II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 July 1999

on aid granted by Italy to Sangalli Manfredonia Vetro

(notified under document number C (1999) 2895)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2000/369/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 in accordance with the abovementioned Articles given interested parties notice to submit their comments [1], and having regard to those comments,

Whereas:

I. PROCEDURE

(1) By letter of 10 February 1998, registered as incoming mail on 11 February 1998 under A/31060, the Commission received a complaint from a competitor concerning aid which the Italian authorities allegedly intended to grant to Sangalli Vetro SpA to build a flat-glass factory in Manfredonia in southern Italy. According to the complainant, the aid was in the form of a land sale at below the market price, provision of infrastructure free of charge, the grant of investment aid at an intensity higher than that allowed under the regional aid scheme applicable, the grant of employment subsidies, and tax concessions and reductions in social security contributions. A further complaint about the same aid measures was received by letter of 25 September 1998 from another flat-glass producer.

(2) By letters of 18 February, 27 April, 17 July and 27 October 1998 the Commission asked the Italian authorities for detailed information on the measures in question. The Italian authorities replied by letter of 6 May 1998.

(3) In view of the lack of sufficiently detailed information from the Italian authorities, and its doubts about the compatibility of the aid measures with the common market, the Commission decided on 22 December 1998 to initiate the procedure laid down in Article 88(2) of the Treaty and to require the Italian Government to answer its questions. The Italian Government was informed of this by letter of 27 January 1999 (SG(99) D/686), which was published in the *Official Journal of the European Communities* with an invitation to interested third parties to submit their comments on the aid in question [2].

[1] OJ C 92, 1.4.1999, p. 5.

[2] See footnote 1.

(4) The Commission received comments from Sangalli Vetro SpA, from the recipient Sangalli Manfredonia Vetro Srl, from Enisud, and from a company intending to move to the same industrial site as Sangalli Vetro in Manfredonia; it forwarded them to the Italian Government for its observations, and the Italian Government replied by letter of 4 June 1999.

II. DESCRIPTION OF THE AID

II.1. The recipient

(5) Sangalli Manfredonia Vetro Srl (Sangalli) was set up on 30 January 1998 and has its registred office in Foggia, Apulia, Italy. It is controlled by Sangalli Vetro SpA (Sangalli SpA). The Sangalli group operates in the flat-glass processing industry, obtaining its raw materials from major flat-glass producers established in various countries of the European Economic Area.

(6) Sangalli is a medium-sized firm according to the criteria set out in the Commission recommendation concerning the definition of small and medium-sized enterprises [3]. When it starts operating in 2001, it will have 197 employees and assets of ITL 217 million.

(7) The Sangalli Vetro group is also a medium-sized firm according to the criteria referred to in recital 6. It employs 213 persons and had a consolidated turnover of ITL 65,460 billion at 31 December 1997.

II.2. The measures at issue

(8) The Article 88(2) procedure was initiated in respect of the following measures:

— the sale of land by Agricoltura SpA to Sangalli at a price which is apparently not consistent with the market price; the Commission did not have specific detailed information concerning the identity of the selling company, the prices charged and current market prices,

— the subsidies which the regional and/or national authorities may have granted to Sangalli and other companies for the construction of infrastructure in the investment area; the Commission did not have sufficient data to identify the nature of the infrastructure and to check that it was not built solely for the Sangalli project,

— investment aid for the building of a new flat-glass factory allegedly granted by the Italian Government to Sangalli; as the area concerned is an assisted region, the Commission noted that the Italian authorities had failed to state the exact legal basis for the measures in question and that the forecast market growth, as indicated by the complainants, would not be enough to absorb a capacity increase,

— a grant of ITL 50 million for employees which Enisud may have granted to Sangalli, as the Commission was unable to satisfy itself that it was not State aid,

— aid in the form of tax concessions and reductions in social security contributions, as the Commission was unable to establish whether they were covered by an approved scheme.

III.1. Reply of the Italian authorities to the initiation of the Article 88(2) procedure

(9) On 18 December 1998, Agricoltura SpA, a company under private law (Agricoltura) sold a total of 206 563 m^2 of land at the industrial site of Mattinata e Mote Sant'Angelo (hereinafter Manfredonia). The Italian authorities state that the price paid by Sangalli was higher than the price determined in an expert report carried out by an independent company on 31 May 1996 for plots adjacent to the plots in question. In accordance with point II.3 of the Commission communication on State aid elements in sales of land and buildings by public authorities [4], therefore, it was not necessary to notify the sale, as it did not comprise any State aid within the meaning of the Treaty. Furthermore, the price paid was also higher than that paid at the same time by other investors for adjacent plots.

(10) The infrastructure that will be provided at the place of the investment will be used by all the firms located at the Manfredonia industrial site. It will consist in the supply of drinking water and the installation of a centralised water purifying and treatment plant, and a network of roads and shared parking areas. The cost of the infrastructure for the exclusive use of Sangalli, for example site development and connection to the electricity

[3] OJ C 107, 30.4.1996, p. 4.

[4] OJ C 209, 10.7.1997, p. 3.

grid, would be borne solely by Sangalli. The Italian authorities also state that Consorzio per lo Sviluppo Industriale ASI (Consorzio), which manages the industrial plots and the infrastructure work, has not, as yet, determined the charges which firms on the site will have to pay the use of the common infrastructure. The Italian authorities state, however, that, as a public business enterprise, Consorzio is obliged to apply tariffs which at least cover costs. The tariffs will be set out in a list of prices adopted by internal procedures which will apply to all the firms in Manfredonia.

(11) With regard to the situation in the flat-glass market, the Italian authorities have provided data indicating that the Italian and Community markets for flat glass are not suffering from excess capacity. On the contrary, they are growing by some 2 % a year owing to more varied uses for flat and other types of glass. This is demonstrated by the fact that other producers of flat glass are setting up joint subsidiaries in other European countries. According to the Italian authorities, the main reason why the complainants applied to the Commission is that, once the new factory at Manfredonia has been built, the Sangalli group will no longer have to acquire raw materials from the complainants. The Italian authorities have forwarded a list with the terms and conditions applied by the competitors of the Sangalli group.

(12) The investment aid granted totals ITL 135,6 billion, in respect of eligible, non-discounted costs of ITL 191 billion. The Italian authorities argue that this corresponds to an intensity of 40 % net grant equivalent, plus 15 % gross grant equivalent, which is permitted in an Objective 1b investment region and is calculated in accordance with the relevant Ministerial order ([5]).

(13) The Italian authorities state that on 2 May 1998 Manfredonia Sviluppo, an incorporated partnership established in Foggia, Apulia, submitted to the responsible Ministry an application from Sangalli for admission to the 'Manfredonia Area Contract' ([6]), an instrument used within the framework of the regional scheme provided for in Law No 488 of 19 December 1992 ([7]). The Sangalli project was approved on 15 July 1998. The scheme in Law No 488 of 1992 and the 'area contract' system were approved by the Commission in decisions of 30 June 1997 (letter SG(97)D/4949) and 22 December 1998 (letter SG(99)D/1119).

(14) On 7 May 1998 Enisud SpA (Enisud) and Sangalli signed an agreement which provided for the recruitment of a maximum of 45 workers formerly employed by ENI companies that had been hived off. For each ENI worker actually taken on, Enisud undertook to pay ITL 50 million (EUR 25 826). The agreement was not notified to the Commission in the annual report on Enisud's activities, as Sangalli had not yet employed any former ENI workers and would be taking on only those who satisfied the job requirements. Furthermore, the Italian authorities pointed out that the Commission had acknowledged in a letter of 10 May 1994 that Enisud's activities were similar to those forming the subject of its Decision 92/266/EEC ([8]) on French public industrial groups, and that they were not caught by Article 87(1).

(15) The Italian authorities state that the general reductions in social security contributions have not yet been granted to Sangalli and that, when they are, the authorities will comply with the Pagliarini-Van Miert Agreement of 1 March 1995, extended by decision of 31 March 1998 (letter SG(98)D/2708 of 1 April 1998).

III.2. **Comments by interested parties and comments by Italy**

(16) The Commission has comments from Associazione degli Industriali di Capitanata (the Association) Foggia, Apulia; from Sangalli SpA; from Sangalli; and from Enisud.

([5]) *Circolare Ministero dell'Industria* No 234363 of 20 November 1997, as amended by *Circolare* No 9000043 of 5 February 1998.

([6]) The Manfredonia contract was signed on 4 March 1998. The examination of the various projects for admissibility was completed on 15 July 1998. The projects accepted included Sangalli Vetro.

([7]) On the basis of its decision of 21 May 1997 on State aid 27A/97, notified to Italy by letter No SG (97)D/4949 of 30 June 1997, the Commission authorised the scheme provided for in Law No 488 of 1992. By decision of 21 December 1998 concerning State aid 810/97, notified to Italy by letter of 9 February 1999, the Commission also approved the instruments implementing the Law, including the area contract instrument.

([8]) OJ L 138, 21.5.1992, p. 24.

(17) The Association emphasises that the Sangalli project, as part of the Manfredonia area contract, is of considerable importance to Apulia. With the opening of the new plant, there will be 500 new jobs, both direct and indirect, and other small and medium-sized firms will be encouraged to move to the region. Furthermore, the fact that Sangalli will be producing glass, the raw material which until now it has only processed, will strengthen competition in the common market in an oligopolistic sector.

(18) Sangalli itself also describes the situation in the flat-glass market in Europe and in Italy. According to its estimates, production in 2001 (excluding its own output) will be 950 000 tonnes, against demand of 1 058 000 tonnes. Sangalli justifies its investment by the need to produce its own flat glass, for which it has until now been dependent on the major European producers, and provides details concerning its future sales strategies. It also provides the same responses to the various points raised in the procedure as the Italian authorities.

(19) Enisud confirms the statement by the Italian authorities concerning the non-mandatory nature of the agreement between Sangalli and Enisud and the fact that the former has not as yet taken on any former ENI workers. Enisud also points out that, according to the abovementioned letter of 10 May 1994 from DG IV, the industrial restructuring of the ENI group does not contain any State aid. Enisud argues that this has been confirmed in the assessments of Enisud's annual reports carried out by the Commission; Enisud also specifies that, despite its efforts to promote the Manfredonia area contract (assistance for 80 firms totalling ITL 1 400 billion and 4 000 new jobs planned), no former ENI workers have been employed by any of the companies in Manfredonia.

(20) In its reply to the comments by third parties, as part of the procedure Italy states that it agrees with the observations submitted.

IV. **ASSESSMENT OF THE AID**

(21) Article 87(1) of the Treaty and Article 61(1) of the EEA Agreement provide that any aid 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.

(22) The procedure under Article 88(2) of the Treaty has enabled the Commission to determine that some of the measures in question do not comprise any State aid within the meaning of Article 87(1) of the Treaty and Article 61(1) of the EEA Agreement, and that the initial investment aid complies with an approved scheme. On the other hand, tax concessions and reductions in social security contributions granted to the recipient are not compatible with the common market, as they are not covered by an approved scheme.

IV.1. **The sale of land**

(23) Agricoltura is a public enterprise governed by private law. On 18 December 1998 it sold Sangalli 206 563 m^2 of land located within its own operating area at a price of ITL 15 000 per m^2. Agricoltura will bear the costs of clearing the site and making good the damage caused by its polluting activities. Its responsibility for such work will be limited in time (12 months after the sale) and to a specific proportion of the costs.

(24) The Commission takes the view that the price paid by Sangalli corresponds to the market price. The Italian authorities have provided a report, dated 31 May 1996, carried out by an independent consultancy firm. According to that report, the price per square metre at the time was ITL 12 000. The Italian authorities have also submitted other contracts for the sale of parcels of land in the same area but smaller than that acquired by Sangalli. The contracts had recently been concluded by Agricoltura with other firms at ITL 12 000 per square metre and on the same conditions as those given to Sangalli: Agricoltura is to bear the costs of clearance and clean-up within the same time limits. The selling price is therefore higher in Sangalli's case than in that of the firms purchasing adjacent parcels, as its plot is larger, and the cost of clearing it is in turn higher.

(25) The Commission therefore concludes that, in accordance with point II.3(b) of the Commission communication on State aid elements in sales of land and buildings by public authorities [9], the sale does not comprise any State aid, because it took place at a price corresponding to that established by an independent valuer and to the market value at the time of the sale.

IV.2. **Development of the infrastructure in the investment area**

(26) The infrastructure provided by Consorzio is for the benefit of all the firms located in the area. According to the information provided by the Italian authorities it comprises the supply, purification and treatment of water and the construction of road links and common parking areas within the industrial site.

(27) As regards the utilisation of the infrastructure, the Italian authorities stated in a letter of 6 June 1999 that the charges cover the costs of the infrastructure provided. Furthermore, as stipulated in the agreement between Consorzio and Sangalli, the charges for the use of the infrastructure will be fixed by internal Consorzio rules, which will apply equally to all the firms concerned.

(28) The cost of infrastructure specifically benefiting Sangalli, such as the electricity supply connection and the development of the site, is to be borne solely by the firm itself.

(29) The Commission concludes from the foregoing that the infrastructure is shared by all the firms located within the Manfredonia industrial area, that it will not be made available free of charge, and that the charges will be calculated so as to cover all the costs incurred. Furthermore, the charges will be applied objectively to all the firms concerned. As the cost of infrastructure for the exclusive use of each firm, including Sangalli, will be borne solely by each firm, the Commission concludes that there is no selective assistance for the recipient company. The construction of the infrastructure in question is not, therefore, caught by Article 87(1) of the Treaty.

IV.3. **The flat-glass industry and the Sangalli feasibility study**

(30) In connection with the initial investment aid, the Italian authorities have forwarded a feasibility study concerning the Sangalli project. In 2002, Sangalli will be producing 185 000 gross tonnes, or 160 000 tonnes net, of flat glass [10] varying in thickness from 2 mm to 20 mm and of various sizes. Most of its output (approximately 100 000 tonnes) will be used by the Sangalli group itself, and 60 000 tonnes will be used by industry, of which 60 % on the domestic market and 40 % exported to Greece and eastern Europe.

(31) As already stated in the notice initiating the procedure, the relevant market is the market for flat glass produced using the float process developed in the 1960s. The process makes it possible to produce glass which requires no further polishing or smoothing and may therefore be cut and sold directly. This is the process most often used by the industry's major producers. Flat glass produced in this way is then used in the manufacture of panes for construction, insulation and reinforcement.

(32) The Community flat-glass market is shared by a small number of large manufactures [11] for whom, despite their strong expansion into eastern Europe, the Community market remains the largest outlet [12]. According to the major Community flat-glass manufacturers, after two years of crisis, 1997 saw an upturn in demand. The new investment took place mainly in eastern Europe and in South America. In addition, according to the same sources, 1997 witnessed one of the most extensive internal restructuring exercises in the industry, involving losses in jobs and in orders; the prospects for recovery, they say, are very poor, in a market still suffering from excess capacity [13].

[9] OJ C 209, 10.7.1997, p. 3.

[10] Flat glass produced by the float process.

[11] According to the magazine *Industrial minerals*, December 1997, the flat-glass market in Europe is shared by the following firms: Pilkington 25 %, Glaverbel 18 %, Saint-Gobain 29 %, Guardian 12 %, PPG 8 %, Sisecam 6 % and Euroglas 2 %.

[12] This is the case for Pilkington plc, Saint-Gobain and Glaverbel. Websites (28.11.1998): http://www.pilkington.com, www.saint-gobain.com and www.glaverbel.com.

[13] Pilkington annual report 1996/97 and 1998, websites (28.11.1998): http://www.pilkington.com/finance; 1997 annual report, group performance www.glaverbel.com.

(33) The Commission notes that the trend towards internal restructuring and relocation in the countries of eastern Europe is due, according to the *Panorama of EU industry*, to the fact that, 'The glass industry is going through a period of reorganisation... . Firms are also responding to the huge variations in the worldwide labour market, and are making investments in lower-cost countries to benefit from cheaper factors of production' ([14]). But this does not prove that capacity in the Community flat-glass market is greater than requirements.

(34) According to a study carried out by an independent organisation, the historical trend in the glass market has in fact been one of worldwide growth in demand of some 2 to 3 % a year. Over the last 20 years, the figure for Europe has been 4,4 %. In the European Union, and specifically in the flat-glass sector, the demand forecasts are: + 3,2 % in 1998, + 4,6 % in 1999, + 2,9 % in 2000, + 4,3 % in 2001, + 2,7 % in 2002, and + 4,0 % in 2003, representing an average growth in demand of + 3,6 % over the whole period ([15]).

(35) The firms themselves predict a growth in demand in the period 1998 to 2000 of some 2 to 3 % a year. In their annual reports all the large companies refer to 'current insufficient capacity' (Glaverbel 1998) ([16]) or state that, against the corresponding period in 1998, '1999 showed a change based on actual structure of + 4,3 %' (Saint-Gobain 1999) ([17]) or again that 'total consumption of flat glass in the 15 EU countries is growing at a rate of 4 %, higher than their average GDP' and that 'glass consumption in 1999 should experience similar growth' ([18]). This optimistic view of market trends is also confirmed by the fact that, as stated in the Commission decision of 7 August 1998 on the acquisition of PPT Industries Inc. by Glaverbel, 'In the last five years Guardian has built a new float-glass plant in Germany. There exist announced projects for new float-glass plants in Italy, Spain, Greece and the United Kingdom (mainly by the existing float-glass producers, but also by the potential new entrant Sangalli)' ([19]). This was recently confirmed in a report forwarded to the Commission by the European flat-glass producers group, which stated that Saint-Gobain would be opening a new factory at the end of 1999 in the United Kingdom, that Glaverbel and Pilkington would be opening another in Spain in mid-2000 and Interpane in France and Sangalli in Italy would also be doing the same at the end of 2000, all having the same production capacity of 500 tonnes a day (185 000 gross tonnes a year).

(36) In conclusion, the European flat-glass industry is not in crisis, which explains the investments planned by the major companies in the sector. Furthermore, as regards the Italian flat-glass market, it is likely that there will be a strong increase in demand owing to the opening of a new Fiat plan at Melfi, Apulia, and the centralisation of Alfa Romeo production in Naples.

(37) As regards the processed glass sector in which Sangalli SpA operates, the Commission concludes that in view of the market share held by Sangalli, a medium-sized firm, the aid could not seriously distort competition in that market.

(38) On the basis of the foregoing, the Commission concludes that the Sangalli project is viable. First, over 60 % of the Manfredonia plant output is for the Sangalli group's own consumption. The flat-glass supply contracts concluded by the Sangalli group which the Italian authorities forwarded to the Commission show that the conditions and prices applied by the group's suppliers (Saint-Gobain, Pilkington and Glaverbel) are not competitive, and that Sangalli is unable to renegotiate them. With the new factory at Manfredonia, the group should no longer have to depend on its suppliers and should achieve higher profits in the future. Second, the output intended for the market is equal to only 1 % of demand at European level ([20]). Not only is the market in southern Italy experiencing strong growth, but Manfredonia is close to Greece and the Balkans, regions where demand is expected to surge, so that it can be assumed that production for the domestic and European markets effectively corresponds to a real demand.

([14]) DG III, *Panorama of EU industry 97*, Vol. I, pp. 9-8 to 9-14.
([15]) Study published by Frost & Sullivan Market Research in 1997.
([16]) Statement by Luc Willame, CEO of Glaverbel, to the General Shareholders' Meeting on 27 May 1998. *Source*: http://www.glaverbel.com (28.11.1998).
([17]) http://www.saint-gobain.com (15.6.1999).
([18]) Glaverbel 1998 annual report, 'Management report', section headed 'European glass consumption up'. *Source:* http://www.glaverbel.com (14.6.1999).
([19]) Point 22 of the decision of 7 August 1998 declaring a concentration to be compatible with the common market (Case IV/M.1230 — Glaverbel/PPG), OJ C 282, 11.9.1998, p. 2.
([20]) According to estimates by the Assiciation of flat-glass producers, forecast demand in the EU will be 6 390 million tonnes in 1999, 6 737 million tonnes in 2000 and 7 180 million tonnes in 2001.

IV.4. **Regional aid**

(39) On the basis of the information supplied by the Italian authorities in the course of this procedure, the Commission concludes that Italy, in granting non-repayable aid amounting to 70 % gross of the initial investment costs to Sangalli in Manfredonia, complied with Law No 488/92. The grand of ITL 135,630 billion, to be paid in three equal annual instalments in respect of eligible costs of ITL 191 billion [21], corresponds to the maximum intensity allowed by Law No 488/92 (40 % nge + 15 % gge) for a medium-sized firm such as the recipient (see section II.1) in the investment area, which is in a region qualifying for aid under Article 87(3)(a) [22].

(40) The aid also complies with the instrument implementing Law No 488/92, the area contract [23]. The area contract is intended to stimulate new employment initiatives and create jobs in industry, agriculture, the services sector and tourism. In accordance with the regional aid schemes the public authorities grant aid for investments that are viable from a technical, economic and financial standpoint and which benefit on their own account from favourable terms from credit institutions [24].

(41) Although the regional aid in question reaches the threshold provided for in the multisectoral framework on regional aid for large investment projects [25], it is not subject to the obligation to notify the Commission provided for in the framework. Italy formally granted Sangalli the aid in question on 15 July 1998, i.e. prior to the entry into force of the framework.

(42) On the basis of the information in recitals 30 to 38 and the abovementioned feasibility study presented by Sangalli to the Italian authorities, the Commission concludes that the Sangalli project is viable. Furthermore, the financing prospects and conditions applicable to Sangalli for its contribution to the project, amounting to 25 % of the investment, appear to be adequate. Lastly, as regards job creation, the Commission notes that the project creates 197 direct jobs (management and workers) and 306 indirect jobs. Sangalli will obtain its supplies of raw materials (chiefly the glass-making sands) and its service requirements (land and sea transport) *in situ*.

(43) Accordingly, the Commission concludes that, in the present case, the regional aid granted by the Italian authorities to Sangalli complies with the terms and intensities of the scheme in Law No 488/92, which has already been approved by the Commission.

IV.5. **Employment subsidy granted by Enisud**

(44) By letter of 10 May 1994 the Commission stated that, applying by analogy Decision 92/266/EEC [26], the conversion activities of Enisud did not constitute State aid within the meaning of Article 87(1) of the Treaty. As requested in the letter, the Italian authorities had undertaken to send a report on the conversion activities of Enisud every year in order to verify that State aid was not being used [27]. The Italian authorities have, to date, regularly presented such a report, and the Commission has not expressed any concern that the conversion measures taken by Enisud might contain State aid after all.

(45) Enisud belongs to the ENI group, which has been in the process of privatisation since December 1995 [28]. The Treasury currently holds only a minority shareholding (36,3 %) [29]. None of ENI's Board members are appointed by the State nor, as regards the conversion activities, are the supervisory bodies linked to the public authorities.

(46) The conversion activities essentially consist in finding employment for group employees currently without a job (covered by wage guarantee fund and mobility schemes) and in promoting industrial initiatives in areas where ENI has closed plants. The cost of such measures has been borne by the group [30] and has accounted for 0,28 % of its own funds (in-house financing).

[21] The eligible costs break down as follows: 5 % for studies (ITL 9,5 billion); 3 % for land (ITL 5,5 billion); 20 % for plant (ITL 43,3 billion); and 72 % for equipment (ITL 132,6 billion).
[22] See decision of 21 May 1997 on State aid 27A/97 which lists the intensities allowable in Article 88(3)(a) regions, (OJ C 242, 8.8.1997).
[23] See footnote 7.
[24] See footnote 6.
[25] OJ C 107, 7.4.1998, p. 7.
[26] See footnote 8.
[27] See, *inter alia*, the 1997/98 annual report sent to the Commission in connection with the supervision of the conversion activities (document registered as incoming mail on 18 November 1998 under A/38296).
[28] ENI shares have also been quoted on the stock exchange since 1995.
[29] See http://www.eni.it (28.6.1999).
[30] According to ENI estimates contained in the report, the total conversion costs will be ITL 100 billion, and the activity is to continue until the end of 2000.

(47) The Commission therefore concludes that the grant of ITL 50 million per worker to firms which employ former ENI workers is not caught by Article 87(1) of the Treaty. As the resources used are not State resources, and the ENI group conducts its worker re-employment policy independently, the measure in question cannot be regarded as State aid.

(48) When it initiated the procedure, the Commission expressed doubts about the fact that the abovementioned annual report for the period from 1997 to October 1998 did not refer to the grant to Sangalli. The Italian authorities, like ENI and the recipient, have confirmed that the measure was not included in the annual report because the recruitment by Sangalli had not taken place; accordingly, the doubts expressed by the Commission have been resolved.

IV.6. **General reductions in statutory contributions**

(49) In their reply to the initiation of proceedings, the Italian authorities stated that any general reductions in statutory contributions (*sgravi contributivi di tipo generale*) granted to Sangalli, will comply with the Pagliarini-Van Miert. Agreement of 1 March 1995, extended by letter of 1 April 1998 (SG(98)D/2708).

(50) The Commission notes that the decision of 31 March 1998 ([31]), communicated to Italy by the letter of 1 April 1998 referred to in recital 15, renews only some of the measures contained in Decision 95/455/EC of 1 March 1995 on the arrangements for reducing the social security contributions paid by firms in the Mezzogiorno and for assigning to the State some of those contributions ([32]).

(51) The earlier decision provided for the dismantling of the system of reductions in social security contributions in the Mezzogiorno (0 % by 1 December 1997) ([33]). In addition, the differential in relation to centre-north regions in the proportion of contributions taken over by the State under the *fiscalizzazione* measures was to be phased out as follows: 2 % at 1 January 1998, 1 % at 1 January 1999 and 0 % at 1 January 2000.

(52) The most recent decision of 31 March 1998, however, relates only to the part concerning the reductions in social security contributions. The Commission there decides that aid to employment, which is aid not connected with investment and exempting for one year from social security contributions firms that create new jobs in specific regions of Italy, is compatible with the common market on the basis of the guidelines on aid to employment ([34]).

(53) Sangalli is a new company that is due to start operating in 2001, when the abovementioned decision will no longer be applicable. Furthermore, the jobs created are linked to investment. Accordingly, in this instance, reductions in tax and social security contributions are not covered by a scheme approved by the Commission.

(54) As they are not provided for in a scheme approved by the Commission, the reductions constitute new individual aid measures, the compatibility of which with the common market must be specifically assessed in the light of their characteristics.

(55) The aid in question is not compatible with the common market and does not qualify for exemption under Article 87(2), as it is not aid of a social character granted to individual consumers and is not intended to make good the damage caused by natural disasters or other exceptional occurrences. Neither does it qualify for exemption under Article 87(2)(c). Nor is exemption under Article 87(3)(b), (c) and (d) possible, as the aid is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, or to facilitate the development of certain economic activities or to promote culture and heritage conservation. However, the recipient is located in a region qualifying for assistance under Article 87(3)(a), and the Commission must determine the compatibility of the aid under that exemption.

([31]) OJ C 188, 17.6.1998, p. 8.
([32]) OJ L 265, 8.11.1995, p. 23.
([33]) The decision provides for a different system for Abruzzi.

([34]) OJ C 334, 12.12.1995, p. 4. The granting of such aid is subject to the following conditions:
— the workers recruited must be unemployed,
— the recruiting firms must not have dismissed staff in the last 12 months,
— recruitment must involve the creation of new jobs, measured against the number of staff employed by the firm in the 12 months preceding the recruitment,
— contracts must be open-ended or of sufficient length to guarantee some job stability (employment must be guaranteed for at least 12 months following payment of the aid). In the event of combination with other aid, the total amount of the aid may not exceed the higher ceiling in the schemes concerned.

(56) Point 10 of the guidelines on aid to employment referred to in recital 52 specifies that the guidelines cover only aid that is not linked to investment: 'Even where investment aid is calculated per job created or includes premiums for job creation, it does not constitute employment aid as such since it is not directly intended to create or maintain jobs. In view of its purpose and its permanent effects on the industrial structure, such aid should be treated just like any other investment aid and should be subject to the normal assessment criteria'.

(57) The Commission concludes that the jobs created in connection with the investment have already been taken into account under the regional aid scheme (Law No 488/92). As a result, if Sangalli were to receive additional aid for the new jobs created, that aid would come on top of the investment aid forming the subject of this procedure: the total would exceed the maximum levels for the assisted region in question. The intensity of the investment aid provided for in Law No 488/92 already corresponds to the maximum intensity for the assisted region in question, so that combination with aid in the form of reductions in tax and social security contributions would result in the maximum levels being exceeded, which would be incompatible with the common market.

(58) For those reasons, the Commission concludes that aid in the form of reductions in tax and social security contributions granted to Sangalli constitutes incompatible aid since it does not qualify for any of the relevant exemptions.

V. **CONCLUSIONS**

(59) On the basis of the foregoing, the Commission considers that the sale of land by Agricoltura to Sangalli does not comprise State aid as the sales price is consistent with the value calculated by an independent expert and with the price recently paid by other firms in similar transactions. Furthermore, the construction of infrastructure in the investment area cannot be regarded as State aid, as the infrastructure is used by all the firms located in the same industrial site and the charges, based on costs incurred, are applied objectively to all the firms. The costs of any infrastructure for the sole use of any one firm will be borne solely by that firm.

(60) The investment aid of ITL 135,630 billion complies with the conditions and intensities provided for in Law No 488/92, already approved by the Commission. That aid is therefore compatible with the common market.

(61) The contribution of ITL 50 million per worker which Enisud may grant to Sangalli does not comprise State aid within the meaning of Article 87(1) of the Treaty, as it does not involve the use of public resources and the public authorities are not involved in the choice of recipient.

(62) On the other hand, tax relief and the social security reductions to which the Italian authorities refer in their letter of 6 May 1999 constitute aid which is not covered by Decision 95/455/EC. The benefit of that aid combines with the aid under Law No 488/92, as it is aid linked to initial investment benefiting firms in the regions provided for in Article 87(3)(a). As the intensity of the aid corresponds to the maximum for the assisted region in question, combination with aid in the form of tax concessions and social security reductions would result in the regional ceilings approved by the Commission being exceeded and thus render the aid in question incompatible. The Italian authorities are therefore not authorised to grant such aid to Sangalli.

(63) On the basis of the information supplied by the Italian authorities, the Commission concludes that no State aid has been granted to the firm in question in advance of the Commission's final decision,

HAS ADOPTED THIS DECISION:

Article 1

The sale of land by Agricoltura SpA to Sangalli Manfredonia Vetro Srl, the construction of common infrastructures in the investment area and the contribution that will be granted by Enisud SpA to Sangalli Manfredonia Vetro Srl for each employee of the ENI group who is recruited by Sangalli Manfredonia Vetro fall outside the scope of Article 87(1) of the Treaty.

Article 2

The aid granted by Italy to Sangalli Manfredonia Vetro Srl totalling ITL 135,630 billion complies with Law No 488 of 19 December 1992 establishing a regional aid scheme approved by the Commission.

Article 3

Italy shall not grant tax concessions or reductions in social security contributions to Sangalli Manfredonia Vetro Srl inasmuch as such measures are not part of a scheme approved by the Commission and constitute aid that is incompatible with the common market.

Article 4

Italy shall inform the Commission within two months of the date of notification of this Decision of the steps it has taken to comply herewith.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 20 July 1999.

For the Commission

Karel VAN MIERT

Member of the Commission