COMMISSION

COMMISSION DECISION

of 16 May 2000

on State aid granted by Spain to Asociación General Agraria Mallorquina SA (AGAMA)

(notified under document number C(2000) 1401)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2000/631/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),

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1],

After giving notice to the interested parties to submit their comments, in accordance with the above Article [2],

Whereas:

I. PROCEDURE

(1) The Commission was informed via a complaint that Spain had granted State aid to the Asociación General Agraria Mallorquina SA (hereafter 'AGAMA').

(2) By telex dated 4 December 1995, the Commission asked the Spanish authorities for information on the aid and sent a reminder by telex dated 7 January 1997, but received no reply.

(3) By letter dated 16 May 1997, the Commission informed the Spanish Government of its decision to open the procedure provided for in Article 87(2) of the Treaty with regard to the aid.

(4) By letters dated 14 July 1997, 22 April 1998, 20 May 1998 and 18 March 1999, the Spanish authorities submitted their comments.

(5) The Commission decision to open the procedure was published in the *Official Journal of the European Communities* [3]. The Commission gave notice to the interested parties to submit their comments on the aid.

(6) The Commission has received no comments from the interested parties.

II. DETAILED DESCRIPTION OF THE AID

(7) The beneficiary of the aid granted by the Spanish authorities was the company AGAMA, which processes and markets milk products in Majorca (Balearic Islands). AGAMA is the only company involved in the industrial processing and marketing of milk products in the Balearic Islands.

(8) In August 1990, AGAMA announced that it had suspended payments. The Government of the Balearic Islands decided to intervene, via the publicly owned company Semilla, following a feasibility study carried out by Inmark SA. This study envisaged the application of a number of measures within AGAMA to ensure its viability, *inter alia*, staff reductions, renegotiation of the company's debt with its creditors and an injection of capital.

(9) Semilla advanced AGAMA ESP 176 million (EUR 1 057 781,30), i.e. 20 % of its debt with private financial institutions, which it then repaid. The institutions concerned waived ESP 706 million (EUR 4 243 145,46), equal to 80 % of the total debt of ESP 882 million (EUR 5 300 926,76).

[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ C 204, 4.7.1997, p. 6.
[3] See footnote 2.

(10) Semilla also advanced AGAMA a sum of ESP 272 million (EUR 1 634 752,92), equal to 85 % of its debt to milk producers, which it then repaid. The milk producers concerned waived 15 % (approximately ESP 47 million) of the total debt of ESP 319 million (EUR 1 917 228,61). In exchange for payment of a large part of the debt, the milk producers concerned sold Semilla 6 681 of their AGAMA shares at the price of ESP 1 700 (EUR 10,22) per share, when their nominal value was ESP 10 000 (EUR 60,10). In addition, on 20 May 1991, Semilla took out, for ESP 1 million (EUR 6 010,12), an option on 11 674 AGAMA shares held by Paslac SA (a private company) at a total price of ESP 71 million (EUR 426 718,59), i.e. ESP 6 081 per share (EUR 36,55).

(11) Furthermore, on 7 May 1991, Semilla transferred working capital of ESP 146 million (EUR 877 477,67) to AGAMA, which AGAMA was to repay.

(12) At that point, Semilla's contribution to AGAMA comprised: ESP 176 million (EUR 1 057 781,30) intended to repay debts to private financial institutions, ESP 272 million (EUR 1 634 752,92) intended to repay debts to milk producers and working capital of ESP 146 million (EUR 877 477,67) in the form of loans repayable to Semilla. In addition, Semilla had provided ESP 11 million (EUR 66 111,33) for the purchase of shares and ESP 1 million (EUR 6 010,12) for a purchase option. The total contribution was ESP 606 million (EUR 3 642 133,35), which with interest gives a total of ESP 663 million (EUR 3 984 710,25).

(13) On 3 April 1992, Semilla sold its shares and its option on AGAMA shares to Granjas Braut SA and Granjas Son Seat SAT for a total, including the repayment of AGAMA's debts to Semilla, of ESP 677 million (EUR 4 068 851,65). Of the four companies interested in buying AGAMA, which were all equally solvent, the Government of the Balearic Islands chose the best offer, in economic terms, received. However, after making an initial payment of around ESP 184 million (EUR 1 105 862,27) to Semilla, the buyers (who had already exercised their option to buy AGAMA's shares) were hit by financial difficulties and were unable to make payment to Semilla.

(14) Semilla refused to postpone the deadline for payment as requested by Granjas Braut SA and Granjas Son Seat SAT, cancelled the contract and imposed the maximum penalty provided for in the contract, i.e. 30 %. Semilla was consequently able to recover AGAMA's shares. The operation produced an accounting loss of ESP 91 million (EUR 546 921,02) for Semilla.

(15) After Semilla had recovered AGAMA, Ernest & Young drew up a restructuring plan, the conclusions of which stated that AGAMA would be economically viable if certain measures were taken: reducing production capacity, rationalising the range of finished products (which involved discontinuing the production of products with a small profit margin and promoting those products that were highly profitable), improving the brand image and reducing production costs. The plan forecast, at 31 December 1992, that the company would move into profit from 1997. (In fact, the company was into profit in 1996, one year earlier than forecast). In addition, the AGAMA shares held by Semilla and AGAMA's debts to Semilla were transferred to the Government of the Balearic Islands for operational reasons.

(16) In September 1994, the Government of the Balearic Islands decided to inject capital of ESP 548 million (ESP 3 293 546,33), made up of ESP 213 million (EUR 1 280 155,78) in the form of new capital and ESP 335 million (EUR 2 013 390,55) from the conversion into equity capital of AGAMA's debt to Semilla, subsequently transferred to the Government of the Balearic Islands.

(17) AGAMA's shareholders other than the Government (milk producers), who held 3 % of its capital, also injected capital (approximately ESP 16 million or EUR 96 161,94).

(18) Moreover, in June 1994, AGAMA obtained a loan of ESP 500 million (EUR 3 005 060,52) from the financial institution La Caixa d'Estalvis i Pensions de Barcelona (hereafter 'La Caixa'), backed by a joint and several guarantee from the Government of the Balearic Islands. The loan was repaid in March 1998. The Spanish authorities provided a certificate issued by the Government of the Balearic Islands' General Treasury undertaking to recover the amount concerned from AGAMA should the guarantee be called upon. During that same period, AGAMA took out loans from other private financial institutions without a Government guarantee for approximately ESP 300 million (EUR 1 803 036,31). Those loans were repaid in June 1999.

(19) The Spanish authorities calculated the aid element of the guarantee, in accordance with paragraph 38 of the Commission communication [4]. The State aid element of the guarantee is equal to the difference between the interest rate AGAMA would have paid for the loan on the free market (between 12 % and 9,25 %) and the rate it actually paid (MIBOR plus 0,5 %), i.e. a difference of approximately 0,95 %.

[4] OJ C 307, 13.11.1993, p. 3.

(20) AGAMA's liabilities consisted of a loan of ESP 500 million (EUR 3 005 060,52) guaranteed by the Government and other unsecured loans totalling ESP 300 million (EUR 1 803 036,31). Of this, ESP 580 million (EUR 3 485 870,21) was used to provide the company with working capital by paying off the debts incurred by Granjas Braut and Granjas Son Seat SAT when they were owners of AGAMA and ESP 205 million (EUR 1 232 074,81) was used to make redundancy payments to workers affected by staff cuts This total of ESP 785 million (EUR 4 717 945,02) is the cost associated with the restructuring plan detailed in recital 15.

(21) AGAMA considerably reduced staff numbers (from 244 in 1990 to 51 in 1997) and reduced its milk production capacity by 30 % (from 35 million litres in 1990 to 22 million litres in 1996). In fact:

(a) the management totally ceased the production of pasteurised milk for which the company had bottling capacity of 15,5 million litres per year; the equipment removed was not replaced;

(b) the bottling of sterilised milk in glass bottles, for which the company had a capacity of 15 million litres per year, totally ceased;

(c) two Tetra Pak UHT TBA-300 machines were replaced by a single machine of better quality but with a capacity less than the sum of the two replaced.

(22) In 1996, AGAMA began to make a profit (very small), but in 1998 profits rose to ESP 173 097 000 (EUR 1 040 333,92). Operating profits were ESP 93 743 000 (EUR 563 406,78) in 1996, ESP 6 212 000 (EUR 37 334,87) in 1997 and ESP 178 260 000 (EUR 1 071 364,18) in 1998. Turnover was ESP 2 093 million (EUR 12 579 183,35) in 1996, ESP 1 814 million (EUR 10 902 359,57) in 1997 and ESP 1 903 million (EUR 11 437 260,35) in 1998. At the end of 1996, the company was sold at the best price obtained in a public tendering procedure in which four private companies submitted tenders.

(23) AGAMA obtained a postponement of the deadline for the payment of social security contributions to the Social Security Fund by Resolutions of 11 May 1992 and 3 June 1994. It paid interest at the statutory rate for the postponement and repaid the debt in 60 monthly instalments ending in June 1999.

(24) In the absence of a reply from the Spanish authorities, the Commission initiated the procedure provided for in Article 88(2) of the Treaty and expressed its doubts about the guarantee given by the Government of the Balearic Islands on the loan granted to AGAMA by La Caixa, the injection of Government capital through the publicly owned company Semilla, the taking-over as a creditor of AGAMA's debts to financial institutions and other credit institutions and the postponement of the deadline for repaying debts granted by the Social Security Fund. The Commission took the view that, unless the Spanish authorities could demonstrate to the contrary, all the sums granted to AGAMA by the Spanish authorities constituted State aid and therefore asked the Spanish authorities to specify the number of payments made and the amounts involved.

III. **SPAIN'S COMMENTS**

(25) The Spanish authorities replied that they had not notified the Commission of the aid since, in their view, it was not State aid but rather the action of a private investor. In their opinion, the Government of the Balearic Islands' management of AGAMA had given excellent results.

(26) In May 1991, following AGAMA's notification that it had suspended payments and given the social consequences of the decision (most dairy farms on the island sold their milk to AGAMA), Semilla, with the assistance of Inmark SL, a company specialising in business management, decided to buy AGAMA shares and implement the measures proposed in an Inmark SL. study to guarantee the company's viability.

(27) In April 1992, Semilla sold its shares in AGAMA to Granjas Braut and Granjas Son Seat SAT at a price slightly above what it had paid. When the buyers failed to make payment, Semilla cancelled the sales contract and imposed the maximum penalty. The operation produced an accounting loss of ESP 91 million (EUR 546 921,02) for Semilla. However, the Spanish authorities took the view that this was the least costly action a private creditor could take. The payments due totalled around ESP 500 million (EUR 3 005 060,52) and the loss to Semilla would have been much greater if it had not cancelled the contract.

(28) After Semilla had reacquired AGAMA, the Government's intention was to restructure the company and sell it to the private sector at the best price, achieving a satisfactory return. It was decided to inject capital. AGAMA's other shareholders also injected capital. The Spanish authorities claim that this injection of capital shows that the Government acted in the same way as a private investor.

(29) AGAMA obtained a loan of ESP 500 million (EUR 3 005 060,52) backed by a joint and several guarantee from the Government of the Balearic Islands. The loan was repaid in March 1998. During the same period, it took out unsecured loans from private financial institutions totalling approximately ESP 300 million (EUR 1 803 036,31), which were repaid in June 1999. According to the Spanish authorities, this was necessary in order to restructure the company.

(30) However, although the Commission considers these measures to be State aid, the Spanish authorities believe that they meet the criteria laid down by the Commission for restructuring aid, since:

(a) as regards restoring viability, Ernest & Young drew up a restructuring plan, containing all the necessary details, which was applied in full. Within a very short period AGAMA was again viable. Proof of this was the sale of AGAMA to the private sector at the end of 1996 by a public tendering procedure to the highest of four tenderers;

(b) as regards the prevention of distortions of trade, production capacity was definitively reduced by 30 % and staff numbers were cut. In addition, AGAMA never sold its products below cost price;

(c) as regards the need for the aid to be proportional to the costs and benefits of restructuring, the aid constituted a 'de minimis' plan, which consequently did not result in surplus liquidity, as can be seen from the company's accounts. The aid was not used to reduce the company's financial charges, since its accounts show liabilities of ESP 800 million (EUR 4 808 096,84). In addition, private financial institutions granted AGAMA loans of around ESP 300 million (EUR 1 803 036,31) without a Government guarantee;

(d) the restructuring plan was implemented in full, although it was not notified to the Commission since the Spanish authorities did not think it constituted State aid.

(31) As regards the complainant's charge that the State aid allowed AGAMA to sell its products at below cost price, the Spanish authorities have submitted AGAMA sales invoices proving that this was never the case. Nevertheless, it is possible that, from time to time, a few retailers did sell below cost price. However, this is part of the commercial strategy of the retailers concerned and cannot be blamed on AGAMA. A study made of the average price AGAMA charges for its milk has shown that the company does not sell below cost price.

(32) Government intervention in AGAMA also benefited milk producers, by enabling them to continue processing and marketing their milk despite the fact that being on an island prevents them supplying milk to neighbouring regions at a competitive price.

(33) The postponement of the deadline for the payment of social security contributions was granted by Decisions of 11 May 1992 and 3 June 1994, in accordance with the General Regulation on the collection of contributions and the resources of the social security system, approved by Royal Decree 1937/1995. Article 40 of that Regulation provides for the postponement of repayment or the payment in instalments of debts owed to the Social Security Fund, both during the statutory repayment period and during enforced payment, on request by the debtors where their financial situation prevents payment of the debt concerned. Postponement is granted whenever a request is made in advance and the conditions laid down in the rules are met. The Social Security Fund concludes such agreements, which work to its advantage, in order to ensure that debts are paid. Interest at the statutory rate is paid for the period of postponement.

IV. **ASSESSMENT OF THE AID**

Article 87(1) of the Treaty

(34) Article 37 of Regulation (EC) No 1255/1999 lays down that Articles 87 and 88 of the Treaty apply to the production and marketing of products listed in Article 1 of that Regulation.

(35) Under Article 87(1) of the Treaty, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, is incompatible with the common market.

(36) There is a considerable amount of trade in milk between Spain and the rest of the Community and the measures in question may therefore affect trade in milk between Member States and distort or threaten to distort competition by giving AGAMA preferential treatment.

Aid granted to AGAMA

First period

(37) During the first period (August 1990 to April 1992), the Spanish Government intervened in favour of AGAMA through the publicly owned company Semilla, which paid off ESP 176 million (EUR 1 057 781,30) of AGAMA's debts to financial institutions. Those institutions waived ESP 706 million (EUR 4 243 145,46), equal to 80 % of AGAMA's total debt of ESP 882 million (EUR 5 300 926,76).

(38) Semilla also advanced AGAMA ESP 272 million (EUR 1 634 752,92), equal to 85 % of the debt it owed to milk producers, who waived 15 % of the total of ESP 319 million (EUR 1 917 228,91) they were owed.

Semilla also bought 6 681 AGAMA shares from milk producers at the very advantageous price of ESP 1 700 or EUR 10,22 per share against a nominal value of ESP 10 000 or EUR 60,10 per share, i.e. for a total of approximately ESP 11 million (EUR 66 111,33), and paid ESP 1 million (EUR 6 010,12) for an option on 11 674 shares at a total price of ESP 71 million (EUR 426 718,59).

(39) Semilla injected capital of ESP 146 million (EUR 877 477,67) in AGAMA.

(40) Finally, in April 1992 Semilla sold its shares in AGAMA to Granjas Braut and Granjas Son Seat SAT for ESP 677 million (EUR 4 068 851,65), more than the Government investment in the company.

(41) Government intervention in favour of AGAMA during this period involved no financial cost to the State. On the contrary, a profit of ESP 71 million (EUR 426 718,59) was made over a period of 20 months on an investment of ESP 606 million (EUR 3 642 133,35).

(42) The Spanish authorities take the view that Government intervention in favour of AGAMA can be compared to the action of a private investor. That intervention was preceded by a viability study carried out by an outside consultant and resulted in a profit for the Government.

(43) In accordance with the Commission communication to Member States on public authorities' holdings in company capital (see Bulletin of the European Communities 9-1984), State aid exists where the public authorities contribute fresh capital to a company in circumstances that would not be acceptable to a private investor operating under normal market conditions. This is the case where the financial position of the company, and particularly the structure and volume of its debt, is such that a normal return (in dividends or capital gains) cannot be expected within a reasonable time from the capital invested.

(44) Given AGAMA's financial position, it is highly unlikely that the company would have been able to obtain capital on the capital market. No private company, basing its decision on the company's expected profits, would have provided capital.

(45) The Commission is of the opinion that, at that point, the Spanish Government could not be certain that the intervention would produce a profit since it had no detailed forecasts (the viability study did not contain a financial perspective with figures but simply specified the measures required to make AGAMA viable). The sale of the company at a price apparently higher than the cost of the intervention does not mean that the operation was not aid, particularly as the sale, which was subsequently cancelled, resulted in significant losses for the Government.

(46) Consequently, the Commission is of the opinion that the Government intervention in favour of AGAMA during this first period (from August 1990 to April 1992) cannot be considered to be the action of a private investor but as State aid within the meaning of Article 87(1) of the Treaty. The Commission also considers that the value of the aid was 100 % of the loans granted to AGAMA by Semilla, amounting to ESP 176 million and ESP 272 million, and 100 % of the injection of ESP 146 million and that the total aid was ESP 594 million (EUR 3 570 011,90).

Second period

(47) During the second period, the purchasers of AGAMA, after making an initial payment (approximately ESP 184 million or EUR 4 068 851,65) encountered financial difficulties and were unable to meet their financial commitments (approximately ESP 486 million or EUR 2 920 918,83) to Semilla arising from the sale. Under the circumstances, Semilla decided to cancel the contract and recover its shares in AGAMA, resulting in a loss of ESP 91 million (EUR 546 921,02). The loss would have been much greater had the contract not been cancelled. This action, intended to reduce the Government's losses to a minimum, was that of a private investor who, faced with external difficulties, chooses the least costly solution.

(48) After the Government had recovered AGAMA, the company faced financial difficulties because of the unsuccessful sale and a restructuring plan was therefore drawn up and implemented. This involved restructuring management and restructuring production with the aim of reducing and modernising it.

(49) It was decided to inject capital of ESP 548 million (EUR 3 293 546,33). The Government provided ESP 213 million (EUR 1 280 155,78) and the remaining sum of ESP 335 million (EUR 2 013 390,55) was obtaining by converting AGAMA's debt to Semilla into equity capital (to clear debts of approximately ESP 272 million (EUR 1 634 752,92) to milk producers

and around ESP 176 million (EUR 1 057 781,30) to financial institutions, after creditors waived a part of the debts concerned). However, since the Commission takes the view that 100 % of the loans granted to AGAMA in 1990 was aid, this conversion into equity capital cannot be regarded as new aid.

(50) AGAMA's other shareholders (holding approximately 3 % of its capital) also injected capital in the same proportion as the Government, in accordance with their shareholding (approximately ESP 16 million or EUR 96 161,94). This capital injection was intended to restructure the company in order to sell it to the private sector and achieve a satisfactory return.

(51) The fact that all the company's private shareholders also injected capital under the same conditions as the Government could support the claim that the Government acted in the same way as a private investor. However, in view of the small number of shares held by private shareholders, the injection of capital by the Government could be regarded as State aid and should be assessed as such.

(52) The Government of the Balearic Islands gave a guarantee on a loan of ESP 500 million (EUR 3 005 060,52) granted to AGAMA by the La CAIXA financial institution ([5]) in June 1994. The loan was repaid in March 1998. The guarantee constitutes State aid within the meaning of Article 87(1) of the Treaty. In a letter sent to the Member States (SG(89) D/4328 of 5 April 1989 ([6])), the Commission stated that Article 87(1) of the Treaty applied to all guarantees given by Governments.

(53) In that letter, the Commission also specified that guarantees would be considered acceptable only if their mobilisation were made subject to specific conditions fixed by contract, including the possibility of compulsory declaration of bankruptcy by the beneficiary enterprise or an analogous procedure. Given that the Government of the Balearic Islands agreed to recover from AGAMA the sums covered by its guarantee should it be called upon, this requirement can be regarded as being fulfilled.

Postponement of the deadline for the payment of contributions granted by the Social Security Fund

(54) AGAMA also obtained a postponement of the deadline for the payment of its social security contributions. It paid interest at the statutory rate for the postponement and repaid the debt in 60 monthly instalments ending in June 1999.

([5]) Without prejudice to the nature of the loan from La Caixa.
([6]) Letter to the Member States No SG (89) D/4327 dated 5 April 1989 was replaced by Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (OJ C 71, 11.3.2000, p. 14).

(55) The General Social Security Act provides for the postponement of repayment and the payment in instalments of arrears in social security contributions or surcharges on contributions. A surcharge for delayed payment is levied on debts.

(56) The Social Security Fund may allow the payment in instalments of arrears in social security contributions. The Fund acts as a public creditor which, in the same way as a private creditor, seeks to recover amounts owed to it and, in order to facilitate repayment, reaches agreements with debtors permitting repayment in instalments. The interest usually applicable to this type of debt is to offset the loss to the creditor caused by the debtor's delay in repaying the debt, i.e. interest on arrears (see judgment of the Court of Justice of the European Communities of 29 April 1999 in Case C-342/96, *Spain* v *Commission* ([7])).

(57) According to the information supplied by the Spanish authorities, the Social Security Fund allows payment in instalments where debtors submit a request in advance, their economic circumstances prevent them repaying the debt and the conditions laid down in the rules are fulfilled. Any company with cash-flow problems receives the same terms. The Social Security Fund accepts such solutions, which work to its advantage, in order to ensure that it recovers its debts.

(58) The facilities for the payment of social security contributions granted to a company on a discretional basis by a body responsible for their collection constitutes State aid within the meaning of Article 87(1) of the Treaty where, given the size of the economic advantage conceded, the company could not have obtained comparable facilities from a private creditor in the same situation with regard to the company (see judgment of the Court of Justice of 29 June 1999 in Case C-256/97, *Démenagements-Manutention Transport* ([8])).

(59) The Commission has verified that the action of the Social Security Fund enabled it to recover the total loan, in instalments, plus statutory interest, the debt being paid off in full in June 1999.

(60) The Social Security Fund therefore acted in the same way as a private creditor acting to recover a debt. The Commission consequently concludes that the postponement of payment of AGAMA's debt to the Social Security Fund and application of the statutory interest rate to that debt do not constitute State aid within the meaning of Article 87(1) of the Treaty.

([7]) [1999] ECR I-2459.
([8]) [1999] ECR I-3913.

Possible derogations from Article 87 of the Treaty

(61) There are derogations from the principal of non-compatibility laid down in Article 87(1) of the Treaty.

(62) Article 87(3)(c) lays down that aid to facilitate the development of certain economic activities or of certain economic areas that does not adversely affect trade to an extent contrary to the common interest can be considered to be compatible with the common market.

(63) The aid scheme under examination must be assessed in the light of that subparagraph.

Assessment of the State aid granted

Rules applicable to the assessment of State aid

(64) Government intervention in favour of AGAMA during the first period, in the form of an injection of capital, taking-over of AGAMA's debt and the purchase of shares, and during the second period, in the form of an injection of capital and the provision of a guarantee, constitute State aid. The Commission therefore examined whether it fulfilled its criteria for that type of aid.

(65) Paragraph 101 of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty [9], in force since 9 October 1999, states that the Commission will examine the compatibility with the common market of any rescue or restructuring aid granted in breach of Article 88(3) of the Treaty on the basis of the guidelines in force at the time the aid is granted.

(66) Prior to the introduction of the above guidelines, the rules applicable were laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty [10], in force from their publication in the *Official Journal of the European Communities*, on 23 December 1994. The Commission referred to those guidelines in its letter dated 16 May 1997, since they were the ones in force at the time and, in the absence of a reply from the Spanish authorities, the Commission did not have details of either the amounts of aid granted to AGAMA or the dates on which they were granted.

(67) However, all the aid AGAMA received was granted before the letter was sent. At the time the aids were granted, the Commission was applying in the agricultural sector, by analogy [11], the principles set out in paragraph 228 of the eighth report on competition policy [12], which are that the aid must be strictly conditional on the implementation of a restructuring or conversion plan that, in the long term, effectively restores the competitiveness of the product concerned and that the aid must be limited to the strict minimum needed to keep the company in balance during the inevitable transitional period before such a programme takes effect, which is a clearly defined period.

(68) The principle of 'one-off' aid ('one time, last time') did not yet exist. The Commission can therefore assess the two Government interventions in favour of AGAMA separately. It should also be pointed out that the financial difficulties experienced by Granjas Braut SA and Granjas Son Seat SAT and their inability to complete the purchase of AGAMA were not the fault of AGAMA and neither could the latter have easily foreseen those problems.

Assessment of the aid

(69) With regard to the first Government intervention in favour of AGAMA, an external consultant carried out a viability study which set out the measures that needed to be implemented: a substantial reduction in staff numbers, renegotiation of the company's debt with its creditors, which resulted in the waiving of a substantial proportion of its debt, and injection of capital by the Government. The measures were implemented and the company regained viability and could be sold within 20 months for a sum greater than the cost of the Government intervention. A restructuring process could therefore be said to have begun.

(70) The Government intervention involved no financial cost to the Government but, on the contrary, produced a profit of ESP 71 million (EUR 426 718,59). In actual fact, the Government intervention in AGAMA, which was later sold for ESP 677 million (EUR 4 068 851,65), cost a total of ESP 663 million (EUR 3 984 710,25), i.e. ESP 606 million (EUR 3 642 133,35) plus interest, which breaks down as follows: loans of ESP 176 million (EUR 1 057 781,30) for the payment of debts to private financial institutions and ESP 272 million (EUR 1 634 752,92) for the payment of debts to milk producers and an injection of working capital of ESP 146 million (EUR 877 477,67). In addition, ESP 11 million (EUR 66 111,33) was paid to buy shares and ESP 1 million (EUR 6 010,12) for a purchase option. Even if 100 % of each of the loans is regarded as aid, together with the injection of capital (given the company's difficult situation when the loans were granted), this gives total aid of ESP 594 million (EUR 3 570 011,90).

[9] OJ C 288, 9.10.1999, p. 2.
[10] OJ C 368, 23.12.1994, p. 12.
[11] Precedents: Commission Decisions 93/133/EEC (OJ L 55, 6.3.1993, p. 54), confirmed by judgment of the Court of Justice of 14 September 1994 in Case C-42/93 Spain v Commission ([1994] ECR I-4175), and 94/343/EC (OJ L 154, 21.6.1994 p. 37).
[12] Competition law in the European Communities, volume II: Rules applicable to State aids (situation at 31 December 1989), p. 153.

(71) The aid granted to AGAMA in the first Government intervention therefore fulfilled the Commission's criteria for this type of aid at the time it was granted.

(72) With regard to the second Government intervention, the restructuring plan implemented permitted the company to achieve long-term viability within a reasonable time span. This is demonstrated by the fact that by 1996 the company was making a small profit, which increased to ESP 173 097 000 (EUR 1 040 333,92) in 1998, and that a number of private investors showed interest in buying the company, which was finally sold to the highest private bidder at the end of 1996. AGAMA was sold through a publicised and unconditional public tendering procedure and the sale did not therefore involve State aid.

(73) Moreover, the amount of aid was the strict minimum needed to keep the company in balance, as can be seen from the company's accounts, and the aid was proportional to the costs and benefits of restructuring. In addition, it was not used to finance new investment unconnected with restructuring or to reduce by an excessive amount the company's financial charges.

(74) The Government contributed to the restructuring plan by guaranteeing a loan of ESP 500 million (EUR 3 005 060,52) obtained by the company and injecting capital of ESP 213 million (EUR 1 280 155,78) as a shareholder of the company. A part of that capital injection was made by converting a debt of ESP 335 million (EUR 2 013 390,55) into equity capital. However, since the Commission takes the view that 100 % of the loans granted to AGAMA in 1990 was aid, this conversion into equity capital cannot be regarded as new aid.

(75) For its part, in addition to the capital injected by private investors (ESP 16 million), AGAMA itself contributed to implementing the restructuring plan by means of two loans obtained from financial institutions. One of these, for ESP 500 million (EUR 3 005 060,52), was guaranteed by the Government, the other, for ESP 300 million (EUR 1 803 036,31), was not guaranteed. The company paid off the loans in March 1998 and June 1999 respectively.

(76) The costs of restructuring AGAMA were principally redundancy payments to workers totalling ESP 205 million (EUR 1 232 074,81) and the provision of working capital by paying off debts incurred by the former owners (Granjas Braut SA and Granjas Son Seat SAT) before the Government took over the company. Those debts amounted to ESP 580 million (EUR 3 485 870,21).

(77) The Commission therefore considers that the total value of the State aid granted to AGAMA was proportional to the cost of restructuring and that the company contributed to an adequate extent to that restructuring.

(78) Consequently, the aid granted to AGAMA in the second Government intervention also fulfilled the Commission's criteria for this type of aid at the time it was granted.

(79) In addition, it should be pointed out that, the fact that the territory is an island prevents milk being transported to neighbouring regions at a competitive price, Government intervention in AGAMA also benefited milk producers by allowing them to continue processing and marketing their production. Furthermore, because the territory is an island, AGAMA always has a market for its products, despite the sector having surplus capacity.

(80) Finally, it must be stressed that, although at the time the aid was granted the Commission's criteria did not oblige AGAMA to take measures to mitigate as far as possible any adverse effects of the aid on competitors, the company did in fact do so by making a considerable cut in its production capacity (30 %) and its staff numbers (cut from 244 to 51). In addition, according to the documentation submitted by the Spanish authorities, AGAMA did not sell its products at below cost price.

V. **CONCLUSION**

(81) The Commission concludes that Spain granted the aid in question illegally, in infringement of Article 88(3) of the Treaty. Nevertheless, the Commission takes the view that the aid for restructuring AGAMA fulfilled the Commission's criteria for this type of aid at the time it was granted and that it is therefore eligible for the derogation provided for in Article 87(3)(c) of the Treaty, being aid to facilitate the development of the sector concerned without adversely affecting trading conditions to an extent contrary to the common interest,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted by Spain to Asociación General Agraria Mallorquina SA is compatible with the common market.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 16 May 2000.

For the Commission

Franz FISCHLER

Member of the Commission