II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 20 July 1999
on State aid granted by Italy to the Inma shipyard through the public holding company Itainvest (formerly GEPI)

(notified under document number C(1999) 2532)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2000/262/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) As part of the monitoring procedure initiated under the Commission Decision of 17 July 1996 [2] on the GEPI group (which became Itainvest on 12 September 1997 and is referred to hereinafter by this new name), the management of the group acknowledged that, in 1997, they awarded a wholly-owned subsidiary, the Inma shipyard, a capital grant of approximately ITL 100 million (EUR 51,6 million) in order to cover the losses recorded by the shipyard in 1996 and 1997. The Commission therefore sent the Italian authorities an official request for information dated 1 October 1998. By letter of 9 November 1998 the Italian Permanent Representative supplied information in the form of the company's annual accounts for the years 1992 to 1997.

(2) By letter of 19 January 1999 the Commission informed the Italian Government of its decision to initiate proceedings under Article 88(2) of the EC Treaty in respect of the aid. The Italian authorities sent their comments to the Commission by letter No 3896 of 2 March 1999 from the Permanent

[1] OJ C 63, 5.3.1999, p. 2.
[2] OJ C 5, 9.1.1997, p. 3.

Representative. The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ([3]) together with an invitation to other interested parties to submit their comments. Comments were received, which the Commission forwarded to Italy. Its response was received by letter of 30 June 1999.

II. **DESCRIPTION**

(3) An examination of the accounts shows, firstly that the 1996 financial year closed with a loss of ITL 21,4 billion (EUR 11 million). The Board of Directors requested Itainvest, as the principal shareholder of the company, to cover the loss by writing off debts. The shareholders' meeting held on 13 November 1997 decided that ITL 4,68 billion (EUR 2,4 million) of the loss would be covered by the statutory and special reserves and the remaining ITL 16,7 billion (EUR 8,6 million) by Itainvest. At a meeting on 24 March 1998, it was decided that, since the company's accounts at 30 November 1997 already showed a loss of ITL 81,89 billion (EUR 42,3 million), this amount would be covered and the capital would be restored to a level of ITL 35 billion (EUR 18 million). The principal shareholder was to subscribe 99 % of the capital but release only three-tenths immediately, whilst the remaining 1 % was to be subscribed and made available immediately by the shipyard Nuovi Cantiere Apuania (NCA), which also belongs to Itainvest. Finally, an ordinary and extraordinary shareholders' meeting on 23 June 1998 approved the accounts for the entire 1997 financial year, recording an overall loss of ITL 103,7 billion (EUR 53,5 million) and decided to cover the losses of ITL 21,8 billion (EUR 11,2 million) still outstanding for that financial year. The total amount paid by Itainvest thus amounts to ITL 155,4 billion (EUR 80,2 million).

(4) The same balance sheets also revealed several amounts of aid paid by the competent Italian authorities (first by the Ministry responsible for the merchant navy and subsequently by the Ministry for Transport and Navigation) under Laws No 599 of 14 August 1982, No 111 of 22 March 1985, No 234 of 14 June 1989 and No 132 of 24 February 1994. Although the Commission authorised the shipbuilding aid established by those laws, it was unable to identify the precise justification for each aid measure.

(5) The Commission doubted that Inma could benefit from aid by virtue of being listed in one of the special registers for shipyards established by Law No 234/1989, created by the Italian Government in order to bring production capacity under control. Inma is not one of the large shipyards whose restructuring under Law No 111/1985 ([4]), and the refinancing of that loan ([5]), was approved by the Commission, or one of the small- or medium-sized shipyards that were refinanced separately ([6]).

(6) In view of the foregoing, the Commission initiated proceedings under Article 88(2) of the Treaty because, having concluded that, as regards Itainvest's contributions towards loss compensation and recapitalisation, the company was incorporated under public law and benefits from public funds, it considers that the payments constitute State aid under Article 87(1). Such aid distorts or threatens to distort competition by favouring an undertaking. Furthermore, as the firm is engaged in shipbuilding, the aid should be examined under Council Directive 90/684/EC of 21 December 1990 on aid to shipbuilding ([7]), as last amended by Directive 94/73/EC ([8]) and in particular Article 5(1) thereof which states that 'aid to facilitate the continued operation of shipbuilding and ship conversion companies, including loss compensation, rescue aid and all other types of operating aid not directly supporting particular restructuring measures covered in Chapter III, may be deemed compatible with the common market provided that such aid together with production aid allocated directly to individual shipbuilding and ship conversion contracts in accordance with Article 4(4) does not exceed the ceiling expressed as a percentage of the aid recipient's annual turnover in shipbuilding and ship conversion'.

([3]) See footnote 1.
([4]) Aid No 193/84, letter SG(85) D/9151 of 17 July 1985.
([5]) See footnote 4.
([6]) Aid No 192/87, letter SG(89) D/2375 of 21 February 1989.
([7]) OJ L 380, 31.12.1990, p. 27. The application of the Directive was extended by Council Regulation (EC) No 3094/95 (OJ L 332, 31.12.1995, p.l), as last amended by Regulation (EC) No 2600/97 (OJ L 351, 23.12.1997, p. 18).
([8]) OJ L 351, 31.12.1994, p. 10.

(7) In view of the various amounts of operating and investment aid and the eligibility of Inma for such aid, the Commission asked the Italian authorities to provide any information enabling it to assess the compatibility of the aid with Directive 90/684/EC on aid to shipbuilding and other relevant decisions.

(8) Lastly, the Commission also had doubts concerning the fact that most of the bank loans of the firm were covered by guarantees granted by Itainvest and a large proportion of the yard's business in recent years was with shipping companies wholly or partly controlled by Inma (especially Pugliola Stargas, Tellaro di Navigazione, Corsica Ferries).

III. **COMMENTS FROM INTERESTED PARTIES**

(9) As part of the procedure, the Danish authorities put forward their views in a letter dated 21 May 1999, stressing in particular the capacity problems facing the shipbuilding industry worldwide and referring to the yard closures in Denmark in recent years, notably due to excess capacity. In the particular case of Inma, the Danish authorities noted that if it was found that the yard did not qualify for aid, any aid should be recovered. It agreed with the Commission that all aid granted in breach of the laws in force should be censured.

IV. **COMMENTS FROM ITALY**

(10) By letter No 3896 of 2 March 1999 the Italian authorities first provided a detailed breakdown, for each year from 1987, of all aid granted, specifying the amount of each contract or investment, the rate at which the aid was granted and the relevant legal basis. As regards the inclusion of Inma in the special shipyards' register, the Italian authorities confirmed that the register was established by Law No 234/1989 but that the implementing Decree was adopted only in February 1992 and the register became active only between May and September 1993. Under the Law, only shipyards listed in the register qualified for aid, with the result that the aid was granted only from 1993. Inma had always been regarded as a medium-sized shipbuilder. It was not on the list to which the Commission referred in its letter because it could not qualify for the refinancing under Law 111/1985 since, at the time, it had received only ship conversion orders and appeared to wish to specialise in that area. Only the yards included in that list qualified for refinancing but were not entitled to receive aid under Law No 234/1989 in 1987 and 1988.

(11) The Italian authorities also stated that the amount contributed by Itainvest to cover losses totalled only ITL 120,4 billion (EUR 62,2 million), composed of ITL 16,7 billion (EUR 8,6 million) for 1996 and ITL 103,7 billion (EUR 53,5 million) for 1997, the capital contribution of ITL 35 billion (EUR 18 million) not having been paid out in the end.

(12) As regards the loss compensation granted between 1997 and 1998, the Italian authorities pointed out that Itainvest had taken all the measures which the situation called for, in its capacity as the sole shareholder of the yard. In this connection, they gave a brief account of recent developments in the shipyard.

From 1980 onwards, the yard consistently carried out the necessary adjustments and restructuring dictated by the market, in particular by reducing the workforce from 622 to 221 persons. Following the positive results recorded in the period 1992 to 1995, the financial year 1995 closed with a net profit of ITL 85 million (EUR 0,085 million).

In March 1997, the 1996 balance sheet having shown a loss of ITL 21 billion (EUR 11,2 million), Itainvest immediately initiated an audit, which revealed a number of management errors, in particular as regards the acquisition and management of orders received in December 1995.

In February 1998 an assessment of the net worth of the firm at 30 November 1997 revealed losses of ITL 81,9 billion (EUR 42,3 million) and led to the dismissal of the managing director of Inma, a vicarious liability action being brought against him. It was then decided to cover the loss and carry out a fresh audit, with a view to merging Inma with the other shipyard in which Itainvest had an interest, i.e. Nuovo Cantiere Apuania (NCA).

In June 1998 the ordinary and extraordinary general meeting of shareholders recorded the consultant's negative opinion on the merger with NCA and confirmed the decision of February to cover the 1997 losses which had in the mean time risen to ITL 103 billion (EUR 55,3 million).

Following the negative opinion of the consultant on integration with NCA, an invitation to tender for the shipyard was launched. Of the various bids received in June 1998, there was only one which could be taken into consideration. However, when the firm's real position emerged, it became impossible to sell it and, finally, on 6 November 1998 the general shareholder's meeting decided to wind up the shipyard and appoint an administrator to complete current orders, depending on how advanced their construction was, to avoid further damage through the sudden closure of the yard and the loss of subsidies on the orders in question. The charges borne by Itainvest were estimated at ITL 325 to 350 billion (EUR 168 to 181 million), consisting primarily in its commitments in respect of two orders in hand (Tirrenia and Finanziaria Marittima Stolt-Nielsen), in the form of a performance bond and bonds covering earlier orders (Corsica Ferries and Pugliola), as well as guarantees covering current administrative expenditure, as follows:

	ITL billion	EUR million
Previous orders	32,440	16,753
Completion of orders December 1995	175,915	90,852
Current administration	15,510	8,010
Total	223,865	115,616

Provision was also made for Itainvest's exposure to other costs or damage.

(13) With regard to the statement by the Commission that orders in recent years for the construction of new vessels were from shipping companies either wholly or partially controlled by Inma, the Italian authorities commented as follows. 'Tellaro di Navigazione (in liquidation since 28 June 1999) is no longer in business and the five vessels ordered were never built. Pugliola replaced another defaulting shipowner which had ordered two vessels from the yard. The first was resold to a private operator on normal market terms and second was chartered bareboat by the same operator, who will become the full owner by 2000. Corsica Ferries is a French company which is completely independent of Inma. Inma had only a minority interest in two firms controlled by Corsica Ferries which in turn each placed an order for a passenger vessel. The first shareholding was sold in 1998 and the second will be sold in 2000'.

(14) In short, the Italian authorities take the view that Itainvest thus acted in the most appropriate way possible by taking careful stock of the crisis facing the firm and reducing to a minimum the costs potentially resulting from the guarantees given in order to secure the best possible return on the transfer of the company's assets. Itainvest acted like any private shareholder by seeking in the first place, to minimise losses and eventually, when it proved impossible to sell the firm despite considerable efforts, deciding without delay to put it into liquidation.

(15) These measures do not therefore constitute State aid under Article 1 (d) of Directive 90/684/EC which defines aid as that which is granted by Member States to shipbuilding or ship repair undertakings which they directly or indirectly control and which counts as the provision of risk capital according to standard company practice in a market economy.

(16) Furthermore, as stated in the communication to the Member States on the application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EC to public undertakings in the manufacturing sector ([9]), the Commission acknowledges that the economic reasons for decisions taken by a public shareholder and hence consistency with the private investor principle, must be assessed at the moment the financing decision is made.

(17) It is also accepted 'that a parent company may also, for a limited period, bear the losses of one of its subsidiaries in order to enable the latter to close down its operations under the best possible conditions. Such decisions may be motivated not solely by the likelihood of an indirect material profit but also by other considerations, such as a desire to protect the group's image or to redirect its activities' ([10]).

(18) The Commission has also stated that it is not its intention to apply the principles governing State aid here 'in a dogmatic or doctrinaire fashion' and it is aware that a wide margin of judgment must come into investment decisions as long as 'the risks are adequately and objectively assessed and discounted at the time the decision to invest is made, in the way that a private investor would' ([11]).

V. **ASSESSMENT**

(19) Because the aid concerns a shipbuilding and ship-repair company, it must be examined under Directive 90/684/EC and Council Regulation (EC) No 1540/98 of 29 June 1998 on aid to shipbuilding ([12]).

(20) As regards the production aid, which is covered by Article 4(1) of the Directive, and the investment aid, which is covered by Article 6, that was granted by the Italian Government, the Commission concludes, having analysed the exact breakdown of aid granted since 1987, that it complies with Italian Laws No 599/1982 (for the period 1981 to 1983), No 111/1985 (for the period 1984 to 1986), No 234/1989 (for the period 1977 to 1990) and No 132/1994 (for the period 1991 to 1998). The aid schemes were authorised by the Commission. The laws in question provided for investment aid with a maximum intensity of between 20 % and 40 % of the investment, on condition that it was accompanied by a restructuring plan. Between 1982 and 1998, Inma carried out restructuring which involved a reduction in the workforce of 65 %, of which 50 % between 1982 and 1992. In the period 1987 to 1998, in respect of investments totalling ITL 49,3 billion (EUR 25,5 million), investment aid was granted amounting to ITL 9,1 billion (EUR 4,7 million), giving an average intensity of 18,5 % in the period in question. The prior notification of aid granted under existing schemes is not necessary. The Commission notes, however, that while the amounts shown in the firm's balance sheets could have created some confusion, essentially because of payment delays caused by the gap between the entry into force of the Community rules and the actual implementation of the relevant national measures, and the aid was granted for the most part after the investments had been made, the investment aid about which it had doubts should have been notified *a posteriori* under the monitoring procedure provided for in Article 12 of Directive 90/684/EC, in particular on Schedule 3, attached to the Directive. As regards the contract aid, the Commission concludes that all the contracts which benefited from aid conformed to those reported under the monitoring procedure. It notes, however, that, as regards shipbuilding contracts C.4138 and C.4139 for Pugliola-Stargas, C.4248 and C.4249 for Corsica Ferries and C.4260, C.4261 and C.4262 for Stolt-Nielsen, the rate applicable is the maximum rate in force under Article 4(1) of Directive 90/684/EC on the date on which the contracts were signed.

(21) The measures taken by the public-sector group Itainvest to assist its subsidiary Inma should be assessed under Regulation (EC) No 1540/98, Article 1 of which states that 'until 31 December 2000, production aid in support of contracts for shipbuilding and ship conversion, but not ship repair,

([9]) OJ C 307, 13.11.1993, p. 3, point 28. The communication, annulled by Court of Justice judgment of 16 June 1993 in Case C-325/91 *French Republic* v *Commission* ([1993] ECR I-3283) was readopted by the Commission, following amendments, after the adoption of Directive 93/84/EC (OJ L 254, 12.10.1993, p. 16).
([10]) Judgment of the Court of Justice of 21 March 1991 in Case C-303/88 *Italian Republic/Commission* [1991] ECR I-1433, paragraph 21.
([11]) See footnote 9, points 28 and 29 of the communication.
([12]) OJ L 202, 18.7.1998, p. 1.

may be considered compatible with the common market provided that the total amount of all forms of aid granted in support of any individual contract (including the grant equivalent of any aid granted to the shipowner or third parties) does not exceed, in grant equivalent, a common maximum aid ceiling expressed as a percentage of the contract value before aid. For shipbuilding contracts with a contract value before aid of more than ECU 10 million, the ceiling shall be 9 %; in all other cases the ceiling shall be 4.5 %'. Article 5(1) states that aid for the rescue and restructuring of undertakings in difficulties, including capital injections, debt write-offs, subsidised loans, loss compensation and guarantees, may exceptionally be considered compatible with the common market provided that it complies with the Community guidelines on State aid for rescuing and restructuring firms in difficulty. As the loss compensation is not accompanied by any restructuring plan, the Itainvest measures cannot be regarded as restructuring aid under Article 5(1) of Regulation (EC) No 1540/98.

(22) Point 2.1 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([13]) define rescue aid as measures which temporarily maintain 'the position of a firm that is facing a substantial deterioration in its financial position reflected in an acute liquidity crisis or technical insolvency, while an analysis of the circumstances giving rise to the company's difficulties can be performed and an appropriate plan to remedy the situation devised'. Or, in other words, aid aimed at providing 'a brief respite, generally for not more than six months, from a firm's financial problems while a long-term solution can be worked out'. As regards the form of the aid, point 3.1 of the guidelines states that rescue aid must:

'— consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates,

— be restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies),

— be paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan,

— be warranted on the grounds of serious social difficulties and have no undue adverse affects on the industrial situation in other Member States'.

(23) The Commission notes in connection with its decision of 17 July 1996 on the Gepi group ([14]) that the Inma shipyard was one of 23 companies which the holding company had been required to sell in order to comply with the conditions governing the group's refinancing under its new name of Itainvest. A limited budget of ITL 360 billion (EUR 185,9 million) had been earmarked for the winding-up which would normally end by 31 December 1996 and no later than 31 December 1997. All the assistance granted to Inma in the form of direct contributions, to which the abovementioned decision refers, was granted from June 1997 on the basis of the initial losses identified in the 1996 accounts and was therefore not part of the budget of ITL 360 billion (EUR 185,9 million). These measures were therefore not notified and the Commission was informed about them only in September 1998 at a meeting between its departments and the Italian authorities.

(24) The Italian authorities attribute the difficulties encountered by the yard in 1996 to management errors relating to the Stolt Nielsen and Tirrenia orders received in December 1995. The Commission also notes, however, that completion of the orders was guaranteed by Itainvest to an amount of ITL 42 billion (EUR 21,7 billion) from March 1996. Therefore, in view of the various financial operations that were needed in order to complete the orders in hand, it is clear that no financial institutions would have granted advances without a guarantee from Itainvest, and hence without recourse to public resources.

(25) The guarantees constitute aid under Article 87(1) of the Treaty because, as the Commission stated in its 1993 communication to the Member States, 'it is only if guarantees are assessed at the granting stage that all the distortions or potential distortions of competition can be detected. The fact that a firm receives a guarantee even if it is never called in may enable it to continue trading, perhaps forcing competitors who do not enjoy such facilities to go out of business' ([15]).

([13]) OJ C 368, 23.12.1994, p. 12.
([14]) OJ C 5, 9.1.1997, p. 3.
([15]) See footnote 9, point 38 of the communication.

(26) If the Italian authorities intend to justify the contribution from Itainvest in the form of loss compensation on the ground that it was less costly than the obligations arising out of guarantees, it must be pointed out that such obligations constitute non-notified aid under Article 87(1) of the EC Treaty and conform to the concept of aid in Article 2(1) and (2) of Regulation (EC) No 1540/98. As the guarantees are directly linked to the cost of the vessels, they should have been taken into account in calculating the maximum aid rate for contracts, as defined in Article 4(1) of Directive 90/684/EC, granted under Italian Law No 132/1994 and approved by the Commission ([16]). According to the information provided by the Italian Government on 16 April 1986 under the monitoring procedure provided for in Article 12 of Directive 90/684/EC, the orders from Stolt Nielsen (six vessels) and Tirrenia (two vessels) also benefited from 9 % aid in the form of a grant from the competent Ministry and the maximum aid rate would thus have been exceeded.

(27) The Tirrenia order is not a direct order but shipbuilding work on behalf of a third party, namely the Ferrari shipyard which received aid from the Italian Government. As the construction of the two vessels has already benefited from guarantees given to the Inma yard, the two measures (contract aid and guarantees) together exceed the maximum of 9 % of the contract price before the aid. It would also seem that the construction of the two vessels had not started by the end of 1996, since by the end of 1997 work had progressed by only 45,5 % and 28 % respectively.

(28) The Italian authorities state that the first indication of losses incurred by Inma (ITL 21 billion) emerged in May 1997 at the general shareholders' meeting, which then called for an audit of the exact position of the yard. The losses are entered in the balance sheet at 31 December 1996, and it is difficult to accept the assertion of the Italian authorities that the unexpected deficit is due solely to the management of orders received in December 1995. Especially as in the presentation of the balance sheet for 1996, it was clearly stated that the Stolt Nielsen and Tirrenia orders had not contributed significantly to the results of that financial year.

(29) It must therefore be concluded that the poor results achieved by the firm already existed before and were caused by other orders. The Commission notes that the Corsica Fernes I and Corsica Fernes II orders, which also benefited from guarantees given by Itainvest to the builders, namely two shipping companies of which Inma owned 49 % and 51 % respectively, were completed in 1996. The data provided by the Italian authorities indicate that the assistance given by Itainvest to Inma includes a 10-year claim mobilisation guarantee, linked to the order for the two vessels, amounting to ITL 32,440 billion (EUR 16,7 million). As the two ships have already been delivered and paid for, in principle, the Commission concludes that the guaranteed loans in question were used for the general management of the yard. As the guarantees were given through public resources, they constitute State aid in the form of operating aid covered by Article 3(1) of Regulation No 1540/98; they should therefore be included in the maximum aid for contracts and hence reduce the level of aid granted by the Italian Government. This was not the case since, according to the information provided by the Italian authorities, the Ministry granted 9 % of the contract price before aid to all vessels already delivered, i.e. the maximum amount of aid that can be granted under Article 4(1) of Directive 90/684/EC.

(30) The Commission's findings concerning the number and dates of the transactions guaranteed by Itainvest indicate that the latter, as the paxent company, was closely linked with the risky day-to-day management of the Inma yard. The Commission cannot therefore accept that Itainvest acted like a private investor. In view of the already extensive losses (ITL 21 billion or EUR 11 million) at 31 December 1996, of which the shareholder must have been aware well before the general meeting in May 1997, it must be concluded that Inma was already insolvent by that date and should therefore have petitioned for bankruptcy.

([16]) OJ C 302, 9.11.1993, p. 6; OJ C 390, 31.12.1994, p. 18; OJ C 290, 3.10.1996, p. 14; OJ C 50, 12.2.1998, p. 5.

(31) The loss compensation cannot therefore be regarded as rescue aid under the relevant Community guidelines as it does not fulfil, in either substance or form, the conditions for compatibility with the common market pursuant to Article 87 of the EC Treaty.

(32) The Commission also considers that the contributions of ITL 21,4 billion in 1997 and ITL 103,7 billion in 1998 constitute aid because they were made 'in circumstances which would not be acceptable to an investor operating under normal market conditions', which is 'normally taken to mean a situation where the structure and future prospects for the company are such that a normal return (by way of dividend payments or capital appreciation) by reference to a comparable private enterprise cannot be expected within a reasonable time' ([17]). The Italian authorities have not shown that the capital injection could be regarded as reasonable and therefore acceptable 'to an investor operating under normal market conditions', in the sense that 'the present value of the expected future cash flows from the intended project' exceeded 'the new outlay' ([18]).

(33) The Commission therefore concludes that the loss compensation in 1997 and 1998 was intended solely to enhance the value of the shipyard artificially by injecting non-repayable funds, since there is no evidence that even if Itainvest had sold the yard, it would have covered the 'investment' of ITL 120 billion, given the difficulties affecting the shipbuilding industry. It is therefore difficult to conclude that the transaction can be regarded as the action of a private investor since, in any event, the return on the investment was negative right from the start.

(34) The Commission also doubts that, in preferring to cover the losses, Itainvest opted for the lowest expenditure since, in principle, bankruptcy would automatically have entailed the cancellation of contractual commitments, in particular those relating to the Tirrenia order and hence reduced the cost of its obligations towards the shipping companies, one of the effects of bankruptcy being to place all creditors on the same footing and then give priority to those that have actually advanced funds rather than those entitled to compensation for the failure to fulfil a contractual clause. And, should this not be the case, it would further confirm the Commission's view that Itainvest had committed itself more deeply than a private investor would under normal market conditions. The Commission also notes that the breakdown of Itainvest commitments shows a guarantee of ITL 22,7 billion (EUR 11,7 million) for the Tirrenia order, which was issued in March 1998 and a guarantee of ITL 9 billion (EUR 4,6 million) for the Stolt-Nielsen order, issued in March to May 1998, i.e. after having taken the decision in February to cover the Inma losses on the basis of the accounts adopted at 30 November 1997.

(35) The loss compensation therefore constitutes aid under Article 87(1) of the EC Treaty and Article 1(1) of Regulation (EC) No 1540/98. In view of the lack of a restructuring plan providing for a capacity reduction and the fact that the operating aid ceiling authorised by the Commission has been exceeded, the aid measures in question are incompatible with the common market pursuant to both Directive 90/684/EC and Regulation (EC) No 1540/98.

VI. **CONCLUSIONS**

(36) The Commission concludes that Italy unlawfully granted guarantees for the construction of vessels ordered by Corsica Ferries, Pugliola, Tirrenia and Stolt Nielsen and covered losses incurred by Inma in 1997 and 1998, contrary to Article 88(3) of the Treaty. The guarantees granted in respect of the construction of the ships should not, in accordance with Article 4(4) of Directive 90/684/EC and Article 3(1) of Regulation (EC) No 1540/98, have exceeded the ceiling on aid for individual contracts provided for in Article 4(1) of the Directive. The loss compensation constitutes operating aid which, under Article 5 of Directive 90/684/EC, should also be included in the maximum amount. In the absence of a restructuring plan, the operating aid in the form of loss compensation is also incompatible with Article 5 of Regulation (EC) No 1540/98. Nor can it be regarded as rescue aid under the relevant Community guidelines. The aid must therefore be recovered,

([17]) See footnote 9, point 35 of the communication.
([18]) Ibid.

HAS ADOPTED THIS DECISION:

Article 1

The State aid in the form of guarantees for the Corsica Fernes, Pugliola, Stolt-Nielsen and Tirrenia orders and the loss compensation totalling ITL 120,4 billion (EUR 62,2 million) granted by Italy through the public holding company Itainvest to the shipyard Inma SpA is incompatible with the common market.

Article 2

1. Italy shall take all the necessary measures to recover from the recipient the aid referred to in Article 1 and unlawfully made available to the recipient.

2. Recovery shall be effected in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision.

3. The aid to be recovered shall include interest on the date on which it was paid to the recipient until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aid.

Article 3

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 20 July 1999.

For the Commission

Monika WULF-MATHIES

Member of the Commission