

# COMMISSION

## COMMISSION DECISION

of 1 July 1998

on aid granted and to be granted by Italy to Keller SpA and Keller Meccanica SpA

(notified under document number C(1998) 2047)

(Only the Italian text is authentic)

(Text with EEA relevance)

(1999/195/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

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

Having given notice to the parties concerned, in accordance with the above Articles, to submit their comments,

Whereas:

### I

By letters dated 12 April 1996 and 2 May 1996, the Italian Government notified the Commission of its intention to grant State guarantees under Article 2a of Law 95/1979 to Keller SpA and Keller Meccanica SpA, both declared insolvent and under extraordinary administrative arrangements since 1994.

Both companies were part of Gruppo Keller, which manufactures rolling stock. Keller SpA, which was the parent company, is based in Sicily and employs 294 people. Keller Meccanica SpA, which is controlled by Keller SpA, is based in Sardinia and employs 319 people.

In accordance with Law 95/1979, an extraordinary administrator was appointed to draw up recovery programmes for both companies; the programmes were approved by ministerial decree on 22 December 1994 and envisaged,

among other measures, completion of existing orders as a means of returning both companies to viability with a view to finding a purchaser; alternatively, the companies were to be wound up. Implementation of those measures was delayed because of difficulties in finding the required financing.

Of the financing obtained by the companies, Keller SpA received an ITL 33 839 million soft loan from Irfis-Mediocredito della Sicilia while Keller Meccanica SpA obtained a ITL 6 500 million soft loan from Società Finanziaria Industriale Rinascita Sardegna-Sfirs SpA. Both loans were granted at an interest rate lower than the corresponding reference rate for Italy (11,35 % for 1995).

### II

On 10 February 1997, in view of the unsatisfactory information provided by the Italian authorities and the serious doubts it had regarding the measures notified, the Commission decided to initiate proceedings under Article 93(2) in respect of:

- the ITL 33 839 million soft loan granted by Irfis-Mediocredito della Sicilia SpA to Keller SpA at an annual interest rate of 4 %,
- the ITL 6 500 million soft loan granted by Società Finanziaria Industriale Rinascita Sardegna-Sfirs SpA to Keller Meccanica SpA at an annual interest rate of 5 %,

- the proposed State guarantees to be given to Keller SpA and Keller Meccanica SpA under Article 2a of Law 95/1979 covering 50 % of the above loans.

At the time, the Commission could not consider the measures included in the recovery programmes as restructuring measures, since the conditions laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty<sup>(1)</sup> were not met, in particular because of the absence of a feasible, coherent and far-reaching plan to restore the firms' long-term viability. Moreover, both soft loans seemed to have been granted in breach of the obligation, laid down in Article 93(3) of the EC Treaty, to inform the Commission of any plans to grant or alter aid.

### III

By letter dated 5 March 1997, the Italian authorities were informed of the Commission's decision to initiate proceedings under Article 93(2) in respect of the above measures. A copy of the letter was published in the *Official Journal of the European Communities*<sup>(2)</sup>. The Commission has not received any observations from third parties in the course of the proceedings.

On 19 May 1997 the Italian authorities replied to the initiation of proceedings, stating that:

- with regard to the aid granted to Keller SpA, the Region of Sicily replied that the ITL 33 839 million soft loan granted on 22 April 1996 was covered by Regional law 25/1993, which concerned an aid scheme approved by the Commission. That law, which was notified to the Commission on 14 March 1995, was subsequently modified by Regional Law 20/1995, which extended the benefits of the 1993 scheme to companies under extraordinary administrative arrangements. Contrary to what the Commission had indicated when initiating proceedings, the loan had not therefore been granted under Regional Law 20/1995, but under Regional Law 25/1993. The Sicilian authorities also communicated their intention not to grant a State guarantee to Keller SpA,
- with regard to the aid granted to Keller Meccanica SpA, the Region of Sardinia maintained that the ITL 6 500 million soft loan was covered by Regional Law 66/1976, which concerned another aid scheme approved by the Commission and adapted subsequently in order to update the criteria, laid down in 1976, so as to bring them into line with current economic conditions. The Sardinian authorities made

no reference to the proposed State guarantee for Keller Meccanica SpA,

- the Italian and Sardinian authorities explained that the restructuring plans covered only the four-year period allowed for the continuation of business under Law 95/1979. Therefore, the plans were aimed solely at securing completion of existing orders and the sale of the companies to a third party on expiry of that period, or their liquidation.

On 23 June 1997 a meeting was held with the Sardinian authorities, who stressed that there were no *de facto* links between Keller Meccanica SpA and Keller SpA. With regard to the soft loan granted under Regional Law 66/1976 to Keller Meccanica SpA, the Sardinian authorities reiterated that the conditions under which the Commission in 1985 authorised the 1976 aid scheme had been updated in line with the definition of SMEs given by the Commission itself in the Community Guidelines on State aid for SMEs<sup>(3)</sup>.

At that meeting, the Sardinian authorities undertook to notify the amendments made to Regional Law 66/1976 and to submit a restructuring plan for Keller Meccanica SpA. They mentioned the possibility of not granting the State guarantee to Keller Meccanica SpA.

On 27 January 1998, after several reminders from the Commission, the Italian authorities sent additional information regarding the two companies. In particular, they confirmed that the State guarantees notified under Law 95/1979 would not be granted, that both companies were implementing the recovery plans approved in 1994 and that, since their sale to a third party had to be completed by June 1998, the relevant procedure had already been started. They thus took the view that it was no longer necessary to send new restructuring plans to the Commission and announced the withdrawal of the notification concerning the State guarantees under Article 2a of Law 95/1979.

The Italian authorities enclosed a document from the Region of Sardinia stating that the amendments to the 1976 aid scheme, which covered the loan granted to Keller Meccanica SpA, would be notified jointly with a new amendment which had not yet been approved for political reasons. Nevertheless, they repeated that the sole aim of the amendments had been to update the criteria laid down for the original 1976 scheme. There has so far been no notification pursuant to Article 93(3) of the EC Treaty; the Commission was simply 'informed' of the amendments in question by letter dated 27 January 1998.

<sup>(1)</sup> OJ C 368, 23. 12. 1994, p. 12.

<sup>(2)</sup> OJ C 140, 7. 5. 1997, p. 12.

<sup>(3)</sup> OJ C 213, 19. 8. 1992, p. 2.

## IV

**A. State guarantee pursuant to Law 95/1979**

The proposed guarantees to be given by the Italian Treasury to Keller SpA and Keller Meccanica SpA under Law 95/1979 have been notified to the Commission pursuant to Article 93(3) of the EC Treaty. The Commission considers that the Italian authorities have complied with the obligation laid down in that Article.

By letter dated 27 January 1998, the Italian authorities confirmed to the Commission that the State guarantees would not be granted and they therefore withdrew the notification. Accordingly, the Commission has terminated the proceedings under Article 93(2) in respect of those guarantees.

**B. ITL 33 839 million soft loan granted to Keller SpA**

When initiating proceedings, the Commission stated that the Italian authorities themselves had previously confirmed that the loan had been granted on 22 April 1996 under Regional Law 20/1995, by which the Region of Sicily extended the benefits of Articles 30 and 31 of Regional Law 25/1993 to companies under extraordinary administrative arrangements. The measures under Articles 30 and 31 of Regional Law 25/1993 were approved by the Commission in 1994 (State aid C 12/92, ex-NN 113/A/93 — Italy). As Regional Law 20/1995 amended Regional Law 25/1993, the Commission had considered it as part of the original scheme still under examination (State aid NN 113/A/93 — Italy).

As stated above, in their comments on the initiation of proceedings the Italian authorities claimed that the ITL 33 839 million soft loan granted to Keller SpA had not been granted under Regional Law 20/1995 but under Regional Law 25/1993. In fact, the agreement between Irfis-Mediocredito della Sicilia and Keller SpA, already under extraordinary administrative arrangements, was signed on 30 December 1994, i.e. one day before the deadline fixed by the Commission in its 1994 decision on the regional aid scheme provided for in Regional Law 25/1993 (itself amending Regional Law 119/1983).

According to the Italian authorities, in order to verify whether the measure complies with the scheme, the date to be taken into consideration is the date of legal completion of the act allowing payment and not the date of actual payment of the soft loan. This interpretation was confirmed by the Commission by letter dated 19 January 1995. Therefore, as only the former date has to be taken into consideration, the soft loan cannot have been granted

under Regional Law 20/1995, which had not even been adopted by the Region at the time.

As regards Regional Law 20/1995, the Italian authorities consider that it does not provide for the granting of additional State aid but simply confirms expressly that companies under extraordinary administrative arrangements may also benefit from the measures laid down in Regional Law 25/1993. In other words, Regional Law 20/1995 simply clarifies the interpretation of Regional Law 25/1993. The authorities add that Italian law does not preclude companies under extraordinary administrative arrangements from obtaining new financing for their current operations. In particular, neither Regional Law 119/1983 nor Regional Law 25/1993 prohibits soft loans for companies under extraordinary administrative arrangements.

The Commission takes the view that the arguments put forward by the Italian authorities contradict information previously sent. By letter dated 20 September 1996 (forwarded to the Commission by letter of the Italian Permanent Representative's Office dated 12 December 1996), the Region of Sicily stated that Regional Law 20/1995 extended the benefits of Regional Law 25/1993 to companies under extraordinary administrative arrangements. Moreover, in a letter dated 21 April 1997 (forwarded to the Commission by letter of the Italian Permanent Representative's Office dated 19 May 1997), the Region of Sicily stated that Regional Law 20/1995 was designed to permit implementation of a previously agreed operation.

Accordingly, Regional Law 25/1993 was not applicable to companies under extraordinary administrative arrangements pursuant to Article 2a of Law 95/1979. This is also borne out by the fact that the Italian authorities decided on 14 March 1995 to notify the Commission pursuant to Article 93(3) of the EC Treaty of the amendments provided for in Regional Law 25/1993.

In any case, the Commission considers that Regional Law 20/1995 could not have applied retroactively. The Commission's position was communicated to the Italian authorities by letter of 2 May 1996, which confirmed that 'the amendment introduced by Article 1 of Regional Law 20/1995, which provides for the extension of this scheme to companies under extraordinary administrative arrangements pursuant to Law 95/1979, constitutes alteration of an existing scheme which, pursuant to Article 93(3) of the EC Treaty, has to be notified to, and approved by the Commission. For the time being, therefore, the company Keller SpA cannot benefit from the aid scheme in question (Regional Law 20/1995)'.

In conclusion, the soft loan was granted to Keller SpA, already under extraordinary administrative arrangements, as part of a scheme that did not allow it to receive such aid. The scheme in question authorised aid in the form of soft loans covering up to 30 % of the total contract price of orders already obtained by companies operating in Sicily. Since this constituted operating aid, the Commission decided to limit its approval to the ITL 50 000 million budget available at the time and to loans to be made before 31 December 1994.

In addition, the soft loan was granted before adoption of the amendments authorising it and before the Commission could take up a position on those amendments. The aid element involved in the soft loan has thus to be considered illegal, as it was granted outside the scope of an approved scheme and in breach of the obligation imposed on Member States under Article 93(3) of the EC Treaty to inform the Commission of any plan to grant or to alter aid in sufficient time to enable it to submit its comments. The Commission has therefore to consider the aid in question as a new individual measure not covered by the approved scheme. As the company is clearly in difficulty and as the Italian authorities defined the proposed State guarantee for part of this loan as restructuring aid, the loan must be assessed in the light of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

### C. ITL 6 500 million soft loan granted to Keller Meccanica SpA

Similar conclusions as under point B apply to the ITL 6 500 million soft loan granted by Società Finanziaria Industriale Rinascita Sardegna-Sfirs SpA to Keller Meccanica SpA.

When initiating proceedings, the Commission noted that the soft loan did not meet the conditions on which the Commission had based its approval of the aid scheme (State aid C 4/85 — Italy), in particular the size of possible beneficiaries. The aid scheme, as approved by the Commission, stipulated that beneficiaries would be limited to firms with up to ITL 7 000 million in fixed assets and a maximum of 100 employees. According to the information provided by the Italian authorities before the proceedings were initiated, Keller Meccanica SpA had 319 employees and a total of ITL 53 466 million in fixed assets.

In their comments on the initiation of proceedings, the Italian authorities pointed out that the Commission was wrong in identifying the maximum number of employees

as a dimensional criterion. In their view, the Commission, when approving the measures provided for in Regional Law 66/1976, had first fixed the maximum aid per person (ECU 14 000 or ECU 18 000) and then took a basis of 100 employees, in order to determine the maximum aid per firm, whatever the actual number of employees. In addition, a strict limit of 100 employees, as fixed by the Commission, would not be consistent with the Commission's own definition of an SME (250 employees), with the result that a large number of SMEs would not qualify for the measure in question.

The Italian authorities also claimed that what the Commission considered as subsequent amendments to the scheme, whereby Keller Meccanica SpA became eligible to receive aid under the scheme were simply an updating of those criteria (fixed assets and aid per person). As things stand, the original dimensional criterion of ITL 7 000 million in fixed assets is insufficient for even an average-sized craft enterprise to qualify. Therefore, on account of the steady loss of purchasing power of the lira, the criteria have been cautiously revised upwards. It should be noted that the extent of this revision falls short of the decline in the value of the lira over the period 1980 to 1992 (calculated by ISTAT at 130,6 %).

As regards the soft loan to Keller Meccanica SpA, the Commission considers that the eligibility criteria were clearly set out in its 1985 decision (State aid C 4/85 — Italy). The letter sent to the Italian authorities informing them of the Commission's decision explicitly states that 'the Commission has taken note of the limits set on the size of the beneficiary companies (maximum 100 employees and ITL 7 000 million in fixed assets)'. The limit of 100 employees has thus to be understood as a dimensional criterion and a maximum limit. Even if the Italian authorities thought that the Commission's decision did not reflect the meaning of the notified scheme, they did not challenge it before the Court of Justice of the European Communities within the prescribed time limit. The decision is therefore final and irrevocable.

Since the approved scheme did not provide for a mechanism to adjust the aid criteria and the eligibility of beneficiaries, the subsequent amendments were substantial and should have been notified to the Commission pursuant to Article 93(3) of the EC Treaty. As there was no such notification, the soft loan already granted to Keller Meccanica cannot be deemed to be covered by the

Commission's approval of the original scheme. The information provided by the Italian authorities does not justify any change in the position the Commission took when initiating proceedings. The loan does not meet the conditions on which the Commission based its approval of the aid scheme, in particular the size of possible beneficiaries.

As the ITL 6 500 million soft loan to Keller Meccanica SpA was granted outside the scope of an approved scheme, the Commission has to consider it as a new individual measure not covered by the approved scheme. Furthermore, as the company is clearly in difficulty, the loan must be assessed in the light of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

## V

The interest rebate on the soft loans to Keller SpA and Keller Meccanica SpA must be considered State aid within the meaning of Article 92(1) of the EC Treaty.

It should be added that in the course of the proceedings the Italian authorities have never contested that in both cases the interest rebate constitutes aid. They did not request any specific derogations but simply observed that both soft loans were granted under regional aid schemes approved by the Commission.

The Community Guidelines on State aid for rescuing and restructuring firms in difficulty stipulate that, by its very nature, such aid distorts competition and affects trade between Member States, as is also confirmed by the situation in the sector in which the two companies operate.

The rolling stock sector includes the manufacture of railway and urban rail transport equipment<sup>(1)</sup>. After a period of stagnation in the mid to late 1980s, there was a rapid growth in demand from 1991 until 1994. After a slight decline in both production and consumption in 1994 (4,7 % and 1,7 % respectively), production plummeted by 16,5 % and consumption by 13,9 %, both falling below their 1992 levels.

Demand in the sector is concentrated among a small number of customers: national and regional railway companies, urban transport companies, private rental and

leasing companies and industries with their own rolling stock. The demand for rolling stock is dependent on long-term transport and infrastructure policies, which are in turn influenced by the political and economic climate.

As the market comprises a rather small number of customers with large projects which arise infrequently and generally last several years, competition between suppliers remains fierce. For rolling stock manufacturers these time lags make each contract crucial. The experience acquired and the economies of scale obtained by winning several contracts is critical in determining the strength of the manufacturer's next bid for a contract.

Decades of cross-reliance between railways and suppliers have created excess production capacity which has been only partially absorbed by exports to non-EU countries. In the past, there have been few cross-border orders from countries with indigenous rolling stock manufacturers, with the exception of the Netherlands, Spain and, more recently, the United Kingdom. Access by individual suppliers to new national markets tends to have been achieved through the process of acquisition or part-ownership or via a consortium.

Implementation of Council Directive 90/531/EEC on public procurement in previously excluded markets, including transports<sup>(2)</sup>, as last amended by Directive 94/22/EC<sup>(3)</sup>, has created new business opportunities for European suppliers after years of restricted access to national markets. Also, with greater separation of the management of railway infrastructure from the operation of rail transport services, as provided for in Council Directive 91/440/EEC on the development of the Community's railways<sup>(4)</sup>, there should be an increasing trend towards cross-border purchasing.

Intra-Community trade in rolling stocks<sup>(5)</sup> amounted to some ECU 1,5 billion in 1993, ECU 2,6 billion in 1994, ECU 1,4 billion in 1995 and ECU 1,2 billion in 1996. Italy's share of those totals was as follows:

	(%)			
	1993	1994	1995	1996
Imports	2,36	1,74	4,33	9,33
Exports	14,84	4,17	6,28	10

It should be noted that, according to the Italian authorities, Keller SpA exported to Germany rolling stock worth ITL 7 414 million in 1991, ITL 18 968 million in 1992 and ITL 6 820 million in 1993.

<sup>(2)</sup> OJ L 297, 29. 10. 1990, p. 1.

<sup>(3)</sup> OJ L 164, 30. 6. 1994, p. 3.

<sup>(4)</sup> OJ L 237, 24. 8. 1991, p. 25.

<sup>(5)</sup> Eurostat, intra-European Union statistics.

<sup>(1)</sup> Panorama of EU Industry 97, European Commission.

## VI

The Italian authorities have described the proposed State guarantee for part of the soft loans to Keller SpA and Keller Meccanica SpA as restructuring aid. The loans themselves have therefore also to be considered as financial aid for restructuring. Even if the aid elements involved in the loans were regarded as rescue aid, they could not be authorised under the Community Guidelines on State aid for rescuing and restructuring firms in difficulty. This is because they do not meet all the conditions laid down in the Guidelines; in particular, they have not been granted for the time needed to devise the necessary and feasible recovery plan. Only in cases where the Commission is still examining the restructuring plan when the period for which rescue aid has been authorised expires can it consider favourably an extension of the rescue aid until it has completed its examination.

In this case, the aid is designed to help the companies to complete their existing orders, and both the periods forecast for these completions (31 to 39 months) and the duration of the loans go well beyond the six months for which rescue aid is normally approved. Moreover, as is explained below, the plans submitted are concerned only with completing the orders and cannot be viewed as restructuring plans capable of restoring the firms' long-term viability.

The Community Guidelines on State aid for rescuing and restructuring firms in difficulty stipulate that restructuring aid can, generally speaking, be allowed only in circumstances in which it can be demonstrated that the approval of restructuring aid is in the Community interest. This is only possible when strict criteria are fulfilled and account taken of the possible distortive effect of the aid.

For the Commission to approve aid, the restructuring plan must satisfy all the following general conditions:

- it must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. Consequently, restructuring aid must be linked to a viable restructuring/recovery programme submitted in all relevant details to the Commission,
- it must avoid undue distortions of competition caused by the aid,
- the aid must be in proportion to the restructuring costs and benefits,
- it must be fully implemented and detailed annual reports must be sent to the Commission.

In this case, as regards both Keller SpA and Keller Meccanica SpA, the Italian authorities submitted recovery programmes aimed at completing existing orders so as to return both companies to economic and financial viability. In addition, it was not impossible that new orders would be accepted depending on progress in completing orders in hand. All the measures envisaged in the recovery programmes, including those concerning renovation of the production plants and modernisation of the machinery, are geared to that end. The financial plan presented to the Commission by Keller SpA forecast a profit of ITL 1 805 million after the orders have been completed. In the case of Keller Meccanica SpA, the profit forecast is ITL 8 300 million.

At the time the proceedings were initiated, neither company had any new orders. The Commission could not conclude that the restructuring plans for the firms would render them economically and financially viable in the long term because, even if existing orders were completed, the forecast profits would not be sufficient to cover the companies' past losses.

In their comments on the initiation of proceedings, the Italian authorities outlined the special nature of the provisions of Law 95/1979, pointing out that the purpose of extraordinary administrative arrangements is to allow the insolvent company to continue its activities where there is a possibility of recovery with a view to transferring the viable assets to a private third party as soon as possible. It is therefore clear that the recovery programme cannot cover a period longer than the duration of the extraordinary administrative arrangements (maximum of four years). Any decision on the future of the companies beyond that period must be taken by the private purchaser. In addition, the Sardinian authorities explained that, under the extraordinary administrative arrangements, the initiatives of the administrator in the case of Keller Meccanica SpA are not structural in nature but are aimed at the completion of orders.

In their last letter, dated 27 January 1998, the Italian authorities informed the Commission that they had started the procedure for selling the plant of both Keller SpA and Keller Meccanica SpA and that this new element made it unnecessary to forward restructuring plans.

On the basis of the above information, the Commission cannot alter its preliminary conclusions that the 'recovery programme' established by the extraordinary administrator for both Keller SpA and Keller Meccanica SpA under Law 95/1979 constitutes simply a financial plan aimed at the completion of orders in hand at the time the law was applied.

The recovery programme cannot be regarded as a restructuring plan within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty because it does not constitute a feasible, coherent and far-reaching plan to restore the firm's long-term economic and financial viability. To fulfil the viability criterion, the restructuring plan must be considered capable of enabling the company to cover all its costs, including depreciation and tax charges, and generating a minimum return on capital so that, after completing its restructuring, the firm will not require any further injection of State aid and will be able to compete in the market on its own merits.

Clearly, this is not the case here. The aim of the measure is to keep both companies in operation for a limited transitional period while a private purchaser is found. The Italian authorities even admit that any initiative to ensure the firms' future viability will have to be taken by the potential private purchaser after expiry of the extraordinary administrative arrangements. It must therefore be concluded that the first and most important condition laid down in the Community Guidelines (namely, a restructuring plan to restore the firms' long-term economic and financial viability) is not met.

The requirement that the aid should not unduly distort competition is not met either since, during the transitional period, both companies are being kept in operation artificially to the detriment of non-aided competitors in the sector. In addition, it is not impossible that the companies will obtain new orders.

Consequently, the aid elements in the ITL 33 839 million soft loan granted to Keller SpA and the ITL 6 500 million soft loan granted to Keller Meccanica SpA do not qualify for the derogation under Article 92(3)(c), which is the only basis for exempting aid for rescuing and restructuring firms in difficulty. The derogation under Article 92(3)(a) is not applicable because the aid is not aimed at promoting the economic development of areas where the standard of living is abnormally low.

It should be added that, if both companies had been privatised at the end of the four-year period of extraordinary administrative arrangements, the Commission would have reached the same conclusions for the reasons already explained. This would not have obviated the need

for the Commission to adopt a position on the measures taken during the transitional period of the extraordinary administrative arrangements and which have to be assessed on their own merits, independently of any possible sale.

Nor does the fact that both companies are subject to extraordinary administrative arrangements affect the Commission's conclusions. In a previous State aid case (State aid C 8/96 — Ferdofin Srl <sup>(1)</sup>), the Commission took the view that aid measures granted to Ferdofin under Law 95/1979 constituted State aid since measures under that law are not aimed at all companies, but only the largest ones (more than 300 employees) and the procedure itself is subject to the discretion of the public authorities. In the absence of a genuine restructuring plan, the Commission terminated the case by ordering the aid granted to Ferdofin by the Italian authorities to be repaid. In line with this decision, the Commission cannot adopt a different position in cases with similar characteristics, such as the present one.

## VII

The aid elements may be calculated as the difference between the interest rates charged to the companies and the reference rate used to calculate the net grant equivalent of regional aid in Italy in 1995, i.e. 11,35 %. This gives an aid element of ITL 4 288 million for the soft loan granted to Keller SpA and one of ITL 903 million for the soft loan granted to Keller Meccanica SpA.

It must therefore be concluded that the interest rebate amounting to ITL 4 288 million for the soft loan granted to Keller SpA and ITL 903 million for the soft loan granted to Keller Meccanica SpA must be declared illegal and incompatible with the common market.

Where aid granted illegally is found to be incompatible with the common market, Article 93(2) of the EC Treaty allows the Commission to require the Member State to recover it from the recipient, as the Court of Justice has confirmed in its judgments in Cases 70/72 Commission v. Germany <sup>(2)</sup>, 310/85 Deufil v. Commission <sup>(3)</sup> and C-5/89 Commission v. Germany <sup>(4)</sup>.

The Italian authorities are therefore requested to take the necessary steps to recover the illegal and incompatible aid,

HAS ADOPTED THIS DECISION:

### *Article 1*

The conditions under which soft loans of ITL 33 839 million and ITL 6 500 million were granted to Keller SpA and Keller Meccanica SpA are not in accordance

<sup>(1)</sup> OJ L 306, 11. 11. 1997, p. 25.

<sup>(2)</sup> [1973] ECR 813.

<sup>(3)</sup> [1987] ECR 901.

<sup>(4)</sup> [1990] ECR I-3437.

with the conditions laid down in the regional aid schemes approved by the Commission. Furthermore, the loans were granted before the Commission had submitted its comments on the subsequent alterations to those schemes, in accordance with Article 93(3) of the EC Treaty.

*Article 2*

The aid in the form of interest rebates amounting to ITL 4 288 million for Keller SpA and to ITL 903 million for Keller Meccanica SpA is illegal.

Such aid does not qualify for any of the exemptions laid down in Article 92(2) and (3) of the EC Treaty or Article 61(2) and (3) of the EEA Agreement and is therefore incompatible with the common market within the meaning of Article 92(1) of the EC Treaty and Article 61 (1) of the EEA Agreement.

*Article 3*

Italy shall take whatever steps are necessary to recover the illegal aid referred to in Article 2. Repayment shall be made in accordance with the procedures and provisions of Italian law.

The amounts to be repaid shall bear interest from the date on which the aid was granted until the date on which it is effectively repaid. The interest shall be calculated on the basis of the reference rate used to calculate the net grant equivalent of regional aid applicable in Italy on the date of repayment.

*Article 4*

Italy shall inform the Commission within two months of the date of notification of this decision of the measures it has taken to comply with it.

*Article 5*

This Decision is addressed to the Republic of Italy.

Done at Brussels, 1 July 1998.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

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