
Changes to legislation: *There are currently no known outstanding effects for the Commission Decision of 20 November 2007 on the State aid C 36/A/06 (ex NN 38/06) implemented by Italy in favour of ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche (notified under document number C(2007) 5400) (Only the Italian version is authentic) (Text with EEA relevance) (2008/408/EC). (See end of Document for details)*

Commission Decision of 20 November 2007 on the State aid C 36/A/06 (ex NN 38/06) implemented by Italy in favour of ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche (notified under document number C(2007) 5400) (Only the Italian version is authentic) (Text with EEA relevance) (2008/408/EC)

- Article 1 (1) The State aid which Italy has implemented in favour...
- Article 2 (1) Italy shall recover from the beneficiaries the aid referred...
- Article 3 (1) Italy shall take all necessary measures to recover from...
- Article 4 (1) Italy shall keep the Commission informed of the progress...
- Article 5 This Decision is addressed to Italy.
- Signature

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- (1) [OJ C 214 of 6.9.2006, p. 5.](#)
- (2) See footnote 1.
- (3) Article 4, paragraph 6, first indent, letters (a) and (b) of Law 1643/62.
- (4) Companies which exploit public water to generate power operate on the basis of a concession (*concessione di derivazione idroelettrica*) which is temporary. Its duration (generally thirty years in Italy) is sufficiently long to allow companies to defray their investment costs. As concessions expire, they should be awarded again on the basis of a transparent selection procedure.
- (5) State aid NN 52/1991, letter SG (91) D/15502.
- (6) Article 1, paragraph 285 of Law 266/2005.
- (7) *Delibera* AEEG No 228/01.
- (8) *Delibera* AEEG No 148/04.
- (9) [OJ L 227, 19.8.1983, p. 24.](#)
- (10) Sentence of the ECJ in *Terni SpA and Italsider v. Cassa Conguaglio per il settore elettrico*, reference for a preliminary ruling, Case C 99/92, [1994] ECR p. I-00541.
- (11) Commission Decision SEC/1999/687 of 11 May 1999 in Case C 49/98, Measures in favour of employment, Articles 15 and 26 of Law 196/97, [OJ L 42, 15.2.2000, p. 1-18.](#)
- (12) Sentence of the ECJ in *Deggendorf v. Commission*, Case C-355/95 [1997] ECR p. I-02549.
- (13) Communication of 16.12.2005 of the Ministry for productive activities to the AEEG.
- (14) [OJ L 83, 27.3.1999, p. 1.](#)
- (15) See footnote 14.
- (16) *Delibera* AEEG 190/2006.
- (17) Notably the following judgments: *A.D.B.H.U.*, Case C 240/83 of 7.2.1985 ECR (1985) p 00531, *Asteris*, joint cases 106-120/87 of 27.9.1988, ECR (1988) p. 05515 *Altmark*, Case C-280/00 of 24/7/2003, (ECR 2003) p. I-07747; *Ferring*, Case C 53/00 of 22.11.2001, ECR (2001) p. I-09067.
- (18) Notably in France, Germany, Spain, Greece and Finland. Italy has provided a description of schemes allegedly in force in these countries in favour of energy-intensive industries.
- (19) First Report of the High Level Group ‘*Contributing to an integrated approach on competitiveness, energy and the environment policies — functioning of the energy market, access to energy, energy efficiency and the EU Emission Trading Scheme*’ of 2 June 2006.
- (20) Judgement of the ECJ in *Pearle and others*, (Case C-345/02 [2004] ECR I-7139 and *Preussen-Elektra*, Case C-379/98 [2001] ECR I-02099.
- (21) The mechanism for challenging the amount of compensation was laid down in Article 5, paragraph 5 of the nationalization law.
- (22) It should be noted that, under Italian law, when hydro-power concessions expire, the hydropower company loses ownership rights on part of its assets, notably certain engineering works, which automatically revert to the State.
- (23) See judgments of the ECJ in *Steinike & Weinlig*, C-78/76, [1977] ECR p. 595 and in *French Government v. Commission*, Case C-47/69 [1970] ECR p. 00487.
- (24) Judgment of the ECJ in *Pearle and others v. Commission*, Case C-345/02 [2004] ECR I-7139.
- (25) See judgment of the ECJ in *Italy v. Commission*, Case C-303/88,[1988] ECR I.1433, *France v. Commission*, Case C 47/69 [1970] ECR 4393; judgment of the CFI in *Deutsche Bahn/Commission*, Case T-351/02, [2006] ECR II. 1047.
- (26) Cementir belongs to the Caltagirone Group, operates a number of plants in Italy, some of which are active in the export business. The company produces a variety of cement and lime products and controls a cement-producer in Turkey which exports to the EU. Nuova Terni Industrie Chimiche belongs to the Norsk Hydro group, active in the production of chemical and mineral fertilizers, oil and gas and petrochemicals. ThyssenKrupp is a global conglomerate active mainly, but not only, in steel production.

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- (27) Judgment of the ECJ *France Republic v. Commission*, Case C 102/87, [1988] ECR p. 04067.
- (28) Commission Decision of 30 November 1994 (Cases IV/33.322 — cement), OJ L 343/1994, p. 1-158.
- (29) Decision IV/M.832 of 25.10.1996 *Norsk Hydro/Enichem Agricoltura — Terni (II)*.
- (30) See, *inter alia*, Decision IV/M.925 *Krupp-Hoesch/Thyssen* of 11 August 1997.
- (31) See, *inter alia*, the judgment of the ECJ in *Philip Morris/Commission*, (Case 730/79, ECR [1980] p. 02671, paragraph 11) and judgment of the ECJ in *Air Liquide Industries/Ville de Seraing et Province de Liège* (Joint Cases C 393/04 and C 41/05, [2006] ECR p. I-05293).
- (32) See, for example, on this point, the judgment of the CFI in *Territorio Historico de Alava — Diputacion Foral de Alava*, Joint Cases T-127/99 and T-148/99, [2002] ECR II-012575, paragraphs 173-175.
- (33) Joined Cases C 15/98 and C 105/99, *Italy and Sardegna Lines v. Commission* ECR [2000] I-8855, paragraph 74 of the Opinion.
- (34) Judgment of the CFI in *Government of Gibraltar v. Commission*, Joint Cases T 195-01 and T 207/01 [ECR 2002] p. II-02309.
- (35) The conversion law of Decree 80/05 provided for the retroactive entry into force of the tariff extension as of 1 January 2005.
- (36) *Breda Fucine Meridionali v Commission*, Joined Cases T-126/96 and T-127/96 [1998] ECR II-3437, paragraph 47.
- (37) See footnote 5.
- (38) See Judgments of the ECJ in *Italy v Commission*, Case C-86/89 [1990] ECR I-3891, paragraph 18, and *France v Commission*, Case C-301/87 [1990] ECR I-307, paragraph 50; judgment of the Court of First Instance in *Siemens v Commission*, Case T-459/93 [1995] ECR II-1675, paragraph 48.
- (39) [OJ C 37, 3.2.2001, p. 3.](#)
- (40) State aid No 27/1997, Commission Decision SG(97) 4949 of 30 June 1997.
- (41) See, for example, the judgment of the ECJ in *Italian Republic v Commission*, Case C-372/97 [2004], ECR I-03679, paragraph 67.
- (42) [OJ L 83, 27.3.1999, p. 1.](#)
- (43) Judgment of the ECJ in *Alcan Deutschland*, Case C 24/95 [1997], ECR I-1591, paragraphs 25, 30 and 31, and *Demesa and Territorio histórico de Alava v Commission*, Joined Cases C-183/02 P and C-187/02 [2004] ECR I-10609, paragraph 45.
- (44) Judgment of the ECJ in *Commission v Germany*, Case C-5/89 [1990] ECR I-3437, paragraph 16.
- (45) See judgment of the CFI in *Fleuren Compost v. Commission*, Case T-109/01 [2004] ECR p. II-127, paragraphs 141-143.
- (46) See judgment of the ECJ in *Germany v. Commission*, Case C-506/03, [2005] ECR p. I-0000, paragraph 58.
- (47) [OJ L 140, 30.4.2004, p. 1-134.](#)

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