



EUROPEAN COMMISSION

Brussels,  
C (2009)

**PUBLIC VERSION**

**WORKING LANGUAGE**

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**Subject: State Aid n° N 357/2008 – Italy – Fri-El Acerra S.r.l.**

Sir,

The Commission wishes to inform Italy that, having examined the information supplied by your authorities on the aid measure referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

**1. PROCEDURE**

- (2) On 22 May 2008, a pre-notification meeting took place between the Commission services and the Italian authorities.
- (3) By electronic notification dated 16 July 2008, registered at the Commission on the same day, the Italian authorities notified to the Commission, pursuant to Article 88(3) of the EC Treaty, the above-mentioned measure.
- (4) By letters dated 2 September 2008 (D/53398) and 12 December 2008 (D/54895) the Commission requested additional information on the above measure which the Italian authorities provided by letters of 1 October 2008 (A/20101), 22 October 2008 (A/22018) and of 19 January 2009, the latter register at the Commission on 21 January 2009 (A/1460).

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## **2. DESCRIPTION OF THE AID MEASURE**

- (5) The Italian authorities intend to provide, under the Guidelines on National Regional Aid for 2007-2013<sup>1</sup> (RAG), regional ad hoc aid to Fri-El Acerra S.r.l. for the conversion of a closed traditional power plant. The investment is to be carried out in Acerra, Campania (NUTS 2), in Italy, in a region eligible for regional aid pursuant to Article 87(3)(a). The Italian authorities intend to promote regional development.
- (6) The Italian authorities have not answered to the Commission's observation that Community guidelines on State aid for environmental protection<sup>2</sup> (Environmental aid guidelines) seem more relevant for the assessment of this type of measure with energy/environmental objectives and given the nature of the investment (bio-fuel plant).

### **2.1. The beneficiary of the aid**

- (7) The Beneficiary of the aid is Fri-El Acerra S.r.l (hereinafter referred to as Friel). At the moment of notification of the measure Friel was a 95% subsidiary of Fri-El Acerra Holding S.r.l. NGP S.p.A., the former owner of the traditional power plant, controlled the remaining 5%. Fri-El Acerra Holding S.r.l. itself belongs in 100% to Fri-El Group Green Power S.p.A.. The Group was founded in the Province of Bolzano in 1994, by three brothers Gostner, and operates in the production and sales of electricity from renewable sources<sup>3</sup>.
- (8) The Italian authorities provided data on the SME status of the beneficiary of the measure and of the mother company, at the moment of notification.
- (9) At present Fri-El Group Green Power S.p.a. mainly operates in wind power production (Fri-El Green Power S.p.A. produces electrical energy in 19 wind farms in Italy). The investment project in Acerra is the first where the beneficiary's group would produce energy from liquid biomass. According to the notification documents, the beneficiary is developing other 8 projects of power plants functioning on bio-liquids (in Toscana, Puglia, Abruzzo, Emilia, Basilicata, Calabria and Sicilia).
- (10) In the course of assessment, the Italian authorities provided the ownership structure of the beneficiary of the aid. It stipulates that at the moment of the transfer of assets (February 2006), NGP S.p.A. (NGP), the former owner of the power plant, owned 90.5% of Friel's shares.
- (11) In January 2009 the Italian authorities informed the Commission that NGP had decided to withdraw from the ownership of Friel. Therefore, at present Friel is a 100% subsidiary of Fri-El Acerra Holding S.r.l. and thus, of Fri-El Group Green Power S.p.A..

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<sup>1</sup> OJ C 54, 4.3.2006, p. 13.

<sup>2</sup> OJ C82, 1.4.2008, p.1

<sup>3</sup> Information from the Internet site of FRI-EL Group Green Power Spa: [www.fri-el.it](http://www.fri-el.it)

- (12) NGP S.p.A. (NGP), also located in the zone of Acerra, was created in 2003, through the separation of the activity for production of polyester polymer from Montefibre, a producer of polyester fibre located as well in Acerra. NGP ran into difficulties and benefited from aid for restructuring in the total amount of EUR 20,87 million, which was notified to the Commission (NN15/2007, C14/2007). The Commission approved the aid to NGP/Simpe on 16 July 2008<sup>4</sup>. The sell of the power plant constituted one of elements of the restructuring plan presented by the Italian authorities.

## **2.2. The investment project**

- (13) The notified investment project is to be carried out in the Region of Campania, in the industrial zone of Acerra. It concerns a takeover of the closed traditional power plant belonging to NGP and its conversion into a power plant fuelled by vegetable oil. In the notification documents the Italian authorities specified that the new power plant would be supplied mainly in palm oil.
- (14) The new power plant will be accommodated with 4 combustion engines Wärtsilä 18V46 of the unitary output of 17.2 MW and a steam turbine of 6 MW. Total electric and heat output of the plant should be of 74.8 MW.
- (15) The Italian authorities stipulated that works on the project started in July 2007. However, the purchase transaction of the old power plant was initiated in February 2006.
- (16) In the notification documents, the Italian authorities informed that the project should be finalized in 2009.

## **2.3. Eligible expenses of the project**

- (17) The project involves total eligible investment costs of EUR 80.635 million in nominal value (EUR 82.241 million, in the present value, on the base of the investment time framework provided at the moment of notification). The breakdown by category is provided in the table below. The Italian authorities stipulate that the costs were incurred by the beneficiary of the aid in 2007 (EUR 35 million) and 2008 (EUR 45.635 million).

**Table 1: Eligible expenses, nominal value**

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<sup>4</sup> Decision letter to the Member State C(2008)3528 of 16.07.2008, not yet published in the O.J. of the EU

<b>Expenditure breakdown</b>		<b>Total in Euro</b>
<b>Design and feasibility studies</b>		3 300 000
Design and studies	2 500 000	
Engineering	800 000	
<b>Building work, etc.</b>		16 415 000
Purchase of existing infrastructure	12 200 000	
Generating plant	2 000 000	
Associated services building	100 000	
Auxiliary structures	1 200 000	
Substations	825 000	
Miscellaneous work on site	90 000	
<b>Machinery and equipment</b>		60 920 000
Generating power units	16 000 000	
Combined-cycle steam turbine	4 200 000	
Auxiliary mechanical systems	6 000 000	
Installation, construction, testing and commissioning	20 388 000	
Electrical equipment	5 300 000	
Automation equipment	400 000	
Heat-recovery equipment	1 800 000	
Emission control equipment	1 700 000	
Specific facilities and tools	3 584 000	
Permits and insurance	1 438 000	
Miscellaneous instruments	70 000	
Training staff to use the machinery; training materials	40 000	
<b>Total</b>		<b>80 635 000</b>

- (18) The costs of purchase of the existing infrastructure include costs of purchase of the old power plant and of the fuel tanks from NGP. The Italian authorities provided the Commission with details of the transaction of purchase by Friel of the old power plant from NGP. The Italian authorities explained that, at the moment NGP subscribed to the increase of capital of Friel, it transferred to Friel the branch of its business related to the power plant, at a total value of EUR 8.296 million, subject to EUR 3.771 million in debts to third parties, allocating the difference of EUR 4.435 million to reserves. Following the subscription to the increase of capital of Friel and at the moment the transaction took place (February 2006), it appears that NGP owned 90.5% of Friel's shares. The Italian authorities provided an external evaluation confirming the value of the power plant.
- (19) The Italian authorities provided only a copy of the agreement signed between Friel and NGP and concerning the sell of fuel tanks. The price agreed is of EUR 4.2 million. Notwithstanding the Commission's request, the Italian authorities have not presented any external evaluation confirming the value of the fuel tanks.

#### **2.4. Financing of the investment**

- (20) 25% of the total EUR 80.635 million (in nominal) costs of the investment will be financed by own resources of Friel; EUR 42.5 million from medium/long terms loans, EUR 15.9 million from short term loans, EUR 9.375 from operating balance of the beneficiary and the rest, EUR 19.5 million, corresponds to the aid amount.

#### **2.5. The aid**

- (21) The Italian authorities argue that Friel launched the investment project to reclassify the Acerra power plant in 2006 (at the date of the purchase of the dismissed power plant), on the basis of a commitment issued by the Italian authorities under Programme Agreement on intervention activities concerning the industrial crisis of NGP S.p.A. in Acerra<sup>5</sup>. According to the clarifications provided by the Italian authorities the incentive effect should derive by law from the Programme Agreement in view of its binding legal scope.
- (22) The Programme Agreement was signed on 15 July 2005 by national and regional authorities with NGP, Montefibre and Edison S.p.A. and concerns the NGP site as well as other activities in the Acerra zone. However, it does not refer to aid for the conversion of the traditional power. It lists investments to be carried out and measures in the aim of restructuring NGP. Edison S.p.A. was quoted at that time as a future investor into the existing power plant, but eventually it withdrew from the transactions. The document *Accordo di programma* had been also referred to by the Italian authorities in the frame of the notification of the restructuring aid to NGP (NN 15/2007) as one of the legal basis of the restructuring plan and the plan included the creation of a new company, Friel Acerra S.r.l.
- (23) The decision on granting regional aid to Friel for the conversion of the power plant in Acerra was issued on 26 October 2007 (*Deliberazione Giunta Regionale*).
- (24) The Italian authorities inform that the legal basis for the aid are:
- Protocol of 8 April 2008 amending *Accordo di Programma per l'attuazione coordinata dell'intervento nell'area di crisi industriale della NGP S.p.A. di Acerra* [Programme Agreement for coordinated action in the industrial crisis area of Acerra NGP S.p.A.] signed on 15 July 2005;
  - *Deliberazione della Giunta Regione Campania n°1857* of 26 October 2007.
- (25) The notified aid measure concerns aid granted for an initial investment. It involves assistance in the form of direct grant in the total amount of EUR 19.5 million in the present and nominal value which represents an aid intensity of 23.71% gross grant equivalent (GGE) of the applicable eligible investment costs expressed in present value.

## **2.6. Contribution of the project to regional development**

- (26) The Italian authorities argue that the project of Friel in Acerra is consistent with the objectives of the Region's energy programming in terms of production from renewable sources within the meaning of Decision of the Regional Council (Decisione Giunta Regionale) No 4818 of 25 October 2002<sup>6</sup>, approving the *Regional Guidelines on sustainable development in the energy sector*, as supplemented by the PEAR (Regional Environmental Energy Plan) - strategy outline approved by Decision of the Regional Council No 962 of 30 May 2008 with

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<sup>5</sup> Accordo di programma per l'attuazione coordinata dell'intervento nell'area di crisi industriale della NGP Spa di Acerra

<sup>6</sup> BURC, Campania official regional gazette, No 58 of 25 November 2002

the second updating of the PASER (Regional Economic Development Action Programme).

- (27) The Italian authorities have put forward different aspects to justify the project's contribution to the development of the region:
- (28) The investment will lead to the creation of 25 jobs. The Italian authorities explained that those jobs correspond to workers who are currently registered in Cassa integrazione as the result of difficulties of NGP. According to the Italian authorities Friel is a new company, independent of NGP and even in case of a simple workforce transfer it should be considered as a net jobs creation at the level of the beneficiary of the aid.
- (29) The Italian authorities explain that the region suffers from endemic shortfalls of electricity supply and the notified project should contribute to solve the problem. As provided in the notification, the energy deficit of the Region Campania was estimated in 2006 at 2 489 MW in terms of installed capacity. The Italian authorities also stipulate that the output of the new power plant will satisfy energy demand of the industrial zone. In fact, the power plant is located in the industrial area of Acerra, which for already few years has been hosting companies in the sector of production of polymers and synthetic fibres, succeeding one another and running in difficulties (Montefibre, NGP/Simpe). The Italian authorities informed that there are plans of developing the zone by creating an industrial park regrouping smaller and larger enterprises. Location of the power plant in the zone is important for the continuity of supply, including off-grid, at the quantity and quality required by the production cycle.
- (30) Finally, the Italian authorities emphasize on the sustainable character of the project. The power plant will be fuelled in vegetable oil (mainly palm oil) and its environmental negative impact should be reduced. According to the Italian authorities the project meets the objectives of sustainable development.

### **3. ASSESSMENT**

- (31) In accordance with Article 6(1) 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<sup>7</sup>, the decision to initiate proceedings shall summarise the relevant issues of fact and law, shall include a preliminary assessment from the Commission as to the aid character of the proposed measure, and shall set out the doubts as to its compatibility with the common market.

#### **3.1. Existence of state aid**

- (32) The present aid measure confers to Friel an economic advantage in relation to other companies that do not receive such aid. Since it concerns an individual aid granted to a single company, the measure is considered as selective and threatens to distort competition. The aid is granted through State resources. Finally, and considering that the measure concerns an undertaking involved in trade between Member

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<sup>7</sup> OJ L 83, 27.3.1999, p. 1.

States, there is a risk that the aid could affect that trade. Consequently, this project constitutes state aid within the meaning of Article 87(1) of the EC Treaty.

### **3.2. Legality of the aid measure**

- (33) By notifying the aid project before putting it into effect and by introducing a condition that the award of the notified aid is subject to the Commission approval, the Italian authorities respected their obligations under Article 88(3) of the EC Treaty.

### **3.3. Compatibility**

- (34) The Italian authorities sustain that the aid aims at promoting regional development, and accordingly, has to be assessed under the Regional aid guidelines 2007-2013<sup>8</sup> (hereinafter referred to as "the RAG").
- (35) The assessment has led the Commission to consider that the measure complies with the following conditions of the RAG:
- i) The aid measure concerns an initial investment project as defined by point 34 of the RAG which is carried out by the beneficiary and consists in the setting-up of a new establishment and for the acquisition of capital assets directly linked to an establishment which has closed or which would have closed had it not been purchased. This is in line with the provisions of points 34 of the RAG.
  - ii) The area of Acerra in Campania where the project is carried out, is entirely eligible under Article 87(3)(a) of the EC Treaty, with a standard regional aid ceiling of 30% GGE.
  - iii) The notified aid intensity of 23.71 % GGE is below the applicable regional aid ceiling of 30% GGE adjusted accordingly to the provisions of point 67 of the RAG for an investment project with eligible expenses amounting to EUR 82.241 million in the present value.
  - iv) The beneficiary of the aid, Friel, is a SME in the meaning of Annex I to Commission Regulation (EC) No 364/2004 and the costs of preparatory studies and consultancy services are linked to the investment and are below an intensity of 50% of the actual costs incurred. This is in line with the provisions of point 51 of the RAG.
  - v) The Italian authorities confirmed that the notified aid will not be cumulated with any other aid granted for the same eligible costs.
  - vi) The beneficiary of the aid provides a financial contribution of at least 25% of the eligible costs in a form which is free of any public support (cf. point 39 of the RAG)
  - vii) Aid is conditioned by the obligation of the maintenance of the investment for a minimum period of 5 years after its completion (cf. point 40 of the RAG).

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<sup>8</sup> Guidelines on national regional aid for 2007-2013, OJ C 54, 4.03.2006, p. 13.

### *3.3.1. Aspects which need further investigation*

- (36) On the basis of the information available at this stage of the assessment, the Commission has the following doubts as to the compatibility of the measure with the RAG:

#### *Incentive effect*

- (37) Pursuant to the provisions of point 38 of the RAG, in the case of ad hoc aid granted to a single company, the authority granting the aid must have issued a letter of intent, conditional on Commission approval of the measure, to award aid before works starts on the project.
- (38) The Italian authorities argue that the condition on incentive effect of the aid is met as works on the project started in February 2006 (with the purchase of the old power plant), after the Regional authorities which are granting the aid confirmed that the project qualifies for receiving the aid. The Italian authorities refer in this context to the Accordo di Programma signed on 15 July 2005.
- (39) The Commission observes that the document the Italian authorities refer to as a letter of intent lists activities and projects to be undertaken in order to address financial difficulties of NGP. The documents does not provide for any provision relating to regional aid and investment to be carried out by Friel.
- (40) At this stage the Commission is of the opinion that the first document that may be considered as explicitly granting aid to Friel for the investment in Acerra dates 26 October 2007 and given that works started on the project more than one year before this documents was issued (in February 2006), the Commission considers at this stage of the procedure, that the project does not fulfil the formal conditions of the RAG on the incentive effect of the aid.
- (41) The Commission therefore invites the Italian authorities and third parties to comment and provide any information necessary for the assessment of the incentive effect of the aid.

#### *Eligible expenses*

- (42) Pursuant to the provisions of point 52 of the RAG, in case of an initial investment taking form of an acquisition of assets of a closed undertaking, the assets to be taken into consideration have to be acquired from third parties and the transaction must take place under market conditions.
- (43) Considering that eligible expenses of the notified project include acquisition of assets of the closed power plant, the Commission had to verify if the provisions of the RAG had been respected. In that aim, and on the Commission's request, the Italian authorities provided information on the process of the transfer of the ownership and of the assets of the old power plant from NGP to Friel and provided an independent evaluation confirming the value of the closed plant of EUR 8.296 million.
- (44) The Italian authorities described the process of the acquisition of the assets of the old power plant in the following way :



- *Fri-El Acerra (Friel) was set up on 20 December 2005, with a share capital of €10 000, of which 95% was held by Fri-El International Holding SA and 5% was held by NGP;*
- *On 9 February 2006 NGP subscribed to the whole of a EUR 90 000 increase in the share capital, which brought the capital to EUR 100 000. NGP now held 90.5% of Friel, and Fri-El International Holding held 9.5%. At the same time NGP transferred to Friel the branch of its business related to the power plant, at a total value of EUR 8 296 520, subject to EUR 3 771 042 in debts to third parties, allocating the difference of EUR 4 435 000 to reserves;*
- *On 20 February 2006, NGP transferred a 41.5% interest in Friel to Fri-El International Holding, at a value of EUR 2 303 350. This reduced NGP's stake in Friel to 49%, while Fri-El International Holding's stake rose to 51%;*
- *On 10 October 2006 NGP transferred 44% to Fri-El Green Power, at a value of EUR 1 995 400;*
- *On 29 November 2006 Fri-El International Holding transferred 51% of Fri-El Acerra to Fri-El Acerra Holding, and Fri-El Green Power likewise transferred its 44%. This brought the stake in Fri-El Acerra held by Fri-El Acerra Holding to 95%; the stake held by NGP was now 5% (Annex 1, Fri-El Acerra register of shareholders at 9 April 2008).*

- (45) The Commission observes that the definitive costs of the purchase of the closed power plant incurred by Friel are still unclear and expresses its doubts as to the independent status of the investor. It appears that the transfer of the old establishment represented a contribution to the capital of the beneficiary, and therefore it gave ownership rights to the seller. At the time of notification, the final 5% of the value of the power plant had still to be paid out to the seller and represented a participation of NGP to Friel.
- (46) The stipulated in the notification eligible costs of the investment also include costs of the purchase of fuel tanks. The Italian authorities informed that Friel bought the assets also from NGP and the costs of the purchase amounted to EUR 4.3 million. The Commission has not received, as requested, any evidence of the stipulated value of these fuel tanks.
- (47) Therefore the Commission invites the Italian authorities and third parties to submit their comments as to whether the transaction of the purchase of the old power plant and of the fuel tanks took place between independent parties and under market conditions.

#### *Regional contribution of the project*

- (48) As described above, the Italian authorities have presented certain elements in order to justify the regional contribution of the project and that the project contributes towards a coherent regional development strategy.

- (49) The Commission notes that the notified project would lead to the maintenance of 25 jobs for workers who are currently employed by NGP and registered in Cassa Integrazione.
- (50) The Italian authorities emphasized the importance of the new electric plant for the industrial zone of Acerra and for the companies located in the area. Nevertheless, the Italian authorities have not provided any information on the zone, or any concrete plans of the development of the zone for the future which would enable the Commission to assess the real benefits of the project. The Commission doubts if the new electric power plant is not aiming exclusively at the supply in energy of NGP/Simpe (in February 2007 acquired by the Spanish group La Seda), currently located in the zone.
- (51) The Italian authorities also contend that the new power plant will contribute to solve the energy deficit of the region. Neither had this aspect of the investment project been fully clarified by the Italian authorities. 75 MW should be the installed capacity of the power plant in Acerra and the capacity deficit of the region Campania has been estimated at 2 489 MW<sup>9</sup>. Therefore, the Commission has doubts as to the relevance of the argument advanced by the Italian authorities on the significant positive impact of the new power plant on the regional offer of energy.
- (52) The Commission would welcome comments from the Italian authorities and third parties on the issue of the contribution of the new power plant fuelled in palm oil to the development of the area of Acerra and of the Campania region.
- (53) Moreover, the Commission observes that the Italian authorities have not either provided information which would allow assessing if the planned aid fulfils the provisions provided for in the Environmental aid guidelines. Therefore and given the nature of the investment, the Commission invites the Italian authorities to comment on this point.

### **3.4. Conclusion**

- (54) In view of the above, the Commission, after a first preliminary assessment of the measure, has doubts whether, and if yes to which extent, the notified aid is necessary to provide an incentive effect for the investment and can be considered compatible with the RAG and the common market.
- (55) The Commission is unable to form a prima facie opinion on the partial or complete compatibility of the measure in question and is of the opinion that a more thorough analysis of the aid measure is necessary. The Commission is under duty to carry out all the requisite consultations and, therefore, to initiate the procedure under Article 88(2) of the EC Treaty, if the initial investigation does not enable the Commission to overcome all the difficulties involved in determining whether the aid is compatible with the common market. This would give the opportunity to the third parties whose interest may be affected by the granting of the aid to comment on the measure. In light of both the information notified by the State concerned and that provided by any third parties, the Commission will assess the measure and will take its final decision.

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<sup>9</sup> Information for 2006, provided by the Italian authorities in the notification

#### 4. DECISION

- (56) In light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests Italy to submit its comments and to provide all such information as may help to assess the aid measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.
- (57) The Commission wishes to remind Italy that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.
- (58) The Commission warns Italy that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.
- (59) If this letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
State Aid Greffe  
B-1049 Brussels  
Fax No: 32 2 296 12 42

Yours faithfully,  
For the Commission

*Neelie KROES*  
Member of the Commission

