidated. They indicate that at that date Merco had already completely abandoned trading in olive oil, oil seeds and cotton.

As regards the fruit and vegetables division, Merco had sold or leased out with a purchase option a number of its centres and was negotiating the sale or lease of the remainder.

According to the information supplied by the Spanish authorities on 27 May 1992, a final decision had not yet been taken at that time on the sale of the centres belonging to the cereals division or the setting up of a service company.

Of the companies belonging to or associated with the Merco group, Olcesa, Coosur, Climadis, Indualagon, Indunorca, Mercocanarias, Mercolerida, Novofruit, Abasa and Agribetica had been sold, Comalsa, Merco of America and Mercojaen had been totally liquidated and Merco Castellón, Paesa, Irjasa, Los Menestrales, Indulerida and Sprona were in the process of being sold.

IV

In the past, Merco received other significant grants of State aid. By letter dated 27 December 1990, the Commission informed the Spanish authorities of its decision to close the procedure provided for in Article 93 (2) of the EC Treaty and opened with regard to the aid granted to Mercorsa (Merco), Olcesa and Uteco-Jaen/Merco-Jaen (Aid No C 28/90 ex NN 17/89), since the aid, intended to finance restructuring, constituted measures decided upon before Spain's accession to the European Communities.

Moreover, it should be recalled that on 4 November 1992, under the procedure laid down in Article 93 (2) of the EC Treaty, the Commission adopted Decision 93/133/EEC [1] requiring the reimbursement of aid of Pta 5,9 billion paid to Merco by the Spanish authorities in 1990 in the form of an injection of capital.

V

Under Article 92 (1) of the Treaty, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.

The Commission defined its position with regard to public authorities' holdings in company capital in September 1984 and informed the Member States by letter dated 17 September 1984 [2].

According to that communication, there is State aid where a Member State contributes fresh capital in circumstances that would not be acceptable to a private investor operating under normal conditions in a market economy. Such is the case where the financial situation of the company, and particularly the structure and volume of its debt, is such that a normal return (in dividends or capital gains) cannot be expected within a reasonable time from the capital invested or where, because of its inadequate cash-flow if for no other reason, the company would be unable to raise the funds needed for an investment programme on the capital market.

[1] OJ No L 55, 6. 3. 1993, p. 54.
[2] Communication to the Member States concerning public authorities' holdings in company capital *(Bulletin of the European Communities* 9-1984).

The Commission's position has been confirmed by the Court of Justice, in particular, in its judgments of 10 July 1986 (Case 234/84, Belgium v. Commission [1]) and 21 March 1991 (Case C-305/89, Italy v. Commission. [2]).

In deciding whether or not an injection of capital amounts to State aid, the Court took the view that it was necessary to determine whether the undertaking in question would have been able to obtain the necessary financing on the capital market. Where the facts show that the company receiving the aid would not have been in a position to obtain the necessary capital from a private investor, it can correctly be concluded that the capital received constitutes State aid.

In view of the financial losses sustained by Merco, its volume of debt, the lack of any indication in the accounts that the injections of capital concerned were a commercial practice and the decision to liquidate the undertaking taken at the same time as that to contribute capital, it is unlikely that the company could have obtained the funds for the contributions in question on the capital market or that any private company, basing its decision on the likely probability of profits without any regard for social considerations or for regional or sectoral policy, would have made such contributions of capital. The injections of capital in question therefore constitute State aid within the meaning of Article 92 (1) of the Treaty.

Given that, according to the Spanish authorities, between 31 December 1991 and 30 September 1992, Merco realized fixed assets and stocks of around Pta 8,4 billion (see Section II) and that, on 23 January 1993, the Spanish authorities decided to inject capital of at least Pta 18 billion, the undertaking had assets during this period of approximately Pta 26 billion. The Spanish authorities, however, only informed the Commission of the payment of compensation to employees (Pta 1,5 billion) and the payment of creditors, mainly small farmers, (Pta 5 billion). Given that, according to the Spanish authorities, the injections of capital were intended and would be intended for the payment of compensation to employees, commercial creditors and financial creditors (see Section II), a considerable percentage of those injections of capital was or would be intended for the payment of the financial creditors.

In effect, the State has enabled Merco to continue trading when it would have been impossible under normal conditions. It gave an implicit guarantee that it would repay all credit extended by Merco's creditors, should the company become insolvent or unable to make repayment. Such measures must be considered as the retrospective payment of operating aid received by the company in the form of bank credits, the normal repayment of which would have been impossible without these measures.

Such measures are therefore likely to favour the undertaking concerned at the expense of other companies both from Spain and the other Member States not receiving such aid. The measures in question are therefore likely to distort competition in favour of Merco.

VI

The aid which the Spanish authorities have granted and plan to grant to Merco is, in the opinion of the Commission, aid which affects or is likely to affect trade between the Member States given that the agricultural produce marketed by the undertaking, in part using the credits granted by the financial institutions as a result of the intervention of the authorities, is traded between Member States.

Trade between Spain and the other Member States in the products marketed by Merco during 1991, the final year before the decision to cease trading taken on 23 January 1992, was as follows:

Product	1991					
	Intra-EEC		A		B	
	ECU 1 000	kg 1 000	ECU 1 000	kg 1 000	ECU 1 000	kg 1 000
Cotton seed (1)	2 912	16 343	1 159	6 098	0	0
Sunflower seed (2)	465 820	995 496	17 617	25 436	6 177	11 242
Olive oil (3)	1 124 864	436 486	778 905	319 417	57 428	23 720
Cereals (4)	6 220 824	26 954 427	250 932	767 024	445 821	2 179 137
Fruit (5)	6 050 293	7 508 485	1 961 096	2 769 572	127 143	155 823
Vegetables (6)	6 216 291	13 414 299	964 981	1 292 583	211 850	703 320

A: EEC imports from Spain.
B: Spanish imports from the EEC.
(1) CN code 12 07 02.
(2) CN code 12 06 00.
(3) CN code 15 09.
(4) CN code Chapter 10.
(5) CN code Chapter 8.
(6) CN code Chapter 7.

(1) [1986] ECR 2263.
(2) [1991] ECR I-1603.

Merco's continued trading owing to the granting of State aid may affect the volume and conditions of trade between Spain and the other Member States. The aid granted to Merco may therefore affect trade between Member States.

The aid granted in the form of injections of capital and the aid planned therefore fulfil the criteria laid down in Article 92 (1) of the Treaty.

VII

In their letters dated 23 November 1992 and 14 January 1993, the Spanish authorities took the view that the injections of capital in question were not aid within the meaning of Article 92 (1), given that they permitted the recovery of assets of Pta 12 billion, and that they did not constitute an implicit Government guarantee for creditors. By telex message dated 21 December 1992, the Commission asked the Spanish authorities to justify the argument set out in their letter dated 23 November 1992 according to which the injections of capital permitted the recovery of assets of Pta 12 billion. Their reply, contained in a letter dated 14 January 1993, showed only that the company's accounts for the period 31 December 1991 to 30 September 1992 revealed a reduction in stocks, fixed assets, money owed to creditors and provisions (see Section II).

At the meeting held on 8 July 1993, the Spanish authorities explained that, without the injections of capital, the controlled liquidation of the company could not have taken place and the recovery of assets would therefore have been carried out under less favourable conditions.

According to the Spanish authorities, the contributions of capital enabled the recovery of assets greater than the sum of the contributions and the assets which would have been recovered under less favourable conditions and the payments do not therefore constitute aid.

The Commission cannot accept the argument put forward by the Spanish authorities that the injection of capital of Pta 18 billion in 1992 and that of Pta 5,8 billion were not aid even if they did permit a controlled liquidation of the undertaking and the recovery of more assets than would have been the case under the less favourable alternative conditions (bankruptcy). In any case, the argument does not prevent the contributions concerned constituting aid. The contributions simply permitted the amount of aid to be reduced by an amount equal to the advantage gained from a controlled liquidation.

This implicit guarantee given to its creditors enabled the company to continue trading under non-commercial conditions, thus remaining afloat artificially. The fact that the injections of capital were decided upon at the same time as the liquidation of the undertaking is irrelevant. What must be considered is the fact that they are intended, in particular, to finance the losses sustained by the company arising from its activities carried out under non-market conditions before its liquidation, i.e. intended for the retrospective payment of operating aid received by the company in the form of bank credits granted in the absence of any prospect of normal repayment.

The argument put forward by the Spanish authorities in their letter dated 10 September 1993 according to which a part of Merco's debt to the financial institutions was caused by payments by the latter to farmers for produce supplied to Merco is irrelevant. It is not the farmers who are the creditors of Merco but the financial institutions. Even if part of the aid were intended to pay the farmers, the conclusions would remain the same, being based on factors unconnected with the status of the creditors.

Moreover, even if the claim by the Spanish authorities that the amounts recovered were in fact greater than the sum of the contributions and the assets that would have been recovered in the event of bankruptcy were true (figures can be no more than estimates), it must be pointed out that the contributions were made only by the Spanish authorities. The other creditors, the financial institutions for example, who might have benefited from a controlled liquidation of the company, did not supply additional funds, at the same time as the State and under the same conditions, to permit refinancing.

In the light of the above, the Commission must consider the contributions made and planned by the Spanish authorities not as the normal action of an economic operator but rather as State aid.

Where a financial contribution from the public authorities strengthens the position of certain undertakings or permits them to be maintained at the expense of their competitors in the Community, it must be considered as affecting the latter. The aid already granted and that planned favours one particular undertaking (Merco) and distorts competition between it and other undertakings in Spain and the other Member States receiving neither the aid already paid to Merco nor that planned. This is all the more true when, as in the present case, the aid has permitted an undertaking which would normally have disappeared much sooner or which would have been restructured to continue trading.

In view of the above, the aid granted to Merco is likely to affect trade between Member States and to distort competition by favouring Merco at the expense of competing companies. The aid therefore fulfils the conditions laid down in Article 92 (1) of the Treaty.

VIII

The Spanish Government did not comply with the suspensory effect of Article 93 (3) of the Treaty in that it did not await a Commission decision before granting the aid of Pta 18 billion paid in 1992. Since the provisions of Article 93 (3) were not complied with, the aid is illegal under Community law from the date of payment.

In this connection, it must be pointed out that the imperative character of the procedural rules set out in Article 93 (3), compliance with which is important from the point of view of public order, and the direct effect of which has been recognized by the Court of Justice in its judgments of 19 June 1973 in Case 77/72 (Capolongo v. Azienda Agricola Maya) (1), 11 December 1973 in Case 120/73 (Gebrueder Lorenz Gmbh v. Germany) (2), 22 March 1977 in Case 78/76 (Steinike and Weinlig v. Germany) (3) and 21 November 1991 in Case C-354/90 (Fédération nationale du commerce extérieur des produits alimentaires and others v. France) (4), is such that the illegality of the aid in question cannot be remedied by subsequent action.

Moreover, where aid is incompatible with the common market, the Commission can make use of the facility afforded it by the judgment of the Court of Justice of 12 July 1973 in Case 70/72, Commission v. Germany (5), confirmed by the judgments of 24 February 1987 and 20 September 1990 in Cases 310/85, Deufil v. Commission (6), and C-5/89, Commission v. Germany (7), and require Member States to recover from recipients all aid illegally granted.

IX

Article 92 (1) of the Treaty lays down the principle that aid having the characteristics it specifies is incompatible with the common market.

As far as the exceptions to that principle are concerned, those provided for in Article 92 (2) do not apply to the case in question, given the nature and objectives of the aid. Furthermore, the Spanish Government has not invoked these exceptions.

Under the terms of Article 92 (3), in order to maintain the proper operation of the common market and to take account of the objectives set out in Article 3 (f) of the Treaty, derogations from the principle of incompatibility of aid must be interpreted strictly in an examination of any aid scheme or individual aid measure.

In particular, derogations may be granted only where the Commission can establish that, if the aid were not granted, market forces alone would not be sufficient to induce the recipients to act in such a way as to achieve one of the objectives laid down.

To apply the derogations to cases which do not contribute to such an objective, or where the aid is not necessary for that purpose, would be to give an unfair advantage to the industries or undertakings of certain Member States, whose financial position would be strengthened artificially, and to affect trading conditions between Member States and distort competition, without any justification based on the common interest referred to in Article 92 (3).

The derogations provided for in Article 92 (3) (a) and (c) for aid to promote or facilitate the development of certain areas do not apply to the aid measure in question.

Article 92 (3) (a) provides for a derogation for aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Article 92 (3) (c) also provides for a derogation for aid for the development of certain areas. It should be noted, however, that, although Merco carried out certain of its activities in areas eligible for regional aid pursuant to Article 92 (3) (a) and (c), the aid measures in question were not applied as part of regional aid programmes but on the basis of *ad hoc* decisions taken by the Spanish Government and in the form of contributions of capital made on a discretionary basis.

Even were the aid in question to be considered as regional aid it could not be eligible for any of the derogations provided for in Article 92 (3) (a) and (c) since aid granted pursuant to the said Article must contribute to the long-term development of the area (which, in this case, would at least have involved the use of the aid to restore the profitability of the undertaking, which was impossible for Merco since the decision to inject capital was taken at the same time as that to liquidate the company) without having any unacceptable negative consequences for conditions of competition within the Community.

With regard to the derogations provided for in Article 92 (3) (b), the aid in question is obviously not intended to promote a project of common European interest nor to remedy a serious disturbance of the Spanish economy.

(1) [1973] ECR 611.
(2) [1973] ECR 1471.
(3) [1977] ECR 595.
(4) [1991] ECR I-5505.
(5) [1973] ECR 813.
(6) [1987] ECR 901.
(7) [1990] ECR I-3437.

Furthermore, the Spanish Government has not invoked such reasons to justify the aid.

Finally, with regard to the derogations provided for in Article 92 (3) (c) for aid to facilitate the development of certain economic activities, the Commission may judge certain sectoral aid to be compatible with the common market where two conditions, set out in Article 92 (3) (c), are fulfilled, i.e. the aid must be to facilitate the development of a sector from the point of view of the Community and must not adversely affect trading conditions in a manner contrary to the common interest.

In view of the fact that the contributions of capital were decided upon at the same time as the liquidation of the undertaking, they cannot be considered as being for the implementation of a restructuring programme intended to put the undertaking on a sound footing and develop the sector.

It is clear from the judgments handed down by the Court of Justice in abovementioned Case 234/84 and in Case 40/85, Belgium v. Commission, [1], that aid of this type does not fulfil the conditions laid down for the granting of one of the derogations provided for in Article 92 where it does not contribute to putting an undertaking on a sound footing, i.e. where the undertaking cannot be expected to be moved into profit without other assistance within a reasonable time.

Given that the financial assistance was granted before the Commission could reach a decision on its compatibility, that part of the aid was or would be used to compensate, at least in part, for losses, to reduce the undertaking's debts and probably to pay its creditors, principally financial institutions, that the measures in question were not linked to a restructuring programme intended to put the undertaking on a sound footing and that the measures may have had an adverse effect on its competitors in the Community, the Commission cannot consider the aid in question as compatible with the common market.

From the above it must be concluded that the aid granted to Merco, on the one hand, enabled the undertaking to be kept artificially afloat when, under normal market conditions, it would have disappeared or would have had to have undergone restructuring and, on the other hand, prevented other operators from increasing their market share.

Consequently, the aid paid to Merco and that planned, in the form of injections of capital, is not compatible with the common market since it fulfils none of the conditions required for the granting of the derogations provided for in Article 92 of the Treaty.

[1] [1986] ECR 2321.

X

As stated in Section VIII, the Commission may require Member States in such cases to recover from the recipients aid paid unlawfully.

It should be recalled that the recovery of aid which has been paid unlawfully is the logical consequence of the fact that its illegality had been established (see the judgment of the Court of 21 March 1990 in Case C-142/87, Belgium v. Commission) [2].

The aid of Pta 18 billion paid to Merco in the form of contributions of capital in 1992 must be revoked and the sums paid recovered.

It should be stressed that the information submitted by the Spanish authorities does not give the Commission reason to believe that Merco has already used the money from the injections of capital to pay its creditors.

The Commission takes the view that the decision taken by the Spanish Government to liquidate the company does not remove the obligations to repay aid of Pta 18 billion paid in 1992.

To lift the obligation to repay aid where a decision to liquidate an undertaking is taken would be to render the rules on State aid and the provisions laid down on the recovery of illegal and incompatible aid [3] meaningless. A decision to liquidate a company which had received financial support from the State would suffice to prevent the application of Articles 92 and 93 of the Treaty.

Furthermore, it must be stressed that it has already been unsuccessfully argued before the Court of Justice that the provisions on the recovery of aid should not apply where a decision to liquidate an undertaking has been taken [4].

Repayment must be made in accordance with the procedures and provisions of Spanish law, in particular those concerning interest on overdue payments owed to the State, the interest being calculated from the date the aid in question was paid. This appears necessary in order to restore the previous situation by revoking all the financial advantages enjoyed by the company receiving the illegal aid since the date on which it was paid.

[2] [1990] ECR I-959.
[3] See Commission communication, OJ No C 318, 24. 11. 1983, p. 3.
[4] See Case C-142/87, cited above, paragraphs 49, 50 and 51.

The aid of Pta 5,8 billion planned by the Spanish authorities for the same purpose as the Pta 18 billion paid to Merco in 1992 may not be paid.

This Decision shall not prejudice any consequences the Commission might draw for the financing of the Common Agricultural Policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

Article 1

The aid amounting to Pta 18 billion paid by Spain to Merco, a company, in the form of contributions of capital in 1992 is illegal, having been granted in breach of the rules of procedure laid down in Article 93 (3) of the EC Treaty. This aid, and the aid of Pta 5,8 billion Spain has decided to grant to Merco, are also incompatible with the common market within the meaning of Article 92 of the Treaty.

Article 2

Spain shall withdraw the aid of Pta 18 billion granted in 1992 and order Merco to repay the money within two months of the date of notification of this Decision.

The aid shall be recovered in accordance with the procedures and provisions of national law, and in particular those relating to interest on overdue payments owed to the State, with interest starting to run from the date on which the unlawful aid was granted.

Article 3

Spain shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply herewith.

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 7 December 1993.

For the Commission

René STEICHEN

Member of the Commission