

Commission Decision of 15 September 2010 on State aid that Italy plans to grant to Fri-El Acerra Srl (Case C 8/09 (ex N 357/08)) (notified under document C(2010) 6159) (Only the Italian text is authentic) (Text with EEA relevance) (2011/110/EU)

- Article 1 The state aid which Italy plans to grant to Fri-El...
- Article 2 Within 2 months of notification of this Decision, Italy shall...
- Article 3 This Decision is addressed to the Italian Republic.
- Signature

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- (1) [OJ C 95, 24.4.2009, p. 20.](#)
- (2) [OJ C 95, 24.4.2009, p. 20.](#)
- (3) [OJ C 54, 4.3.2006, p. 13.](#)
- (4) Commission Decision of 28 November 2007 on state aid case N 324/2007 Italy: *Regional state aid map 2007–2013*, C(2007) 5618 def. cor. ([OJ C 90, 11.4.2008, p. 4.](#))
- (5) Information from the Internet site of the Fri-El Group: [www.fri-el.it](http://www.fri-el.it).
- (6) Commission Decision of 16 July 2008 on State aid C 14/07 (ex NN 15/07) implemented by Italy for NGP/SIMPE ([OJ L 301, 12.11.2008, p. 14.](#))
- (7) Information from the Internet site of the Fri-El Group: [www.fri-el.it](http://www.fri-el.it).
- (8) All values are nominal unless otherwise indicated.
- (9) The protocol itself is dated 6 April 2006, though its annexes were signed on 4 April 2006.
- (10) *Deliberazione della Giunta Regionale della Regione Campania n. 1857*, published in the *official gazette of the Region of Campania* (BURC), No 63 of 3 December 2007.
- (11) [OJ C 82, 1.4.2008, p. 1.](#)
- (12) The Memorandum of Understanding (*Protocollo d'intesa*) sought to secure a solution to the industrial crisis at NGP, and was signed on 12 May 2004 by, among others, national, regional and local authorities, Sviluppo Italia, Montefibre SpA, NGP SpA, Edison SpA and the trade unions.
- (13) Already referred to.
- (14) The first amendment to the Programme Agreement (*Protocollo integrativo dell'Accordo di programma*) sought to secure a solution to the industrial crisis at Ilmas SpA, and was signed on 6 April 2006 by, among others, national, regional and local authorities, Sviluppo Italia, Consorzio ASI di Napoli, Exide Italia Srl, ILMAS SpA and the trade unions.
- (15) Already referred to.
- (16) The second amendment to the Programme Agreement (*Protocollo integrativo dell'Accordo di programma*) was signed on 8 April 2008 by, among others, national, regional and local authorities, NGP and Fri-El Acerra.
- (17) *Consorzio per l'Area di Sviluppo Industriale della Provincia di Napoli.*
- (18) The Commission observes that NGP held shares in Fri-El Acerra from the date on which Fri-El Acerra was set up, on 20 December 2005, until 11 December 2008.
- (19) The electricity market opened completely on 1 July 2007 under the terms of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC ('the Second Electricity Directive'), [OJ L 17, 15.7.2003, p. 37.](#)
- (20) See Court of First Instance in Case T-297/02 *ACEA v Commission* [2009] ECR II-1683, paragraph 90, and Case T-301/02 *AEM v Commission* [2009] ECR II-1757, paragraph 95.
- (21) [OJ C 74, 10.3.1998, p. 9.](#)
- (22) The Court of First Instance has held that in order to establish when aid was granted the relevant criterion is 'the legally binding act by which the competent [national] authorities undertake to grant aid': see Case T-109/01 *Fleuren Compost v Commission* [2004] ECR II-127, paragraph 74, and Joined Cases T-362/05 and T-363/05 *Nuova Agricast v Commission* [2008] ECR II-297\*, paragraph 80. See also the recent judgment in Case T-62/08 *Thyssenkrupp Acciai Speciali Terni v Commission*, 1 July 2010, not yet published in the ECR, paragraphs 234-236.
- (23) [OJ C 82, 1.4.2008, p. 1.](#)
- (24) Decision on State aid case N 357/08, published [OJ C 95, 24.4.2009, p. 20.](#)
- (25) Unofficial Commission translation. Court of First Instance in Case T-396/08 *Freistaat Sachsen v Commission*, 8 July 2010, not yet published in the ECR, paragraphs 46 and 47.
- (26) Case T-162/89 *Kronoply v Commission* [2009] ECR II-1, paragraphs 80 and 81.
- (27) [OJ C 74, 10.3.1998, p. 9.](#)

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- (28) *Kronoply v Commission*, paragraph 80.
- (29) These conditions were met for example in the letter of intent (in the form of a written document signed by the recipient and the Region of Piedmont) in another recent Italian ad hoc regional aid case, Case N 381/2008 *Pirelli Industrie Pneumatici Srl* (OJ C 284, 25.11.2009), and also in a long list of Polish ad hoc regional aid cases: N 468/2009 *Roche Polska Sp z oo* (OJ C 53, 5.3.2010); N 448/2009 *Crisil Irevna Poland Sp z oo* (OJ C 147, 5.6.2010); N 447/2009 *TietoEnator Sp z oo* (OJ C 25, 2.2.2010); N 338/2009 *Unicredit Processes & Administration SA* (OJ C 93, 13.4.2010); N 293/2009 *Samsung Electronics Polska Sp z oo* (OJ C 94, 14.4.2010); N 433/2008 *UPS Polska Sp z oo* (OJ C 1, 5.1.2010); and N 67/2008 *Google Poland Sp z oo* (OJ C 217, 26.8.2008).
- (30) Commission Decision of 16 July 2008 on State aid C 14/07 (ex NN 15/07) implemented by Italy for NGP/SIMPE, referred to above.
- (31) Measure covered by the SMEs scheme XS 67/05, published OJ C 19, 26.1.2006, p. 4. That scheme, exempted under Regulation (EC) No 70/2001 (OJ L 10, 13.1.2001, p. 33), expired on 31 December 2006.
- (32) Resolution of the Campania Regional Executive (*Deliberazione della Giunta Regionale della Regione Campania*) No 168 of 15 February 2005, published in the *official gazette of the Region* (BURC), No 20 of 11 April 2005.
- (33) The exempted SMEs scheme XS 67/05 referred to above.
- (34) As in decision C(2008) 2997 final of 2 July 2008 on a State aid scheme (C 1/04 (ex NN 158/03 and CP 15/2003)): Misuse of aid measure N 272/98, Regional Act No 9 of 1998, where the Commission adopted a negative decision and ordered recovery. This approach has been upheld by the Court of First Instance: ‘The general principle established by Article 87(1) EC is that state aid is prohibited. According to the case-law, exceptions to that principle are to be interpreted strictly ... It follows that a decision to raise no objection to an aid scheme relates only to the grant of aid under that scheme: it is for the national authorities concerned to grant the aid before that decision expires’ (unofficial Commission translation; Joined Cases T-362/05 and T-363/05 *Nuova Agricast v Commission* [2008] ECR II-297\*, paragraph 80). Thus the fact that a company meets the eligibility conditions of one aid scheme does not entitle it to obtain aid under another aid scheme or measure.
- (35) Commission Decision D/105754 of 2 August 2000.
- (36) *Decreto Dirigenziale* No 416, published BURC No 62, 26.11.2007.
- (37) The 2007 Guidelines were published in the Official Journal on 4 March 2006, but Member States had been informed earlier. Press release IP/05/1653 (‘State aid: Commission adopts new regional aid guidelines for 2007–2013’) dates back to 21 December 2005.
- (38) For examples see the following state aid cases: for Italy: N 381/2008, already referred to; for Poland: N 468/2009, already referred to; N 447/2009, already referred to; N 649/2008 *SWS Business Process Outsourcing Poland Sp z oo* (OJ C 122, 29.5.2009); N 522/2008 *Franklin Templeton Investments Poland Sp z oo* (OJ C 186, 8.8.2009); N 406/2008 *Robert Bosch Sp z oo* (OJ C 122, 29.5.2009); N 360/2008 *State Street Services (Poland) Limited Sp z oo* (OJ C 328, 31.12.2008); N 67/2008, already referred to; C 46/2008 *Dell Poland* (OJ L 22, 2.2.2010); N 299/2007 *Sharp Manufacturing Poland Sp z oo* (OJ C 20, 27.1.2009); NN 4/2007 *Delitissue Sp z oo* (OJ C 107, 11.5.2007); N 904/2006 *Funai Electric (Polska) Sp z oo* (OJ C 41, 15.2.2008); N 828/2006 *Bridgestone Stargard Sp z oo* (OJ C 278, 21.11.2007); N 535/2006 *Shell Polska Sp z oo* (OJ C 200, 28.8.2007); N 256/2006 *LG Electronics Wroclaw Sp z oo* (OJ C 276, 17.11.2007); N 251/2006 *LG Innotek Poland Sp z oo* (OJ C 270, 13.11.2007); N 247/2006 *Lucky SMT Sp z oo* (OJ C 282, 24.11.2007); and N 630/2005 *MAN Trucks Sp z oo* (OJ C 126, 30.5.2006); for Romania: N 767/2007 *Ford Craiova* (OJ C 238, 17.9.2008); for Latvia: N 730/2007 *SIA Ekobriketes Karsava* (OJ C 210, 19.8.2008); and N 729/2007 *SIA Eko Osta Riga* (OJ C 80, 3.4.2009); for Slovakia: N 847/2006 *Samsung Electronics Co. Ltd* (OJ C 195, 19.8.2009); N 857/2006 *Kia Motors Slovakia* (OJ C 214, 13.9.2007); and N 651/2005 *INA Kysuce as* (OJ C 205, 5.9.2007); and for the Czech Republic: N 661/2006 *Hyundai Motor Manufacturing Czech sro* (OJ C 262, 1.11.2007).
- (39) Annual update of the Regional Development Action Plan (PASER) under Article 27(1) of Regional Act No 1 of 19 January 2007, approved by the Campania Regional Executive on 30 May 2008, and Regional Environmental Energy Plan (PEAR) 2008.
- (40) This is confirmed by the presence of Fri-El Acerra on the list of energy operators published by the organisation managing energy markets, Gestore del Mercato dell’Energia, at <http://www.mercatoelettrico.org/>

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- (41) See footnote 38.
- (42) See Court of Justice in Joined Cases C-278/92 to C-280/92 *Spain v Commission* [1994] ECR I-4103, paragraph 49, and Court of First Instance in Case T-176/01 *Ferriere Nord v Commission* [2004] ECR II-3931, paragraph 94.

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