II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 April 2003

on the State aid granted by Spain to Porcelanas del Principado SL

(notified under document number C(2003) 907)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2004/32/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 provision(s) cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) Following allegations made by a competitor that Spain had granted State aid to Porcelanas del Principado SL ('Porcelanas Principado'), the Commission sent an information request to Spain by letter dated 14 February 2000.

(2) By letter dated 5 May 2000, Spain submitted information. By letter dated 19 July 2000, a new information request was sent to Spain. Following a reminder on 5 March 2001, Spain submitted the requested information by letter dated 4 May 2001, in which it indicated that the regional society for the promotion of the Asturias region (*Sociedad Regional de Promoción del Principado de Asturias* — 'SRPPA'), a State-controlled entity, granted on 18 January 2001 a subordinated loan with profit participation to Porcelanas Principado.

(3) On 19 September 2001, the Commission decided to initiate the procedure laid down in Article 88(2) of the EC Treaty with regard to this loan. Having requested a time extension, Spain submitted its comments by letter dated 21 November 2001. In these comments, it indicated new measures in favour of Porcelanas Principado.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid measures.

(5) The Commission received comments from the aid beneficiary by letter dated 10 January 2002. These comments were forwarded to Spain by letter dated 16 January 2002. Spain did not submit comments within the prescribed period.

(6) By letter dated 11 March 2002, registered on 13 March 2002, Spain submitted a revised viability plan. By letter dated 22 February 2002, the aid beneficiary submitted evidence of a capital increase.

[1] OJ C 336, 30.11.2001, p. 2; OJ C 239, 4.10.2002, p. 4.

[2] OJ C 336, 30.11.2001, p. 2.

(7) On 9 April 2002 the Commission decided to extend the investigation procedure to the new measures of which it had only been informed when Spain reacted to the initiation of the formal investigation procedure.

(8) The reaction from Spain to the extension of the formal investigation procedure was received by letter dated 16 May 2002, registered on 21 May 2002.

(9) The Commission decision to extend the procedure was published in the *Official Journal of the European Communities* ([3]). The Commission invited interested parties to submit their comments on the aid measures.

(10) The Commission received comments from the aid beneficiary by letter dated 13 June 2002, registered on 19 June 2002. These comments were forwarded to Spain by letter dated 22 August 2002.

(11) By letter dated 30 August 2002 the Commission requested additional information from Spain. Spain responded by letter dated 25 October 2002, registered on 29 October 2002.

(12) The Commission requested additional clarifications by letter dated 11 December 2002. On 16 December 2002 a meeting was held with representatives of the national and regional government as well as the aid beneficiary. Following this meeting Spain submitted the information requested by letter dated 10 January 2003, registered on that same date.

II. **DESCRIPTION**

A. **The company**

(13) Porcelanas Principado is a limited liability company set up in 1995 and which employed 150 workers in 2002. It produces china and porcelain dishes for the household sector and for professional use, in particular for hotels and decorators. These products are also exported.

(14) According to Spain, following a strike that led to the suspension of activities over the period November 1999 to January 2000, Porcelanas Principado entered a financial crisis. The following table as provided by Spain gives a picture of its performance in 1999 and 2000.

TABLE 1

(EUR million)

	1998	1999	2000
Turnover	4,48	4,36	4,61
Result	0,00	– 0,11	– 0,64

(15) In 2000, Porvasal SA ('Porvasal') and other private investors took over an 80 % stake of Porcelanas Principado. Porvasal is itself a limited liability company employing some 175 people. It produces china and porcelain dishes for the household sector and for professional use, in particular for hotels and decorators. These products are sold to countries such as France, Belgium, Switzerland, United Kingdom, Germany, Greece, etc. The following table provided by Spain gives a picture of its performance in 1999 and 2000.

TABLE 2

(EUR million)

	1998	1999	2000
Turnover	7,17	7,67	8,24
Result	0,14	0,18	0,20

B. **Restructuring**

(16) Following the initiation of the formal investigation procedure, Spain explained that a viability plan for Porcelanas Principado had been drawn up by the end of 2000, when Porvasal, together with other private investors agreed to acquire over 80 % of Porcelanas Principado. Following the extension of the formal investigation procedure, Spain submitted an updated viability plan. The plan had been updated and detailed after Porvasal had worked some months with Porcelanas Principado and had gained a better insight into the company.

(17) The plan is to run from 2001 to 2010, although break-even is expected in 2004. According to Spain, the last years are actually the consolidation of the results expected by the restructuring.

(18) As explained in the extension of the investigation procedure, the viability plan contemplated a number of measures intended to ensure the company's long-term viability. The company's aim is to close down

([3]) OJ C 239, 4.10.2002, p. 4.

loss-making activities and reorient to the hotelware market. First, measures were intended to provide an adequate debt-equity ratio. Second, investments were foreseen in plant and machinery with a view to modernising and optimising capacity. In addition, the plan indicated that Porcelanas Principado had to invest in moulds for an isostatic press as well as in a kiln to optimise the production process. Moreover, the workforce had to be reduced by 20 % and several measures had to be undertaken to improve productivity. Finally, the plan also provided for the company's financial restructuring to meet payments of some EUR 4,751 million that had accumulated since it first ran into difficulty.

(19) The overall cost of the restructuring measures is detailed in the table below

TABLE 3

(EUR million)

Capital needs	Cost
Fresh capital	1,800
Economic restructuring	
Investments	0,294
Kiln	0,661
Reduction of workforce	0,670
Financial restructuring (debts outstanding)	
Tax authorities	0,861
Social security	0,947

(EUR million)

Financial restructuring (debts outstanding)	Cost
Fogasa	0,229
Suppliers	0,593
Mortgage (Caja Asturias)	1,612
Debts with Porcelanas Gijón	0,329
Total	7,998

C. **Financial commitment**

(20) To finance the costs described above and provide the company with an adequate capital basis, various measures were taken. First, the company increased its capital, which was subscribed by both the public sector and private investors. Second, investments were financed through loans from private banks and by different grants from the regional government. Finally, the financial debts of the company were rescheduled.

(21) It will be noted that several public-sector measures already agreed have still not been paid for, the reason being that, following the initiation of the formal investigation procedure, the regional Government suspended payments until the Commission reached a final decision as to the measures' compatibility.

(22) The table below, the accuracy of which has been confirmed by the Spanish authorities, provides an overview

TABLE 4

(EUR million)

	Measures	Cost
Capital adjustment		
1	Subordinated loan from SRPPA	0,601
2	Capital increase Porvasal	0,601
3	Capital increase SRPPA — pending	0,300
4	Capital increase Porvasal — pending	0,300

(EUR million)

	Measures	Cost
Business restructuring		
5	Loan from Bancaja for EUR 0,294 m (investments) — part not covered by measures 6 and 7	0,046
6	Grant from the Asturias region (investments) — granted	0,101
7	Guarantee from Asturgar for loan under measure 5 (investments)	0,147
8	Loan from IDAE for EUR 0,661 m (kiln) — part not covered by measures 9 and 10	0,103
9	Grant from the Asturias region (kiln) — demanded but not granted	0,229
10	Guarantee from Asturgar for loan under measure 8 — envisaged	0,330
11	Grant from the Asturias region (personnel reduction)	0,670
Financial restructuring		
12	Deferral of tax debts (guarantee from Asturgar for the same amount)	0,485
13	Deferral of tax debts (mortgage for the same amount)	0,433
14	Payment of social security debt	0,300
15	Deferral of social security debts (mortgage for the same amount)	0,647
16	Deferral of Fogasa debt (mortgage for EUR 0,502 m)	0,229
17	Deferral of debts to suppliers	0,593
18	Cajastur mortgage	1,612
19	Asturgar guarantee for debts with Porcelanas Gijon — pending	0,115
	Total	7,842

(23) Measure 1. A loan (*préstamo participativo*) of EUR 0,601 million granted to Porcelanas Principado by SRPPA in January 2001. The loan bears a fixed interest rate of 5,143 % ([4]) plus a variable rate depending on profits, ranging from 0,75 % for profits up to EUR 0,3 million, 4,25 % for profits up to EUR 0,75 million and 9,5 % for profits higher than EUR 1,2 million. The term of the loan is seven years. Early repayment is allowed by virtue of a 'liquidity agreement' signed between Porcelanas Principado and SRPPA.

(24) Measure 2. Spain has supplied evidence showing that Porvasal provided new funds amounting to EUR 0,601 million.

(25) Measures 3 and 4. Two planned capital injections. SRPPA plans to inject capital worth EUR 0,3 million (measure 3). Spain indicated in its reply to the opening of the formal investigation procedure that this capital injection is conditional on the private investor's (Porvasal's) decision to inject the same amount into the company (measure 4). Spain also confirmed that any future participation by SRPPA in Porcelanas Principado will provide the former with priority subscription rights. SRPPA has not carried out the planned capital injection pending the Commission's decision in the present case.

(26) Measures 5 to 7 cover investments of EUR 0,294 million (including interest). Specifically, measure 5 is a

([4]) 12-month Euribor (15 January 2001) + 0,5 %.

loan from Bancaja for EUR 0,294 million, granted on condition that measures 6 and 7 are also granted.

(27) Spain confirmed that the Asturias regional authorities had made a non-refundable grant for EUR 0,101 million (measure 6). Spain states that this investment subsidy was granted under an aid scheme approved by the Commission as regional investment aid ([5]). The non-refundable subsidy has not been paid, pending the implementation of the investment and the Commission's approval in the present case.

(28) As regards measure 7, Spain has indicated that the Asturias Mutual Guarantee Company (*Sociedad de Garantia Reciproca de Asturias* — 'Asturgar') provided a guarantee for EUR 0,147 million, to cover the Bancaja investment loan.

(29) Measures 8 to 10 cover the costs of a kiln, which total some EUR 0,661 million. Specifically, measure 8 consists in a loan from the National Institute for Energy Saving and Diversification (*Instituto nacional para la diversificacion y el ahorro de energia* — 'IDAE') for EUR 0,661 million, granted on condition that the Asturias region make a grant for 40 % of the value of the kiln (measure 9) and that a guarantee is arranged for 50 % of the costs (measure 10).

(30) Measure 9. A subsidy from the Asturias region for EUR 0,229 million. An application has been submitted, but the autonomous community of Asturias has not yet taken a decision, pending the outcome of the current investigation by the Commission.

(31) Measure 10. A proposed guarantee from Asturgar for 50 % of the costs of the kiln.

(32) Measure 11. A grant by the Asturias region for EUR 0,67 million (granted). The grant is intended to finance the retirement plan for 22 workers over the age of 53. It has not yet been paid, pending the Commission's decision in the present case.

(33) Measures 12 to 19 are the result of an agreement between the company and its creditors rescheduling and partly waiving outstanding debts.

(34) Measures 12 and 13. In April 2001, the maturity of the tax debt of EUR 0,861 million (including interest on arrears) was deferred until 20 July 2005. The deferral was subject to a double condition: firstly that Asturgar would provide a guarantee for the payment of EUR 0,485 million (measure 12), and secondly that the company would take out a real estate mortgage for some EUR 0,433 million (measure 13). The guarantee under measure 12 was provided and the mortgage under measure 13 was taken out. The deferred debt bears interest of 6,5 % for the year 2001 and 5,5 % for 2002, as laid down in Spain's Finance Law (Law 13/2000 of 28 December).

(35) Measures 14 and 15. The debt with the social security for EUR 0,947 million (including interest on arrears) was deferred in April 2001 subject to the condition that the company would pay EUR 0,3 million from its own resources. Initially a further guarantee from Asturgar was foreseen for this amount. This guarantee was never granted. However the company found sufficient own resources to pay this amount to the social security (measure 14), and in June 2001 the payment of the remaining amount EUR 0,647 million (including interest) was deferred until 30 April 2006 (measure 15). Following the extension of the formal investigation procedure Spain reported that on 19 October 2001 the company took out a chattels mortgage (*hipoteca mobiliaria*) in favour of the social security for an amount of EUR 0,647 million to ensure repayment of the deferred debt. The deferred debt bears interest at 5,5 %, as laid down in Spain's Finance Law (Law 13/2000 of 28 December).

(36) Measure 16. In November 1998, the debt with Fogasa of EUR 0,229 million (including interest on arrears) was deferred until November 2006. The deferred debt bears interest at 5,5 %. As a guarantee, the company has provided a chattels mortgage for EUR 0,502 million.

(37) Measure 17. The debts with suppliers have been rescheduled until March/April 2006 through various agreements. They have been deferred without interest. […] (*).

([5]) Case N 75/2000. Decision of 3 May 2000 (OJ C 293, 14.10.2000, p. 7).

(*) Confidential information.

(38) Measure 18. A mortgage in favour of Cajastur on real estate from Porcelanas Gijon, a failed company. The real estate was acquired by Porcelanas Principado in 1997 at public auction. On 8 March 2001, Porcelanas Principado assumed responsibility for this mortgage in favour of Cajastur for EUR 1,612 million. Spain has provided evidence that Porcelanas Principado is meeting its payments under the mortgage promptly.

(39) Measure 19. A new guarantee has been requested from Asturgar to cover the remaining outstanding debts with Porcelanas Gijon.

D. **The market**

(40) There is a brisk trade in tableware between Spain and other Member States. According to data from Eurostat, between January and October 1995, Spain exported 8 546 tonnes of tableware products worth EUR 32,6 million and imported between January and September 1995 7 844 tons worth EUR 43,3 million. Spain's share of the overall intra-Community trade in tableware goods stands at roughly 3 %. Porcelanas Principado, although not one of the EU's major producers of tableware, participates in this market through exports to Italy and Belgium.

(41) While ornamentalware is produced throughout Europe, important regional concentrations of tableware producers exist in Northern Bavaria (Germany), Staffordshire (United Kingdom) and the Limousin (France). Next to a plethora of SMEs, there is also a number of large undertakings. The latter include Villeroy & Boch (Germany/Luxembourg), Hutschenreuther and Rosenthal (Germany) as well as Royal Doulton and Wedgewood (United Kingdom) and account for more than a third of total production in the Community. The special requirements of the hotel and catering trades have given rise to the 'hotelware' sector, with specially designed hard-wearing ceramics. The UK, Germany and Italy are the main producing and consuming countries. Close links with the final consumer and the need to compete on design have given special features to this very labour-intensive industry, with its enormous array of products. Sales to third countries exceed European imports in value; imports exceed exports in tonnage, however, owing primarily to very low-price imports from China ([6]).

([6]) Data extracted from the website of Cerame-Unie (http://www.cerameunie.org).

(42) In the porcelain industry there is overcapacity. Production and consumption both registered continuing growth between 1984 and 1991, but entered a contraction phase in 1992 to 1993. The expected recovery in 1994 did not happen. The trade balance in recent years has been positive, but the share of imports has increased markedly, in particular in the household china segment. Export growth is not sufficient to offset increasing competition in the sector. On the contrary, this situation of strong competition and excess capacity is being reinforced by new market entrants from south-east Asia and eastern Europe, in particular the Czech Republic and Hungary, all benefiting from preferential trading arrangements with the European Union ([7]).

(43) According to Cerame Unie's website ([8]), in 2001 the European ceramics industry recorded total sales of around EUR 25,6 billion (table and ornamental ware accounting for EUR 2,7 billion), and employed close to 240 000 people. The European industry is estimated to provide a third of total world production, and has been able to maintain a positive trade balance with third countries. While the EU single market has stimulated further concentration in the industry, small and medium-sized companies tend to predominate.

III. **REASONS FOR THE INTITIATION AND EXTENSION OF THE FORMAL INVESTIGATION PROCEDURE**

(44) In initiating the formal investigation procedure, the Commission analysed the financial measures in favour of Porcelanas Principado in the light of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement. The measures derived from State resources and distorted or threatened to distort competition, affecting trade between Member States and conferring advantages on the company. In its preliminary assessment the Commission considered that Porcelanas Principado was a company in difficulty. It doubted, moreover, that the State had behaved like a private investor making financial resources available to the firm. In a preliminary assessment such measures were regarded as State aid. The measures were provisionally assessed under the Community guidelines on rescue and restructuring firms in difficulty ([9]) (the rescue and restructuring guidelines). On the basis of the information available, the Commission doubted that the aid could be considered compatible with the common market.

([7]) Panorama of EU Industry 1997, 9-20; NACE (Revision 1). See also Commission decision in Case C 35/97, *Triptis Porzellan GmbH* (OJ C 52, 27.2.1999).

([8]) http://www.cerameunie.org/industry.htm.

([9]) OJ C 288, 9.10.1999.

(45) The information submitted in response to the initiation of the formal investigation procedure provided details of additional measures of which the Commission had not been informed before. Consequently, the investigation procedure was extended to assess them in the light of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement.

IV. **COMMENTS FROM SPAIN**

(46) Following the initiation of the formal investigation procedure, Spain submitted a restructuring plan elaborated in late 2000 in the context of the acquisition of an 80 % stake in Porcelanas Principado by Porvasal and other investors. The information submitted by Spain also provided details of numerous measures of which the Commission had not been informed before.

(47) Following the extension of the formal investigation procedure, Spain provided detailed information on the measures subject to the extended assessment as well the updated viability plan submitted by the aid beneficiary with its reply to the initiation of the formal investigation procedure.

(48) Spain considers that both the participating loan under measure 1 and the capital injection under measure 3 do not constitute aid. It states, moreover, that the guarantees under measures 7, 10, 12 and 19 should not be regarded as aid. Similarly, Spain considered that the grant under measures 6 and 9 (the latter not yet approved by the regional authorities) are covered by an approved regional aid scheme and should be seen as existing aid. It explained, moreover, that the ad hoc aid measures should be regarded as compatible aid under the rescue and restructuring guidelines.

(49) Finally Spain pointed out that the payment of all public sector measures in favour of the company had been suspended following the initiation of the formal investigation procedure.

V. **COMMENTS FROM THE AID BENEFICIARY**

(50) The aid beneficiary confirmed the information submitted by Spain, namely that the participating loan under measure 1 is part of a series of measures aimed at restoring Porcelanas Principado's viability. The aid beneficiary lists the same measures as Spain.

(51) In its response to both the initiation and the extension of the formal investigation procedure, the aid beneficiary denies the State aid character of the subordinated loan granted to it by SRPPA (measure 1), since that loan is concomitant with a capital increase made by a private investor (Porvasal) for the same amount (measure 2). The aid beneficiary equally confirms that the intended capital increase of EUR 0,3 million by SRPPA (measure 3) is concomitant with another capital increase for an equivalent amount to be provided by Porvasal (measure 4). For this reason, the aid beneficiary considers that the intended capital increase, if it materialises, would not constitute State aid.

(52) As regards the guarantees (measures 7, 10, 12 and 19), the aid beneficiary indicates that Asturgar granted or will grant them at normal market rates and that they do not constitute aid.

(53) As regards the grants under measures 6 and 9, the aid beneficiary indicates that they constitute existing aid since they are covered by an aid scheme approved by the Commission (regional investment aid scheme) ([10]).

(54) The aid beneficiary also indicates that if the Commission concludes that any of the measures in its favour constitutes State aid, then such aid would be compatible with the common market since it complies with the conditions laid down in the applicable guidelines ([11]). Firstly, because in December 2000 Porcelanas Principado was in a situation of crisis within the meaning of the rescue and restructuring guidelines. Secondly, because a restructuring plan existed at the time of the grant of the relevant measures. Thirdly, Porcelanas Principado is claimed to be an SME, hence a reduction of capacity is not compulsory under the guidelines. In any event the beneficiary claims that no capacity increase is planned, but only an improvement in efficiency. Fourthly, the aid is claimed to be limited to the minimum necessary: (i) it has only been used to pay creditors (both public and private) and to make investments; (ii) there is a substantial contribution from the private investor, which has taken the risk of contributing its own funds for the capital increase; (iii) Porcelanas Principado regularly pays the costs and commissions linked to the bank guarantees and is repaying its loans, including the subordinated loan; (iv) the revised restructuring plan shows that the company will be able to maintain a balanced cash-flow situation and that it will not use the aid to launch an aggressive price campaign.

([10]) See footnote 5.
([11]) See footnote 9.

(55) The aid beneficiary submitted an updated financial forecast indicating that breakeven would be achieved in 2004 (see Table 7). The aid beneficiary admits that although the forecasts in the original restructuring plan may have been overoptimistic, the revised forecasts are more accurate and are based on the in-depth knowledge of Porvasal after working closely with Porcelanas Principado for some months. The beneficiary pointed out that the forecasts were actually being achieved.

(56) The aid beneficiary also provided a market analysis showing the main features of the china and porcelain sector in Spain. The analysis distinguishes between two sub-sectors on the basis of the end-user (home and hotel/restaurant) and confirms that at least 20 % of the sales in Spain of china and porcelain for the hotel/restaurant segment are imported products. The remaining 80 % is broken down as follows:

TABLE 5

(%)

Company	Market
CIM	19
Porvasal	16
GEA	5
Bidasoa	24
Capeans	7
Porcelanas Principado	9

(57) The aid beneficiary indicates that Porcelanas Principado's share of the Spanish market has fallen to 9 % and also confirms that the company is in competition with other EU manufacturers (Costa Alegre and Vista Alegre, both from Portugal).

(58) Lastly, Porcelanas Principado refers to the restructuring measures already mentioned under the original viability plan and forwards very detailed information and records on its operations.

VI. **ASSESSMENT**

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

(59) Financial assistance deriving from public resources has been or is to be granted to Porcelanas Principado, conferring advantages on it vis-à-vis its competitors. As indicated in the decision initiating the procedure, the products marketed by Porcelanas Principado are traded between the Member States and there is competition between manufacturers. Porcelanas Principado confirmed in its submission that: (i) at least 20 % of the sales in Spain of china and porcelain for the hotel/restaurant segment are imported products; (ii) it is in competition with other EU manufacturers (Costa Alegre and Vista Alegre, both from Portugal). Therefore, any financial support granted by the state to Porcelanas Principado is deemed to affect trade and distort competition.

(60) In its initiation and extension of the formal investigation procedure, the Commission concluded that Porcelanas Principado was a firm in difficulty within the meaning of the rescue and restructuring guidelines. Spain has never contested this point.

(61) In its initiation and extension of the formal investigation procedure, the Commission provisionally considered that a number of measures should be regarded as State aid within the meaning of Article 87(1) EC Treaty. Spain however contests the State aid character of a number of measures. These measures will be analysed in turn.

(62) Measure 1. A loan with participation in the profits (*préstamo participativo*) for EUR 0,601 million from SRPPA. SRPPA is a public institution, which promotes regional development in the Asturias Region. The regional government of Asturias (Principado de Asturias) has a controlling stake in it of 53,12 % ([12]). The facts entered in the file show that its actions in the present case are imputable to the State. Spain has never contested this point.

(63) In the event of the insolvency of Porcelanas Principado, the loan would be repaid after all other creditors have been satisfied but before shareholders receive any payment. Thus, the loan qualifies as a subordinated loan.

(64) The loan was granted for a period of seven years, the first two without repaying any instalments. Early repayment of the loan is allowed by virtue of a 'liquidity agreement' signed between Porcelanas Principado and SRPPA. The loan has a fixed interest rate of 5,143 % and an additional variable rate depending on profits, ranging from 0,75 % for profits up to EUR 0,3 million, 4,25 %

([12]) The remaining shares are distributed between public and private institutions.

for profits up to EUR 0,75 million and 9,5 % for profits higher than EUR 1,2 million. However, no profits at all are expected before the year 2004 (see Table 7 below). Consequently, it can be assumed that the rate of interest will remain at 5,143 % for at least four years. This interest rate is below the applicable reference rate of 6,33 % ([13]) and will remain below this rate for at least four years. Spain confirmed that there is no collateral for the loan.

(65) According to Spain, the loan was granted when there were difficulties but the crisis had not yet been made official, as the annual accounts for 2000 were only published at the end of 2001. Spain seems to draw a distinction between a crisis and a difficulty. This seems to be due to the Spanish version of the rescue and restructuring guidelines, which uses the term 'empresa en crisis'. However, the different language versions of the guidelines make no distinction at all between the treatment of firms experiencing serious difficulties and that of firms in crisis. In fact, the 1999 guidelines were adopted by the Commission on the basis of texts drafted in the three working languages: French, English and German. The precise terms used are 'entreprise en difficulté', 'firm in difficulty' and 'Unternehmen in Schwierigkeiten', all three with exactly the same meaning. The Commission considers that a language version cannot imply a difference in treatment for companies in a particular Member State. The logic of the system imposes a uniform approach. Hence Porcelanas Principado was a company in difficulty within the meaning of the guidelines, irrespective of whether a crisis had been declared or not at the relevant point of time.

(66) The fact that the company was in difficulty at the time the loan was granted, as admitted by Spain, is already sufficient to expect from a diligent lender a particularly cautious approach. This was not the case here as the loan, to be repaid after all other creditors had been satisfied, was granted below the reference rate and without collateral. Whether the difficulties of the company were known to the public or not is irrelevant; it is the lender who must exercise due diligence.

(67) The aid beneficiary disputes the State aid character of this loan because it is concomitant with a private capital increase for the same amount (measure 2). In its view, the fact that both measures are granted at the same time and under comparable conditions should allow the Commission to exclude the presence of aid. Moreover, the aid beneficiary indicates that, in the event of bankruptcy, the loan would be repaid after all creditors but before the shareholders were paid, which is precisely the nature of measure 2. The aid beneficiary thus claims that this loan has been granted under circumstances that are more favourable for SRPPA than those under which the capital increase from Porvasal (measure 2) took place. Finally, the aid beneficiary emphasises the fact that SRPPA took account of the existence of a viability plan and of Porvasal's stake.

(68) As the Commission indicated in the document 'Application of Articles 92 and 93 [now 87 and 88] of the EEC [EC] Treaty to public authorities' holdings ([14]), no State aid is involved where fresh capital is contributed in circumstances that would be acceptable to a private investor operating under normal market economy conditions. This applies in principle where the public holding in a company is to be increased, provided the capital injected is proportionate to the number of shares held by the authorities and goes together with the injection of capital by a private shareholder and the private investor's holding must have real economic significance. However, as regards some acquisitions, it cannot be decided from the outset whether they do or do not constitute State aid. In certain circumstances, there is a presumption that there is indeed State aid, for example where the authorities' intervention takes the form of acquisition of a holding combined with other types of intervention which need to be notified pursuant to Article 88(3) or where the holding is taken in an industry experiencing particular difficulties. In the present case the Commission notes that the subordinated loan is granted together with other measures which are regarded as State aid within the meaning of Article 87(1) of the EC Treaty (see the following recitals) and that Porcelanas Principado was in difficulty at the time of its award.

(69) The Commission acknowledges the concomitance of this subordinated loan with a capital increase from the main shareholder. In the event of bankruptcy, the capital increase would be reimbursed after the subordinated loan: however, in view of the low asset value of the company, it is doubtful that it would be reimbursed at all. Moreover, the Commission considers that the position of Porvasal and that of SRPPA are not comparable. Whereas Porvasal is the main shareholder and was forced to increase the capital of Porcelanas Principado to avoid insolvency, the State did not need to intervene to secure any investment. It can be inferred that, in the event of Porcelanas Principado's insolvency, Porvasal would have to face a number of claims, the amount of which would be bound to surpass the capital

([13]) See http://europa.eu.int/comm/competition/state_aid/others/reference_rates.html.

([14]) Bulletin EC 9-1984.

injected in the company. Hence, for Porvasal, injecting fresh capital into Porcelanas Principado was a more economically viable solution than allowing the company to file for insolvency. SRPPA, on the other hand, was not bound by any such considerations. Consequently, the behaviour of SRPPA is not comparable to that of Porvasal.

(70) In view of the above, the Commission concludes that a market economy investor would not have awarded a subordinated loan below the reference rate, for which no compensatory revenues are foreseen until at least 2004 and without demanding substantial guarantees from a company in difficulty. The Commission considers that the behaviour of SRPPA is not comparable to that of a market economy investor, since the subordinated loan is concomitant with other aid measures (see the following paragraphs). Consequently, the Commission maintains its view that this loan contains State aid elements within the meaning of Article 87(1) of the EC Treaty.

(71) Measure 3 is a capital injection proposed by SRPPA conditional on the private investor's (Porvasal's) decision to inject the same amount into the company (measure 4). Spain also confirmed that any future stake of SRPPA's in Porcelanas Principado will give it priority subscription rights. Spain explains, moreover, that the conditions under which this capital increase will take place will be fixed in a re-purchasing contract in which the price will be established as the higher of the following values: the theoretical accounting value, or the nominal value upgraded by Euribor + 1,5 %. The Commission acknowledges the fact that this capital injection has not yet taken place, pending the Commission's decision in the current case. The Commission also notes that Porvasal has not yet increased the capital either, since it too is waiting for the Commission's decision on the compatibility of the overall restructuring package.

(72) Spain claims the measure does not constitute State aid, since the behaviour of SRPPA is comparable to that of Porvasal. The Commission however considers that the proposed injection cannot be regarded in isolation, but in connection with the subordinated loan under measure 1. Both support measures form part of the same operation intended to provide Porcelanas Principado with an adequate capital basis within its restructuring. Hence, the Commission considers that the same arguments that allow for measure 1 to be regarded as State aid within the meaning of Article 87(1) of the EC Treaty apply to the proposed capital injection from SRPPA.

(73) Measure 5: a loan from Bancaja, a non-profit financial entity jointly set up by various savings banks (80 %), banks and various service companies ([15]). Savings banks are credit institutions constituted as private foundations which assign part of their profits for social purposes. In the case of Bancaja, those social purposes are to find employment for young people, support for voluntary social work, the organisation of conferences and exhibitions, etc. Savings banks' boards of directors usually include representatives of the regional authorities. In Bancaja's case, its general meeting is constituted by the Generalitat Valenciana (28 %), depositors (28 %), municipal corporations (28 %), employees (11 %) and the Royal Economic Society of Friends of the Valencia Region (*Real Sociedad Económica de Amigos del País, Valenciano*) (5 %). However, the fact that public bodies may have a dominant influence directly or indirectly does not automatically imply that the state exerts control in this particular case. As a matter of fact, savings banks are bound to act under market economy principles and the facts in the file do not provide any evidence that in the case of the Bancaja loan the public authorities exerted any influence ([16]).

(74) The loan was granted for seven years at a rate of 5,75 %, reviewable every three months on the basis of Euribor 90 + 1,25 % ([17]). It must be reimbursed in monthly rates starting on the same month of the first disbursement. Moreover, it is noted that this loan was granted on the condition that a guarantee was presented for 50 % of its amount (measure 7) and that a grant would be awarded to cover 40 % of the investments (measure 6). It is in these measures that advantages in favour of the company have to be looked for.

(75) Measures 6, 9 and 11. Three non-refundable grants from the autonomous community of Asturias. As stated in the extension of the formal investigation procedure, these measures are regarded as aid, a fact which is not contested by Spain. As regards measures 6 and 9 (the latter not yet approved by the regional authorities),

([15]) 'Bancaja is a non-profit financial entity that combines the social spirit of the savings banks with the management criteria of a commercial bank.' http://bancaja.es/grupo/queesentidad.asp?menu=15.

([16]) See the judgment of the Court of Justice in Case C-82/99 *France* v *Commission* [2002] ECR I-4397, paragraph 55.

([17]) The reference rate for the year 2001 was 6,33 %. However this is based on a five-year interswap bank rate, and is hence a fixed rate.

Spain considers that they are covered by an approved aid scheme; its description as an existing aid will be analysed in the following section.

(76) Measure 8. A loan from IDAE. This institution is a public body attached to the Ministry of Economic and Financial Affairs and is responsible for promoting efficient use of energy and the use of renewable energies in Spain ([18]). The loan thus derives from State resources and grants an advantage to the company which, in view of its difficulties, it would not have obtained from a private sector operator.

(77) Measures 7, 10, 12 and 19. Guarantees from Asturgar. The Commission notes that measure 19 has not yet been decided and measure 10 is simply envisaged.

(78) In its extension of the formal investigation procedure, the Commission could not on the basis of the information available disregard the fact that Asturgar, a private financial entity, was controlled by the authorities, as the Asturias region seemed to be its reference shareholder. Moreover, the Commission had not been informed of the conditions under which the guarantees had been granted. Hence, in its provisional assessment the Commission regarded these guarantees as State aid.

(79) The capital of Asturgar is broken down as follows (data from 2001):

TABLE 6

(%)

Shareholder	Voting capital
Principado de Asturias	45,6
Caja de Ahorros de Asturias	1,27
Banco Herrero	1,19
More than 800 shareholders, none of whom holds more than 1 % of the capital	51,94

([18]) 'The Institute for Energy Saving and Diversification, IDAE, is a public corporation attached to the Ministry of Economic Affairs through the State Secretariat for Energy, Industrial Development and Small and Medium-sized Enterprises', http://www.idae.es/home/home.asp.

(80) Spain admits that the region of Asturias (Principado de Asturias) currently holds 43,9 % of the capital of Asturgar. The presidency of Asturgar is held by the Instituto de Fomento Regional, which is linked to the region of Asturias. The region of Asturias appears as the reference shareholder. However, following the extension of the formal investigation procedure, Spain submitted new data in this respect. Asturgar's statute forbids institutional partners to monopolise control. Spain states that capital does not influence the decision-making process of Asturgar. According to the information submitted, decisions are taken by the board of counsellors in which each counsellor has only one vote, irrespective of his/her stake in Asturgar's capital. Of the 14 counsellors on Asturgar's board, only four are linked to the regional government in Asturias. Hence, the regional government only has a small minority of the voting rights.

(81) However, an agreement on employment (*Pacto interinstitucional por el empleo*) of the regional labour body (*Consejeria de Trabajo y Promocion de Empleo*) states that all instruments of regional promotion, namely the Instituto de fomento regional, the Servicio de asesoramiento y promocion empresarial, the SRPPA and Asturgar ([19]), are the responsibility of the regional Ministers for Industry, Commerce and Tourism. Asturgar is thus presented as a body linked to the Asturias regional government.

(82) As regards the conditions of the guarantees, following the extension of the formal investigation procedure Spain informed the Commission that Asturgar required that Porcelanas Principado pay an annual 1 % premium plus a commission of 0,50 % on the transaction costs. In addition, to be able to obtain guarantees from Asturgar, companies should acquire a stake in Asturgar's capital. The stake depends on the amount of the guarantee to be obtained. Thus Porcelanas Principado bought shares worth EUR 10 217 for the two guarantees agreed (measures 7 and 12).

(83) However, the Commission notes that according to information in its possession, guarantees from guarantee

([19]) 'From an operational point of view, the corporate development instruments for which the regional Ministry for Industry, Commerce and Tourism is responsible (Instituto de fomento regional, Servicio de asesoramiento y promocion empresarial, Sociedad regional de promoción del Principado de Asturias, SA, Asturgar, SGR are functionally integrated under a single directorate (that of the Director General of the Instituto de Fomento Regional).' http://www.idepa.es/ifr/documentos.asp?doc=111.

societies are charged with a premium ranging between 0,5 % and 1,5 % per quarter plus a commission of 0,5 % ([20]). This would indicate that the guarantees from Asturgar to Porcelanas Principado are below market conditions. A possible explanation for this is to be found in a statement on the website of the regional institute for technological development (*Instituto de Desarrollo Economico del Principado de Asturias* — IDEPA), according to which the cost of Asturgar's guarantees is very low on account of the subsidies from the regional authorities ([21]). The agreement for employment mentioned above states that, in order to support technically viable projects, resources shall be allocated to Asturgar with the aim of reinforcing its position so that it can assume new risks ([22]).

(84) In view of the above, the Commission cannot rule out that the advantage of the subsidies granted to Asturgar may be passed on to Porcelanas Principado through guarantees granted at conditions that a market economy operator could not afford without subsidies. These subsidies from the autonomous community are granted to Asturgar with a view to promoting regional development. The Commission therefore adheres to the view, expressed in the extension of the formal investigation procedure, that these guarantees contain an aid element. The aid element may be as much as 100 % of the loans covered by the guarantees, since, pursuant to the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees, 'where, at the time the loan is granted, there is a strong probability that the borrower will default, e.g. because he is in financial difficulty, the value of the guarantee may be as high as the amount effectively covered by that guarantee' ([23]).

(85) Finally, the Commission must assess whether the rescheduling of debts with public authorities contains any aid element.

(86) As regards outstanding tax debts, the Commission notes that the deferral in April 2001 for an amount of EUR 0,861 million (including interest) was subject to a double condition: first that Asturgar would provide a guarantee for the payment of EUR 0,485 million (measure 12) and second, that the company would take out a mortgage on its real estate for some EUR 0,433 million (measure 13). Both conditions were fulfilled, hence the guaranteed amount is higher than the debt itself. The deferred debt bears interest at 6,5 % for the year 2001 and 5,5 % for 2002. Spain provided evidence that these debts are being paid back.

(87) As regards the outstanding social security debts amounting to EUR 0,854 million, following the payment of EUR 0,3 million by the company, the remaining amount of EUR 0,647 million (including interest) was deferred until 30 April 2006 (measure 15). For this amount the company took out a chattels mortgage set up a mortgage on goods in order to assure its repayment. The deferred debt bears interest at 5,5 %, equivalent to the rate last shown in the Finance Law (Law 13/2000 of 28 December). Spain provided evidence that these debts are being paid.

(88) Lastly, in November 1998 the outstanding debt with Fogasa (measure 16) for an amount of EUR 0,279 million was deferred until November 2006. As security, the company has provided a chattels mortgage for EUR 0,502 million. The deferred debt bears interest at 5,5 %, equivalent to the rate laid down in the Finance Law (Law 13/2000 of 28 December). Spain provided evidence that these debts are being paid back.

(89) In view of the above, the Commission considers that the public creditors exercised due diligence when rescheduling the repayment of their debts. No amounts were waived, the outstanding amounts have been fully secured through mortgages and guarantees, and all the deferred debts vis-à-vis public creditors bear interest at the statutory rate ([24]). Rescheduling these debts, which are currently being repaid, was a more efficient way of recovering them for the public creditors than enforcing immediate repayment, which would have probably resulted in the insolvency of the company. The public creditors took account, in particular, of the decision of

([20]) See the Commission decision in Case C 95/2001 (OJ C 33, 6.2.2002, p. 9), in particular paragraph 21.

([21]) 'Their cost as a function of the amount of the quarter and its interest rates (financial, technical, etc.) is very low as a result of the subsidies from the autonomous community; in many cases, it is virtually nil.' http://www.idepa.es/ifr/documentos.asp?doc=111.

([22]) 'To support these projects that are considered technically and economically viable, Asturgar's role as a mutual guarantee company (SER) will be strengthened and its resources increased so that it can assume new business risks.' http://tematico2.princast.es/trempfor/trabajo/inferior/pacto/promo.htm.

([23]) OJ C 71, 11.3.2000, p. 14, point 3.2

([24]) Judgment of the Court of Justice in Case C-342/96 *Spain* v *Commission* [1999] ECR I-2459, paragraph 58.

Porvasal to invest in the company and to draw up a sound restructuring plan.

(90) It is noted that the debts with suppliers (measure 17) have been rescheduled until March/April 2006 through various agreements. The debts have been deferred without interest and no securities have been agreed for their deferral […].

(91) In view of the above, the Commission considers that the deferrals of public-sector debt do not contain any aid elements.

(92) The Commission concludes therefore that measures 1, 3, 6, 8, 9 and 11 constitute State aid within the meaning of Article 87(1) of the EC Treaty. Together, these measures amount to some EUR 2,2 million. In addition, the guarantees under measures 7, 10, 12 and 19 are deemed to contain a State aid element.

B. **Existing aid**

(93) Part of the aid in favour of Porcelanas Principado was allegedly awarded under approved aid schemes. Since the Commission had serious doubts about the compliance of these aid measures with the terms of the schemes under which they had been allegedly awarded, it issued an information injunction pursuant to Article 10(3) of Council Regulation 659/1999 ([25]) to supply all documentation, information and data necessary for their assessment.

(94) The measures claimed to be existing aid are measures 6 and 9: two non-refundable grants of EUR 0,101 million and EUR 0,229 million respectively. It will be noted that measure 6 has not yet been paid, pending Commission approval. The regional authorities have not yet decided on measure 9 for the same reason. Spain indicates that these investment subsidies were decided under an aid scheme approved by the Commission as regional investment aid ([26]).

(95) In its extension of the formal investigation procedure, the Commission noted that the qualification as existing aid could not be sustained in the light of the comments received from Spain. Both Spain and the aid beneficiary indicated that Porcelanas Principado has been a firm in difficulty within the meaning of the guidelines since at least December 2000. The data provided in the course of the formal investigation procedure show that Porcelanas Principado would have been unable, either through its own resources or with funds it is able to obtain from its owner, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term.

(96) The Commission decision of 3 May 2000 in case N 75/2000 approved a regional scheme for investment aid in Asturias, an assisted area. The scheme lays down conditions for access to public assistance. Amongst these conditions, the scheme indicates that companies in difficulty ([27]) are excluded from the scheme.

(97) Spain states that when measure 6 was granted, the regional authorities based their decision to grant the aid on the consolidated accounts for 1999 which did not show losses as high as in the accounts for 2000. Spain also states that the aid was granted on the basis of the original viability plan and subject to the achievement of the objectives under that plan. The Commission, however, notes that in 1999 Porcelanas Principado had already incurred losses. Moreover, the fact that the aid was granted on the basis of a restructuring plan should have allowed the Spanish regional authorities to deny the aid as regional investment aid, since it was clearly aid for an investment within the context of a restructuring. The existence of a restructuring plan does not frustrate the description of Porcelanas Principado as a firm in difficulty, excluded from aid under the scheme in question.

(98) Consequently, at the time the aid was granted, Porcelanas Principado was a company in difficulty within the meaning of the rescue and restructuring guidelines, as admitted by both Spain and the aid beneficiary. Hence, any investment aid granted to this company does not fulfil one of the conditions laid down in the scheme. Measure 6 will thus be regarded as new aid.

(99) As regards measure 9, the Commission notes that the same reasons indicate it should be regarded as new aid. The aid is proposed for the benefit of a company in difficulty, to cover an investment, proposed under a restructuring plan, that is necessary in order to restore

([25]) OJ L 83, 27.3.1999, p. 1.
([26]) See footnote 5.
([27]) 'Empresas en crisis' in the Spanish version.

the company's viability. It does not qualify as regional investment aid either, therefore, and will also be regarded as new aid.

C. **Compatibility with the common market**

(100) Article 87(1) of the EC Treaty lays down that, save as otherwise provided, aid that 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.

(101) Article 87(2) and (3) of the EC Treaty does, however, provide for certain exemptions to the general rule of incompatibility as stated in paragraph (1).

(102) Article 87(3)(c) provides for the authorisation of State aid granted to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. For the assessment of financial measures awarded to companies in difficulty the Commission has issued specific guidelines on rescue and restructuring aid ([28]), in the light of which the measures under scrutiny have to be assessed.

(103) Point 3.2.2 of the restructuring guidelines lays down the conditions for the authorisation of restructuring aid.

(104) Firstly, the firm must qualify as a firm in difficulty within the meaning of the guidelines. As stated in previous sections and admitted by both Spain and the aid beneficiary, Porcelanas Principado has been a firm in difficulty within the meaning of the guidelines since at least December 2000.

(105) Secondly, the grant of the aid is conditional on implementation of the restructuring plan that must be endorsed by the Commission in the case of all individual aid measures. The restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable time-scale and on the basis of realistic assumptions as to future operating conditions. Restructuring aid must therefore be linked to a viable restructuring plan to which the Member State concerned commits itself.

(106) As indicated above, Spain submitted a restructuring plan, which was drawn up towards the end of 2000 and subsequently updated, once Porvasal had a better insight into the company. The Commission acknowledges that the amendments simply concern the financial forecast. The stages and cost of the restructuring remain unaltered compared with the first draft of the plan. The viability plan is given firmer shape in the following financial forecast:

TABLE 7 ([29])

(ESP million)

	2001	2002	2003	2004	2005	2006	2007
Turnover	824	865	909	974	1 043	1 106	1 172
Production costs	592	622	641	663	688	718	745
Sales costs	70	74	76	78	80	81	84
Overheads	93	91	93	96	98	99	102
Personnel costs ([a])	445	459	472	436	524	527	546
Depreciation ([b])	20	36	36	36	36	33	33
Operating result	8	8	24	57	91	116	146
Annual result	−19	−42	−24	12	49	79	107

([a]) Included in production and sales costs and overheads (cost allocated by function).
([b]) Included in production and sales costs and overheads (cost allocated by function).

([28]) See footnote 9.
([29]) It will be noted that this forecast is not complete and is simply intended to provide a general overview of the main items.

(107) It will be noted that the management report for the year 2001 reports a turnover of ESP 966,084 million (EUR 5,806 million) and an operating result of ESP 9,264 million (EUR 56,677), slightly surpassing the initial forecasts. However, Spain states that the forecasts for the year 2002 have not been achieved. According to Spain, the reason for this is that, following the initiation of the formal investigation procedure, the Spanish authorities suspended payment of all financial support until the Commission decided on its compatibility. This lack of financing has had a negative impact on the implementation of the restructuring, which the company is now financing by its own means, and on the company's financial situation.

(108) It will also be noted that Spain has provided evidence that Porcelanas Principado is not incurring any further debts and is currently paying taxes, social security contributions, suppliers and payrolls regularly. In addition, Spain has provided evidence that the company is meeting the instalments on its deferred debts.

(109) In view of the above, the Commission considers that with the help of Porvasal's experience and support, together with the aid, Porcelanas Principado will be able to restore its long-term viability.

(110) Thirdly, measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors. Otherwise, the aid would be regarded as 'contrary to the common interest' and therefore incompatible with the common market. This condition usually takes the form of a limitation on the presence that the company can enjoy on its market or markets after the end of the restructuring period. This condition should accordingly be regarded as not normally applying to small or medium-sized enterprises, except where otherwise provided by rules on State aid in a particular sector.

(111) Moreover, the Commission recalls that Porcelanas Principado is located in an Article 87(3)(a) area. Economic and social cohesion is a priority objective of the Community in accordance with Article 158 of the EC Treaty and other policies are required to contribute to this objective in accordance with Article 159. The Commission must therefore take the needs of regional development into account when assessing restructuring aid in assisted areas. That is why the conditions for authorising aid may be less stringent as regards the implementation of compensatory measures.

(112) Aid to SMEs tends to affect trading conditions less than that granted to large firms. This also applies to restructuring aid so that the conditions laid down in points 29 to 47 of the guidelines are applied less strictly: the grant of restructuring aid to SMEs will not usually be linked to compensatory measures, unless this is otherwise stipulated in rules on State aid in a particular sector. The Commission notes that the china and porcelain sector is not such a sector.

(113) Porcelanas Principado satisfies the requirements of the recommendation concerning the definition of small and medium-sized enterprises ([30]). The Commission would point out that towards the end of 2000 Porvasal and other investors acquired an 80 % stake in Porcelanas Principado; both companies together surpass the ceilings laid down in the above recommendation, although only on account of the combined number of employees (375 in total, as opposed to the 250 provided for in the definition). However, the status of SME is lost only if this phenomenon is repeated during two consecutive financial years. The point of reference is the moment when the aid is granted on the basis of the restructuring plan. This occurred in November 2001, although part of the measures have still not been paid. At the end of 2000, Porcelanas Principado lost its status as an SME because Porvasal acquired an 80 % stake in it. In 1999, however, Porcelanas Principado is considered to have been an SME. Thus it had not lost its SME status when the aid was granted. The Commission considers it appropriate, therefore, to apply less strict conditions to Porcelanas Principado as regards capacity reductions. The Commission also notes that the combined sales of Porcelanas Principado and Porvasal — EUR 13,3 million — are an insignificant percentage of European sales in the tableware/ornamental ceramics sector (EUR 2,7 billion according to Cerame-Unie). Lastly, both companies are situated in an area that is eligible for regional aid according to Article 87(3)(a) of the Treaty.

(114) Moreover, both Spain and the aid beneficiary state that capacity will not be increased during the restructuring period. Spain has explained that the company's capacity is determined by the vitrification kiln, which creates a bottleneck. This kiln is currently being used at 100 % of its capacity. It is not planned to invest in a second vitrification kiln.

(115) Given that the beneficiary's market presence is small, that it is located in an assisted area and that it has

([30]) Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises, OJ L 107, 30.4.1996, p. 4.

undertaken not to increase capacity during the restructuring period, the Commission considers that the distortive effect of the aid of some EUR 2,2 million is limited.

(116) Fourthly, the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken in the light of the existing financial resources of the company, its shareholders or the business group to which it belongs. Aid beneficiaries will be expected to make a significant contribution to the restructuring plan from their own resources.

(117) In any event, it must be demonstrated to the Commission that the aid will be used only for the purpose of restoring the firm's viability and that it will not enable the recipient during the implementation of the restructuring plan to expand production capacity.

(118) In the present case, aid is limited to some EUR 2,2 million plus an additional element included in the guarantees. Even if these guarantees are considered to be 100 % aid, total State aid works out at EUR 3,277 million, i.e. approximately 41 % of the total restructuring costs. The remaining 59 % will be covered by the beneficiary. The Commission considers that the aid is limited to the strict minimum and that the beneficiary contributes substantially to the restructuring.

(119) Finally, the restructuring plan must be fully implemented. The Commission would remind Spain that its commitment to submit an annual report on the implementation of the restructuring is one of the conditions laid down in the guidelines that apply in this case.

VII. **CONCLUSIONS**

(120) The Commission finds that Spain has unlawfully implemented the aid in question in breach of Article 88(3) of the Treaty. The Commission takes note of Spain's decision to suspend all pending payments and decisions on aid measures following the initiation of the formal investigation procedure. On the basis of the information available, the Commission concludes that the aid in question can be considered compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Spain has implemented for the benefit of Porcelanas Principado is compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 2 April 2003.

For the Commission

Mario MONTI

Member of the Commission