COMMISSION DECISION

of 19 February 2003

on the measures implemented by Spain for Hilados y Tejidos Puigneró SA

(notified under document number C(2003) 518)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2003/876/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) By letter dated 12 March 2001, the Commission, after receiving a complaint from an interested party in the textile sector, required the Spanish authorities to supply information on alleged State aid measures. The Commission subsequently received a second complaint.

(2) By letter dated 18 April 2001, Spain submitted incomplete information in response to the questions that the Commission had raised in its letter. By letter of 17 May 2001, the Commission sent a reminder requesting the missing information. The Spanish authorities responded by letters of 14, 25 and 29 June 2001.

(3) By letter dated 19 September 2001, the Commission informed Spain that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty and requested further information on the possible State aid measures. By letter dated 19 October 2001, the Spanish authorities requested more time, and provided incomplete information by letters dated 5 and 9 November 2001. By the same letter the Spanish authorities responded to the Commission's enquiry concerning possible confidential information contained in its decision to initiate the procedure. The Commission replied by letter dated 26 October 2001, stating that it was not able to grant Spain's request. On 14 November 2001, a meeting was held between the Commission departments and the Spanish authorities, at their request, which was also attended by representatives of the Catalan Institute of Finance (Instituto Catalán de Finanzas, hereinafter 'ICF'). By letter dated 14 December 2001, the Commission urged the Spanish authorities to supply the information still missing, which the Spanish authorities submitted by letters dated 18 January and 1 and 14 February 2002. A letter from the beneficiary, dated 23 January 2002, was annexed to the letter of 1 February 2002.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* on 1 December 2001 together with an invitation to interested parties to submit their comments. The Commission received no comments from interested parties.

(5) By decision of 7 May 2002 the Commission extended the procedure to include new measures. By letter of 13 May 2002 the Commission informed Spain of its decision. Spain submitted further information by letters dated 2, 10 and 15 July 2002. The decision to extend the procedure was published in the *Official Journal of the European Communities* on 10 July 2002. The Commission received one comment on 15 July 2002, to which the Commission invited Spain to react by letter dated 4 September 2002. Spain submitted its comments on 11 October 2002.

II. DESCRIPTION

1. The company

(6) The company Hilados y Tejidos Puigneró SA (hereinafter 'Puigneró') is active in the production of yarns and

[1] OJ C 399, 1.12.2001, p. 6 and OJ C 164, 10.7.2002, p. 6.

fabrics as well as in textile finishing and has its registered office in Barcelona. The company was founded in 1957 and is privately owned by the Puigneró family. In 1982 the company was converted into a limited company. Puigneró operates three plants at Sant Bartomeu del Grau, Roda de Ter and Prats de Lluçanès. All three areas are defined as assisted areas according to Article 87(3)(c) of the Treaty.

(7) By decision of 10 November 2000, the Court of First Instance No 4 at Vic (Barcelona) declared that the company was in suspension of payments and therefore insolvent. The Suspension of Payments Act of 26 July 1922 grants a company whose assets exceed its liabilities the possibility of suspending payment of certain individual debts while at the same time being allowed to continue trading to avoid worsening its financial situation. On the basis of agreements with its creditors, a decision lifting the suspension of payments is about to be adopted or may already have been adopted.

(8) According to data from 1998 Puigneró was the biggest company in the sector in Spain in terms of workforce and the second biggest in terms of turnover. Some key data describing the company are presented below:

(EUR million)

	1993	1994	1995	1996	1997	1998	1999	2000
Workforce				n.a.	n.a.	1 600	1 800	1 600
Turnover				115	142	126	98	90
Balance sheet total		124	124	158	163	162	177	184
Operating result		3,99	9,35	4,69	6,38	6,47	6,70	−32,97
Result for the year	−12,09 ([2])	2,33	8,82	2,16	0,82	1,05	1,65	−104,70

(9) According to recent information, turnover in 2001 amounted to EUR 62 million, 32 % lower than estimated. Losses in 2001 amounted to EUR 2,5 million. The workforce has been reduced to 780 employees.

(10) Puigneró sells 60 % of its output domestically, disposes of some 30 % on the European market and exports the remaining 10 % to Tunisia and Morocco.

(11) Considering Puigneró's workforce (more than 250), the company does not qualify as a small or medium-sized enterprise (SME) in accordance with Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises ([3]).

2. **The complaints**

(12) According to the first complainant, Puigneró accumulated significant debts with various public institutions, including substantial amounts of unpaid taxes and social security contributions. The company's public debt exceeded its annual turnover. Only 2 % of its liabilities was owed to banks, and these liabilities consisted mainly of commercial loans secured by guarantees issued by public institutions. This indicated that the company did not enjoy the confidence of the private financial markets. Following the Court decision declaring that the company was in suspension of payments, the company also received a loan, amounting to ESP 2 000 million (EUR 12,02 million), from a public institution, the ICF. The complainant therefore took the view that Puigneró had distorted competition through its manifest non-compliance with its public obligations. The complainant also maintained that Puigneró had already been declared in suspension of payments on previous occasions.

(13) The second complainant also stressed Puigneró's large debt towards the tax and social security authorities. In its view, the public authorities had failed in their duty to enforce mandatory collection of the debt. It also suspected that the loan referred to above lacked valid guarantees, in which case it constituted State aid.

(14) Moreover, in a subsequent letter both complainants raised concerns over the pricing policy applied by the company, especially in the textile-finishing sector. They claimed that Puigneró was distorting competition on the relevant market by selling its products at below production cost.

([2]) This figure is mentioned in subsequent annual accounts as a negative tax base to be offset against any future profits. The result for that year may have been a bigger loss, but not a smaller one.

([3]) OJ L 107, 30.4.1996, p. 4.

(15) The Commission received a third letter from the first complainant, underlining its concern that Puigneró was continuing to benefit from a transfer of public funds and was therefore distorting trading conditions on the market. However, a few months later it withdrew the complaint.

3. **The market**

(16) The textile market in the European Union is a saturated, highly competitive market. Several subsectors of the textile industry suffer from overcapacity. EU employment in the textile and clothing sector has greatly declined, leading also to a fall in the number of enterprises operating in these sectors in recent years. Over the period from 1995 to 1999, production in all subsectors of the textile industry declined, with the exception of industrial and other textiles, where production rose slightly (measured in constant prices). Decreases were strongest in yarn and thread, followed by textile finishing. Apparent consumption of textiles also decreased ([4]).

(17) The yarns sector is also the most worrying for Puigneró due to its low profitability and competitiveness in relation to competitors in Asian and North African countries. The yarns sector represented 23 % of total turnover according to the figures available for 2000; finished and printed fabrics made up the bulk of the company's annual turnover, accounting for 50,6 % in 2000.

4. **The aid measures**

(18) The following measures have been taken in favour of Puigneró:

4.1. *Measures taken by the ICF*

(19) The ICF is a public institution operating under the Catalan Regional Government's Department for Economic Affairs and Finance. It was established by Act No 2/1985 of 14 January 1985 to assist the Regional Government in exercising the powers conferred on it by Catalonia's Statute of Autonomy, with regard to the financial system, and to act as the main instrument of the Regional Government's public credit policy. In 1998 the ICF's legal status was changed from an autonomous financial agency to a public-law entity operating under private law. The ICF's material resources and capacity to take on risks are determined each year in the budget of the Regional Government. The various departments of the Regional Government establish sector-based priorities to be followed by the ICF ([5]). As an entity dependent on the Catalan Regional Government, the ICF is subject to parliamentary control. It must file a quarterly report on the guarantees and loans granted and the results obtained. The ICF is also subject to the external control mechanisms established both by the Catalan Public Finance Act and the Catalan Public Enterprise Statute. The ICF's accounting and financial statements are thus regularly audited by the relevant bodies within the Catalan administration. The Regional Government is responsible for making the managerial appointments. The Director-General for finance policy and the Director-General for budget and treasury are members of its Management Committee. The ICF granted the following loans and guarantees.

(20) Loan granted in 1993: ESP 500 million (approximately EUR 3 million). The loan was granted on 23 April 1993 and formalised on 28 April 1993. Its original duration was six years with a two-year grace period. For the remaining four years the instalments on the principal were to be paid on a quarterly basis (ESP 31 250 000 each). The interest rate was set at Mibor 3-months + 1 %. The duration of the loan was extended to ten years on 30 May 1996. At that time the first three instalments had been paid as stipulated. The remaining amount was to be paid back in 85 monthly instalments of ESP 4 779 412 (EUR 28 725) each.

(21) As security Puigneró provided a mortgage on its industrial site at Prats de Lluçanès. The mortgage totalled ESP 970 million (EUR 5 829 817), of which ESP 50 million (EUR 300 506) was for execution costs. At the time, this site was already burdened with four other mortgages, two of which for a total value of ESP 500 million, dating from 31 July 1992 and 4 September 1992 respectively. The third provided security for an amount of ESP 50 million (EUR 300 506). The value of the fourth mortgage is not indicated. The 1995 annual accounts mention this mortgage as being for a total of ESP 1 200 000 000 (EUR 7 212 145), but this amount concerns both the site at Prats de Lluçanès and that at Roda de Ter, which is worth 3,5 times more. The actual loan secured by this mortgage amounted in 1995 to ESP 495 350 000 (EUR 2 977 114). The decision by the ICF specifies that the loan was to be further secured by shares in the company owned by the main shareholder, but this is not formalised in the original document. In the extension granted in 1996 this guarantee is mentioned, however.

([4]) The EU Textile and Clothing Sector 2000 OETH, May 2000.

([5]) The 2000 annual report states that one of the main reasons for withdrawal of an application is non-compliance with these sector-based priorities (p. 14).

(22) The outstanding part of the loan at the start of the suspension of payments procedure amounted to ESP 82 678 246 (EUR 496 906,27).

(23) Guarantee granted in 1996: ESP 600 million (approximately EUR 3,61 million). The guarantee was granted on 2 July 1996 and formalised on 10 July 1996 for three years. It served to guarantee commercial credit lines provided by several banks up to a maximum amount of ESP 600 million (EUR 3,61 million). The credit provided by the banks was to total ESP 750 million (EUR 4,51 million). The guarantee was subsequently extended for a further two years on 31 March 1999. The cost of the guarantee consists of 0,5 % by way of a fee and 1,75 % in administrative costs and risk premium.

(24) As securities Puigneró provided a mortgage on seven properties, a personal guarantee from the main shareholder and 9 620 shares in the company (66,8 % of the total number of the company's shares). Two of the properties formed part of the industrial site at Prats de Lluçanès, the others were apartments and houses at Prats de Lluçanès ([6]). The mortgage provided security for a maximum amount of ESP 1 135 055 866 (EUR 6 821 823), of which ESP 105 586 592 (EUR 634 588) was for execution costs. This total amount corresponds to the execution value mentioned in the contract. The nominal value of each share is ESP 500 000; the execution value of each share mentioned in the contract is ESP 17 954. The maximum coverage of all the shares is ESP 154 944 134 (EUR 931 233).

(25) The original guarantee and the first extension never had to be called as all the obligations were met. Various properties had already been distrained by the Tax Agency and mortgaged in favour of other creditors. It seems that another mortgage on a property owned by the main shareholders was later added for security.

(26) Guarantee granted in 1998: ESP 500 million (approximately EUR 3 million). The guarantee was granted on 4 June 1998 for a maximum period of three years. The guarantee covered 50 % of the amount of a number of policies relating to discounting of bills which had been agreed between Puigneró and two banks. The cost of the guarantee is the same as above, and the security consisted of a mortgage on 23 properties of which 15 were owned by Puigneró and eight by the main shareholder. These properties formed part of the industrial site at Sant Bartomeu del Grau or were houses in that locality. The execution value of all these properties together mentioned in the guarantee is ESP 1 075 million. It appears that this guarantee has not been called either.

([6]) The houses at Prats de Lluçanès were valued at ESP 163 million (EUR 0,98 million) in July 2001. No previous valuation of the same properties exists.

(27) The guarantee agreements include a clause according to which the value of the securities given has to be revalued and the shortfall made up by other securities if the accounting value of the shares decreases by 10 % or more. This was indisputably the case as the company was declared insolvent by the Court in November 2000. However, the ICF states that it did not enforce the clause on the topping-up of the guarantee since it was unaware of the existence of other assets.

(28) Extension of guarantees in July 2001; reduction to a total of ESP 800 million (EUR 4,8 million): the 1996 and 1998 guarantees were once more extended by a further two years until 2003 on 17 July 2001. On this occasion the total amount covered by the guarantee was reduced to ESP 800 million (EUR 4,8 million). The risk premium was not modified, nor were further securities added.

(29) Modification of guarantees in November 2001: on 29 November 2001 the two guarantees were modified once more, reducing the coverage by another ESP 300 million (EUR 1,8 million). This amount was used to guarantee a loan to cover the severance payments related to the restructuring (basically deriving from closure of the site at Roda de Ter). This guarantee is valid until July 2003 like the others. The modifications did not affect the mortgages by which the guarantee was covered. Spain maintains that the actual total value of the guarantees amounted to ESP 800 million (EUR 4,81 million).

(30) Loan granted on 14 December 2000: The loan amounts to ESP 2 000 million (EUR 12,02 million) and was initially granted for one year. It was subsequently twice extended by another year. The interest rate is Euribor 3 months +1 %. The loan is conditional on implementation of a detailed action programme for 2001 and aims to bring about a temporary improvement in the company's cash flow. It is therefore explicitly devised as a bridging measure to enable the company to meet its day-to-day running costs and carry on its business 'normally'.

(31) The securities provided for the loan consist of a mortgage on 27 properties owned by the company (including the three industrial sites) and on 10 properties owned by the main shareholder, together with shares in the company provided by its shareholders (14 400 shares with a nominal value of ESP 500 000 each) and a personal guarantee by the main shareholders. The total execution value of the properties mentioned in the mortgage is ESP 3 570 million (EUR 21 396 030,92). As for the properties owned by the shareholders, no valuation was provided.

(32) Puigneró met the interest payments on the loan, at least until November 2001.

(33) Agreement on deferral and remission of debt reached as part of the suspension of payments procedure: the ICF subscribed to the agreement between Puigneró and its preferential creditors. This agreement does not concern the 2000 loan, which was granted after the suspension of payments procedure was initiated. The total debt covered by the suspension of payments procedure is ESP 149 590 014 (EUR 899 054). 39,70 % of the debt was to be paid out of the sale of the industrial site at Roda de Ter. For the remaining debt ICF was to subscribe to the agreement with ordinary creditors, which provided for a debt remission of 70 %.

4.2. *Deferral and remission of social security debt*

(34) The social security authorities charged the legal interest rate on all the debts. According to the annual accounts, the debt at the close of each year amounted to the sums indicated in the following table.

(ESP million)

	1992	1993	1994	1995	1996	1997	1998	1999	2000
Social security debt	k. A.	k. A.	4 727,3	5 259,8	5 996,3	6 190,2	7 288,7	8 815,7	9 963,1

(35) As for the various arrangements on payment in instalments and rescheduling of the accumulated debts, at least the following agreements were concluded ([7]):

Date	Amount (ESP million)	Amount (EUR)	Mortgage on:	Maximum burden on the property (ESP million)
December 1989 ([8])	671,5	4 036 109	Industrial site at Roda de Ter	4 612,2
21 February 1996	5 097,6	30 637 419	Not established. Intention was to mortgage the industrial site at Roda de Ter	n.a.
25 November 1999	6 778,5	40 739 884	Industrial site at Roda de Ter	8 815,7

(36) The entry into force of the agreements was subject to Puigneró formalising the relevant mortgages in the public register and complying with its current obligations as well as paying the instalments stipulated in the terms. The Commission notes, however, that the annual accounts for 1995, 1996, 1997, 1998 and 1999 all mention a mortgage in favour of the social security authorities for an amount of ESP 4 612 105 000 (EUR 27 719 309). This amount is raised only in the 2000 annual accounts to ESP 8 815 705 000 (EUR 52 983 454). The mortgages mentioned were placed only on the industrial site at Roda de Ter.

([7]) The Spanish authorities have provided copies of the more recent agreements, whereas the company's financial statements provide information on earlier agreements. Moreover, further agreements are mentioned in the statement of affairs for the suspension of payments as of 10 November 2000. It should be noted that any new agreement with the same authority covers new debt together with accumulated previous debt.

([8]) The exact amount of the agreement has not been confirmed, therefore the amount shows the approximate amount remaining to be paid on 31 December 1995. The same amount still remained unpaid on 31 December 1996.

(37) Following non-compliance with the 1996 agreement, the social security authorities imposed the following distraints on the company's assets:

Date of Decision	Amount (ESP)	Amount (EUR)	Properties concerned
30.9.1997	5 814 331 967	34 944 839	Industrial sites and various dwellings at Sant Bartomeu del Grau and Roda de Ter
14.10.1998	984 328 232	5 915 932	Ditto
8.9.1999	849 654 219	5 106 525	Only industrial sites at San Bartomeu del Grau and Roda de Ter
June 2001			Same properties as in 1997 and 1998

(38) The 1999 agreement was signed in November of that year, despite Puigneró's repeated failures to fulfil the terms of the previous agreements. The new agreement included the debt covered by the previous agreements together with newly accumulated debt. In addition to what was common to the other agreements, this agreement expressly stated that the authorities reserved the right to call securities in the event of non-compliance and to convert distraints into mortgages on the properties serving as securities. It also stated that in the event of the slightest non-compliance the authorities would initiate the enforced collection procedure. According to Spain, this agreement did not in fact come into effect since the company failed to meet its payments.

(39) Puigneró did not fulfil the terms of these agreements. The social security authorities did not receive any interest payment at all on the rescheduled debts.

(40) In the light of points 35 to 39 above, the Commission finds that none of the new debts accumulated after the 1989 agreement were covered by any guarantee until the distraint imposed in 1997. Furthermore, according to the debt rescheduling agreements a mortgage was to be established only on the industrial site at Roda de Ter. The distraints concerned dwellings as well as the industrial site at Sant Bartomeu del Grau. The industrial site and dwellings at Prats de Lluçanès were not affected at all.

(41) The debt to social security recognised in the suspension of payments procedure amounts to ESP 7 871 million (EUR 47,3 million). This debt can be broken down as follows:

(EUR)

Site	Period	Debt
Roda de Ter	11.1990 to 9.2000	1 735 524,19
Prats de Lluçanès	11.1998 to 9.2000	1 327 762,56
Sant Bartomeu del Grau	4.1990 to 9.2000 7.1977 to 12.1983	40 369 520,83 3 874 704,99
Total		47 307 512,57

(42) On 16 July 2002 Puigneró reached an agreement with all its preferential creditors (except one) on debt rescheduling and remission. Puigneró undertook to sell off within three years its production plant at Roda de Ter with the aim of obtaining a selling price of EUR 47 million. The proceeds of the sale would be used to pay each preferential creditor a minimum of 39,7 % of its claims (EUR 18 818 879,24 in the case of social security). If a higher value were to be obtained, the difference would be distributed among all creditors. Of the remaining debts 70 % would be remitted and 30 % (EUR 8 546 552,84 in case of social security) would be rescheduled over a period of 12 years, with no payment in the first year, increasing instalments and an interest rate of 3 %. The other preferential creditors that subscribed to this agreement include the Catalan Water Agency, the Official Credit Institute and the ICF.

4.3. *Deferral and remission of tax debt*

(43) The debt to the tax authorities decreased from 1992 to 1994 and in 1997. In 1998 and later years, it increased substantially. The Tax Agency also charged the legal interest rate on all the debts, to be paid together with the principal. According to the annual accounts, the tax debt at the close of each year amounted to the sums indicated in the following table:

(ESP million)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001 ([9])
Tax debt	3 516,6	n.a.	2 426,2	2 805,3	2 791,7	2 023,0	3 073,3	3 738,0	7 364,0	7 720,3

(44) As for the various arrangements on payment in instalments and rescheduling of the accumulated debts, at least the following agreements were concluded ([10]):

Date	Amount (ESP million)	Amount (EUR)	Properties to be mortgaged	Maximum burden of the mortgage (ESP million)
9 March 1990 ([11])	1 474,4	8 861 118	Unknown	Unknown
19 October 1992	3 516,6	21 135 184	All three industrial sites including machinery. However, the property register does not mention any mortgages on the sites at Prats de Lluçanès and Sant Bartomeu del Grau, neither do later guarantee agreements refer to such mortgages, so it appears that these were not established.	6 702,7
5 October 1999	4 018,8	24 639 554	Maintenance of mortgage on industrial site at Roda de Ter in order to cover ESP 1 195,1 million of debt and new mortgage on (all) the company's machinery in order to cover the remaining debt	Not established, agreement cancelled. The 2000 annual report, however, mentions a burden on all three industrial sites and machinery for a total value of 6 058,9.

(45) The entry into force of the agreements was subject to Puigneró formalising the relevant mortgages in the public register and complying with its current obligations as well as paying the instalments stipulated in the terms. The 1999 tax agreement furthermore expressly stated that the authorities reserved the right to call securities in the event of non-compliance. As for the 1999 agreement with the social security authorities, the authorities reserved the right to convert distraints into mortgages on the properties serving as securities. It also stated that in the event of the slightest non-compliance the authorities would initiate the enforced collection procedure.

(46) Puigneró did not fulfil the terms of these agreements. It paid only the first instalments.

(47) When Puigneró failed to make the scheduled payments the Tax Agency decided to impose distraints and mortgages for an amount equivalent to the debt. The following distraints were imposed on the company's assets as listed in the decision declaring that the company was in suspension of payments:

Date of decision	Amount (ESP million)	Amount (EUR)	Property concerned
22.4.1991	807,3	4 851 937	Industrial sites at Sant Bartomeu del Grau and Roda de Ter and 12 other properties, but apparently not the industrial site at Prats de Lluçanès
1996	478,8	2 877 935	Dwellings at Prats de Lluçanès
6.3.1998	2 050,4	12 322 888	All three industrial sites and almost all houses and apartments owned by the company

([9]) Estimate made by the Tax Agency on 27 December 2001.

([10]) The Spanish authorities have provided copies of the more recent agreements, whereas the company's financial statements provide information on earlier agreements. Moreover, further agreements are mentioned in the statement of affairs for the suspension of payments as of 10 November 2000. It should be noted that any new agreement with the same authority covers new debt together with accumulated previous debt.

([11]) The exact amount of the agreement has not been confirmed, therefore the amount shows the amount remaining to be paid on 31 December 1995.

(48) From the above, the Commission concludes in the first place that the Tax Agency apparently considered the site at Roda de Ter sufficient collateral until 1996, when an additional distraint on houses and apartments at Prats de Lluçanès was established.

(49) The total amount covered by the mortgages at the start of the suspension of payments procedure was ESP 3 486 million. The recognised debt to the Tax Agency in the suspension of payments procedure amounted to ESP 7 584 million (EUR 45,6 million). The debt can be broken down as follows:

Period	Capital	Surcharges	Interest	Total
1978-1990	4 843 837	1 514 548	8 535 310	14 893 695
1987-1991	2 554 166	510 833	558 068	3 623 067
1982-1992	976 503	195 301	213 359	1 385 163
1989-1991	2 351 018	535 244	2 313 660	5 199 922
1991-2000	16 335 366	3 267 073	2 170 619	21 773 058
Total	27 060 890	6 022 999	13 791 016	46 874 905

(50) On the basis of the agreement concluded between Puigneró and its preferential creditors on 16 July 2002, the Tax Agency was to receive a minimum amount of EUR 18 550 936,36 out of the proceeds of the sale of the site at Roda de Ter. For the remainder of the debt, the Tax Agency also subscribed to the agreement with ordinary creditors, under which it was to receive a further EUR 8 424 303 over a period of 12 years.

4.4. *Properties, mortgages, distraints and value of assets*

(51) As can be seen from the above, almost all properties served as collateral for various debts, loans and guarantees throughout the period in question. An overview is provided in Annex I to this Decision. The 2000 annual accounts provide the following description:

(ESP)

Property	Value of the mortgage	Beneficiary
Industrial site at Roda de Ter	8 815 705 000	Social security
Industrial sites at Sant Bartomeu del Grau and Prats de Lluçanès	1 200 000 000	Fondo de Garantía de Depósitos en Cooperativas de Crédito
Dwellings	27 000 000	Caja de Ahorros Comarcal de Manlleu
Dwellings	40 000 000	Caja de Ahorros Comarcal de Manlleu
Industrial site at Prats de Lluçanès and along the road from Vic to Gironella	2 725 000 000	ICF
Industrial sites at Sant Bartomeu del Grau, Roda de Ter and Prats de Lluçanès	6 058 859 000	Tax Agency
Total	18 416 564 000	

(52) The properties owned by the company are noted with the value at which they were entered in the property register. Some of them were registered in the 1960s and 1970s and the majority during the 1980s. Therefore, the mortgages that burden these properties far exceed the value mentioned in the register.

(53) In the context of the 1992 agreement with the Tax Agency, the latter's technical department valued the assets that were to be mortgaged. Twenty of the properties, including the industrial sites at Sant Bartomeu del Grau, Roda de Ter and the smaller one at Prats de Lluçanès, were estimated to be worth ESP 8 994 million (EUR 54,1 million) ([12]).

(54) Another valuation by an independent valuer, dated 20 May 2001, concerned only the industrial site at Roda de Ter (No 2 994), whose value was estimated at ESP 10 000 million (EUR 60 101 210). According to Spain, no further assessment of the value of the other properties was made before the new valuation carried out in July 2001.

([12]) As a matter of fact, there were two agreements in 1992. The first agreement concerned the industrial sites at Roda de Ter and Sant Bartomeu del Grau and a number of dwellings in those localities. The second carries the same date, but Spain has not provided a copy of the annex in which the properties are detailed. Some further dwellings may also have been included in the second mortgage, but the bulk of that mortgage most likely consisted of the industrial site at Lluçanès. This is confirmed by the fact that its value compared to the other value roughly corresponds to the value of the Lluçanès site in 2001 compared to the value of the other two sites in the 2001 valuation. The 1995 annual accounts mentioned that the debt to the Tax Agency was secured by a mortgage on all three industrial sites. This again confirms the likelihood that the second agreement concerned the industrial site at Lluçanès, even though the mortgages on this site and on the site at Sant Bartomeu del Grau were not formalised.

(55) The Court required Puigneró to commission an independent expert to value all its assets. The valuation is dated 21 July 2001 and was carried out for the purpose of drawing up the company's statement of affairs for the suspension of payments proceedings. The valuation in 2001 established the values as presented in the table below. The Commission notes that the auditor did not approve the creation in Puigneró's accounts of a revaluation reserve on the basis of this new valuation. In his report on Puigneró's financial statement for 2000, he commented that this revaluation reserve introduced into the equity funds did not comply with generally accepted accounting principles ([13]).

Item	ESP million	EUR million
Industrial sites	16 156,9	97,1
Dwellings	1 160,5	7,0
Machinery	6 683,2	40,2
Other installations	1 734,7	10,4
Total, including also transport equipment, tools, stocks etc.	29 443,7	177,0

(56) Based on these values for the properties, the Commission made an estimate of the values in previous years, assuming constant increments and equal increments for the industrial sites at Roda de Ter and Sant Bartomeu del Grau. Since Spain has not submitted more precise information, the Commission has no alternative but to rely on these calculations. They are presented in Annex II to this Decision.

([13]) The statement of affairs included in the Court decision shows assets totalling ESP 32 086 million (EUR 192,84 million) and liabilities totalling ESP 22 088 million (EUR 132,75 million), giving an asset surplus of ESP 9 998 million (EUR 60,09 million). For a company to qualify for the suspension of payments procedure, its assets must exceed its liabilities. This may induce companies to overvalue their assets. It should be noted that, according to the information available, the value of Puigneró's assets increased by approximately 67 % between 1992 and 2001. There is no doubt that a company's properties may increase in value, but some deterioration will also inevitably take place in buildings over nine years, especially where the company has been facing financial difficulties and is unlikely to have any spare cash for major investments to improve the condition and value of its assets. Consequently, the valuation would not seem to have been established on prudential principles. However, neither can the possibility be ruled out that the valuation may reflect a fair market value.

III. GROUNDS FOR INITIATING THE PROCEDURE UNDER ARTICLE 88(2)

(57) The Commission considered that the conditions according to which Puigneró had been able to defer its public debt appeared to include elements of State aid. In arriving at this conclusion the Commission particularly noted the significant length of time over which these debts had accumulated. The Spanish authorities did not seem to have taken any action with a view to enforcing debt collection as provided for under Spanish law. Moreover, according to the information provided by the Spanish authorities, at least a partial debt waiver was envisaged.

(58) The Commission also took the view that the conditions according to which the EUR 12,02 million loan was granted appeared to include elements of State aid, given that Puigneró appeared to be a company in difficulty and the funding was provided by a public body at the same interest rate as that applied to companies not facing financial difficulties. Furthermore, it remained unclear whether the guarantees provided for the loan were valid and sufficient.

(59) During the course of the investigation procedure it became apparent that Puigneró had received previous loans in 1993 as well as two guarantees, in 1996 and 1998 respectively, from the same public body as above, namely the ICF. As Puigneró was already in difficulty it was doubtful whether the securities provided, consisting mainly of the same assets that secured all other transactions, were sufficient and valid. Hence, given the low cost of the loan and the guarantees, the possibility could not be ruled out that these transactions too included elements of State aid.

IV. COMMENTS FROM INTERESTED PARTIES AND SPAIN'S RESPONSE

(60) According to the Belgian textile federation, Febeltex, Belgian textile companies active in the clothing sector had long been competing with Puigneró under unfavourable conditions. Febeltex maintained that Puigneró was applying abnormally low sales prices on the market, particularly in the United Kingdom, and that Puigneró's actions had distorted competition in that it had been able to snatch a large market share from its European competitors on the Benelux and Spanish markets.

(61) According to Spain, Puigneró had never been active on the Belgian clothing market, but in the sectors of yarns and textile finishing.

V. **COMMENTS FROM SPAIN AND PUIGNERÓ**

(62) Spain argued that Puigneró was a company in temporary difficulties which had been declared to be in suspension of payments in order to enable the authorities to recover at least a proportion of their claims. The procedure is used in situations where the economic problems are temporary and can be overcome.

(63) Spain furthermore maintained that the Spanish authorities could not be accused of having remained inactive since they had granted payment deferrals in accordance with the legislation in force together with corresponding guarantees and instalments. Default interest had also been charged as provided for in Spanish law.

(64) However, Spain acknowledged that the authorities had not tried to realise any of the company's assets securing the public debts. The Spanish authorities defended their action on the ground that the Suspension of Payments Act of 26 July 1922 prevents creditors requesting a declaration of bankruptcy while proceedings for suspension of payments are in progress.

(65) Spain gave two main reasons for not having initiated any enforced executions: first, that Spanish labour law gave preferential treatment to employees and, second, that an enforced liquidation of assets was likely to yield a lower price than their market value. The Spanish authorities therefore took the view that the option of using deferrals and distraints had proved preferable as it had placed them in a better position in the suspension of payments proceedings.

(66) The Spanish authorities furthermore claimed that they had acted as a diligent creditor by imposing distraints and mortgages on Puigneró's assets equivalent to the value of their claims. They thus maintained that securities were sufficient to cover the entire debt.

(67) As for the current situation, the authorities argued that enforced collection would make it extremely difficult to recover the entire debt, partly because severance payments take precedence over all other claims and partly because of the low price that would be obtained for the mortgaged assets in a public auction.

(68) For its part, the company supposed that practical reasons may have prompted the authorities to decide not to proceed with an enforced sale of assets, as it was easier for the public authorities to try to recover the debt by allowing the company to continue trading than to initiate an enforced liquidation.

(69) As for the agreements that Puigneró concluded with it, the ICF maintained that the securities provided were at all times sufficient to cover the loans and guarantees granted. According to the ICF, although most of the properties, around 27 in number and including all the industrial plants, had already been distrained by the social security and tax authorities, and 10 additional properties owned by the shareholders had been given to secure guarantees previously granted by the ICF, it was confident that the remaining value of the mortgage was sufficient to cover the new loan of EUR 12,02 million granted in December 2000.

(70) On the other hand, Spain also stated that given the semi-mountainous area where the plants are located and the significant value of the plants, an enforced sale of assets would be unlikely to yield their full value.

(71) The Spanish authorities concluded that their actions had been in accordance with the relevant legislation. They therefore took the view that a private creditor would have acted in the same way and that the measures did not constitute aid.

(72) However, Spain also referred to public objectives, e.g. the villages in which two of the three industrial sites are located are very small; Sant Bartomeu del Grau has some 1 215 inhabitants and Prats de Lluçanès has some 2 790. In the ongoing suspension of payments proceedings, the main concern of the public authorities (and at all events of the Catalan Regional Government) was to minimise the economic and social impact that could result from Puigneró's difficult situation.

(73) In its letter of 23 January 2002 Puigneró used a similar line of argument with a view to demonstrating that it had not received any illegal aid. As regards the 2000 loan from the ICF it stated, in support of that position, that given the collateral available it could have obtained a loan from private sources under the same conditions.

VI. **VIABILITY PLAN**

(74) Spain submitted a viability plan worked out for Puigneró by a consultancy firm located in Barcelona. The plan was dated November 2000.

(75) As for the reasons that led to the company's difficulties, the plan ascribed these mainly to the globalisation effect and extreme price-competitiveness of producers established outside the European market, which had radically changed market conditions. As for the company's future prospects, turnover was expected to remain at around the same levels as in 1999 and 2000. As a reduction in prices was anticipated, an increase in production was assumed. Moreover, turnover was to increase at an annual rate of around 9 % from 2003 to 2005. Thus, no reduction in capacity was planned.

(76) The plan was rather general as regards financial aspects. It did not foresee any investor contribution to the restructuring of the company. Neither did it indicate clearly the total cost of the restructuring, nor did it provide details on how the restructuring would be financed (timetable, method of raising the necessary finance, etc.). A major 'source' of finance was to be the debt remission by the public authorities.

(77) In their letter of July 2002, the Spanish authorities submitted a new version of the viability plan updated by Puigneró. In short, according to the new version, the company planned to reduce capacity in its loss-making activities (chiefly spinning). It was to close down its plant at Roda de Ter, which would subsequently lead to reductions in other sectors, such as weaving. In the future it would concentrate on products with higher added value, such as finished textiles. As a consequence, there has been a substantial reduction in the workforce.

(78) The company expects to generate gross operating profits as from 2002 and profits from 2004 onwards. The company is confident that these funds, together with the proceeds of the divestment of unproductive assets, will enable it to fulfil its obligations under the suspension of payments procedure.

VII. **ASSESSMENT**

1. **Puigneró's financial situation**

(79) Puigneró has been facing financial difficulties over an extended period of time. First of all, the company entered into agreements on deferral/payment in instalments with the social security and tax authorities on several occasions, at least in 1989, 1990, 1992, 1996, 1999 and 2000. According to the available financial data, the company has had insufficient net assets for several years. The equity situation has evolved as follows:

(ESP million)

Equity funds	1993	1994	1995	1996	1997	1998	1999	2000
Share capital	2 884	5 500	5 500	7 200	7 200	7 200	7 200	7 200
Revaluation reserve		—	—	1 615	1 615	—	—	14 422
Other reserves		392	392	392	392	—	—	—
Accumulated results		(5 809)	(5 420)	(3 953)	(3 593)	(1 450)	(1 275)	(1 000)
Result of the year		389	1 467	360	136	174	275	(17 421)
Total equity		472	1 939	5 614	5 750	5 925	6 200	3 201
Adjusted total ([14])								(11 221)

([14]) Adjustment made on the basis of the comments by the company's auditors (see point 55).

(80) As can be seen from the table, Puigneró had already lost most of its equity by the end of 1994 ([15]). On 7 June 1994 the share capital was increased by ESP 2 616 million (EUR 15 722 476,65). The equity level was restored to a sufficient level by a second capital increase only in 1996. The restoration was achieved to a large extent through a revaluation of assets that was subsequently cancelled to balance out some of the accumulated deficits. No fresh capital was therefore injected in respect of the amount of the revaluation.

(81) In 2000 total losses amounted to – ESP 17 421 million (– EUR 104,7 million), an amount exceeding the company's turnover of ESP 14 914 million (EUR 89,6 million). In addition to normal operating costs, the expenditure included ESP 1 748 million (EUR 10,5 million) in extraordinary expenditure and ESP 8 166 million (EUR 49,1 million) in charges pertaining to previous years.

(82) Puigneró partly restored its equity, although not to a sufficient level, in 2000 by introducing a revaluation reserve stemming from an increase in the value of its fixed assets (properties) following the valuation carried out by an independent expert on 21 July 2001 (see points 51 to 56 above). The book value of these assets increased by over 150 %. However, according to the auditor's report on Puigneró's financial statement for 2000, the revaluation reserve introduced into the equity funds did not comply with generally accepted accounting principles. The company's equity funds should therefore be reduced by ESP 14 422 million (EUR 86,68 million). Consequently, the value of its total equity funds at the end of 2000 was some – ESP 11 221 million (– EUR 67,44 million). In fact, due to the many uncertainties in Puigneró's annual accounts the auditors did not give an opinion on the state of the accounts but issued a qualified audit report for the year 2000.

(83) Puigneró submitted a provisional balance sheet as of 31 December 2001 in its updated viability plan. The balance sheet still includes the revaluation reserve as part of the equity. Nevertheless, even allowing this revaluation reserve to constitute part of the equity, Puigneró's solvency ratio (38,7 %) is not sufficient. Moreover, it is clear that no fresh financing has been injected that would provide the business with badly needed capital.

([15]) Exact data on earlier years are not available, but it appears from the 1995 annual report that the loss of equity must have taken place before 1994. The Commission notes that the 1995 annual report mentions losses that can be offset for tax purposes incurred during the period up to and including 1994 for a total amount of ESP 1 813,5 million (EUR 10 899 439), while 1994 showed a modest positive result.

(84) Another confirmation of the company's protracted financial difficulties lies in the fact that in no year has Puigneró succeeded in complying fully with its tax and social security obligations, as regards both its new obligations and the instalments payable under earlier agreements. Although the Commission has no precise information on this for the year 1993, it must be noted that in that year in particular a substantial loss was incurred, whereas Puigneró had negotiated a debt rescheduling with the tax authorities just before.

(85) Finally, it must be borne in mind that throughout the period under consideration the company was active in a sector that was suffering from strong competition from outside the EU (see points 16 and 17).

(86) It therefore has to be concluded that the company has at least since 1993 been struggling with financial difficulties which have led to the current suspension of payments procedure. It thus meets the definition of a company in difficulty according to the Community guidelines on rescue and restructuring aid.

2. **Aid within the meaning of Article 87(1) of the Treaty**

(87) Article 87(1) of the Treaty lays down the principle that, save as otherwise provided in the Treaty, any 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 shall, in so far as it affects trade between Member States, be incompatible with the common market.

(88) The measures described in points 6 to 56 were granted by the State or through State resources. The tax and social security authorities form part of the state. The ICF is a public institution operating under the Regional Government's Department for Economic Affairs and Finance. When it grants a selective advantage, this advantage must be regarded as being financed by State resources and it is attributable to the State ([16]).

(89) Yarns, fabrics and finished textiles are products that are extensively traded within the EEA and between the EEA and third countries, and their markets are characterised by fierce competition and suffer from overcapacity. The

([16]) The Commission furthermore notes that in response to Parliamentary questions the Regional Government replied two days before the 2000 loan was formalised that it planned to grant the loan through the ICF.

Commission notes that Puigneró is a major player in Spain in these sectors. Consequently, if the measures described in points 6 to 56 constitute a selective financial advantage, they reinforce Puigneró's position compared to its competitors in these markets and they certainly distort or threaten to distort competition and therefore affect trade between Member States.

(90) The remaining issue to establish whether or not the measures described in points 6 to 56 constitute State aid within the meaning of Article 87(1) of the Treaty is whether they favour a particular undertaking. For this, the Commission has to determine whether the measures benefited Puigneró in a selective way. This is assessed for each measure below.

3. **The 1993 loan and the guarantees provided by the ICF**

(91) In order to establish whether the 1993 loan and the guarantees provided by the ICF constitute a selective advantage, the Commission applies the 'private investor principle'. This means that the Commission assesses whether under the same circumstances a private lender would have granted the loan and the guarantees on the same terms. If this is the case, there is no selective advantage in favour of Puigneró.

The 1993 loan

(92) The ICF charged an interest rate that a private lender would have charged when granting a loan to financially healthy companies. Given the fact that Puigneró was in financial difficulties, such an interest rate was only justified if the loan was secured by sufficient collateral. As explained in points 6 to 56, the collateral consisted in shares in the company and a mortgage on property owned by the company.

(93) The nominal value of the 4 200 shares in the company provided as collateral was ESP 2 100 000 000. They constitute 29,17 % of the total share capital. However, it seems that the use of the shares as collateral for the loan was not formalised. In any case, the actual value of the shares has to be established according to the company's financial situation at the particular point in time. When the loan was granted the company was in difficulties. Moreover, its assets were burdened by mortgages and distraints and the loan agreement would not prevent further burdening. Therefore, the shares would not provide any value for a lender.

(94) As explained in points 6 to 56, a mortgage was created on part of the industrial site at Prats de Lluçanès. As indicated in paragraph (56) and Annex II, the Commission estimates the value of the industrial complex of Prats de Lluçanès, including the value of the dwellings at the site and the machinery, at time the loan was granted at ESP 1 208,9 million (EUR 7,26 million). However, the industrial site consists of two parts entered on the property register separately. The mortgage does not affect the larger of the two, nor the dwellings and machinery. Moreover, both parts of the industrial site, together with the other properties, had already been used as security for debts towards other financial institutions, and a substantial proportion of those debts had not yet been repaid in 1993 ([17]). Subtracting this amount from the total value for both parts of the industrial site leaves an amount which is clearly less than the maximum value of the mortgage of ESP 970 million. The actual coverage based on only the smaller part of the site must be even smaller.

(95) A private lender would certainly have taken into account the fact that in the event of a forced public auction the value obtained can be considerably lower than the value of a company as a going concern. Therefore, a private lender in the ICF's position in 1993 would not have considered the securities as sufficient collateral to cover the loan and would not have provided the loan on the same terms. The ICF holds that in the event of an enforced auction, and where no third party puts in a sufficient bid, the ICF will itself acquire the property. Then as soon as possible, it will arrange its sale, but under better market conditions, so that the amount of the entire outstanding debt will be recovered. However, this would certainly involve costs and risks that a private lender would not have accepted on the same terms. Consequently the Commission concludes that the loan was not granted in conformity with the private investor principle and therefore constitutes State aid within the meaning of Article 87(1) of the Treaty in favour of Puigneró.

([17]) The property register shows mortgages in favour of Fondo de Garantía de Depósitos en Cooperativas de Crédito (maximum ESP 1 200 million, debt in 1995 still ESP 495,4 million) and Caixa d'Estalvis i Pensions de Barcelona (maximum ESP 886 million). The 1995 annual report also mentions two loans representing a total burden of ESP 500 million, under which ESP 397,9 million was still owed in 1995. It is not clear, however, where the smaller of these last two is registered in the property register.

(96) The extension of the loan in May 1996 does not change the situation. The company was still in difficulty and the property was still mortgaged to guarantee other transactions, although the outstanding debt under those transactions had somewhat decreased by that time. The first instalment of the loan was paid according to schedule. As explained in point 56 and Annex II, the Commission estimates the value of the industrial site in 1996 at ESP 1 822,8 million. However, the mortgage still encumbered only the smaller of the two parts. So the effective coverage must have been substantially smaller than the collateral needed to secure the loan sufficiently. The Commission therefore concludes that the extension of the loan also constitutes State aid within the meaning of Article 87(1) of the Treaty.

The July 1996 guarantee amounting to ESP 600 million (EUR 3,61 million)

(97) The ICF charged an annual fee of 1,75 % by way of administrative costs and risk premium for the guarantee, which according to the Commission should be viewed as a fee applied to healthy firms and/or for loans secured by sufficient collateral. However, Puigneró was in serious financial difficulties at the time and the collateral consisted in shares in the company, a personal guarantee provided by the main shareholder and a number of properties.

(98) As explained above, given that the company was in difficulty when the guarantee was granted and most of its assets were mortgaged, the shares in the company did not provide valid collateral for a guarantor.

(99) As regards the personal guarantee by the main shareholder, the Commission points out that any private guarantor would prefer a quantified and concrete security to a general, unspecified commitment. Spain has not provided any evidence of the value of this personal guarantee. In contrast, the main shareholder is likely to be personally liable for the tax debt of ESP 2 282 million, stemming from before the change in the legal form of the company in 1982, which was included in the total tax debt in 2000. The Commission therefore takes the view that the personal guarantee provided by the main shareholder adds little or no security.

(100) The smaller part of the industrial site at Prats de Lluçanès again served as security for the guarantee, but the other part and the private dwellings were this time added as collateral. The dwellings did not account for a very large share of the value, around 7 % of the total in 2001. Since the smaller part of the site was already burdened by the mortgage to cover the loan, the major new asset was the larger part of the site. However, as explained above, this part of the property was already burdened by other mortgages. Although these mortgages concerned other properties too, it is clear that insufficient value was left for covering the new guarantee, in particular (but not only) when the 1992 mortgage in favour of Caixa d'Estalvis i de Pensions de Barcelona, for an amount of ESP 886 million, is taken into account.

(101) Taking into consideration the fact that the company was struggling with financial difficulties, the Commission concludes that the conditions under which the guarantee was granted do not comply with the private investor principle. The collateral would have been insufficient for a private guarantor, who would have required further securities and/or would have set a higher risk premium, or would not have granted the guarantee at all. The fact that the guarantee has never been called does not change this assessment. The Commission therefore concludes that the full amount covered by the guarantee constitutes aid, since the company could not have obtained it under the conditions granted by ICF.

The 1998 guarantee amounting to ESP 500 million (EUR 3,0 million)

(102) The annual premium for the 1998 guarantee was again 1,75 %, which, as already pointed out, should be viewed as a premium applied to healthy firms and/or for loans secured by sufficient collateral. Puigneró was in financial difficulties at the time and the collateral consisted of the industrial site and private dwellings at Sant Bartomeu del Grau, eight of them owned by the main shareholder.

(103) By the time this guarantee was granted, the company properties provided as collateral were already burdened by a mortgage in favour of Fondo de Garantía de Depósitos en Cooperativas de Crédito, for a debt of which only ESP 395,4 million still had to be paid, a distraint in favour of the Tax Agency for a tax debt of ESP 2 050,4 million and a distraint in favour of the social security authorities for a debt of ESP 5 814,3 million. These burdens concerned almost all the other properties, including the three industrial sites. Moreover, the other properties were also already

burdened: the 1992 mortgage in favour of the tax authorities and the earlier mortgage in favour of the social security authorities on the site at Roda de Ter, and the mortgages in favour of the ICF for the 1993 loan and the 1996 guarantee. As stated in point 56 and Annex II, the Commission estimates the value of all properties owned by the company, including the private dwellings and machinery, at ESP 17 284,0 million in 1998. Since the mortgage for the guarantee did not concern the machinery, it is doubtful whether enough would be left to cover the guarantee. Moreover, if the site at Sant Bartomeu del Grau were sold off, the distraints obtained by the Tax Agency and the social security authorities would take priority. The fact that eight properties owned by the main shareholder were added as collateral does not change this assessment: the Commission does not know their value, but the maximum for which these properties serve as collateral amounts to only ESP 6 947 058 (EUR 41 752). Consequently, by providing the guarantee the ICF incurred a risk for which it did not receive appropriate remuneration. Therefore, for similar reasons as those given in point 101 above, the Commission concludes that the guarantee constitutes State aid within the meaning of Article 87(1) of the Treaty.

(104) The ICF argued that, where necessary, it considered it more beneficial to provide a company with an emergency guarantee than to enforce liquidation, which could prove more harmful for all creditors. However, when an emergency guarantee is provided under normal conditions, the risk has to be covered by other means, such as by an increased risk premium. The ICF's statement therefore confirms that the guarantee constitutes State aid.

Extension of the 1996 guarantee in 1999

(105) As explained in point 57 and Annex II, the Commission estimates that by the time the 1996 guarantee was extended, the value of the property, the complete site and private dwellings at Prats de Lluçanès, had increased. However, so had the burden on the property, in particular as a result of the distraint obtained by the Tax Agency in March 1998. There is therefore no need to reassess whether the guarantee constitutes State aid.

(106) It is clear that the value of the property was significantly lower than the total burden on it. Taking also into account the fact that the company was struggling with financial difficulties, the Commission concludes that the extension of the guarantee does not comply with the private investor principle. A private guarantor would have required further securities and/or would have set a higher risk premium or would not have granted the guarantee at all. The Commission therefore concludes that the full amount covered by the guarantee constitutes aid, since the company could not have obtained it under the conditions granted by the ICF.

Extension and modification of the two guarantees in 2001

(107) In 2001 Puigneró was already in suspension of payments. Its debt towards the public authorities and the ICF amounted to ESP 15 605 million (EUR 93,8 million). Puigneró had, furthermore, received a loan amounting to ESP 2 000 million (EUR 12,02 million) from the ICF in December 2000, also secured by the same properties. As a matter of fact, all the company's assets, including those provided as collateral for the guarantees, were mortgaged against both the company's substantial public debt and the loan granted in 2000.

(108) Consequently, given that the extension of the guarantees was granted to an insolvent company against insufficient securities, the entire amount of the guarantees has to be deemed to constitute aid.

4. **Non-payment of taxes and social security contributions**

(109) In line with the Commission Decision of 14 October 1998 ([18]), as confirmed by the Court of Justice ([19]), the persistent and systematic non-payment of social security contributions and taxes constitutes a transfer of public resources. Such transfers give the company a competitive advantage, since — unlike their competitors — they are not obliged to defray these costs as would ordinarily be the case ([20]).

(110) As the Court held in Tubacex ([21]), a good test is to compare the behaviour of the state with the behaviour of a private creditor. This was confirmed by the Court in DMT, where it held that 'the ONSS (the national

([18]) Commission Decision of 14 October 1998 concerning aid granted by Spain to companies in the Magefesa group and their successors (notified under document number C(1998) 3211) (OJ L 198, 30.7.1999, pp.15-27).

([19]) Case C-480/98 *Spain* v *Commission* [2000] ECR I-8717.

([20]) Advocate General Jacobs stated in his opinion of 24 September 1998 in Case C-256/97 *DMT* that it was clear that, in certain circumstances, continued and generous tolerance of late payment of social security contributions could confer an appreciable commercial advantage on the recipient undertaking and in extreme cases be tantamount to relief from those contributions (paragraph 33).

([21]) Case C-342/96 *Tubacex* [1999] ECR I-2459.

social security office) must be compared with a hypothetical private creditor which, so far as possible, is in the same position vis-à-vis its debtor as the ONSS and is seeking to recover the sums owed to it' ([22]). This is referred to as the 'private creditor principle'.

(111) The Commission takes note of the fact that the social security authorities and the Tax Agency acted in accordance with the applicable Spanish law. The Commission also recognises the fact these authorities charged the mandatory default interest and tried to secure their claims by imposing distraints and mortgages on assets. The question is, however, whether a private creditor in the same situation would have been satisfied with these measures or would have proceeded with an enforced liquidation to recover at least a proportion of its claims. From the information available, the Commission concludes that the Spanish authorities have not acted in accordance with the private creditor principle.

(112) In the first place and from a general standpoint, substantial tax and social security obligations remained unpaid for a long time, while the company did not comply with the payment agreements it entered into. According to figures provided by the company, between 1995 and 2000 Puigneró paid the Tax Agency and the social security authorities a total amount of ESP 4 608 675 680 within the periods allowed for voluntary payment. Over the same period it paid ESP 587 966 845 during the enforced collection phase; all these payments were in fact effected between April 1997 and December 1998. Over the same period, the total outstanding debt to these public authorities increased by ESP 10 173,6 million. From these figures, from the annual accounts, from the overviews attached to the various payment agreements and from the tables in points 42 and 50 it can be clearly seen that most of the debt corresponded to obligations that remained unpaid for at least several years. A significant proportion of these obligations remained unpaid for more than five years. A private creditor in the same situation would not have tolerated arrears over such a long period, still less when further arrears were constantly arising and the company was not complying with the payment agreements it had entered into. Despite the legal interest that was charged and the securities that were offered, a private creditor would have lost confidence in recovering its claims and would have enforced payment much earlier.

(113) Secondly and more specifically, a private creditor would have carried out valuations of the properties in order to ascertain the precise value of the distraints and mortgages. Throughout the 1990s the Spanish authorities relied only on a valuation made in 1992 by the Finance Ministry's technical departments.

(114) Thirdly, a private creditor would have agreed on debt rescheduling and mortgages only where there were prospects for an improvement in the situation. When a debtor fails to fulfil payment agreements it has signed, a private creditor would normally seek guarantees that the financial situation of the company was to improve. However, the payment agreements of 1992 and 1999 with the Tax Agency and the agreements concluded in 1996 and 1999 with the social security authorities do not contain any such guarantees or conditions, and the actual situation of the company demonstrates that there was no structural improvement. It must be recalled that the company was in financial difficulties with very low profits throughout the period between 1994 and 1999. It was operating in a market that was characterised by fierce competition, it continued to accumulate payment arrears and it did not abide by the agreements with the public authorities. A more coherent restructuring plan was only submitted in 2000, but this plan had to be fundamentally overhauled in 2001 since the situation had continued to deteriorate, contrary to expectations. So the Tax Agency and the social security authorities could not have believed that there were clear and well founded expectations that Puigneró's situation would improve and that it would be able to pay off the outstanding debts. In such a situation, the usual clauses whereby the agreements become null and void in the event of non-payment of any of the agreed instalments cannot suffice.

(115) Fourthly, the Commission notes that the Spanish authorities could have proceeded to an enforced liquidation of a substantial number of properties on which distraints had been placed to secure the debt, as these consisted of private flats and houses and would thus not have impaired the company's capacity to generate business income. Neither did the authorities enforce a partial closure of any of the industrial sites.

(116) Fifthly, on various occasions the Spanish authorities appear to have acted negligently. According to the agreements of 29 October 1992 with the tax authorities, Puigneró was to establish a mortgage on the three industrial sites within 30 working days to cover a total debt of ESP 3 516,6 million. However, the company established a mortgage only on the site at Roda de Ter and only on 5 May 1993. This meant that the mortgage on the site at Prats de Lluçanès in favour of the ICF, which guaranteed the 1993 loan, took

([22]) Case C-256/97 *Déménagement–Manutention Transport* [1999] ECR I-3913.

priority over later distraints that were imposed to secure the tax debt. Moreover, it was precisely the site at Roda de Ter that was already burdened in favour of the social security authorities. The Commission does not know the exact amount of the debt towards social security outstanding in 1992/1993 that was covered by this mortgage, but given that the debt amounted to ESP 4 727,3 million in 1994, it assumes that the industrial site and dwellings at Roda de Ter were mortgaged for more than their actual value at the time (ESP 3 758,5 million in 1992). A private creditor in the same situation would have reacted immediately to the breach of the agreement, in particular taking into account the company's financial situation and track record in paying its debts.

(117) Similarly, according to the agreement with the social security authorities of 21 February 1996, Puigneró was to establish a mortgage for a total amount of ESP 5 097,6 million. This mortgage was not formalised either. Only in October 1997 did the social security authorities proceed to set a distraint. And finally, neither did the agreement of 25 November 1999 come into effect, owing to non-compliance by Puigneró. The total amount under the distraints of October 1997, October 1998 and October 1999 was ESP 7 648,3 million, which is well below the total social security debts of ESP 9 963,1 million in 2000. The 2000 annual accounts also mention a mortgage on the industrial site at Roda de Ter in favour of the social security authorities for an increased amount of ESP 8 815,7 million. It is not clear at what date this mortgage was established, but as it burdens only the site at Roda de Ter, it has to be concluded that the social security authorities once more accepted an overburdening of this site. A private creditor in the same situation would have reacted much earlier, enforcing payment or requiring security for the debt without delay, above all given the company's financial situation and track record in paying its debts.

(118) The mortgage in favour of the Tax Agency increased substantially in 2000 to a total of ESP 6 058,9 million. Unlike the mortgage in favour of the social security authorities, this mortgage affects all three industrial sites, including machinery. However, this amount is again lower than the actual debt in 2000 (ESP 7 364,0 million). As a matter of fact, the 2000 annual results were heavily affected by losses from earlier years of ESP 2 282,1 million due to an old tax debt, which probably also explains the substantial rise in tax debt in that year. This old debt was incurred by the main shareholder before the change in the legal form of the company in 1982 and had not been taken into account in earlier payment agreements. A private creditor would certainly have sought sufficient security for this debt at a much earlier stage.

(119) Sixthly, a private creditor would have duly taken into account the likelihood that the property would have fetched a lower price in the event of an enforced liquidation. This is supported by the Spanish authorities' statement that the properties are located in a semi-mountainous area and would therefore be less attractive to possible purchasers. The Spanish authorities maintain that the price that could be obtained in an enforced auction is likely to be 50 % of market value at most. The company itself also maintains that in public auctions the realised value is in general substantially lower than the market price, occasionally even lower than 50 %. This is also supported by the fact that the ICF initially required a significantly higher value of securities to cover the principal of a loan or guarantee, although at a later stage it accepted securities that were burdened to an extent exceeding their value.

(120) The Commission therefore considers that it should have been evident to the authorities that their position would only worsen by agreeing repeatedly to defer their claims. They allowed Puigneró to accumulate a significant amount of public debt, amounting to at least the value of all its total fixed assets if these were to be sold by means of a public auction. Thus, the Spanish authorities should have been aware of the fact that their claims were not fully covered by the distraints and mortgages imposed on the assets. Under these circumstances, it should have been evident to the Tax Agency and the social security authorities that setting distraints did not increase the prospects for recovering their claims, but only made it more difficult to recover the interest that was accumulating and the new debts that were arising.

(121) Thus, in allowing a company in difficulty to go on trading over an extended period of time, and not using all the means available under Spanish law to recover their claims, both the Tax Agency and the social security authorities reduced their chances of recovering the amounts owed to them and granted an advantage to Puigneró that cannot be justified according to the private creditor principle. As regards the Tax Agency, this advantage dates back at least to early 1993 when Puigneró failed to abide by the 1992 payment agreement and established a mortgage only on the site at Roda de Ter, instead of on all three industrial sites. As regards social security, the advantage dates back at least to 1995. By that time the outstanding debt had increased significantly and the new debt was not covered by the mortgage that was established before 1992. The first action taken to secure this additional debt was the unsuccessful 1996 agreement. The aid

continued to exist as no action was taken on the breach of the 1996 agreement until the October 1997 distraint. The aid continued thereafter as the debts increased beyond the amount secured by additional distraints and as the social security authorities did not take appropriate action following the breach of the 1999 agreement. For both the Tax Agency and social security, the amount of aid must be considered to be equivalent to the total debt at the time.

(122) The Spanish authorities argued that, since none of the private creditors initiated bankruptcy proceedings, the public creditors behaved in the same way as the private creditors and their actions did not constitute State aid. However, the Commission considers that the other creditors were not in the same position as the public authorities. The main private creditors were the suppliers. A supplier does not tolerate persistent non-compliance with his customer's obligations. When the risk exposure reaches the supplier's limit, he will stop supplying or take other measures, such as requiring advance payment or payment guarantees. As a matter of fact, it is likely that the company was able to avoid enforced liquidation owing to the lack of private creditors who would have been more ready to proceed to enforced collection in the event of persistent non-payment. It may be only due to the guarantees granted by the ICF that the company continued to obtain supplies for production. Moreover, enforced debt collection by the public authorities may not have led to a complete bankruptcy, but could have led to a partial liquidation of the least profitable part of the company. The Commission therefore concludes that this argument fails to prove the absence of State aid.

(123) As regards the further debts accumulated with the social security authorities and the Tax Agency up to the start of the suspension of payments procedure, the Commission concludes that these too constitute aid, in so far as the normal procedures would have enabled the authorities to enforce collection by the date of the start of the procedure. Up to November 2000 the company's financial situation continued to deteriorate (significantly), the debts had increased further and the securities became further overburdened following the 1999 payment agreements. Again, the Spanish authorities did not use all the legal means available for recovering their claims. Therefore, these subsequently accumulated debts constitute further aid.

(124) Under Spanish law new debts that arise in the course of a suspension of payments procedure have priority over the existing debts at the time that procedure started and are therefore relatively well protected. Consequently, the acceptance of new debts by the social security authorities and the Tax Agency does not constitute further aid to Puigneró.

(125) The Commission therefore concludes that the persistent non-payment of taxes between early 1993 and the start of the suspension of payments procedure in 2000 and the persistent non-payment of social security contributions as from 1995 until the start of the suspension of payments procedure in 2000 constitute aid within the meaning of Article 87(1) of the Treaty. Since the debts to social security and the Tax Agency already constituted aid prior to the suspension of payments procedure, there is no need for the Commission to assess whether the agreements concluded in 2002 involve additional aid.

5. **The 2000 loan provided by the ICF**

(126) The ICF charged the same interest rate as that applied to healthy companies for loans secured with sufficient collateral. The loan was granted after the start of the suspension of payments procedure and therefore takes priority over previous debt. However, this priority does not affect the order in which mortgages and distraints protect claims in the event of bankruptcy. Since at that time the company was already in difficulty, such a scenario was not at all unrealistic. Consequently, only if the loan were sufficiently secured would it not constitute State aid.

(127) However, the securities were not sufficient. The mortgage consisted largely of the same collateral that secured all previously described transactions and the ICF would have been the last creditor in chronological order and therefore the last to claim its share of the assets. At the time the loan was granted all Puigneró's assets were burdened by earlier mortgages and distraints, to an extent exceeding what a private investor would have been prepared to accept. At this point the total unsettled payments owed to the ICF and the social security and tax authorities amounted to ESP 15 605 million (EUR 93,8 million). Other preferential creditors held mortgages for an amount of ESP 1 267 million. This means that the loan would increase the total burden still further beyond the value that could be expected in the event of an enforced public auction.

(128) 9 620 of the shares had already been given as security for the guarantee in 1996, and only 4 380 shares had

not previously been given as security. In any case, as explained in points 91 to 108, since Puigneró was in financial difficulties, the shares did not represent any substantial value as a security. As regards the personal guarantee provided by the main shareholder, the Commission points out that any private lender would prefer a quantified and concrete security to a general, unspecified commitment. The Commission notes that Spain has not provided any evidence for the value of this personal guarantee. In contrast, the main shareholder is likely to be personally liable for the tax debt of ESP 2 282 million, accumulated by the company before the change in its legal form in 1982, which was included in the total tax debt in 2000.

(129) Finally, the properties owned by the shareholders provide insufficient value in themselves, in the first place because their total execution value mentioned in the loan contract amounts to only ESP 722 600 000 (EUR 4 342 914). Spain has not provided any estimate of their actual value. The Commission notes that eight of them, with a total execution value of ESP 396 100 000 (EUR 2 380 609), had only been mortgaged for the purposes of the 1998 guarantee, also in favour of the ICF ([23]), and served as collateral only for the very small amount of EUR 41 752, which is much lower than the total value of the loan. The two other mortgages on two of these properties in favour of the Tax Agency, ESP 16 000 000 (EUR 96 162), may also still have been valid. Therefore, the Commission concludes that the properties owned by the shareholders could guarantee a maximum of EUR 4 342 914, although even this figure is not certain.

(130) The loan was granted with an interest rate corresponding to Euribor 3 months + 1 %. Thus, the interest rate, and notably the premium, corresponds to that applied to healthy companies.

(131) Given that the loan was granted to an insolvent company against insufficient securities and without a corresponding risk premium, the Commission concludes that the entire amount of the loan constitutes aid.

(132) For the same reasons as set out in point 102, the argument that the loan may prevent losses on the outstanding loans and guarantees cannot be accepted.

([23]) The property at Sant Feliu de Guíxols may actually have been added as security to the 1996 agreement, rather than the 1998 agreement.

6. **Compatibility of the aid**

(133) Having established that State aid is involved in the 1993 loan and the 1996 and 1998 guarantees provided by the ICF, in the non-payment of social security contributions and taxes, and in the loan provided by the ICF in 2000, the Commission must assess whether or not such aid is compatible with the common market.

(134) The Commission notes that Spain has not relied on any of the derogations provided for in the Treaty, maintaining its position that the measures do not constitute State aid.

(135) The Commission has assessed whether the exemptions set out in Article 87(2) and (3) of the Treaty apply. The exemptions in Article 87(2) of the Treaty can serve as a basis for considering aid to be compatible with the common market. However, in this case the aid (a) does not have a social character and is not granted to individual consumers, (b) is not intended to make good the damage caused by natural disasters or exceptional occurrences and (c) is not required in order to compensate for the economic disadvantages caused by the division of Germany. Neither does the aid qualify for the exemptions in Article 87(3)(a), (b) and (d) of the Treaty that refer to promotion of the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, to projects of common European interest and to the promotion of culture and heritage conservation.

(136) As far as the first part of the exemption in Article 87(3)(c) of the Treaty is concerned, for aid to facilitate the development of certain economic activities, the Commission notes that the aid was not intended for purposes such as R&D, investment by SMEs or protection of the environment. Article 87(3)(c) of the Treaty also provides for the authorisation of State aid to promote the development of certain economic activities or areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The company is located in three areas in Catalonia, all of which qualify for aid under Article 87(3)(c). However, the aid does not comply with the rules for regional investment: e.g., it is not linked to initial investment.

(137) As indicated in points 79 to 86, at the time the various aid measures were granted Puigneró was a company in difficulty. As the primary objective of the aid would have to be to restore the long-term viability of an undertaking in difficulty, the Commission will assess its

compatibility in the light of the Community guidelines on State aid for rescuing and restructuring firms in difficulty adopted in 1994 and 1999 (hereinafter the '1994 guidelines' and '1999 guidelines' respectively ([24])).

Rescue aid

(138) For the following reasons, the 1993 loan, the 1996 and 1998 guarantees and the aid involved in the deferral of tax and social security obligations cannot be found compatible as rescue aid. In the first place, none of these measures were restricted to a 12 month period, as required by point 23(b) of the 1999 guidelines or, more generally, to the time needed to devise the necessary recovery plan, as required by section 3.1 of the 1994 guidelines. The loan and the guarantees were first granted for a three-year period and subsequently extended. The preparation of a recovery or restructuring plan was not set as a condition. The 2000 loan was initially granted for one year, but was subsequently extended twice for another year. This loan cannot therefore be found compatible as rescue aid either in the light of this requirement. In the second place, the measures do not constitute a one-off operation, but must be regarded as various separate measures taken over a longer period. Thirdly, Spain has not provided any evidence that the other criteria were respected. The Commission therefore does not have the necessary information for concluding that the amount of the aid was restricted to the amount needed to keep the firm in business and that the aid was warranted on the grounds of serious social difficulties, without having undue adverse spillover effects on the situation of the sector in other Member States.

Restructuring aid

(139) The guidelines establish the following conditions on which the Commission can approve aid for restructuring:

Restoration of viability

(140) The grant of the aid must be conditional on implementation of a restructuring plan which must be endorsed by the Commission in the case of all individual measures. The plan must restore the company's long-term viability within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. With respect to the measures taken after the entry into force of the 1999 guidelines, the plan must include all relevant details, in particular a market survey to allow consideration to be given to the effects that public support has on keeping an unhealthy company artificially alive, as this can force healthy companies into difficulties.

(141) The Commission notes that there was no such restructuring plan in place until November 2000. The 1993 loan, the 1996 and 1998 guarantees and the aid involved in the deferral of tax and social security obligations were all granted without any such reassurance of a return to viability as normally contained in a viability plan. The Commission therefore cannot find these measures compatible with the common market.

(142) The 2000 loan, in contrast, was granted following presentation of a viability plan and conditional on its implementation. However, the plan does not include a market analysis taking into account the present state and future prospects for supply and demand on the relevant product market, with scenarios reflecting best-case, worst-case and intermediate assumptions and the firm's position within it. Nor does the plan provide information on market shares or a Community-wide forecast for trends in demand, aggregate capacity and prices over the five years ahead. These serious shortcomings are reflected in the changes that subsequently had to be made to the plan, notably the closure of the production site at Roda de Ter. Another shortcoming is that it appears that the aid left the company short of capital, not creating a definitive solution to its financial difficulties but rather keeping it afloat in the short run.

(143) Consequently, the documents and information submitted by the Spanish authorities do not allow the Commission to conclude that the measures offered sufficiently firm prospects for restoration of Puigneró's long-term viability within a reasonable timescale. On this ground alone, the Commission can find that the 2000 loan does

([24]) OJ C 368, 23.12.1994, p. 12 and OJ C 288, 9.10.1999, p. 2. Point 101 of the 1999 guidelines explain which guidelines apply in principle to which measures. However, as the differences between the two sets of guidelines have hardly any impact on the assessment of the measures, the Commission refers in the following assessment only to the 1999 guidelines. Where the distinction is significant, the applicable guidelines are indicated. The 1994 guidelines (OJ C 368, 23.12.1994, p. 12) codified the approach that the Commission had been taking for a long time. The 1993 loan can therefore also be assessed under the same rules.

not comply with the conditions of the 1994 and 1999 guidelines and hence is incompatible with the common market.

Avoidance of undue distortions of competition

(144) According to section 3.2.2(ii) of the 1994 guidelines, measures must be taken to offset, as far as possible, adverse effects on competitors. According to point 35 of the 1999 guidelines, compensatory measures, such as an irreversible reduction in capacity, must be taken to mitigate as far as possible any adverse effects of the aid on competitors.

(145) The textile market is a highly sensitive market which was characterised by overcapacity and declining output throughout the period during which the aid to Puigneró was granted. Any aid granted to a company operating in this market will therefore be likely to distort competition. There is no evidence of any measures having been taken to offset or mitigate the adverse effects on competitors. On the contrary, it appears that the aid enabled the firm to follow a low-price strategy, thereby ensuring an outlet for its production, but harming the interests of its competitors, as alleged by them. The Commission recalls the comment by a third party that Puigneró distorted competition on the market by applying abnormally low sales prices. Puigneró confirms in its new viability plan that its pricing policy had a negative effect on the overall level of market prices.

(146) In terms of turnover, the initial plan did not envisage any reduction in capacity, but rather an increase. Among the measures to be taken the company was planning to reduce prices in order to increase volume. However, the new viability plan provides for a reduction in capacity in that the company is to reduce its loss-making activities, mainly in the spinning sector, and refocus on products with higher added value.

(147) Moreover, Puigneró plans to close its entire plant at Roda de Ter. However, the company has three years in which to sell the plant and pay off part of the public debt with the proceeds. In the event that the sale does not materialise, there does not appear to be any clause ensuring definitive closure of the plant and hence an irreversible reduction in capacity. Moreover, despite the closure of one entire plant and a substantial reduction in the workforce, turnover is expected to remain at the same level as before. A steady increase in turnover is again anticipated. It is therefore not possible to conclude with certainty that a definitive reduction in capacity will take place.

(148) Consequently, this condition in the 1994 and 1999 guidelines is not respected.

Aid limited to the minimum

(149) According to section 3.2.3(iii) of the 1994 guidelines and point 40 of the 1999 guidelines, the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken. Aid beneficiaries will also be expected to make a significant contribution to the restructuring plan from their own resources.

(150) Spain has not provided a clear overview of the costs of the restructuring. The main elements seem to be the cost of closing down the Roda de Ter site and the financial restructuring. The main source of financing will be the proceeds of the sale of the Roda de Ter site. However, the sale is expected to take place within three years, and the price that could be achieved is not known for certain. Moreover, as was the case with the previous agreements, the agreements with the public authorities make no provision for the eventuality of the company not managing to sell the plant within the established time period. In that event, no other measures seem to have been taken to ensure the closure of the plant. In view of these uncertainties regarding the sale of the plant, it is not possible to conclude that this measure satisfies the investor contribution criterion.

(151) A second major source of finance for the restructuring is, of course, the debt reductions as agreed by all the creditors. These concern, however, mainly the public creditors. Since the accumulation of the original debts throughout the years in itself constitutes State aid, the subsequent agreements on debt reductions cannot be seen as a contribution from the beneficiary or from external commercial financing. Thirdly, the plan counts on continued financing by private banks as covered by guarantees from the ICF. Fourthly, according to the plan further assets will be hived off. However, the plan does not specify which assets are to be sold, when or what the proceeds are expected to be. Fifthly, the shareholders have put up their assets, both property and shares in the company, as securities for guarantees and loans. However, as stated above, these (new) securities were relatively small and insufficient to cover the guarantees and loans. Finally, a partner is being sought who will

bring capital to the company once the suspension of payments proceedings have been settled. Given the many uncertainties, it remains unclear whether the aid is limited to the minimum and whether there is a sufficient contribution to the cost from private resources.

(152) In view of the considerations above, and especially the lack of any market survey and the lack of guarantees concerning the avoidance of undue distortions of competition, the Commission concludes that the 1993 loan does not comply with the requirements of the guidelines. In conclusion, all the measures that have been classed as aid must be deemed incompatible with the common market.

VIII. **CONCLUSIONS**

(153) The Commission finds that the 1993 loan, the 1996 and 1998 guarantees and the 2000 loan provided by the ICF constitute aid to Puigneró within the meaning of Article 87(1) of the Treaty. The persistent non-payment of social security contributions and tax obligations as from 1995 and early 1993 respectively also constitutes State aid to Puigneró. Spain has unlawfully implemented the aid in question in breach of Article 88(3) of the Treaty. The aid is, furthermore, incompatible with the common market.

(154) According to Article 14 of Council Regulation No 659/1999 ([25]) all aid that is incompatible with the common market is to be recovered from the beneficiary. In doing so, Spain can deduct any repayment of the loans or debts already made to the respective authorities,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Spain has implemented for Hilados y Tejidos Puigneró SA is incompatible with the common market.

The incompatible aid involves the following measures in favour of Puigneró:

(a) a loan granted by the Catalan Institute of Finance in 1993 and its extension in 1996;

(b) a guarantee granted by the Catalan Institute of Finance in 1996 and its extensions in 1999 and 2001;

(c) a guarantee granted by the Catalan Institute of Finance in 1998 and its extension in 2001;

(d) the persistent non-payment of social security contributions from 1995 until the start of the suspension of payments procedure, in so far as until the latter date the social security authorities could have enforced their collection in accordance with normal procedures;

(e) the persistent non-payment of tax obligations from early 1993 until the start of the suspension of payments procedure, in so far as until the latter date the Tax Agency could have enforced their collection in accordance with normal procedures; and

(f) a loan granted by the Catalan Institute of Finance in 2000 and its subsequent extensions.

Article 2

1. Spain shall take all necessary measures to recover from the beneficiary the aid referred to in Article 1 and unlawfully made available to the beneficiary, deducting any repayment already made to the respective authorities.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiary 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 and shall be net of interest that has already been charged by the respective authorities.

Article 3

Spain 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 Kingdom of Spain.

Done at Brussels, 19 February 2003.

For the Commission

Mario MONTI

Member of the Commission

([25]) OJ L 83, 27.3.1999, p. 1.

ANNEX I

Overview of measures by the Spanish authorities

(ESP million)

Principal / maximum coverage	Prior to 1992	1992	1993	1994	1995	1996	1997	1998	1999	2000
Tax Agency	(1991) distraint on R+ and S+: 656.1/807.3	Payment agreements	Mortgage on R ([1]) for a debt of 3 516,6/6 702,7			Distraint on P (some dwellings only): ?/478,8		March: distraint on S+, R+ and P+ for total amount of 2 050,4	Payment agreements	
Social security	Mortgage on R: ?/4 612,1					Payment agreement	Distraint on S+ and R+ for total amount of 5 814,3	October: distraint on S+ and R+ for total amount of 984,3	Distraints on S+ and R+ for total of 849,7 November: Payment agreement	
ICF			Loan, mortgage on P2: 500/976			May: Extension of 1993 loan July: guarantee, mortgage on P+: 600/1 135		June: guarantee, mortgage on S+: 500/1 075,0	Extension of 1996 guarantee	December: loan, mortgage on all properties and on properties owned by shareholder: 2 000/3 570
Others	(1) (1985) mortgage on S and P: 1 200	(1) mortgage ([2]) on P: 650/886 (2) mortgage on P2: 225 (3) mortgage on P2: 275 (4) mortgage on two dwellings: 67								

S = industrial site at Sant Bartomeu del Grau; S+ = industrial site and some or all of the other properties at Sant Bartomeu del Grau.
R = industrial site at Roda de Ter; R+ = industrial site and some or all of the other properties at Roda de Ter.
P = industrial site at Prats de Lluçanès; P+ = industrial site and some or all of the other properties at Prats de Lluçanès; P1 = larger part of the industrial site at Prats de Lluçanès; P2 = smaller part of the industrial site at Prats de Lluçanès.

([1]) This mortgage results from the 1992 payment agreements. According to these agreements Puigneró was also to establish mortgages on the industrial sites at Prats de Lluçanès and San Bartomeu del Grau, but the property register does not mention any such mortgages.

([2]) This mortgage is not mentioned in the annual accounts. It is mentioned in the property register for P1, but not for P2, although the other mortgage on P2 carries the same date.

ANNEX II

Overview of estimated value of properties

(ESP million)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Value of Roda de Ter industrial site, machinery and dwellings ([1])	3 758,5	4 173,6	4 634,6	5 146,5	5 714,9	6 346,1	7 047,1	7 825,4	8 689,7	9 649,8	10 715,3
Value of S.B. del Grau industrial site, machinery and dwellings	4 181,4	4 643,2	5 156,1	5 725,6	6 358,0	7 060,2	7 840,0	8 705,9	9 667,5	10 735,8	11 921,0
Value of Prats de Lluçanès industrial site, machinery and dwellings	1 054,2	1 208,9	1 386,2	1 589,6	1 822,8	2 090,2	2 396,9	2 748,5	3 151,8	3 614,2	4 144,4
Total value industrial sites	8 994,1	10 025,8	11 176,9	12 461,7	13 895,7	15 496,4	17 284,0	18 279,8	21 509,0	23 999,9	26 780,7
Tax debt	3 516,6		2 426,2	2 805,3	2 791,7	2 023,0	3 073,3	3 738,0	7 364,0		
Social security debt			4 727,3	5 259,8	5 996,3	6 190,2	7 288,7	8 815,7	9 963,1		
Tax and social security debt			7 153,5	8 065,1	8 788,0	8 213,2	10 362,0	12 553,7	17 327,1		
Burden of mortgages for other debts				2 267,0 ([2])	2 267,0	2 267,0	1 992,0	1 992,0	3 992,0		

([1]) The 1992 payment agreements between Puigneró and the tax authorities contain estimates of the value of the properties in 1992. The 2001 values are based on the valuation carried out by an independent expert with a view to drawing up the statement of affairs for the suspension of payments procedure. The 1992 value of the properties at Roda de Ter and San Bartomeu del Grau and all the values between 1992 and 2001 are based on the assumption of equal annual increments in value for these properties (11,0 % for Roda de Ter and San Bartomeu del Grau and 14,7 % for Prats de Lluçanès; these increments include inflation). The figures do not include the value of 'other installations, tools, transport equipment, furniture, IT equipment and stocks', which altogether were valued in 2001 at ESP 5 443,8 million.

([2]) The actual debt covered by these mortgages amounts to only ESP 761,2 million.