COMMISSION

COMMISSION DECISION

of 7 June 1995

concerning aid granted by the Italian State to the company Iritecna SpA

(Only the Italian text is authentic)

(Text with EEA relevance)

(95/524/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement on the European Economic Area, and in particular point (a) of Article 62 (1) thereof,

Having given notice to the parties concerned, in accordance with the aforementioned Articles, to submit their comments, and having regard to those comments,

Whereas :

I

By letter dated 23 August 1994 the Commission informed the Italian Government of its decision, taken on 27 July 1994, to initiate a proceeding under Article 93 (2) in respect of aid given to Iritecna SpA (hereinafter referred to as 'Iritecna').

Iritecna (now in liquidation) was a subholding wholly-owned by the Italian State holding company IRI. It, in turn, controlled a number of companies operating in different sectors, in particular industrial plant engineering, consulting engineering, motorway construction and servicing, urban infrastructure and public works, general civil and infrastructure construction, and management services. The company was recapitalized several times since its creation in 1991, and was finally put into liquidation in February 1994. At the same time a new company, Fintecna, was founded in the context of the restructuring of the sector and acquired certain activities from Iritecna in liquidation ; Fintecna received new capital from IRI.

Following a preliminary investigation into the case, the Commission concluded, on the basis of the information at its disposal, that the capital injections in question could constitute State aid within the meaning of Article 92 (1) of the EC Treaty and of Article 61 (1) of the EEA Agreement. The Commission furthermore considered that these measures could not be considered compatible with the common market or with the functioning of the EEA Agreement. It decided therefore to initiate a proceeding under Article 93 (2) and invited the Italian Government to submit its observations together with information regarding the restructuring process. The Commission's decision was published in the *Official Journal of the European Communities* inviting other Member States and third parties to submit observations [1].

After a first meeting held on 23 September 1994 between representatives of the Commission and of the company, the Italian Government submitted its comments officially by letter dated 21 December 1994, in which further details of the restructuring plan of Iritecna were provided, as requested by the Commission.

Further meetings were held with IRI's and Iritecna's representatives on 15 March 1995 and on 7 April 1995. Those meetings enabled the Commission to clarify certain aspects of the information already submitted and to request further explanations and information.

A further letter dated 5 May 1995 was sent by the Italian Government to the Commission, providing all outstanding information.

[1] Communication to other Member States and interested parties published in OJ No C 328, 25. 11. 1994, p. 2.

Iritecna belongs to the group of companies which are being monitored, until the end of 1996, in their debt-reduction process, in accordance with the agreement between the Italian Government and the Commission of July 1993 (1) concerning certain public undertakings in Italy. However, this agreement provides that, as far as operations which are likely to involve State aid are concerned, the individual treatment of such measures under the Community's State aid rules is not prejudiced.

II

No comments from third parties were received by the Commission in the course of the procedure.

The Italian Government replied officially to the Commission by the two letters referred to above. In addition, some explanatory information was supplied to the Commission in the course of three meetings held with representatives of the company. These replies contained a number of remarks, aimed at demonstrating the reasonableness, from an industrial point of view, of IRI's actions in financing the restructuring of its subsidiary, Iritecna, and in keeping it in operation.

It was stressed that the various recapitalizations of Iritecna since its creation in 1991 were carried out by means of IRI's internal funds (no direct funding was provided by the State), with the purpose — to be regarded in the long term — of safeguarding the presence of IRI in a sector facing a particularly difficult situation, both at domestic and at international level. This was to be achieved by a reorganization and repositioning of the company on the market, thereby adapting it to the changing competitive conditions.

In this context a decision of the Italian Government, dated 30 December 1992, provided that IRI should draw up a restructuring plan for Iritecna with the view to disposing of and liquidating the non-strategical activities and creating a new subholding operating the core businesses. The latter was to coordinate homogenous subgroups of companies, with the purpose of maximizing profit and of seeking partners and/or buyers. This operation addressed, *inter alia*, the need for minimizing the financial burden to be borne by IRI. A sudden and complete liquidation of the whole group would have caused a much higher loss for the shareholder, due to the general devaluation of the assets to be shut down, particularly as concerns contracts in progress.

Complying with such provision, Iritecna was put into liquidation and the new financial subholding Fintecna was established, capitalized as to 100 % by IRI, which was charged with the task of leading the restructuring and subsequent privatization of the basically sound activities.

This process is now being carried out, entailing significant reduction in the personnel, and the abandonment of several activities. The income arising from the disposal of assets and companies effected by Fintecna are to compensate part of the costs to be borne by IRI for the liquidation of Iritecna.

The Italian authorities also argued that, since Iritecna has been put into liquidation, IRI's injections are only to be used to cover the liquidation losses, and, therefore, do not distort competition.

A detailed retructuring plan, summarizing the injections effected before the liquidation of Iritecna, in February 1994, and explaining the investments and the operations to be carried out with regard to the liquidation of Iritecna and the streamlining and privatization of Fintecna, was officially submitted to the Commission as a part of the abovementioned letters.

The global amount of the aid, modifying the sum mentioned in the Commission's decision to initiate the procedure has also been communicated. That decision referred to Lit 1 090 billion (ECU 590 million) as the capital injected by IRI in 1991 to 1993, Lit 602 billion (ECU 325 million) as debt written off in 1993 and Lit 3 400 billion (ECU 1 840 million) as expected net coverage of liquidation losses. It has in fact now been stated that the debt write-off of Lit 602 billion was already included in the expected liquidation losses. This sum must therefore be deducted from the aid, which consequently amounts to Lit 4 490 billion (ECU 2 430 million).

III

1. **Restructuring prior to liquidation**

Action for the restructuring and reorganization of the group was undertaken several times over the years 1991 to 1993, causing significant losses which were covered by the capital injections. In particular some subsidiaries were disposed of or shut down and put into liquidation, due to their poor performance, involving a substantial reduction in the workforce. At group level such reduction amounted to 2 712 people (– 11 %). If one refers solely to the subsectors subject to restructuring (i. e. excluding the motorways sector) the reduction is far more significant, amounting to 3 172 workers (– 22 %). Further details regarding the evolution in staff figures are provided in the following paragraphs.

(1) Annex 3 to the communication of the Commission on State aid to EFIM, published in OJ No C 349, 29. 12. 1993, p. 2.

The capital injections of Lit 1 090 billion made by IRI to Iritecna over the years 1991 to 1993 were used to cover losses due mainly to such liquidations and closures. The following companies, in particular, were at issue :

(In Lit)

Morteo and Morteo Costruzioni (steel and industrial manufacture)	Lit 382 billion
Italsanitá (creating and servicing sanitary infrastructure)	Lit 219 billion
Italcontractors (services to the mechanical construction sector)	Lit 177 billion
CMF Sud (mechanical engineering and manufacturing) (1)	Lit 174 billion
SICIT (building prefabricates)	Lit 59 billion

(1) The Commission, in a final decision dated 15 March 1995, closing the procedure under Article 93 (2) which was opened in 1992, approved this and other aid to CMF Sud (in liquidation) and to its successor CMF as compatible with the common market under Article 92 (3) (c) of the EC-Treaty.

The cost of incentives for staff to leave, around Lit 49 billion, was also borne by Iritecna over this period.

Other companies were put into liquidation in the same period, amongst which Nuova Mecfond (industrial presses), Nuova Saip (steel manufacturing), Forus (agricultural properties), FMI (tools) and Ifagraria (agricultural plant).

2. Restructuring plan of Fintecna and liquidation plan of Iritecna

According to the plan, the successor, Fintecna, has taken over from Iritecna in liquidation the activities to be privatized, which have been reorganized in four business areas : motorways, industrial plant engineering, civil construction and infrastructures and consulting engineering. Also, IRI's 40 % shareholding in the airport services company, Aeroporti di Roma, was transferred to Fintecna, with the view to being privatized.

Fintecna has received an initial payment of Lit 1 500 million (ECU 810 million) from IRI, in order to finance start-up administrative costs (Lit 150 billion) and the acquisition and reorganization of the said holdings (Lit 1 350 billion).

These holdings have all been subject to an evaluation by independent experts, such as Italian and international merchant banks or financial institutions, in order to determine the transfer price. Their global value has been assessed at Lit 1 653 billion (ECU 895 Million). This amount has also been used at a forecast of their final privatization price, which will compensate in part IRI's costs in the liquidation of Iritecna.

The sound activities of the motorway sector and the stake in Aeroporti di Roma have been simply transferred as they were from Iritecna to Fintecna, since they did not need any specific restructuring. As regards the other business areas, their transfer involved significant reorganization and restructuring, mainly through screening out the sound and profitable activities, while the loss-making ones have been left with Iritecna and have been subject to the liquidation process. Given the special nature of its activity, providing services and labour-intensive activities, Iritecna does not have major investment in technical assets. The costs of the restructuring consist therefore for the most part in the writing-down of immaterial, financial and current assets and the shedding of personnel. The liquidation process entails the sale of all assets for which a buyer can be found and the writing-down of those which cannot be sold, with the view to maximizing income and repaying the maximum of debts. All subsidiaries remaining in Iritecna are therefore offered on the market, in whole or in parts, and all that remains unsold will be subject to liquidation. The liquidation of Iretcna constitutes the major part of the restructuring. Consequently, the restructuring remaining to be carried out and financed by Fintecna is limited. In particular, the civil construction and infrastructures business will need further action. The other business areas — namely consulting engineering and industrial engineering and construction — are now operating exclusively under Fintecna. The relevant closure and liquidation operations are carried out by Iritecna's liquidators. The evolution of the four business areas provided for by the restructuring plan is described hereafter.

3. Motorways

As stated above, no major restructuring is foreseen for this sector. No aid has been granted, nor are there any plans to grand aid. This is the biggest sector of Iritecna (about 43 % of Iritecna's turnover in 1993) consisting of a number of companies headed by Autostrade SpA. This company holds a public concession for the construction, maintenance and servicing of several motorways in Italy. Other important companies of this sector are Autostrade International, Autostrade Finance and Pavimental.

The sector is profitable and its activity mainly independent from Iritechna. Autostrade's share capital is partly floated on the stock market, and its complete privatization

is planned. It represents one of the major privatization projects of IRI and of the Italian Government, which will take place as soon as certain legal and administrative steps have been taken, settling the following outstanding matters :

— extension of the public concession from the year 2018 to the year 2033,

— definition of the mechanism fixing motorway tariffs,

— creation of an authority for the regulation of the public services.

4. Industrial plant engineering

This activity is centred on the company Italimpianti, which has in the past been amongst the most important Italian companies in this sector. Its situation has deteriorated in the last five years due to the opening up of the market and to the reduction in the contracts regularly awarded by the Italian public administration, due to budget constraints and corruption inquiries.

Italimpianti had been incorporated in Iritecna in 1991. A 'new' Italimpianti has now been created, which has acquired personnel and the worthwhile assets from Iritecna, which assets consist of some pending contracts and bids, and participations in certain companies (Innse, Innse Engineering, Tagliaferri, Nitco, Italimpianti Deutschland, Italimpianti of America and Castalia).

The 'new' Italimpianti will concentrate its activity on three business units, namely Metallurgic Plants, Environment (reclaiming and industrial waste) and Industrial Plants (machinery). In these areas the company holds a large quantity of contracts already in progress. On the other hand, a large part of the 'past' business will remain in Iritecna in liquidation, including the infrastructures business unit and a number of side activities, like tools and presses manufacturing, steel manufacturing and industrial maintenance. Some contracts already in an advanced state of implementation and involving high-risk outstanding debts from clients in financial difficulty, such as Russia, Brazil and Iran, have also been left with Iritecna. The group companies in question are in the course of being liquidated (Mgs, Italimpianti Sud and CMF) (1).

The reduction in personnel in this sector due to restructuring is significant, touching more than 50 % of the workforce from 1991 onwards. From 1991 to 1993 about 500 workers were shed (out of 2 600), and in 1994 a further 800 people were not included in the transfer to Fintecna and will form part of the liquidation process. The turnover is forecast at around Lit 900 billion, representing a reduction of some 45 % in comparison with 1992.

Italimpianti was offered for sale in June 1994. The relevant procedure is now at an advanced stage and is expected to be concluded in the first half of 1995.

5. Consulting engineering

This sector consists of several companies supplying the engineering planning for contracts acquired by external companies or by other companies of the group, mainly regarding civil, road and infrastructure construction. Some companies (Bonifica, Svei, Italeco and Sotecni) have been left within Iritecna and are being liquidated. others have been rationalized, merged in two companies and transferred to Fintecna. They are Servizi Tecnici (assistance, under public concession, for public building programmes) and Spea (consulting engineering for the motorway sector). Given the special nature of its activity, Servizi Tecnici will be reduced further and will close down once ongoing contracts have been completed. The privatization of Spea will be linked to that of Autostrade, given the connections between their activities.

The turnover of these two companies for 1995 is forecast at Lit 585 billion, a 30 % reduction compared to 1992 and 1993. The personnel is being reduced by 25 % to about 700 people. However, the reduction is much higher if account is taken of the companies left in Iritecna, which are being disposed of or liquidated. Globally, presence in this sector will be reduced by 55 % in terms of turnover and by 65 % in terms of personnel.

6. Civil construction

This has been the least homogeneous sector of Iritecna and, together with the industrial engineering, has been mostly loss-making. It consists of a number of companies operating in several fields and with different aims. Many of them operate under public concessions or benefit from regular awards of works by the public administration.

The plan foresees that a major part of these companies (Garboli, Isa, Mantelli Estero, Cidonio, Panedile, Solius, Sebi, Mededil, Sotea, Infratecna, Idrotecna, Sistemi Urbani, Ponteggi Dalmine, Italinpa, Tono, Svei, Valim and Palacio Italia) remain in Iritecna and are included in the liquidation process.

The companies transferred to Fintecna are Metroroma, Italstrade and Condotte. They are subject to a thorough restructuring in order to restore viability and enable privatization, especially Italstrade and Condotte, which have received large amounts of aid in recent years. Their activity will be concentrated in the business area of civil infrastructure (dams, roads, railways — Italstrade is part of

(1) Following Iritecna's liquidation, Coinfra, a company created *ad hoc* and controlled by Fintecna, will take over only the activities, originally belonging to CMF, for the completion of the Danish Storebaelt bridge. The rest of CMF will go into liquidation.

the Italian high-speed train 'TAV' consortium —), where they have a considerable number of contracts in progress, while the activity of building engineering and construction will be completely abandoned. Moreover, several minor businesses linked to this sector will be abandoned, such as the production of building prefabricates and the management of agricultural properties. As a consequence, there has been a reduction in the number of permanent employees by 466 (– 46 %) in the years 1992 to 1995, and a decrease in turnover by around 40 % (down to Lit 1 500 billion) in 1995.

The sale procedure for the restructured companies has already been launched and partners or buyers are being sought.

7. Other companies/participations

7.1. Aeroporti di Roma :

Fintecna holds a 40 % stake in this big profit-making company providing services for Rome airport. The privatization of this company, which is provided for both by the restructuring plan of Iritecna and by the general privatization plan established by the Italian Government, depends on the adoption of certain laws and administrative provisions by the Italian authorities (as in the case of Autostrade), namely,

— the elimination of the obligation for IRI to hold the majority of the company's shares,

— the elimination of the limit to the level of dividends for distribution, now fixed at 8 % of the share capital,

— creation of an authority for the regulation of the public services.

7.2. Stretto di Messina :

This company, operating under public concession for the preliminary analysis and general planning of the road and railway link between Sicily and Calabria, is at the closing stages of its work and is waiting approval of its own project. It has been kept within Iritecna and will therefore be sold or liquidated as part of the liquidation process.

7.3. Italsanitá :

Italsanitá was created in 1988 to operate in the promotion, planning, realization and management of sanitary infrastructure. Until 1990 its sole task was promotion, with the aim of being awarded contracts by the public administration. Following some unclear and unfortunate operations undertaken in 1990, concerning the renting of buildings to be renovated and adapted for the purposes of creating sanitary residences, the company was put into liquidation in 1992, and a number of civil and criminal lawsuits, many of them still pending, were initiated to settle liability and decide on pending claims for damages. The company never, in fact, operated on the market, and is concerned solely with the management of the considerable law-suits. Significant liability is still expected to arise, to be covered by Iritecna, which could increase the final cost of the liquidation. Such amounts have not been included in the financial plan for the restructuring, and are not part of the total liquidation cost of Lit 3 400 billion (see point 11).

8. Summary of the reduction in the activity of Iritecna due to the restructuring

Given the nature of Iritecna's activity, mainly providing labour-intensive services and activities without fixed assets, it is difficult to identify in a precise way its 'productive capacity' for the purpose of determining the dimension of the company. In industrial manufacturing company capacity depends to a large extent on the technical throughput of the plant. Iritecna's productive potential is based on other factors, so that any distortive effect of the aid on the market and the possible competitors cannot be evaluated by reference to such a parameter. However, the level of workforce is directly related to the production of the company and to its share in the market. It is therefore useful to examine staff trends and production trends, in order to assess the change in the competitive position of the company on the market before and after restructuring. In this respect, the considerable number of abandoned activities — through the liquidation of whole companies — is also important.

The Italian authorities were therefore requested to provide detailed figures regarding personnel and turnover, over the restructuring period.

9. Reduction in personnel

A document has been submitted by the Italian authorities summarizing the evolution in the group's workforce over the period 1990 to 1994. Iritecna was created in 1991 through the merger of two former subsidiaries, Italimpianti and Italstat of IRI. However, the rationalization and restructuring process had already started before. Thus, for 1990 the figures of these two subgroups of companies which are comparable with Iritecna, have been taken into consideration.

5 426 workers have been shed in the period in question. This represents 21 % of the workforce as at 31 December 1990 (25 298 people). However, as the aid and the restructuring do not concern the motorways sector, which is the largest in the group, and as this sector stands rather apart from the rest (as does Aeroporti di Roma), it must be excluded from the calculation, in order for the numbers to be representative of the restructuring which has been and is being carried out. In fact, in these circumstances the reduction is much more significant (– 33 % out of 15 214 people (1)).

A further 2 863 people (– 19 %) have left the group through the sale of companies or activities to third parties. In general, the group's workforce (excluding the motorways sector) has been reduced by 52 % to 7 297 people at 31 December 1994. A further 575 people are covered by the *Cassa Integrazione Guadagni* (Wage Compensation Fund) or enjoy other forms of subvention, and are therefore practically without work.

The Italian authorities also pointed out that the reduction has involved more technical personnel than administrative staff. If the group companies still operating at 31 December 1994 are taken into account, it can be observed that the technical workers represented 71 % of the total as at 31 December 1994, compared to 77 % as at 31 December 1990.

As regards companies left in Iritecna in liquidation, the reduction up to now has been remarkable, and the personnel remaining at 31 December 1994 will quit the group in the next years, as the liquidation process proceeds. The following table summarizes the figures of the companies in the Iritecna group in liquidation, but still operating:

(million lire)

	1990	1994	Δ	Δ %
Bonifica	659	450	– 209	– 31
Idrotecna	224	75	– 149	– 66
Garboli-Rep.	1 087	505	– 582	– 54
Ponteggi Dalmine	468	343	– 125	– 27
Panedile	304	134	– 170	– 56
CMF/CMF Sud (*)	542	409	– 133	– 25
Italeco	291	228	– 63	– 22
Others	448	281	– 167	– 37
Total	3 872	2 425	– 1 447	– 37

(*) See footnote to the table in Section III point 1.

(1) The personnel still employed by companies already put into liquidation has been included in the number of redundancies.

As regards the companies transferred to Fintecna (industrial sector only, motorways excluded) in the period 1990 to 1994, their restructuring has caused a reduction in the workforce of 3 081 workers (– 38 %), as shown in the following table:

(million lire)

	1990	1994	Δ	Δ %
Italimpianti (estimated)	2 000	556	– 1 444	– 72
Condotte	1 738	1 033	– 705	– 40
Italstrade	1 447	866	– 581	– 40
Pavimetal	717	570	– 147	– 20
Innse + Innse Eng	479	442	– 37	– 8
Servizi Tecnici	544	476	– 68	– 12
Spea	497	397	– 100	– 20
Others	405	406	+ 1	0
Total	7 827	4 746	– 3 081	– 39

Some further reduction is foreseen for the companies Italstrade and Condotte in 1995, before they are put on sale (some 200 workers are already covered by the Cassa Integrazione Guadagni). Servizi Tecnici is also expected to reduce its personnel gradually over the next years, as a result of the running down of its activity.

At the end of the liquidation/restructuring process, the size of the whole group's industrial sector in terms of personnel will have been reduced by about 70 % and it will employ only 4 500 people.

It is furthermore underlined, as a demonstration of the reduced presence of Fintecna on the relevant markets, that the number of sites in which the companies operate in the framework of ongoing contracts has reduced by 25 % over the period concerned. A similar reduction (– 20 %, all placed in liquidation) has also occurred in the number of consortia in which Iritecna/Fintecna participate. The consortium is the usual way of being awarded and executing engineering and construction contracts.

10. Reduction in turnover

The documentation submitted by the Italian authorities contains an analysis of turnover over the years 1991 to 1994, split by companies now belonging to Iritecna in liquidation and Fintecna respectively. This is set out in the table below.

Iritecna in liquidation

(Turnover in billion lire)

	1991	1994	Δ	Δ %
Companies still operating:				
Bonifica	200	93	− 107	− 54
Cidonio	35	14	− 21	− 60
CMF	0	73	73	
Garboli-Rep.	504	240	− 264	− 52
Idrotecna	20	18	− 2	− 10
Italeco	93	29	− 64	− 69
Italimpianti Int.	82	116	34	+ 41
Italinpa	13	12	− 1	− 8
Mantelli Estero	46	14	− 32	− 70
Panedile	8	10	2	+ 25
Ponteggi Dalmine	127	71	− 56	− 44
Sistemi Urbani	8	7	− 1	− 13
Sogea	12	12	0	0
Sotea	10	0	− 10	− 100
Stretto di Messina	12	6	− 6	− 50
Svei	87	35	− 52	− 60
Subtotal	1 257	750	− 507	− 40
Companies in liquidation:				
CMF Sud	64	7	− 57	− 89
F.M.I	9	5	− 4	− 44
Forus	—	0	0	0
Idrovie	—	—	0	0
Infratecna	139	58	− 81	− 58
Italimpianti Sud	22	20	− 2	− 10
Italispaca	30	1	− 29	− 97
Italisanità	34	30	− 4	− 12
Mededil	109	64	− 45	− 41
Morteo	105	7	− 98	− 93
Morteo Costruz.	14	0	− 14	− 100
Nuova Mecfond	38	7	− 31	− 82
Nuova Saip	31	3	− 28	− 90
Sebi	2	1	− 1	− 50
Sicit	23	1	− 22	− 96
Subtotal	620	204	− 416	− 67
Total Iritecna	1 877	954	− 923	− 49

Fintecna

(Industrial sector only)

(Turnover in million tonne)

	1991	1994	Δ	Δ %
Castalia	158	90	− 68	− 43
Innse	75	39	− 36	− 48
Innse Eng.	218	71	− 147	− 67
Tagliaferri	30	19	− 11	− 37
Nitco	27	15	− 12	− 44
Condotte	441	445	4	+ 1
Metroroma	40	81	41	+ 103
Italstrade	556	245	− 311	− 56
Servizi Tecnici (ex Edilpro)	784	491	293	− 37
Autostrade Int.	0	2	2	
Pavimental	183	196	13	+ 7
Spea	102	62	− 40	− 39
Sovis	2	2	0	0
Italimpianti (*)	2 458	966	− 1 492	− 61
Total Fintecna	5 074	2 724	− 2 350	− 46
Total Iritecna + Fintecna	6 951	3 678	(3 273)	− 47

(*) *Note:* figures 91 = 'old' Italimpianti + Italstat; figures 94 = 'new' Italimpianti + Iritecna in liquidation.

Globally, the group's turnover (Iritecna + Fintecna, excluding motorways) has been reduced by 47 % over the period.

It should be noted that production in 1994 of Iritecna's companies already in liquidation (Lit 204 billion) refers to its activities already being run down and to be further reduced over the liquidation period.

At the end of the liquidation/restructuring process, the size of the whole group's industrial sector, in terms of turnover, will be reduced by about 60 %, amounting to about Lit 2 800 billion only.

11. Losses due to the liquidation process

The plan foresees a global loss due to the Iritecna's liquidation of Lit 3 400 billion, taking into account the revenues arising from the complete privatization of Fintecna. This amount is the result of the calculation set out in the table below, which summarizes the financial flows associated with the liquidation.

Total indebtness Iritecna group 1 January 1994 (consolidated)		(10 954)
Debt transferred to Fintecna		5 659
Sales of companies to Fintecna		1 653
Expected income from sales of assets of Iritecna		1 490
of which : — participations	346	
— other net assets	1 144	
Liquidation costs		(946)
of which : — Iritecna	(710)	
— other companies in liquidation	(236)	
Subtotal : Debts to be covered by IRI		(3 098)
Capital provision to Fintecna		(1 500)
Expected income from privatization of Fintecna		1 653
Financial charges IRI		(455)
Total cost of the liquidation		(3 400)

Notes : 1. From 1995 onwards IRI will directly finance the liquidation of Iritecna, and will bear the relevant interest charges. In 1994 interest charges due to the liquidation were covered by Iritecna ; they form part of the liquidation costs.

2. The amount of the debts to be covered by IRI (Lit 3 098 billion) includes the Lit 602 billion debt write-off already effected in 1993.

The above scheme has been updated on the basis of the best estimate of the financial situation of Iritecna as at 31 December 1994, integrated with forecasts of future charges due to the liquidation in course. The possible extraordinary liabilities due to pending lawsuits against the company Italsanitá are not included, as this company never started trading.

It should be noted that the estimates of expected receipts from sales of Iritecna's assets are conservative, in accordance with the new Italian accounting rules concerning companies in liquidation issued by the Italian Stock exchange committee Consob (Directive of 24 February 1995).

The income from the privatization of Fintecna has been assumed to be equal to the value paid for the transfer from Iritecna in liquidation. This value was determined on the basis of valuations made by independent experts (FIP, Credit Merchant, KPMG, Morgan Stanley and Salomon Brothers).

IV

1. Confirmation of the existence of aid

In order to ascertain if aid is involved in the measures described above, the Commission analyses capital flows between the State/owner and its public companies in accordance with the principle of the market economy investor as developed in the Commission's communication on public undertakings of 28 July 1993 (1).

According to this principle, which has been largely confirmed by the Court's case-law and by the practice of the Commission, aid is involved in a transaction if this would not have been undertaken by a private investor operating under normal market economy conditions.

On the basis of the information provided to the Commission and as stated above, the amount invested by the Italian State in the restructuring of Iritecna — through is holding company IRI — amounts to Lit 4 490 billion.

The different injections, partly already effected, are summarized in the following table :

	1991	1992	1993	1994	Total
Funds granted to Iritecna	186	433	471	3 400	4 490

As regards the Italian authorities' argument that IRI's internal funds only have been employed without any direct injection by the State, the Commission observes that IRI is an industrial holding company which is 100 % owned by the Italian Treasury. Therefore, any decision by IRI to invest in its subsidiaries and any subsequent lack of return on such investment produces a corresponding negative effect on the return that IRI should provide to its shareholder. Even if no capital injection was made into IRI for the purpose of Iritecna's restructuring, the restructuring costs have been financed with proceeds which otherwise would have reduced the global loss of IRI group, or would have benefited its shareholder, the State, through dividends or increased capital value. In fact, IRI has not provided any return to its shareholder in the last decade ; the funds it has made available to its subsidiaries are therefore to be considered State resources. Moreover, IRI could not have chosen to continuously recapitalize Iritecna, despite its continuously deteriorating performance and accounts, without the tacit or explicit approval of the public shareholder.

(1) OJ No C 307, 13. 11. 1993, p. 3.

The whole investment made by the State in the restructuring of Iritecna will not produce any appropriate return in the future. The injections made over the years 1991 to 1993, before the company was put into liquidation, were clearly carried out with the purpose of putting into effect the first and most urgent restructuring measures. These funds were used simply to cover the liquidation and restructuring losses of some of the subsidiaries of Iritecna, without any prospect of any return. Given the poor performance of Iritecna over the whole period, they have to be regarded as part of a process which has led to the shareholder's decision to liquidate Iritecna and to completely divest itself of the business. No private shareholder would have accepted such poor performance for such a long period. He would have liquidated or thoroughly restructured much earlier. They are therefore to be considered as aid.

The losses attributed to the liquidation process are, by their very nature, aid. They are liabilities that are being guaranteed and finally paid by the shareholder under Article 2362 of the Italian Civil Code, following the placing of the company in voluntary liquidation. Such a guarantee has existed since Iritecna was created in 1991, while the company has continued to be heavily loss-making over this period. Under these conditions a private investor would have tried to limit his commitments with regard to the subsidiary, by deciding to put it into liquidation from the moment it could not reasonably expect a restoration of its financial viability and at a moment where its assets/liabilities position still showed a surplus. As IRI did not exhibit such rational behaviour and only decided to voluntarily liquidate Iritecna much later, in order to write off losses and debts and thereby to help the relaunching of its activities in Fintecna, the cost of such operation must be considered as aid. This cost, amounting to Lit 3 400 billion, includes by deduction the expected income of IRI from the sale of Fintecna.

In light of the above and given the characteristics of the company and of the sector in which it is operating, the Commission concludes that the global amount of Lit 4 490 billion does distort intra-Community trade, and therefore constitutes State aid within the meaning of Article 92 (1) of the Treaty and Article 61 (1) of the EEA Agreement.

Part of this aid has been invested by Iritecna in its subsidiaries, CMF Sud (now in liquidation) and CMF. This aid, totalling around Lit 281 billion (including Lit 182 billion — partially estimated — for payment of CMF Sud's liabilities following the liquidation) had been approved by the Commission under point (c) of Article 92 (3) in March 1995 [1].

The Commission also considers, on the basis of the explanation provided by the Italian authorities on this subject, that the liabilities of IRI that may arise from the pending lawsuits concerning the company Italsanitá (see Section III, point 7.3) do not constitute State aid, as they refer to a company which has never operated in the market and has never been able to distort competition.

2. Compatibility of the aid with the common market

Article 92 (2) and (3) set out certain types of aid which are or may be compatible with the common market.

Given the nature of the operation at issue, Article 92 (2) and point (b) of Article 92 (3) are not applicable to the aid in question.

Given the diversity of the group's operations and locations, and as the measures do not have a regional slant, the only derogation which comes into consideration is that set out in point (c) of Article 92 (3), in so far as it concerns aid to facilitate the development of certain economic activities.

As stated above, the measures in question appear to constitute aid specifically aimed at permitting Iritecna to continue in business and to finance a restructuring project to restore the company's viability. Such measures must be examined and assessed in accordance with the specific rules on the matter.

The Commission's approach to aid for restructuring companies in difficulties is outlined in the 'Community guidelines on State aid for rescuing and restructuring firms in difficulties', which it adopted on 27 July 1994 [2].

In this text, the Commission has pointed out that it takes a strict approach in assessing the compatibility of this kind of aid, since it might otherwise result in the transfer, without reason, of social or industrial problems from one Member State to another, in particular by shifting an unfair share of structural industrial adjustment and attendant social problems on to producers who are managing without aid.

[1] See footnote to the table in Section III point 1 and footnote to Section III point 4.
[2] OJ No C 368, 23. 12. 1994, p. 12.

For this reason, for the Commission to approve *ad hoc* aid to a company in difficulty, its restructuring must satisfy the following basic conditions : first of all, it must restore the long-term viability of the company within a reasonable time ; in addition, it must avoid undue distortion of competition ; finally, it must be in proportion with the restructuring costs and benefits. Only if these basic requirements are fulfilled can it be concluded that the aid does not affect trade to an extent contrary to the common interest, which must be the case for the derogation in point (c) of Article 92 (3) to apply.

On this basis, the documentation and the restructuring plan presented by the Italian authorities have been examined by the Commission, particularly with regard to such elements as the restoration of the viability of the company, the evolution of its competitive position on the market, the proportionality of the aid to the restructuring and the contribution of the beneficiary of the aid to the financing of the restructuring plan and the plans for the company's privatization.

3. **Restoration of viability and privatization**

As a general rule, the *conditio sine qua non* of all restructuring plans is that they must restore the long-term viability and health of the company within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions.

As explained above, the restructuring of Iritecna is based on the split of this company into two different entities, each of them having a specific function. The first subholding, Iritecna in liquidation, heads a group of companies that are to be disposed of or liquidated in the near future and, for this reason, an analysis of its viability is unnecessary.

The second subholding, Fintecna, is a financial company with a small personnel, charged with the task of enabling and managing the privatization of the companies it has taken over from Iritecna. This subholding is already operating on a fully restructured basis.

The special nature of the sectors concerned makes it difficult to draw up a precise plan with regard to resources and specific intervention, as the award of a single contract could change the company's position and perspectives completely. However, the plan appears reasonable and stands a good chance of putting Fintecna back on the path to profitability. Excluding the motorways sector, which does not need restructuring, the different business areas have been reorganized, purged of loss-making activities, and thoroughly rationlized in terms of personnel. In some cases, the restructuring is continuing and should be completed by the end of 1995. The restructured companies can count on a good initial portfolio of orders that will guarantee production and income for the start-up period.

Estimates for the years from 1995 to 1997 with regard to the financial performance of Fintecna's subsectors have been submitted to the Commission. These figures show that a real positive result is already expected for 1995, and that a good level of profit will be achieved by 1997. These positive results are largerly a consequence of the internal rationalization and improvement measures, without depending on future global increases of activity/sales that would not be under the control of Fintecna.

In addition, the Italian authorities have committed themselves to privatize all subsectors in the coming years. For the moment the subsidiaries are at different stages of privatization :

— Italimpianti is at an advanced stage of privatization, completion of its sale being expected by the end of 1995,

— the sale procedure for Italstrade and Condotte (civil construction sector) has been launched in cooperation with the Banca di Roma ; a market analysis is being conducted, to find potential buyers or partners,

— for Autostrade an offer for sale on the stock market is planned, which will take place once the necessary legislative and administrative provisions have been adopted (see Section III, point 3),

— Aeroporti di Roma raises similar legal and administrative problems as Autostrade and they will have to be solved before its privatization process can start (see section III, point 7.1),

— the companies in the consulting engineering sector will either complete their tasks in the coming years (Servizi Tecnici), or will probably be linked to the sale of Autostrade (Spea).

The commitment to completely and definitively dispose of all Fintecna's business is in line with the general privatization programme adopted by the Italian Government. Moreover, this has been confirmed in the context of the debt-reduction plan submitted by IRI to the Commission, in accordance with the provisions of the agreement between the Italian Government and the Commission of July 1993. The implementation of this plan is being monitored by the Commission on the basis of regular reports and meetings with representatives of IRI and of the Italian Government.

Privatization will eventually result in the company's not being able to count on privileged public assistance, since its present direct links with the State will be definitively cut. In these circumstances, it will be up to the new owner to ensure the company's ultimate viability without further State assistance.

4. **Evolution in the company's competitive position on the market**

A further condition for restructuring aid to be allowed is that measures are taken to limit possible adverse effects on competitors. Otherwise aid would be 'contrary to the common interest' and ineligible for exemption under point (c) of Article 92 (3). In sectors with structural excess of production capacity, this is done by irreversibly reducing the capacity of the company. In general, the competitive position of the company on the market after the restructuring should then not be unfairly reinforced, taking into account the interests of competitors.

As noted above, the particular nature of the sectors concerned does make it difficult to carry out such analysis with the help of a parameter like productive capacity. However, broad competition is present between producers both at Community and at a world level, and such competition may be particularly distorted by the granting of State aid. It is therefore necessary to analyse the competitive position of Fintecna after the restructuring.

The plan provides a considerable effort to reduce the activity of the group in all loss-making sectors. All marginal business is being sold or liquidated, and the core businesses transferred to Fintecna are substantially reduced, and limited to those activities which can count on consolidated business experience and on a sizeable portfolio of activity for the forthcoming years.

At a global level, excluding the motorway sector, the size of the group will be more than halved — compared to its original size — in terms of turnover (– 60 %), and reduced even more in terms of personnel (– 70 %). Even taking into account solely the rationalization measures and the activities abandoned and liquidated, the reduction (estimated at 35 %) is substantial and has a clear beneficial effect on competition.

In particular the reduction of personnel is extremely important in the sector concerned. The production of the companies depends on its labour base which comprises factors such as the number and the intellectual and technical skills of the workforce. The singificant reduction in this factor, associated with a corresponding decrease in turnover and the considerable number of abandoned activities — through the liquidation of whole companies — shows clearly than the market share of the company is structurally reduced.

In the light of the above considerations, the Commission can conclude that the restructuring of Iritecna and the final competitive position of Fintecna on the market will not affect competition to an extent contrary to the common interest.

5. **Proportionality of the aid to the restructuring**

As shown by the information submitted by the Italian Government and by Iritecna, the injections made by IRI over the years 1991 to 1993 have been used to cover the losses arising from closures and the liquidation of companies and writing-down of assets. Moreover, the coverage of the liquidation losses of Iritecna, as they result from the financial plan associated with the liquidation, are by definition directly linked to the closure and restructuring measures.

The aid granted is therefore considered not to provide the company with additional cash which could be used for aggressive, market-distorting activities not linked to the restructuring process, or for financing new investment not required by the restructuring. Considering the level of debt transferred to Fintecna, the future level of its financial charges will not be unduly reduced.

The Commission also notes that Fintecna will not benefit from any tax credit attaching to losses covered by debt write-offs, which are financed by the aid.

It is noted that the beneficiary will contribute significantly to the financing of the restructuring plan, by re-investing the income arising from the privatization of Fintecna, which has been estimated as equal to the transfer value paid by Fintecna to Iritecna in liquidation. This estimate appears reasonable and highly likely to be confirmed not solely because such value has been determined by independent experts' valuations but also because more than 90 % of this income will be realized through the sale of the company Autostrade and the 40 % stake in the company Aeroporti di Roma. Both these companies are profit-making, in part due to the relatively 'protected' nature of their business since they operate under public concessions for the provision of services to the public.

The commitment of the Italian authorities to sell Fintecna within a reasonable time-limit, is considered a condition for the approval of the restructuring plan. Without such sale and without the corresponding incomes being used by IRI to reduce the debts of Iritecna in liquidation, the contribution of the beneficiary to the financing of the plan would be non-existent. Moreover, a sale to private individuals makes viability, i.e. future performance at a normal level of profitability, more certain.

Finally, the Commission takes not that the estimate of the final cost of the liquidation, amounting to Lit 3 400 billion, is uncertain and may vary in the course of the liquidation process. However, given the importance of the reduction in market share of Iritecna/Fintecna, the Commission considers that an increase in this cost up to 15 % of Lit 3 400 billion will not affect its positive appraisal of the case.

6. Monitoring and reporting

The implementation of the restructuring and liquidation plan requires monitoring by the Commission. For this purpose, periodic reports will have to be submitted by the Italian authorities, summarizing the progress of the restructuring, liquidation and privatization programme.

The Commission will also have the opportunity to monitor the implementation of the plan in the course of the regular meetings it has with the Italian authorities in the context of the monitoring exercise provided for by the agreement between the Italian Government and the Commission of July 1993.

HAS ADOPTED THIS DECISION :

Article 1

1. The aid in favour of Iritecna to which this Decision relates, namely the capital injections effected in the years 1991, 1992 and 1993, globally amounting to Lit 1 090 billion, and the expected final cost of Iritecna's liquidation of Lit 3 400 billion, as well as any increase in the latter amount not exceeding 15 % thereof arising during the actual implementaiton of the restructuring plan, meets the conditions set out in the 'Community guidelines on State aid for rescuing and restructuring firms in difficulty' of 27 July 1994. The aid is therefore exempted from the prohibition contained in Article 92 (1) of the Treaty and Article 61 (1) of the EEA Agreement by virtue of point (c) of Article 92 (3) of the Treaty, and point (c) of Article 61 (3) of the EEA Agreement, as aid compatible with the common market, provided that the conditions set out in paragraphs 2 to 5 and in Article 2 are met.

2. The beneficiary undertaking shall carry out all the measures laid down in the programme for the liquidation, reorganization and privatization of the Iritecna/Fintecna group submitted to the Commission.

3. Italy shall comply with its commitment to privatize Fintecna and/or its subsidiaries in accordance with the time-scale submitted to the Commission, in accordance with the financial plan for IRI's debt-reduction submitted to the Commission pursuant to the monitoring scheme provided for in the agreement between the Italian Government and the Commission of July 1993. Such privatization shall in any case be carried out within a reasonable time-limit.

4. The income obtained from the sale of the companies and assets in the Iritecna and Fintecna groups, even if higher than forecast in the plan submitted to the Commission, shall be used in full to reduce the debts to be covered by the aid approved. The income shall not be invested in such a way as to result in further aid to other companies in difficulty in the group which have not yet been sold.

5. The privatization shall not be financed by further State aid. It must be open to all interested parties and unconditional.

Article 2

1. Italy shall cooperate fully with following arrangements for monitoring this Decision :

(a) by providing the Commission with half-yearly reports, including in particular :

— the stage of the liquidation, together with the updated financial situation of Iritecna in liquidation, and individual information on its assets and the subsidiaries being sold or put into liquidation,

— the stage of the restructuring and privatization of Fintecna and/or of its subsidiaries ;

(b) by communicating to the Commission in good time the main steps of the privatization process of Fintecna and of its subsidiaries.

2. The first report shall set out the financial situation of Iritecna in liquidation at 31 December 1994, and shall reach the Commission by 30 July 1995. Following reports shall be submitted every six months starting from 31 December 1995 and shall contain financial figures updated to six months before.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 7 June 1995.

For the Commission

Karel VAN MIERT

Member of the Commission