



EUROPEAN COMMISSION

Bruxelles, 11.06.2014

C(2014) 3631 final

PUBLIC VERSION

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**Subject: State aid SA.38579 (2014/N) – Italy
Rescue aid to Impresa S.p.A. in a.s.**

Madam,

1. PROCEDURE

- (1) By notification of 9 April 2014 and further information and clarification sent on 6 May 2014, Italy notified rescue aid to Impresa S.p.A. in a.s. (hereinafter "Impresa S.p.A." or "the Company").

2. DESCRIPTION

2.1. The beneficiary

- (2) Impresa S.p.A. (called Lombardini S.p.A. until 7 April 2004) is an Italian undertaking active since 1976 in the construction sector for civil and industrial infrastructure, including road, railway and maritime infrastructure, mostly in Italy but also abroad. It represents one of the most important General Contractors (public work and investment contracts) in Italy with a production value of EUR 500 million and an order book of approximately EUR 4,5 billion.¹ It holds around 2% of the production value of the top 25 construction companies in Italy.
- (3) Impresa S.p.A. has its headquarters in Rome (Lazio region) and its activities take place mainly in Italy (more than 85% of revenues: *del proprio fatturato annuo per lavori*)². Since 2002 the Company has opened several branches

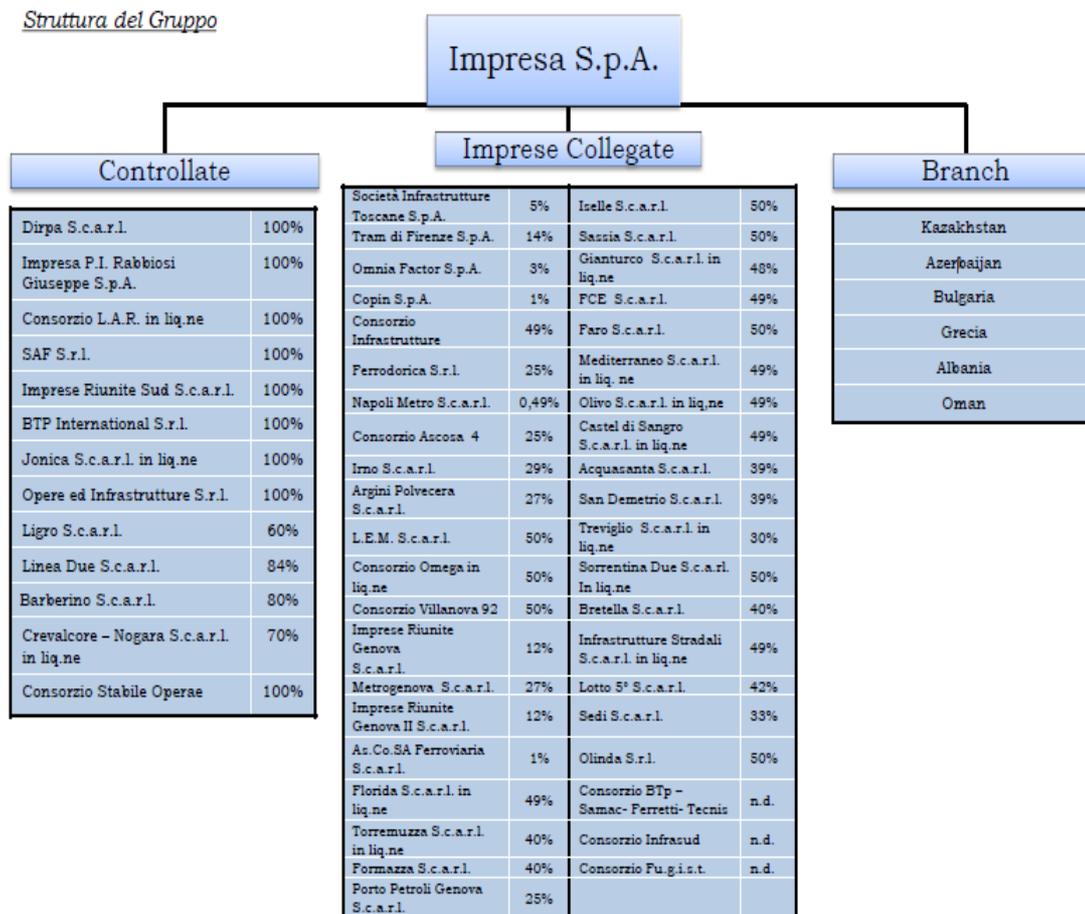
¹ See Company's profile: <http://www.impresaspa.it/en/company/profile> .

² See also the list of projects on the Company's website: <http://www.impresaspa.it/en/> .

abroad: in Greece (2002), Azerbaijan (2007), Kazakhstan (2008), Oman (2011), Albania and Bulgaria (2012). The Company's presence in other EU Member States (i.e. Greece and Bulgaria) appears to be minimal.

- (4) The Company has played an important role in the construction sector not only because of direct jobs it provides but also because of indirect jobs and commercial links it sustains (i.e. with subcontractors, suppliers, creditors, etc.). Impresa S.p.A. employs 500 employees in Italy and around 150 abroad. The Italian authorities explained that due to the economic and financial crisis, the construction sector suffered from reduced public spending in new infrastructure projects as well as a reduction in the number of public-private partnership projects. This negatively affected the labour market in Italy in terms of companies closed and decreased job opportunities.
- (5) At the date of its admission to the extraordinary procedure (*alla data del decreto di ammissione alla procedura di amministrazione straordinaria*) Impresa S.p.A. was 85% owned by Liguria Costruzioni S.r.l. and 15% by Gamma S.r.l. The Italian authorities explained that Liguria Costruzioni S.r.l. and Gamma S.r.l. are mere holding companies which do not produce goods or services themselves.
- (6) At the time of notification for rescue aid Impresa S.p.A. owned several companies as presented in the graph below:

Struttura del Gruppo



- (7) Impresa S.p.A. was put into extraordinary administration by the court of Rome on 10 July 2013 and then declared insolvent on 18 July 2013.
- (8) The Italian authorities have indicated that the causes of the Company's difficulties are to be found in the decline in the number and value of work contracts due to the lower amount of public funding, progressive delays in the payments for the ongoing public work contracts, increase in costs, and increase in the number of contractual claims.

2.2. The notified measure

- (9) Italy intends to provide aid to Impresa S.p.A. through the Ministry of Economic Development. The measure consists of a 6-month State guarantee for lines of credits that are being defined (overdraft facilities and bid/performance/advance payments) in order to meet liquidity needs of EUR 50.93 million. This amount is expected to meet the cumulated cash flow needs of the company for the six months to come, as estimated and documented by the Italian authorities.
- (10) The exact conditions of the credit lines are not yet defined, but the Italian authorities declare that the interest rates for these lines of credit will be in line with normal banking conditions for active undertakings, and will not be lower than the Commission's reference rate.³
- (11) Moreover, Italy has undertaken to ensure that the guarantee will expire six months after the disbursement of the first instalment of the lines of credit to the beneficiary, and that it shall submit a restructuring plan or a liquidation plan, or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated within six months of the authorisation of the rescue aid measure.
- (12) Finally, the Italian authorities indicated that Impresa S.p.A. has not received any rescue or restructuring aid in the past.

3. ASSESSMENT

3.1. Existence of State aid

- (13) Article 107(1) TFEU stipulates that any aid granted by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade among Member States is incompatible with the internal market. It follows that, for a State measure to be qualified as State aid within the meaning of Article 107(1) TFEU, the following cumulative criteria must be met: use of State resources; selective advantage to the beneficiary; and (potential) distorting effects on competition as well as intra-EU trade.

³ Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p.6.

State origin of the measure

- (14) The notified measure, i.e. State guarantee, is granted by the Italian Ministry of Economy and Finance, through the Ministry of Economic Development. Therefore the guarantee involves State resources in case of borrower default and is imputable to the Italian State.

Selective advantage to the beneficiary

- (15) The notified measure is selective, as the State guarantee will be issued to the benefit of one specific undertaking, i.e. Impresa S.p.A. The State guarantee confers an economic advantage on the beneficiary by allowing access to credit lines that it would not have been able to obtain on the market, given its financial condition.

Distortion of competition and effect on trade

- (16) When aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.⁴
- (17) The market for construction works is open to competition in the EU. Most activities of Impresa S.p.A. take place in Italy (85%), but also in other countries of the European Union, such as Greece and Bulgaria (see recital (3) above).
- (18) By granting Impresa S.p.A. access to liquidity at conditions which it would not otherwise obtain, the State guarantee is liable to improve the competitive position of Impresa S.p.A. in relation to its competitors in the internal market. It consequently distorts or threatens to distort competition and affects trade between Member States.

Conclusion on the existence of aid

- (19) In light of the above, the Commission considers that the measure constitutes State aid pursuant to Article 107(1) TFEU. The Italian authorities share the same view.

3.2. Compatibility of the aid

- (20) The Commission may authorise rescue aid as compatible with the internal market pursuant to Article 107(3)(c) TFEU if it complies with the compatibility criteria laid down in the 2004 Rescue and Restructuring Guidelines⁵ (hereinafter "the R&R Guidelines"), which set out specific rules

⁴ See, in particular, Case 730/79 *Philip Morris v Commission* [1980] ECR 2671, para.11; Case C-53/00 *Ferring* [2001] ECR I-9067, para.21; Case C-372/97 *Italy v Commission* [2004] ECR I-3679, para.44.

⁵ Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244, 1.10.2004, p.2, prolonged in 2009, OJ C 156, 9.7.2009, p.3 and in 2012, OJ C 296, 02.10.2012, p. 3

as to the eligibility of the firm for rescue and/or restructuring aid, its form, interest rate, and other conditions pursuant to chapter 3.1 thereof.

Eligibility for rescue aid

- (21) According to points 12(a) and 14 of the R&R Guidelines, only firms in difficulty are eligible for rescue aid.
- (22) According to point 10 of the R&R Guidelines, a firm is considered to be in difficulty in the following circumstances:
- (...)
- (c) Whatever the type of company concerned, when the criteria under domestic law for being the subject of collective insolvency proceedings are met.
- (23) As explained in recital (7), an Italian court has already declared Impresa S.p.A. insolvent and opened the proceedings for extraordinary administration. Impresa S.p.A. thus qualifies as a firm in difficulty pursuant to point 10(c) of the R&R Guidelines.
- (24) According to point 12 of the R&R Guidelines, a newly-created firm having started operations in its relevant field of activity less than three years prior to the notification is not eligible for rescue aid. Impresa S.p.A. is not a newly-created firm. Its activities date back to 1976.
- (25) Finally, point 13 of the R&R Guidelines establishes that a firm belonging to or being taken over by a larger business group is not normally eligible for rescue or restructuring aid, except where it can be demonstrated that the firm's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. As explained in recital (5), the firm's difficulties are intrinsic and cannot be dealt by the group itself. The majority holder (Liguria Costruzioni S.r.l) is a mere holding company which does not produce goods or services itself.

Compatibility conditions in point 25 of the R&R Guidelines

- (26) Rescue aid must meet the conditions set out in point 25 of the R&R Guidelines in order to be declared compatible with the internal market.
- (27) According to points 15 and 25(a) of the R&R Guidelines, the rescue aid must consist of liquidity support in the form of a loan or a guarantee. The loan must be granted at an interest rate at least comparable to that observed for loans for healthy firms. Any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm.

- (28) The notified measure is a State guarantee covering 100% of credit lines up to EUR 50.93 million, to be used by the Company in order to meet liquidity needs, keep the firm in business and support the plan to sell the company's assets. As indicated in recitals (10) and (11) above, Italy undertakes that the interest rates for the credits backed by the State guarantee will be in line with normal banking conditions for active undertakings, and in any case will not be lower than the Commission's reference rate applicable for the period during which the said credit lines will be granted.⁶ Italy also undertakes that the guarantee shall expire within six months after the disbursement of the first instalment of any loan to Impresa S.p.A. The notified measure therefore meets the compatibility conditions laid down in point 25(a) of the R&R Guidelines.
- (29) According to point 25(b) of the R&R Guidelines, rescue aid must be warranted on the grounds of serious social difficulties and have no undue spill-over effects on other Member States. In the present case, if the company ceased its operations, this would – on the basis of the information provided by Italy – have serious social consequences, a direct loss of up to 500 jobs at Impresa S.p.A. in Italy and around 150 jobs abroad, but also an indirect effect on a considerable number of jobs that are related to the activities of Impresa S.p.A. Moreover, as explained above under recital (4), the economic crisis had a considerable impact on labour market in construction sector in terms of companies closed and decreased job opportunities. In light of these considerations, the aid appears to be warranted on grounds of serious social difficulties. In addition, Impresa S.p.A. is active mainly in Italy (more than 85% of its activities) and, to a lesser extent, in non-EU countries and only marginally in Bulgaria and Greece. The focus in its domestic Italian market indicates that the aid does not create undue adverse spill-over effects on other Member States. On the basis of the above, it can be concluded that the aid is in line with point 25(b) of the R&R Guidelines.
- (30) Point 25(c) of the R&R Guidelines stipulates that the Member State notifying a rescue aid has to communicate to the Commission not later than six months after the rescue aid is authorised, a restructuring or liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated. In their notification, the Italian authorities committed to communicating to the Commission a restructuring plan or a liquidation plan, or proof that the guarantee has been terminated, not later than six months after the authorisation of the rescue aid measure to Impresa S.p.A. Consequently, the notified measure is in line with point 25(c) of the R&R Guidelines.
- (31) According to point 25(d) of the R&R Guidelines, rescue aid must be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised. The amount necessary should be based on the liquidity needs of the company stemming from losses. In determining this amount, regard will be had to the outcome of the application of the formula set out in

⁶ Communication from the Commission on the revision of the method for setting the reference and discount rates, OJ C 14, 19.1.2008, p.6.

the Annex to the R&R Guidelines,⁷ and any amount exceeding the result of that calculation would have to be duly explained.

- (32) Based on the financial reports of the company for the year 2013, the outcome of the calculation of the formula in the case of Impresa S.p.A. (EBIT 2013 + depreciation + (working capital of 2013 – working capital of 2012)) is EUR – 189.993 million. This result has to be divided by 2 since the company will need to stay in business for a six-month period (the period during which the aid is authorised). The final outcome of this formula is therefore EUR – 94.996.
- (33) Since the outcome of the formula is negative the first pre-condition for rescue aid to Impresa S.P.A. is satisfied. Second, the requested EUR 50.924 million of the rescue aid for liquidity needs of Impresa S.p.A. meets the estimated and documented prospective cash flow needs of the company in the six months to come and is lower than the maximum resulting from the application of the formula. Therefore, the aid is indeed restricted to the minimum amount necessary as required by point 25(d) of the R&R Guidelines.
- (34) Finally, with reference to compliance with the "one time, last time" principle set out in section 3.3 and point 25(e) of the R&R Guidelines, the Italian authorities have confirmed that Impresa S.p.A. has not received rescue or restructuring aid over the last ten years. Therefore, the notified aid also complies with point 25(e) of the R&R Guidelines.
- (35) In the light of the foregoing, the notified aid meets the compatibility conditions resulting from point 25 of the R&R Guidelines.
- (36) Moreover, Italy declares that Impresa S.p.A. did not receive any unlawful aid with respect to which the Commission has adopted a negative decision with a recovery order. Therefore, the notified aid also meets the condition set out in point 23 of the R&R Guidelines.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified State aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

⁷ The formula takes into account the beneficiary's EBIT (earnings before interest and taxes) in the year preceding to notification (2012), depreciation in the same reference year, and the variation in the beneficiary's working capital (calculated as the difference between current assets and current liabilities) with respect to the year preceding the reference year. The sum of all these elements is then divided by 2, so as to approximate the liquidity needs of the company over a six-month period – i.e. the duration of the rescue aid.

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Your request should be sent by registered letter or fax to:

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Yours faithfully,
For the Commission

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Vice-president