

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 30 March 2004

on the State aid scheme put into effect by Italy providing for urgent measures to assist employment

(notified under document number C(2004) 930)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2004/800/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to the provisions cited above<sup>(1)</sup>,

Whereas:

of the deadline had been accepted by the Commission, Italy submitted additional information by letter dated 20 May 2003.

(3) By letter dated 16 October 2003, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the scheme. The Commission decision to initiate the procedure was published in the *Official Journal of the European Union*<sup>(2)</sup>. The Commission invited other interested parties to submit their comments on the measure. No such comments were received.

(4) Italy submitted comments by letter dated 22 December 2003. The Commission asked for further information by letter dated 19 January 2004, to which Italy replied by letter of 11 February 2004.

### 1. PROCEDURE

(1) By letter dated 12 February 2003 (recorded as incoming mail under number A/31217 on 14 February 2003), the Italian authorities notified, pursuant to Article 88(3) of the EC Treaty, an aid scheme providing for urgent measures to assist employment. The measure was put into effect before the Commission had given its approval, and it was therefore registered as an unlawful aid measure under the number NN 7/03.

(2) By letter dated 12 March 2003 the Commission asked for further information. After a request for an extension

### 2. DESCRIPTION OF THE AID

(5) The aim of the scheme is to safeguard jobs in firms in financial difficulty which are in a form of insolvency proceeding known as 'special administration' (*amministrazione straordinaria*) and which have more than 1 000 employees.

(6) The legal basis of the scheme is Decree-law No 23 of 14 February 2003, which was converted into statute by Act No 81 of 17 April 2003.

<sup>(1)</sup> OJ C 308, 18.12.2003, p. 5.

<sup>(2)</sup> See footnote 1.

(7) The aid is granted to purchasers of firms that have the required characteristics (firms in financial difficulty, in special administration, and having at least 1 000 employees).

(8) The purchaser of such a firm qualifies for aid in respect of the staff of the firm whom the purchaser agrees to employ, up to a ceiling of 550 employees. For each transferred employee the purchaser receives:

— a monthly grant equal to 50% of the special indemnity to which the worker would be entitled if laid off under the laid-off workers' mobility scheme (*collocamento in mobilità*),

— a reduction in employer's social security contributions for the first 18 months, the rate of contribution charged being that for trainees.

These are the benefits granted under another Act, Act No 223/1991, to employers who take on workers registered under the laid-off workers' mobility scheme, i.e. workers whose employment has ended by reason of a structural crisis and who satisfy stated requirements.

Under the aid scheme notified, the same benefits are granted, up to a ceiling of 550 employees, to purchasers who agree to employ staff of the existing firm; these would not qualify for the laid off workers' mobility scheme.

The benefits are granted in respect of a maximum of 550 employees transferred provided two conditions are met: (i) the transfer of employees must be provided for in a collective agreement concluded with the Ministry of Labour by 30 April 2003, and (ii) the purchaser and the firm purchased cannot have the same ownership, and there must be no relationship of control or association between them.

(9) The scheme is applicable to transactions involving a transfer of employees approved by means of a collective agreement concluded with the Ministry of Labour by 30 April 2003. The budget for the year 2003 amounted to EUR 9,5 million.

### 3. GROUNDS FOR INITIATING THE PROCEDURE

(10) In the decision to initiate the formal investigation procedure pursuant to Article 88(2), the Commission took the view that the measure constituted State aid within the scope of Article 87(1). The measure was therefore caught by the general ban on State aid, and

could be considered compatible with the common market only if it qualified for one of the exemptions laid down in the Treaty.

(11) Given that the measure aimed to safeguard jobs, and involved the purchase of firms in difficulty, the Commission considered whether the aid might be held compatible under the Community guidelines on State aid for rescuing and restructuring firms in difficulty (the rescue and restructuring guidelines)<sup>(1)</sup>, or under Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment<sup>(2)</sup> (the Employment Aid Regulation), or, finally, under the guidelines on national regional aid<sup>(3)</sup>. The Commission expressed doubts as to the compatibility of the measure with the common market under any of these rules.

(12) The Commission doubted whether the measure constituted a scheme of assistance to a general class of recipients; in view of its short duration it appeared rather to be aimed at very specific recipients (the legislation was adopted on 14 February 2003, and the deadline for the purchase of the firm and ministerial approval of the transfer of employees was 30 April 2003).

(13) The Commission said that if Italy considered that the notification of the scheme was in fact an individual notification of restructuring aid to a single firm in difficulty, then the measure would have to be notified as such. It would then be necessary to clarify whether the firm in financial difficulty was the effective recipient of the aid. Such a notification would have to be accompanied by a restructuring plan intended to restore the firm to viability, and would have to satisfy all the conditions laid down in the rescue and restructuring guidelines.

### 4. COMMENTS SUBMITTED BY ITALY

(14) Italy submitted comments by letter dated 22 December 2003. The Italian authorities stated that during the lifetime of the scheme only one firm had been sold in accordance with the mechanisms it laid down: this was Ocean SpA, located in Verolanuova, Brescia, which was bought by Brandt Italia SpA. According to the Italian authorities Brandt Italia acquired Ocean at a market price and did not receive any direct economic advantage under the scheme.

(15) The Italian authorities also stated:

— that the measure under examination was not one that applied in specific areas or to specific recipients,

<sup>(1)</sup> OJ C 288, 9.10.1999.

<sup>(2)</sup> OJ L 337, 13.12.2002, p. 3.

<sup>(3)</sup> OJ C 74, 10.3.1998.

— that if the Commission did not consider it a general measure, it should conclude that it did not affect competition, as it was aimed at restoring the productive activity of firms in difficulty and safeguarding the jobs involved,

— that the scheme complied with the rescue and restructuring guidelines, as it did not increase production capacity but aimed to restore viability and safeguard jobs.

- (16) By letter dated 11 February 2004, Italy indicated that the amount of aid awarded to Brandt Italia under the scheme was, at that date, EUR 3 197 982,20 and that the granting of aid had begun in March 2003.

## 5. ASSESSMENT OF THE AID

### 5.1. Existence of aid

- (17) In order to assess whether the measure constitutes aid within the scope of Article 87(1) of the Treaty, it is necessary to determine whether it favours certain undertakings, whether it is granted through State resources, whether it distorts competition, and whether it may affect trade between Member States.

- (18) The first condition for the application of Article 87(1) is that the measure must favour certain undertakings. It is therefore necessary to verify whether the measure confers an economic advantage on recipients that they would not enjoy in normal market conditions, or whether it relieves them of charges that are normally borne from their budgets, and whether such an advantage is granted to specific undertakings.

The scheme under examination provides for grants and social security reductions to purchasers of firms in financial difficulty that are in special administration and have at least 1 000 employees. It therefore confers an economic advantage on the purchaser, who receives a non-repayable grant for every employee transferred, and is relieved of part of the social security contributions ordinarily payable by the employer for 18 months.

The Commission takes the view that the measure may comprise an economic advantage to the firm in special administration as well. Who is the effective recipient of the aid will depend on a number of factors which have not been clarified by the Italian authorities: whether the

firm in financial difficulty is a going concern, whether the sale is an asset or a share deal, whether the purchaser is clearly separate from the firm in financial difficulty, how the selling price is determined, etc.

The Commission considers that the scheme confers an economic advantage on a specific category of recipients, namely:

— the purchaser of a firm, where the firm is in financial difficulty, is in special administration, and has at least 1 000 employees, and the purchaser concluded a collective agreement approving the transfer of employees with the Ministry of Labour by 30 April 2003, and/or

— the firm sold, where the firm is in financial difficulty, is in special administration, and has at least 1 000 employees.

The Commission therefore takes the view that the measure is not a general measure, but instead confers an economic advantage on certain undertakings, reducing the costs they would otherwise have to bear and strengthening their financial position as compared with competitors who do not benefit under the same measures. This finding is confirmed by the fact that the measure has been applied in only one case.

- (19) The second condition for the application of Article 87(1) is that the aid must be granted through State resources. In the scheme under examination, the use of State resources is shown by the fact that the measure is financed by non-repayable public funding and by the State's foregoing a portion of the social contributions ordinarily due.

- (20) The third and fourth conditions for the application of Article 87(1) are that the measure must distort or threaten to distort competition and must affect trade between Member States. The scheme under examination threatens to distort competition because it reinforces the financial position of some undertakings compared to those of their competitors. In particular, it threatens to distort competition and affect trade in cases where the recipients compete with products coming from other Member States, even if they do not export their own products. If they do not export their own products there is nevertheless an advantage to domestic production, because undertakings established in other Member States have less chance of exporting their products to the market in question<sup>(1)</sup>.

<sup>(1)</sup> Judgment of the Court of Justice in Case 102/87 *France v Commission* [1988] ECR 4067.

- (21) The measure under examination is consequently caught by the general prohibition in Article 87(1) of the Treaty, and can be considered compatible with the common market only if it qualifies for one of the exemptions laid down in the Treaty.

### 5.2. Lawfulness of the aid

- (22) As the measure constitutes State aid, the Commission regrets that the Italian authorities have not fulfilled their obligation under Article 88(3) of the Treaty and have put the measure into effect before approval by the Commission.

### 5.3. Assessment of compatibility of the aid

- (23) Having determined that the measure constitutes State aid within the scope of Article 87(1) of the Treaty, the Commission considered whether it could be held to be compatible with the common market under Article 87(2) and (3).

- (24) The Commission takes the view that the aid does not qualify for exemption under Article 87(2), because it is not aid having a social character of the kind referred to in Article 87(2)(a), nor aid to make good the damage caused by natural disasters or exceptional occurrences of the kind referred to in Article 87(2)(b), nor does it fall under Article 87(2)(c). The exemptions in Article 87(3)(b) and (d) are obviously inapplicable too.

- (25) Turning to Article 87(3)(a) and (c), the Commission has laid down its policy on certain categories of aid in exemption regulations and guidelines. The aid under examination aims to safeguard jobs and involves the sale of firms in difficulty, which means that it may fall within the scope of any of three acts of secondary legislation. The Commission has accordingly examined the compatibility of the aid under the rescue and restructuring guidelines, under the Employment Aid Regulation, and finally under the guidelines on national regional aid. But in each case the doubts expressed by the Commission as to the compatibility of the aid scheme with the common market have been confirmed.

### 5.4. Assessment under the rescue and restructuring guidelines

- (26) Given that the notified scheme applied to the sale of firms in financial difficulty, the Italian authorities argued that it should be assessed under the rescue and restructuring guidelines. The Commission considered

whether the aid scheme could be assessed under those guidelines. The rescue and restructuring guidelines allow:

- rescue and restructuring aid notified individually to the Commission, for all firms irrespective of size,
- rescue and restructuring aid schemes confined to small and medium-sized enterprises.

The Italian authorities notified an aid scheme that applies to all firms irrespective of size. Indeed, as the scheme concerns the sale of firms having more than 1 000 employees, the firms concerned will for the most part be large<sup>(1)</sup>. In its current form, therefore, the scheme cannot be considered compatible with the common market on the basis of the rescue and restructuring guidelines.

- (27) In its decision initiating the investigation, the Commission said that if Italy considered that the notification of the scheme was in fact an individual notification of restructuring aid to a single firm in difficulty, then the measure would have to be notified as such. It would then be necessary to clarify whether the firm in financial difficulty was the effective recipient of the aid. Such a notification would have to be accompanied by a restructuring plan intended to restore the firm to viability, and would have to satisfy all the conditions laid down in the rescue and restructuring guidelines.

- (28) The Italian authorities indicated that in reality only one firm had been sold under the scheme during its lifetime. But they continued to describe the measure as a scheme, and did not provide any information that might have enabled the Commission to assess it as an individual notification of restructuring aid to a single firm in difficulty. The Commission cannot, therefore, assess the individual case of the sale of Ocean SpA to Brandt Italia SpA on its own merits.

### 5.5. Assessment under the Employment Aid Regulation

- (29) The notified aid scheme aims to safeguard jobs. In addition to the rescue and restructuring guidelines, the Italian authorities also referred to the Employment Aid Regulation. In this respect, according to the Italian authorities:

<sup>(1)</sup> As far as the sale of Ocean SpA to Brandt Italia is concerned, the Italian authorities did not supply any information regarding the size of the acquiring company, Brandt Italia. The company acquired, Ocean SpA, had more than 1 000 employees.

- the notified measure should be considered as a 'general measure to promote employment which does not distort or threaten to distort competition by favouring certain undertakings or the production of certain goods' (recital 6 to the abovementioned Regulation), as it is general and abstract, and applies to all firms with more than 1 000 employees which are in special administration and which are sold,
- the benefits granted are the same as those available under the laid-off workers' mobility scheme, which has never been considered State aid,
- if the measure is considered to constitute State aid, it should be regarded as a scheme for the creation of employment: Article 4(4)(c) of the Employment Aid Regulation explicitly provides that 'the new workers employed as a result of the creation of employment must have never had a job or have lost or be losing their previous job'. The measure under examination concerns the last of these cases.
- (30) On the first point, the Commission considers that the measure is not a general measure, for the reasons already mentioned in this Decision in the section on the existence of aid.
- (31) On the second point, the measure does not modify lay-off schemes such as the special lay-off fund (*Cassa integrazione straordinaria*) or the laid-off workers' mobility scheme. It is a temporary measure designed for a specific situation and applies only to transactions carried out in the course of one three-month period. Thus it cannot be considered equivalent to general lay-off schemes such as the special lay-off fund or the laid-off workers' mobility scheme, which have never been assessed by the Commission under the State aid rules.
- (32) On the third point, the Commission would point out that under the Employment Aid Regulation aid towards the creation of new jobs in non-assisted areas is allowed only where it is given to small and medium-sized enterprises. The notified aid scheme applies throughout the country and to all undertakings irrespective of size. Indeed, as the measure concerns the sale of firms having more than 1 000 employees, there are grounds for supposing that the firms concerned will for the most part be large.
- (33) The notified measure consequently cannot be considered compatible with the common market on the basis of the Employment Aid Regulation.
- 5.6. Assessment under the guidelines on national regional aid**
- (34) The Commission also considered whether the scheme could be assessed under the guidelines on national regional aid<sup>(1)</sup>. Provided certain stated requirements are met, these guidelines allow aid to maintain jobs to be authorised even if it falls within the definition of operating aid. It is also possible to approve aid to investments in fixed capital undertaken in the form of the purchase of an establishment which has closed or which would have closed had it not been purchased.
- (35) The scheme does not fall within the scope of the guidelines on national regional aid, however, because since it is applicable countrywide. Moreover, the only case in which the scheme is known to have been applied is that of a company located in Verolanuova, Brescia, which is not in an area falling under the exemptions in Article 87(3)(a) or (c). The notified measure consequently cannot be considered compatible with the common market on the basis of the guidelines on national regional aid.
- (36) Lastly, the notified measure is incompatible with the common market in that it contains no provision on overlapping aid from different sources.
- 6. CONCLUSION**
- (37) The Commission finds that the measure under examination constitutes State aid within the scope of Article 87(1) of the Treaty. Italy has put the measure into effect unlawfully, in breach of Article 88(3) of the Treaty. On the basis of the analysis set out above, the Commission finds that the aid is incompatible with the common market in the light of the rescue and restructuring guidelines, the Employment Aid Regulation and the guidelines on national regional aid.
- (38) This Decision concerns the aid scheme and the individual cases in which it is applied, and must be complied with immediately, with special reference to the recovery of all incompatible aid granted. This Decision is without prejudice to the possibility that individual aid measures taken under the scheme may subsequently be considered compatible on their own merits, in whole or in part, by Commission decision,

(1) OJ C 74, 10.3.1998.

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid measure providing for urgent measures to assist employment which Italy has put into effect under Decree-law No 23 of 14 February 2003, converted into statute by Act No 81 of 17 April 2003, is incompatible with the common market.

*Article 2*

Italy shall withdraw the scheme referred to in Article 1 in so far as it continues to have effect.

*Article 3*

1. Italy shall take all necessary measures to recover from the recipients the aid granted under the scheme referred to in Article 1 which has been unlawfully made available to the recipients.

2. Italy shall cancel all outstanding payments of aid with effect from the date of this Decision.

3. Recovery shall be effectuated without delay in accordance with the procedures of national law provided that they allow the immediate and effective execution of the Decision.

4. The aid to be recovered shall include interest from the date on which it was made available to the recipient until the date of its recovery.

5. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid on the date on which the aid was made available to the recipient.

6. The interest rate referred to in paragraph 5 shall apply on a compound basis over the entire period referred to in paragraph 4.

*Article 4*

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it, using the questionnaire attached to the Decision.

*Article 5*

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 March 2004.

*For the Commission*

Mario MONTI

*Member of the Commission*

