Commission Decision of 10 July 2007 on State aid C 19/06 (ex NN 29/06) implemented by Slovenia for Javor Pivka Lesna Industrija d.d. (notified under document number C(2007) 3227) (Only the Slovenian version is authentic) (Text with EEA relevance) (2008/91/EC)

COMMISSION DECISION

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on State aid C 19/06 (ex NN 29/06) implemented by Slovenia for Javor Pivka Lesna Industrija d.d.

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(2008/91/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),

Having called on interested parties to submit their comments pursuant to the provisions cited above[1],

Whereas:

I. PROCEDURE

(1) On 1 December 2004, the Commission received a complaint alleging aid to the Slovenian wood manufacturer Javor Pivka Lesna Industrija d.d. (hereinafter 'Javor Pivka').

(2) The complaint concerned financial measures allocated to Javor Pivka on 27 May 2004 by a resolution of the Slovenian Government pursuant to Article 21 of the Slovenian Act Governing Rescue and Restructuring Aid for Companies in Difficulty. It further emerged that this measure was not notified to the Commission on the grounds that it had been approved by the Slovenian state aid inter-ministerial expert Commission on 23 April 2004, i.e. prior to accession. However, given that the relevant criterion for deciding when an aid is granted is the legally binding act by which the competent national authority undertakes to grant state aid, the Commission considered the measure to constitute new aid, which should thus have been notified on the basis of Article 88 EC and assessed under Article 87 EC[2].

(3) By letter dated 16 May 2006 the Commission informed Slovenia that it had decided to initiate the procedure laid down in Article 88(2) EC in respect of the aid.

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

(5) The Commission received no comments from interested parties.

(6) Slovenia submitted observations by letter dated 17 July 2006. The Commission requested additional information by letter of 23 February 2007 (ref. D/50797), to which Slovenia replied by letter dated 23 April 2007. In addition, a meeting was held between Commission services and the Slovenian authorities on 28 June 2006.

II. DETAILED DESCRIPTION OF THE AID

1. The beneficiary

(7) Javor Pivka manufactures semi-finished wood products and furniture. It is located in the Pivka area in Slovenia, an assisted area pursuant to Article 87(3)(a) EC. In 2003 it had about 800 employees. It has four wholly-owned subsidiaries.

(8) The ownership of the company is spread over some 1 264 shareholders of which 9 investment companies or other legal persons hold 60 % and the remaining 40 % are split between 1 255 shareholders, none of which holds more than 1 %[(4)].

(9) In the years leading up to the granting of aid, Javor Pivka experienced financial difficulties. The main financial and operating indicators are given in the table below:

TABLE 1

Financial indicators for Javor Pivka

Indicator (in SIT thousands)[a]	**2000**	**2001**	**2002**	**2003**
Net sales revenue	8 114 374	7 884 954	8 174 323	8 124 711
Inventories finished goods, work in progress	867 609	1 030 323	894 302	1 121 632

a Any conversions of SIT amounts to EUR are purely indicative and based on the rate 1 EUR = SIT 240.

Net operating result	56 566	-137 030	-303 729	-578 268
Cumulative profit/loss	56 566	-80 464	-384 193	-962 461
Cash flow	480 468	333 324	104 522	-162 879

a Any conversions of SIT amounts to EUR are purely indicative and based on the rate 1 EUR = SIT 240.

2. Restructuring programme

(10) To overcome its difficulties, Javor Pivka submitted a restructuring plan for the period 2004-2008 to the Ministry of Economy in April 2004.

(11) The company stated that its difficulties were due to a lack of competitiveness in the face of imports from low-cost producers in developing countries on its traditional export markets (in particular Germany and USA). In order to meet this competition and return to viability, Javor Pivka identified a need to increase productivity through technological modernisation and reduction of costs, and to reposition itself in more high-margin niches and on new geographical markets.

(12) To this end, the restructuring programme provided for the following measures:

(13) *Technological restructuring*: This entailed a full modernisation of outdated equipment and production programmes. The objective was not to increase capacity but to increase productivity and to meet the demands of customers by introducing new products and adapting to ecological manufacturing standards. New production facilities would also allow the company to move away from intermediate products to more highly processed goods with a higher added value (in particular in the plywood programme). The cost for this part of the restructuring plan were to be met to 50 % by bank credits backed up by a guarantee provided by the Slovenian state, and for the remaining 50 % by Javor Pivka's own funds.

(14) *Restructuring of the workforce*: This part of the plan provided for the reduction of the workforce by some 100 redundancies (entitled to severance pay) and for training of the remaining 700 to adapt their skills to the new demands of the restructuring programme.

(15) *Review of commercial strategy*: Another element of the restructuring plan was to adapt to changes in demand and competition on the company's old markets by repositioning itself on new, more lucrative niche markets and by entering new markets (Russia, particularly targeted for furniture, and South-East Europe). As regards the products, the company intended to shift its focus towards more finished plywood, special plywood for the building industry and, in the furniture sector, specialist chairs for hospitals, retirement homes and other such facilities.

(16) *Re-organisation of company structures*: The return to viability will also require some re-organisation of the company (e.g. merging subsidiaries and improving the supervision of costs by centralizing the business functions sales, purchasing and finance). Costs for these measures were to be covered entirely from Javor Pivka's own resources.

(17) *Financial restructuring*: Insufficient liquidity led to mounting liabilities and rising financial charges. The purpose of the financial restructuring was to adapt the company's sources of financing and its repayment schedules to secure its current and long-term payment capability. The activities were to focus on rescheduling debt, reducing interest rates, extending repayment deadlines and obtaining a moratorium on repayment of principal.

3. Restructuring costs

(18) The table below gives an overview of the costs of the restructuring and its financing[(5)]:

TABLE 2

Restructuring costs and financing

Funds required (in thousand SIT)	**Own funds**	**Subsidies**	**Guarantee**	**Total**
Financial restructuring	400 000	0	0	400 000
Market restructuring	496 000	0	0	496 000
Technological restructuring	999 000	0	1 100 000	2 099 000
Restructuring of workforce	219 750	382 250	0	602 000
Organisational restructuring	4 900	0	0	4 900
Total	2 119 650	382 250	1 100 000	3 601 900

(19) The main element of support from state resources is public guarantees covering loans in the amount of SIT 1 100 000 000 intended to finance Javor Pivka's technological restructuring. As collateral for the guarantees, the Slovenian authorities received a mortgage on assets belonging to Javor Pivka to a value corresponding to the amount covered by the guarantees, i.e. SIT 1 100 000 000 (approx. EUR 4 584 000).

(20) In addition, aid was given in the form of a grant of SIT 382 250 000 (approx. EUR 1 592 000) for the costs of the restructuring of the workforce. This aid will contribute to both the severance pays for the redundant workers and for the training costs of those workers who are kept on.

(21) Slovenia submitted that Javor Pivka would contribute SIT 2 119 650 000 (approx. EUR 8 832 000) towards the restructuring, corresponding to 53,7 % of the total costs.

4. Market situation

(22) Javor Pivka is producing the following products, for which it has the indicated market shares at EU level (figures refer to 2003, and the CN numbers refer to the Combined Nomenclature):

(a) Shuttering panels (CN 4418 40): 3,91 %

(b) Plywood panels (CN 4412): 0,18 %

(c) Veneer (CN 4408): 0,22 %

(d) Wood chairs (CN 9401 61 + 9401 69 + 9401 90 30): 0,08 %

(23) The aggregated Javor Pivka market share in its product range on the EU-25 market was 0,21 % in 2003.

III. REASONS FOR OPENING THE PROCEDURE UNDER ARTICLE 88(2) EC

(24) As indicated above, the Slovenian authorities did not notify the measures in favour of Javor Pivka. In its letter of 16 May 2006 opening the procedure under Article 88(2) EC, the Commission explained in detail why the measures in question would constitute new aid which should be notified on the basis of Article 88 EC and assessed under Article 87 EC.

(25) In addition, the Commission expressed doubts on the aid's compatibility with the common market, and in particular with the Community Guidelines on aid for rescue and restructuring of firms in difficulty of 1999[(6)] (hereinafter 'the guidelines') on the following grounds:

(a) The Commission had doubts whether Javor Pivka was eligible for restructuring aid under the guidelines. In particular, the Commission, questioned whether it was 'in difficulty' within the meaning of the guidelines as its poor performance in 2003 could be an exceptional occurrence rather than part of a trend. In addition, the Commission questioned whether Javor Pivka belonged to a larger business group and whether it could not obtain the necessary funds from its owners.

(b) It was not clear how the company was to restore its long term viability since the Commission had not been provided with sufficient data to assess the assumptions of future performance under the restructuring plan.

(c) No market analysis was provided to justify the absence of compensatory measures.

(d) The Commission also had doubts whether the aid was limited to the minimum necessary because it was unclear whether Javor Pivka had provided a significant own contribution to its restructuring costs as it was unclear how the own funds were to be sourced.

(e) Finally, the Commission requested information on all other aids granted to Javor Pivka in 2004 in order to ensure that it had not received any previous rescue and restructuring aid, in which case the 'one time, last time' condition set out in point 48-51 of the guidelines might bar it from receiving such aid again.

IV. COMMENTS FROM SLOVENIA

(26) In the course of the formal proceedings, Slovenia has made in substance the following comments.

1. New aid, or aid granted before accession

(27) Slovenia insisted that the favourable opinion of the inter-ministerial expert commission amounted, for all practical purposes, to a decision to grant the aid which was binding on the Slovenian state. Since this decision was adopted on 6 April 2004, i.e. before Slovenia's accession to the European Union, and since the aid no longer applied after the accession, Slovenia considered that it was aid granted before accession to which the provisions of Articles 87 and 88(3) EC do not apply.

2. Eligibility

2.1. The notion of company 'in difficulty'

(28) Slovenia showed, submitting i.a. the performance indicators in table 1 above, that Javor Pivka featured several of the characteristics of a company in difficulty, and that this was not only an isolated occurrence in 2003 but a trend which could be distinguished over four years (2000-2003).

(29) In this respect, Slovenia pointed out that Javor Pivka failed to increase its net sales revenue over the period in question. The operating result was negative throughout the period, except for 2000, and the losses increased between 2001 and 2003. The current losses in 2003 were close to half the company's share capital. The return on sales, equity and assets was negative and deteriorated continuously 2001-2003. Free cash flow from operations fell over the period and was negative in 2003. This negative trend culminated in Javor Pivka being under a large threat of bankruptcy in 2003.

2.2. Javor Pivka's ownership

(30) Slovenia clarified the ownership structure of Javor Pivka with reference to the particularities of the privatisation model applied by Slovenia after the end of the Communist regime. Slovenia applied the peculiar notion that the capital of companies had no identifiable owners, neither private nor public, but was 'social capital' which belonged to the population at large. The privatisation process sought to transform this abstract concept into clearer ownership structures by means of ownership certificates which were distributed to the population. These certificates could be exchanged against shares in formerly 'social' companies.

(31) In this process, an important role was played by so-called authorised investment companies (known under the acronym 'PID') and administration companies ('DZU') which were set up to allow private investors to pool their certificates. These were then transformed by the PIDs into shares in various privatised companies, whereas the individual investors in return received shares in the PID, rather than in the privatised companies directly (the PID acting somewhat in the manner of an investment fund).

(32) However, the PIDs had no freely available funds (the currency of their investments being the certificates) and lacked the professional skills and experience to take an active part in corporate governance. As a result, they have been passive owners who take little or no part in the management of the companies they own.

(33) Such passive investors make up a large part of the ownership of Javor Pivka (some 44 % of share capital). They have no fresh capital to invest in the company. Indeed, when the restructuring programme was established, all institutional owners were invited to participate in the refinancing but none responded. Another 40 % of the share capital is split amongst 1 255 small shareholders making it at least 80 % of Javor Pivka's ownership which is not actively managed.

3. Return to viability

(34) On this point, Slovenia explained that the projections on Javor Pivka's performance under the restructuring plan and its consequent return to viability had been based on market analyses incorporated in the restructuring plan, sales forecasts in the company's various segments and market research.

(35) To show the reliability of these forecasts, Slovenia submitted complementary additional information. In particular, Slovenia accounted for the sources of the data on which the projections were based and submitted sales projections for the years 2004-2006 broken down by specific articles within the company's product range.

4. Compensatory measures

(36) On this point, Slovenia argued that no compensatory measures were necessary since, in view of Javor Pivka's negligible market share, there is no undue distortion of competition. In addition, Slovenia argued that the need for compensatory measures must be assessed with due account to the fact that Javor Pivka is located in an area eligible for regional aid pursuant to Article 87(3)(a) EC (see point 54 of the guidelines).

5. Own contribution

(37) Slovenia specified the sources of Javor Pivka's own contributions as set out in the table in paragraph 18 above. This funds were to be sourced as follows: Divestment of assets (financial and real estate) were to provide SIT 958 427 170. Another SIT 900 000 000 would come from bank loans obtained on market terms, without the support of aid. The remainder would be provided trough 'depreciation and amortisation' of assets (expected to amount to a total of SIT 1 111 786 000 in 2004-2006).

6. Other aid

(38) Finally, on this point, Slovenia advised the Commission that Javor Pivka had received state aid for energy saving measures. The aid was given under a scheme to promote renewable sources of energy, effective use of energy and co-generation of heat and electricity. The aid was granted on 1 September 2003 and paid out on 19 February 2004. This information was corrobarated by documents.

V. ASSESSMENT OF THE AID

1. Existence of State aid

(39) According to Article 87 EC, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, insofar as it affects trade between Member States, constitutes incompatible state aid unless it can be justified under Article 87(2) or (3) EC.

(40) The Commission notes that the aid is granted through State resources to an individual company. The criterion of favouring the individual company is also met. As regards the aid given in the form of a grant, the advantage for the beneficiary is obvious. In the case of the guarantee, the advantage may seem less obvious as Javor Pivka provided collateral in the form of a mortgage in return for the guarantee. However, the Slovenian authorities accepted to provide the guarantee against a mortgage with the ratio 1:1 (the value of the mortgage being equal to the amount covered by the guarantee). By contrast, commercial lenders would not have provided a loan against less than a 2,5:1 mortgage ratio. At the time, Javor Pivka would not have been able to provide sufficient mortgage to secure the same credit on commercial terms. In fact, the mortgage provided for the guarantee represented the full

extent of the unencumbered property of Javor Pivka at the time. Consequently, the guarantee provided by the Slovenian authorities favoured Javor Pivka by allowing the company to secure a larger loan than it would otherwise have been able to obtain against the collateral it could provide.

(41) As there is trade in processed wood products and furniture between Slovenia and other Member States the measure is liable to improve the position of the recipient in relation to its competitors in Slovenia and the EU, so that it may consequently distort competition and affect trade between Member States.

(42) Consequently, the Commission considers that the guarantee and subsidy in issue constitute state aid within the meaning of Article 87(1) EC.

2. Existence of new aid

(43) The Slovenian authorities questioned whether the Commission was empowered to assess the aid under Articles 87 and 88 EC, arguing that it was granted before accession. As the Commission clarified in the opening decision, in order to determine whether an aid has been put into effect before or after accession, the relevant event is the legally binding act by which the competent national authorities undertake to grant the aid[(7)]. In the absence of such a decision before accession, the measure constitutes new aid, even if the exposure of the state was known before.

(44) In the present case the Commission concludes that the binding act by which the competent national authorities undertook to grant aid did not come into effect before accession. The relevant Slovenian provisions state that the aid shall be awarded by a decision of the government on the basis of a proposal from the competent ministry. While prior decisions of the interdepartmental expert committee and the Ministry responsible are indeed necessary for the award, they are not sufficient to grant the aid. The definitive decision lies with the government. In the present case, the Government's resolution was issued on 27 May 2004, and Slovenia joined the European Union on 1 May 2004. Therefore, the measures constitute new aid and would have had to be notified on the basis of Article 88 EC and assessed under Article 87 EC.

3. Compatibility of the aid

(45) Given that the aid in question is restructuring aid, it is compatible with the common market if it complies with the criteria under the guidelines.

(46) In view of Slovenia's comments and the information gathered in the course of its enquiry, the commission has reached the following conclusions on the points which caused it to open the formal procedure.

3.1. Eligibility

(47) In view of the information submitted by Slovenia, the Commission takes the view that Javor Pivka's performance as described in section 2.1 above

shows that it was indeed a company in difficulty at the time the state aid in issue was granted. The Commission notes in particular that Javor Pivka experienced increasing losses, diminishing turnover and declining cash flow. The Commission further notes that these problems were part of a trend for the years 2000-2004, and not simply an exceptional occurrence in 2003.

(48) The Commission also notes Slovenia's explanations concerning the nature of Javor Pivka's ownership. In view of the passive nature and poor capital resources of Javor Pivka's institutional owners and the fragmentation of its remaining ownership, the Commission accepts that the company could not obtain the necessary funds from its shareholders. For the same reasons, and taking into account the fact that no single owner holds more than 15 % of Javor Pivka's share capital, the Commission also takes the view that Javor Pivka does not belong to a larger business group.

(49) The Commission accordingly accepts that Javor Pivka was eligible for restructuring aid.

3.2. Return to viability

(50) The Commission indicated in the opening decision that it was unclear how the restructuring plan would enable Javor Pivka to restore long term viability. This related mainly to the five year projections indicating how the company was likely to evolve as a result of the restructuring measures. The Commission's remarked that Slovenia had not submitted the information and data necessary to enable the Commission to assess the assumptions on Javor Pivkas's likely performance under the restructuring plan.

(51) In the course of the procedure, Slovenia has submitted the complementary information mentioned in section 4.3 above. This information adequately explains the basis for the assumptions. The Commission notes that the forecasts for Javor Pivka's sales performance might today appear rather optimistic given that in 2005 and 2006 the sector faced fierce competition from the Far East which resulted in excess supply and pressure to reduce prices. However it is not clear that this information was already known in the beginning of 2004. In addition the Commission itself observed in 2006 that: 'plywood production and consumption have seen significant increase in the past few years, with a strong export market developing for certain grades'[(8)]. Given that the Commission has not been provided with any contradictory information which put the companies and its own assumptions into question, the Commission has no grounds to dispute them. Therefore, the Commission considers that the projections made in 2004 do not appear implausible, so that the Commission's doubts on this point have been allayed.

3.3. Compensatory measures

(52) According to points 35 and 36 of the guidelines, measures must be taken to mitigate as far as possible any adverse impact of the state aid on

competitors. However, such compensatory measures are not required where the beneficiary's share of the relevant market is negligible. In these cases, compensatory measures are not a condition for finding the aid compatible with the common market.

(53) The Commission notes that according to the information provided by the Slovenian authorities, Javor Pivka is active in several product markets (plywood, shuttering panels, veneer and furniture, see point 22 above). As regards plywood the Commission first notes that in a merger case a ‘market investigation has largely confirmed that the different type of wood-based boards such as plywood, hardboard, raw particleboards and coated particleboards, decorative laminates (HPL/CPL) and wood-based panel components for the furniture and construction industry belong to separate product markets’[(9)].

(54) As regards the definition of the relevant market, Slovenia has provided the Commission with a market study which indicates the market shares for the relevant product market in the EU-25. In this respect, the Commission has little reason to depart from the presumption in footnote 20 of the guidelines that the relevant market is the EEA. It recalls that it has previously made some market investigations in the European wood-based products industry (including in particular wood-based panels made out of particleboard) in a merger case[(10)], and concluded that the relevant market was wider than the national market, and at least cross-border regional. This was underpinned by the important cross boarder trade flows. That similar trade flows exist also in the case of plywood is shown by figures provided by Slovenia as confirmed by the Commission's internal experts (this is further confirmed by the fact that the intra-Community exports account for the majority of Javor Pivka's turnover, with 55 %). Moreover, ‘cross-border regional’ was found to relate to a distance of about 1 000 km, the distance varying according to the value added to the products, i.e. coated products would trade over even longer distances than none-coated products. As plywood is already a higher-quality product and exports concern mainly plywood, transportation costs are less important than for particleboard (and even less important for chairs and other furniture made out of plywood). In view of the above, the Commission takes the view that the relevant market for the products manufactured by Javor Pivka should be, if not the entire EEA or EU-25, at least a good part of the EU-25.

(55) Given that Javor Pivka's market share of the EU-25 as indicated in section 2.4 above is 0,21 % (in 2003) for its product range as a whole, and that this share should in principle not more than double even if the geographical market were reduced by half, the Commission considers that the market share is still well below 1 % which, in connection with the fact that the market comprises a large number of small and medium-sized producers, can be considered negligible[(11)]. Consequently, and since this decision is based on the 1999

guidelines, compensatory measures are not necessary to ensure that the state aid is compatible with the common market.

3.4. Aid limited to the minimum

(56) According to point 40 of the guidelines, aid must be limited to the strict minimum needed to enable restructuring, and beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources 'including through the sale of assets that are not essential to the firm's survival, or from external financing at market conditions'.

(57) Javor Pivka's own contribution to the restructuring is set out in section 4.5 above. It should be said at the outset that the Commission cannot accept that depreciation of assets provides a genuine own contribution[(12)] because it does not provide resources available to the company and is also depending on future operations which are the result of the State aid provided[(13)]. Any funds from this source can therefore not be taken into consideration for the purpose of calculating Javor Pivka's own contribution.

(58) On the other hand, the assets divested by Javor Pivka do not appear essential to its survival and the proceeds from this sale therefore constitutes a valid own contribution. The same is true of the funds raised through loans taken on market terms from banks and free of aid. Together, the funds from these sources amount to SIT 2 119 650 000, which the Commission considers as Javor Pivka's own contribution towards the restructuring.

(59) The own contribution corresponds to 45,5 % of the total restructuring costs which can be considered significant under the guidelines[(14)]. The aid also appears limited to the minimum necessary as it is limited to providing the additional funds needed for the technological restructuring and for the restructuring of the workforce and does not provide the company with any surplus cash.

3.5. Other aid

(60) Under the 'one time, last time' principle laid, down in points 48-51 of the guidelines, the Commission cannot approve restructuring aid to a company which has previously received restructuring aid. The Commission considers that this principle requires it to take into account any restructuring aid granted within 10 years preceding the aid under consideration, irrespective of whether the first state aid was granted before the granting Member State's accession to the EU. State aid other than restructuring aid is not relevant in this respect.

(61) Slovenia has argued that the purpose of this aid was to promote energy saving for environmental purposes. Nothing has emerged which would lead the Commission to question that information. The Commission therefore accepts that this aid was not given for restructuring purposes and that it should not be considered for the application of the 'one time, last time' principle.

4. Additional observation

(62) It emerged in the course of the proceedings that the implementation of the restructuring plan have been delayed and that some parts of the technological restructuring have not been implemented according to schedule. It does not appear that these problems in the restructuring plan were apparent at the time of the granting of the aid and they do accordingly not justify calling into question the plan's ability to return Javor Pivka to viability. However, the Commission recalls that the approval of the aid is conditional upon full implementation of the plan (point 43 of the guidelines) and will be monitored (point 45 of the guidelines).

(63) The Commission therefore expects Slovenia, pursuant to point 46 of the guidelines, to provide at least two monitoring reports, one concerning 2007 at the end of January 2008 and one concerning 2008 at the end of January 2009, containing detailed information on the financial performance of the company as well as of its investments made. The Commission underscores that if the company fails to make all the investments in the restructuring plan, it may be liable to pay back some state aid even if it managed to return to viability[(15)].

VI. CONCLUSION

(64) In view of the above, the Commission finds that the aid in question is restructuring aid which complies with the conditions of the applicable guidelines, i.e. the 1999 rescue and restructuring guidelines. The Commission therefore finds that although Slovenia has unlawfully implemented the restructuring aid to Javor Pivka in breach of Article 88(3) of the Treaty, the state aid is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Slovenia has implemented for Javor Pivka is compatible with the common market pursuant to Article 87(3)(c) EC and the Community guidelines on state aid for rescuing and restructuring firms in difficulty of 1999.

Article 2

1 The restructuring plan shall be fully implemented. All necessary measures shall be taken to ensure that the plan is implemented.

2 Implementation of the plan shall be monitored on the basis of annual reports communicated by Slovenia to the Commission. In particular, a report concerning the 2007 activities shall be submitted by the end of January 2008 and a report concerning the 2008 activities shall be submitted by the end of January 2009. The reports shall contain detailed information on the financial performance of the company as well as of the investments it has made.

Article 3

This Decision is addressed to the Republic of Slovenia.

Done at Brussels, 10 July 2007.

For the Commission

Neelie KROES

Member of the Commission

(**1**) OJ C 194, 18.8.2006, p. 26.

(**2**) Details of the procedure were described in the decision to open the procedure (see footnote 1) and remain relevant for the purpose of the present decision.

(**3**) Cf. footnote 1.

(**4**) Figures as at 30 January 2004.

(**5**) In the course of the procedure, Slovenia declared that the costs of the financial restructuring were 'outside the restructuring programme' and would be met by commercial loans obtained by Javor Pivka without any involvement of state aid. The corresponding amount, SIT 400 000 000, was not included by Slovenia in the costs of the restructuring programme. However the Commission takes the view that the financial restructuring is an integral and necessary part of the restructuring programme and that consequently its costs should be included in the restructuring cost. Its financing, to the extent that it is secured by loans obtained on market terms and free of aid, is to be considered as Javor Pivka's own contribution. In this table, as in the rest of the decision, the Commission has incorporated these amounts in the restructuring costs and in the 'own funds'.

(**6**) Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 9.10.1999, p. 2).

(**7**) See opening decision (mentioned in footnote 1), points 19 and 20, and also the Commission decision in case C-3/2005 *FSO*, OJ C 100, 26.4.2005, p. 2, point 38 *et seq.*

(**8**) http://ec.europa.eu/enterprise/forest_based/tradeflows_en.html

(**9**) Case No COMM/M.4165 — *Sonae Industria/Hornitex*, Commission Decision of 28.6.2006, point 11.

(**10**) Case No COMM/M.4165 — *Sonae Industria/Hornitex*, Decision of 28.6.2006.

(**11**) At least in view of other examples under the 1999 guidelines, see the Commission Decision in case C-3/2005 *FSO*, OJ C 100, 26.4.2005, p. 2, point 38 *et seq.*

(**12**) Commission Decision in case N 464/05 *AB Kauno* of 22.2.2006, point 17.

(**13**) This was confirmed, as regards cash flow, in Commission Decisions in case C-19/2000 *TGI*, OJ L 62 of 5.3.2002, p. 30, point 106 and case C-30/1998 *Wildauer Kurbelwelle*, OJ L 287 of 14.11.2000, p. 51, point 52 and, for the 2004 guidelines, in the *AB Kauno* case (see footnote 12).

(**14**) See Commission Decision in case C-39/2000 *Doppstadt*, OJ L 108, 30.4.2003, p. 8, point 74 and Commission Decision in case C-33/1998 *Babcock Wilcox* (OJ L 67, 9.3.2002, p. 50).

(**15**) See Commission Decision of 13 September 2006 in Case N 350/06 *MSO* (OJ C 280 of 18.11.2006).