

IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COMMISSION DECISION

of 30 September 2009

on a measure taken by Italy to rescue Sandretto Industrie srl (C 19/08 (ex NN 13/08))

(notified under document C(2009) 7184)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2010/215/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) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) On 29 January 2007 the Commission approved rescue aid of EUR 5 million to Sandretto Industrie srl (Sandretto) ⁽¹⁾. The aid consisted of a guarantee on two credit lines provided by private banks, the conditions of which were to be defined after the approval of the Commission. When notifying the rescue aid, Italy undertook to terminate the guarantee no later than six months after its disbursement, and to provide the Commission with a restructuring plan for Sandretto within six months of the date of authorisation of the aid.
- (2) On 14 December 2007, having received no information on progress, the Commission wrote to Italy asking for an update on the case (letter ref. D/54995).
- (3) Italy answered by letter dated 21 January 2008 (ref. A/1233) informing the Commission that the aid had been granted in two parts, one on 24 July 2007 and the other on 13 August 2007.
- (4) By letter dated 23 January 2008 (ref. D/50314) the Commission requested Italy to confirm that the guarantee expired on 24 January 2008, or to provide a restructuring plan, and informed Italy that failing a

prompt reply the Commission departments would propose the opening of the formal investigation procedure.

- (5) Italy replied on 8 February 2008 (ref. A/2526) informing the Commission that the first instalment of the guarantee had expired on 24 January 2008, and that following the failure of several attempts to sell the company's assets the court with jurisdiction in the matter had been given timely notice that the proceedings might have to be converted into an application for bankruptcy.
- (6) A decision to initiate the procedure laid down in Article 88(2) of the Treaty (hereinafter 'the opening decision') was published in the *Official Journal of the European Union*, with an invitation to interested parties to submit their comments ⁽²⁾. Italy sent comments by letter dated 19 May 2008 (ref. A/9253). There were no comments from other interested parties.
- (7) Subsequently, the Commission requested additional information by letter dated 20 August 2008 (ref. D/53263), to which the Italian authorities replied on 18 September (ref. A/19134), and by letter of 20 October 2008 (ref. D/54063), to which the Italian authorities replied on 4 November (ref. A/23219).

II. DESCRIPTION

The recipient

- (8) Sandretto manufactures and sells injection moulding machines for thermoplastics. It began as Fratelli Sandretto in 1947, and since then has undergone several changes in its name and corporate form. At the time the aid was granted, in 2007, Sandretto had a turnover of EUR 30 million, and employed 340 people; it was a major source of activity for the local economy, with two production plants located in the municipalities of Grugliasco and Pont Canavese in the province of Turin, both being areas qualifying for aid under Article 87(3)(c) of the Treaty.

⁽¹⁾ Decision N 802/06 (O) C 43, 27.2.2007, p. 2).

⁽²⁾ OJ C 137, 4.6.2008, p. 12.

- (9) The company was declared insolvent in March 2006, and was then authorised to enter into the procedure known as 'extraordinary administration', which might have allowed it to continue in business⁽³⁾. But it was ultimately decided that it should cease trading, and in accordance with the procedure laid down in Legislative Order No 270/99⁽⁴⁾ the special administrator launched its liquidation, and thus the sale of its assets, under an authorisation issued by the responsible Ministry on 27 February 2007.
- (10) Several public offers were made for the sale of the bulk of the company's assets⁽⁵⁾, without success, until 24 May 2008, when preliminary agreement was reached with the Brazilian company *Indústrias Romi SA*, leading to the signature on 12 June 2008 of a final contract between Sandretto and the buyer's Italian subsidiary, *Romi Italia*.
- (11) On 29 July 2008 the District Court (*Tribunale*) of Turin certified that sale, with the effect that from that date Sandretto ceased trading entirely, and will disappear as a legal person as soon as its assets have been divided among its creditors.

The aid measure

- (12) Although the rescue aid was approved on 29 January 2007, the credit lines, amounting to EUR 5 million, were granted almost six months after the date of authorisation, one on 24 July 2007 and the other on 13 August 2007. According to Italy, the administrators needed this time to select the private banks that would grant the credit and to agree with them on the terms of financing.
- (13) The aid took the form of a guarantee on two credit lines of EUR 2,5 million each, provided by Banca Popolare di Novara e Banca Intesa Sanpaolo.
- (14) According to Italy, the guarantee connected to the first instalment of aid was called on 24 January 2008. Italy did not submit a plan for the restructuring of the company (or its liquidation) within the six month following the authorising decision. After the formal investigation procedure had been initiated, Italy informed the Commission that the public guarantees on both loans had been called⁽⁶⁾.

III. REASONS FOR INITIATING THE PROCEDURE

- (15) In the opening decision the Commission took the view that there was nothing to show that Sandretto had ceased

⁽³⁾ Article 54 of Legislative Order (*decreto legislativo*) No 270 of 1999, see footnote 4 below.

⁽⁴⁾ Laying down new rules on the extraordinary administration of large enterprises in a state of insolvency under Section 1 of Act No 274 of 30 July 1998, published in *Gazzetta ufficiale della Repubblica italiana* No 185, 9.8.1999.

⁽⁵⁾ The remaining assets consist essentially of the Sandretto museum, which displays numerous exhibits illustrating design in plastics.

⁽⁶⁾ See recital 17.

to benefit from the rescue aid on the expiry of the six-month period from the disbursement of the first instalment, i.e. by 24 January 2008.

- (16) Furthermore, the Commission expressed doubts as to whether the rescue aid, once unlawfully extended, could be deemed to be restructuring aid that might be compatible under points 34 to 51 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (hereinafter 'the Guidelines')⁽⁷⁾, especially in the absence of a restructuring plan.

IV. OBSERVATIONS FROM ITALY

- (17) The Italian authorities sent observations by letter dated 18 May 2008 in which they informed the Commission that the guarantee covering the two loan instalments disbursed on 24 July and 13 August 2007 had been called by the banks concerned, on 23 March and 4 April 2008 respectively.
- (18) The Italian authorities declared that the State's claim on Sandretto following the call on the guarantee was 'prededucibile'. This means that for the recovery of its debt the State has preference over ordinary creditors. According to the Italian authorities, it is reasonably certain that full recovery of the aid will be possible.
- (19) Finally, the Italian authorities provided information on the state of the liquidation of Sandretto and on the public offers organised for the sale of Sandretto's assets during the period between June 2007 and May 2008, which led to a partial acquisition by *Romi Italia*.
- (20) Subsequently, in response to Commission requests regarding the sale of certain of Sandretto's assets to *Romi Italia*, the Italian authorities provided the following information.
- (21) *Romi Italia* had acquired part of the assets of Sandretto for EUR 7,9 million. That price was lower than the one at which the company had been valued in June 2007, but it was the highest price to emerge after the failure of several public offers of sale. According to the Italian authorities, it should therefore be considered to reflect the market value of the assets concerned.
- (22) Since 29 July 2008 Sandretto had ceased trading entirely, following an order made by the District Court of Turin, and would disappear as a legal person as soon as its assets were divided among its creditors.
- (23) The Italian authorities also underlined that *Romi Italia* had not taken over any of Sandretto's existing liabilities. Sandretto had ended all contracts of employment with its employees, and *Romi Italia* had concluded new and different contracts, only some of them with former Sandretto employees. *Romi Italia* had not stepped into Sandretto's place in any relationship with former agents,

⁽⁷⁾ OJ C 244, 1.10.2004, p. 2.

suppliers or clients of Sandretto, but had merely taken over contracts strictly necessary to the running of the business (contracts for the supply of gas and electricity or maintenance and security services).

V. ASSESSMENT

V.1. Existence of State aid

- (24) The Commission considers that the rescue aid measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty. The measure takes the form of guarantees which constitute an advantage financed by state resources. The measure is selective, as it is limited to Sandretto, and it is likely to distort competition by providing Sandretto with an advantage over other competitors not receiving aid. Finally, there is extensive trade between Member States in the market in which Sandretto operates ⁽⁸⁾.

V.2. Compatibility of the rescue aid

- (25) According to point 25(a) of the Guidelines, rescue aid must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm.
- (26) In the present case, the first instalment of the aid was disbursed on 24 July 2007. Therefore, the guarantee should have been terminated by 24 January 2008, as acknowledged by the Italian authorities in their submission dated 2 February 2008 ⁽⁹⁾.
- (27) When notifying the rescue aid, Italy undertook to terminate the guarantee no later than six months after its disbursement, and to provide the Commission with a restructuring plan for Sandretto within six months of the date of authorisation of the aid.
- (28) However, Italy never did submit a plan for the restructuring (or liquidation) of the company. Rather, at the expiry of the prescribed six months, the guarantee was called, so that Sandretto now had a EUR 5 million debt to the State. So far, Italy has not shown that this debt to the State has been repaid.
- (29) The conditions for extension laid down in point 26 of the Guidelines are not fulfilled either. Point 26 of the Guidelines states that rescue aid may be extended until the Commission has adopted a decision on a restructuring plan, if such a plan is submitted within the six-month period, which is not the case here.
- (30) Finally, an extension of the guarantee beyond six months cannot be regarded as (unlawful) restructuring aid either,

since there has been no notification of a restructuring plan, or of any measure that might meet the conditions in points 34 et seq. of the Guidelines.

- (31) It must be concluded, therefore, that the rescue aid has been used in breach of the authorising decision, and cannot be considered to be compatible restructuring aid, since none of the conditions in the Guidelines have been complied with.
- (32) In addition, the company continued to benefit from the rescue aid at the end of the six months indicated in the authorising decision, and the Commission accordingly finds that from 24 January 2008 onward the aid measure was being misused within the meaning of Article 1(g) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁰⁾ (the Procedural Regulation), since it was used by the beneficiary in contravention of a decision taken pursuant to Article 4(3) of that Regulation.

V.3. Recovery

- (33) Recital 15 of the Procedural Regulation states that misuse of aid may have effects on the functioning of the internal market which are similar to those of unlawful aid and should thus be treated according to similar procedures.
- (34) Article 14 of the Procedural Regulation states that where a negative decision is taken in a case of unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary. Article 16 states that Article 14 applies *mutatis mutandis* in cases of misuse of aid. By reason of the misuse after 24 January 2008 of the aid granted to Sandretto, therefore, Italy must take all necessary measures to recover the aid, with interest payable from the date on which the aid misused was at the disposal of the beneficiary until the date of its recovery.
- (35) After the granting of the aid there was a sale of the assets, in full accordance with the liquidation procedure provided for in Italian law ⁽¹¹⁾, so that the Commission has to verify whether the advantage may have been passed on to the buyer. The Commission must accordingly examine whether the assets were sold at a market price. If it should prove that the assets were in fact sold at a price below their market value, the recovery order must be extended to encompass the buyer ⁽¹²⁾.

⁽⁸⁾ Paragraphs 4-6 of the authorising decision cited in footnote 1.

⁽⁹⁾ Paragraphs 16-18 of the opening decision.

⁽¹⁰⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹¹⁾ Recital 9 above.

⁽¹²⁾ Commission notice, 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid', paragraphs 32-35 (OJ C 272, 15.11.2007, p. 4).

- (36) At the Commission's request, the Italian authorities informed the Commission⁽¹³⁾ that Romi Italia had acquired most of the assets of Sandretto for a total of EUR 7,9 million, made up of EUR 2,48 million for holdings in companies abroad and EUR 5,42 million for other tangible and intangible assets (buildings, machineries, trade marks). The price obtained for the tangible and intangible assets (EUR 5,42 million) was lower than the price at which they were valued in June 2007 (EUR 7,5 million). Nevertheless, this price was higher than any other offer made in the course of the liquidation procedure. According to the Italian authorities, it should therefore be considered to reflect the market value of the assets concerned.
- (37) A review of the contracts between Sandretto and Romi Italia and of the submissions of the Italian authorities shows that Romi Italia did not take over any of Sandretto's liabilities. Sandretto has ended all contracts of employment and Romi Italia has concluded new contracts of employment, only some of them with former Sandretto employees. Romi Italia has not stepped into Sandretto's place in any relationship with former agents, suppliers or clients of Sandretto, confining itself to taking over contracts necessary to the running of the business.
- (38) In view of all the considerations set out above, the Commission has concluded that Romi Italia is not de facto continuing the business of Sandretto. Consequently, the Commission considers that the operation was a sale of assets, and not of a going concern. On the basis of the information available to it at the time of adopting the present decision, the Commission has no reason to believe that the price paid by Romi Italia was not a market price.
- (39) The Commission therefore takes the view that the aid conferred an advantage only on Sandretto, and that the benefit was not transferred to Romi Italia. Recovery should therefore be made directly from Sandretto.

VI. CONCLUSION

- (40) The Commission finds that the rescue aid of EUR 5 million, which was extended beyond 24 January 2008 and benefited Sandretto until it ceased trading entirely on 29 June 2009, has been misused, that it cannot be considered compatible with the common market, and that it must be recovered by Italy from the beneficiary, Sandretto,

HAS ADOPTED THIS DECISION:

Article 1

The State aid amounting to EUR 5 million which was granted by Italy and which was misused in that it remained at the

disposal of Sandretto Industrie srl after 24 January 2008 is incompatible with the common market.

Article 2

1. Italy shall recover the aid referred to in Article 1 from the beneficiary.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 as amended⁽¹⁴⁾.
4. Italy shall cancel all outstanding payments of the aid referred to in Article 1 with effect from the date of adoption of this Decision.

Article 3

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.
2. Italy shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 4

1. Within two months following notification of this Decision, Italy shall submit the following information to the Commission:
 - (a) the total amount (principal and interest) to be recovered from the beneficiary;
 - (b) a detailed description of the measures already taken and the measures planned in order to comply with this Decision;
 - (c) documents demonstrating that the beneficiary has been ordered to repay the aid.
2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and the measures planned in order to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiary.

⁽¹³⁾ Recital 7 above.

⁽¹⁴⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 September 2009.

For the Commission
Neelie KROES
Member of the Commission
