

## IV

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

## COMMISSION DECISION

of 28 October 2009

on State aid C 59/07 (ex N 127/06 and NN 13/06) implemented by Italy for Ixfin SpA

(notified under document C(2009) 8123)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2010/359/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)(a) thereof,

Having called on interested parties to submit their comments <sup>(1)</sup> pursuant to the provisions cited above and having regard to their comments,

Whereas:

#### I. PROCEDURE

(1) On 18 November 2005 Italy adopted a decree on the basis of which the granting of a rescue aid guarantee to Ixfin SpA (hereinafter 'Ixfin' or 'the company') was envisaged. Following notification from the Italian authorities on 23 February 2006, the Commission initially registered the case as N 127/2006. Once it was ascertained that the aid had already been granted as from December 2005, in breach of the standstill clause, the case was reregistered under number NN 13/2006.

(2) By letter dated 5 April 2006, the Commission requested further information, which Italy supplied by letter registered as received on 29 May 2006. A meeting with the Italian authorities took place on 9 June 2006. At this meeting, Italy informed the Commission that a restructuring plan would be submitted.

(3) By letter registered as received on 13 June 2006, Italy informed the Commission that, following a request from Ixfin to increase the aid amount up to EUR 17,3 million, the Italian authorities had expressed their provisional

agreement, subject, however, to a favourable opinion by the Commission. By letter dated 19 June 2006, the Commission requested further information, which Italy supplied by letter registered as received on 26 June 2006.

(4) On 5 July 2006 the Commission sent a reminder concerning the restructuring plan that had been announced.

(5) By letter registered as received on 9 August 2006, Italy submitted further information confirming that the company had been declared bankrupt by the Naples Court (hereinafter referred to as 'the Court') on 5 July 2006. Following a request by the Commission for further information dated 29 November 2006, Italy submitted part of the requested information by letter dated 7 December 2006. The Commission sent a reminder on 22 December 2006 requesting Italy to submit the missing information while specifying in more detail which information would be needed. In particular, the Commission asked whether the company might foreseeably be liquidated, involving the cessation of all business activities, at the end of the insolvency proceedings or whether there was any possibility that the company's business activities might be continued in any form, for instance as the result of a sale as a going concern.

(6) By letter dated 14 March 2007, Italy replied confirming the cessation of all activities. In the same letter, however, Italy explained that it was not possible at that point to indicate whether the business activities of the company could potentially be resumed due to difficulties in gathering the relevant information. On 14 June 2007 the Commission asked Italy to keep it updated about any further measures in the insolvency proceedings while specifying which information would be deemed crucial.

(7) In October 2007 the Commission learned in the press about the possibility of Ixfin receiving restructuring aid.

<sup>(1)</sup> OJ C 30, 2.2.2008, p. 21.

- (8) On 11 December 2007 the Commission adopted a decision to open the formal investigation procedure<sup>(2)</sup> (hereinafter referred to as 'the opening Decision') as well as issuing an information request asking the Italian authorities a series of questions to be answered in one month, and inviting third parties to submit their comments. On 7 January 2008 Italy asked for an extension to the time limit for comments on the opening Decision. An extension until 12 February 2008 was granted the same day. Italy provided only partial information by e-mails of 15 January 2008, 12 March 2008 and 25 March 2008.
- (9) On 25 March 2008 the Commission received third-party comments from the special administrator appointed in the insolvency proceedings (hereinafter 'the Administrator') which were forwarded to Italy on 18 April 2008 together with a request for information. On 24 April 2008 Italy replied to this request and commented on the third-party observations.
- (10) On 20 October 2008 the Commission asked for further information, which Italy provided by letter dated 30 October 2008. The Italian authorities forwarded the Commission's request to the Administrator. The Administrator submitted further information on 18 November 2008.
- (11) Ixfin is a large company based in Marcianise (Caserta), in the Campania Region.
- (12) Ixfin is an Italian company active in the contract manufacturing sector, producing and assembling disks and other electronic products, as well as in call centres and logistics.
- (13) Until 1999 it was a subsidiary of the Olivetti Group and its output was sold under the Olivetti brand. In 1999 Olivetti decided to divest all its production activities and Ixfin was sold to Finmek SpA.
- (14) Since 2003 Ixfin has been controlled by Maxfin Srl, which, in turn, is controlled by Pufin Srl. Pufin Srl, which operates in business services (commercial, administrative, logistic), is the parent company of the Pufin Group, owned by the Pugliese family.
- (15) Ixfin controls directly and indirectly four other companies, namely Nicofin Srl (99 %), Uni.com Partecipazioni Srl (100 %), Uni.com SpA. (100 %) and Uni.com Ricerche Srl (100 %).
- (16) The origin of Ixfin's difficulties lay, among other causes, in the fact that the company acted essentially as a subcontractor for third parties and was therefore dependent on their orders. In the last decade the electronics market has suffered a general crisis, which the companies belonging to this market segment have overcome either by raising efficiency through economies of scale or by relocating production to low-labour-cost countries.

## II. DETAILED DESCRIPTION OF THE MEASURE

### II.1. Beneficiary

- (11) Ixfin is a large company based in Marcianise (Caserta), in the Campania Region.
- (12) Ixfin is an Italian company active in the contract manufacturing sector, producing and assembling disks and other electronic products, as well as in call centres and logistics.
- (13) As soon as Ixfin began to experience serious difficulties it was sold in March 2004 to an investor willing to provide the resources necessary to re-launch the company's activities. The investor's plan was not implemented, however, with the result that as of September 2004 the company encountered solvency problems. In December 2004 the company, with an additional loss of EUR 20 million, was sold back to the Pufin Group. The transaction was carried out for a purely symbolic price. In December 2004 it ceased its activities.
- (18) Ixfin's financial position at the time when aid was granted is outlined in the table below.

Table 1

(in EUR)

	Turnover	Net profit/(loss)	Tax arrears	Social Security arrears
31.12.2003	104 000 000	11 000	9 000 000	20 800 000
31.12.2004	75 000 000	(2 000 000)	14 800 000	26 100 000
31.5.2005	3 000 000	(**)	16 000 000 (*)	27 700 000 (*)

(\*) August 2005.  
(\*\*) No information available.

<sup>(2)</sup> See footnote 1.

## II.2. Aid measure

- (19) On 18 November 2005 the Ministry of Economic Development (hereinafter 'the Ministry') issued a decree on the basis of which it envisaged the granting of a rescue aid guarantee to Ixfin. Financing was to come from funds established on the basis of Decree Law No 35 of 14 March 2005<sup>(3)</sup> (the '*decreto competitività*'), as later amended by Article 11 of Law No 80 of 14 May 2005<sup>(4)</sup> and clarified by Decision No 101 of the *Comitato Interministeriale per la Programmazione Economica* (Interministerial Economic Planning Committee) of 29 June 2005, which stipulates that any such support must be given solely by way of a guarantee and for the purpose of rescuing a company in difficulty.
- (20) The guarantee was given to cover a loan from BancApulia (hereinafter 'the Bank') for EUR 15 million, at the EURIBOR 3-month rate plus 1,25 p.p., i.e. an initial interest rate of 3,591%. The duration of the loan was six months beginning from 30 December 2005.
- (21) The aid was used mainly to pay a part of the company's debts. Italy claimed that these payments were urgent since some of the creditors had already begun court proceedings to enforce their claims.
- (22) The Italian authorities, moreover, informed the Commission that Ixfin had asked for the amount covered by the guarantee to be raised to EUR 17,3 million.

## II.3. Ixfin's insolvency

- (23) On 5 July 2006 the company was formally declared bankrupt and liquidation proceedings (hereinafter referred to as '*procedura fallimentare*' or '*fallimento*') were opened<sup>(5)</sup>.
- (24) In March 2007 the Ministry, which had its claim registered under the bankruptcy proceedings, asked the relevant court to have the *fallimento* proceedings changed into extraordinary administration proceedings, a court-

administered procedure which, when complete, may allow the undertaking concerned to continue to operate (hereinafter '*amministrazione straordinaria*')<sup>(6)</sup>, a measure established by the Legislative Decree No 270 of 8 July 1999 (hereinafter 'Legislative Decree No 270/1999').

- (25) Moreover, the Commission, before opening the formal investigation procedure, learned in the press that Ixfin could possibly be admitted to *amministrazione straordinaria* thanks to an agreement for the industrial regeneration of the Caserta area (*Protocollo d'intesa per la reindustrializzazione della Provincia di Caserta*, hereinafter 'the *Protocollo*'). This agreement, signed by the Italian institutions, the unions and the employers' organisation Confindustria, allowed, by way of various measures, for an investment amounting to between EUR 40 million and EUR 60 million. According to the information available to the Commission at that stage, it appeared that this agreement was aimed at restoring production and preserving employment at the industrial sites in the province of Caserta.

## III. DOUBTS EXPRESSED BY THE COMMISSION WHEN INITIATING THE ARTICLE 88(2) PROCEDURE

- (26) In its decision initiating the procedure, the Commission, on the basis of the information available at that stage, expressed doubts regarding the compatibility of the rescue aid with the Community guidelines on State aid for rescuing and restructuring firms in difficulty<sup>(7)</sup> (hereinafter 'the Guidelines').
- (27) The Commission asked Italy to provide further information to demonstrate Ixfin's eligibility for the aid and, in order to show that the difficulties were too serious to be dealt with by the group itself, the balance sheets for Pufin and Maxfin.
- (28) As regards the compatibility of the rescue aid with the Guidelines, the Commission questioned whether point 25(d) of the Guidelines was met. In order to fulfil that condition, the amount of rescue aid should be limited to the minimum required to keep the firm in business for the period during which the aid is authorised. In this respect, Italy was asked to provide more information on the suitability of the amount of rescue aid, among other points, confirmation that the guarantee was limited to a EUR 15 million loan and not to be increased to EUR 17,3 million as requested by the company.

<sup>(3)</sup> Italian OJ 62 of 16.3.2005.

<sup>(4)</sup> Italian OJ 111 of 14.5.2005.

<sup>(5)</sup> The Commission understands from the Italian legislation that '*procedura fallimentare*' is a court-administered bankruptcy procedure, which is initiated when a company is deemed to be insolvent. A bankruptcy judge oversees the proceedings, whereas the '*curatore*' (administrator) deals with the allocation of the debtor's assets, and a creditors' committee represents all creditors. Under this procedure, the priority of claims is established according to the rules contained in the Italian Civil Code in order to meet creditors' claims by disposing of the company assets, which usually leads to the liquidation of the company.

<sup>(6)</sup> The Commission understands from the Italian legislation in force that '*amministrazione straordinaria*' constitutes a form of administration proceedings that applies to large insolvent companies (normally with more than 1 000 employees) based on 'restructuring plans', so as to avoid bankruptcy. It is thus focused on corporate reorganisation rather than liquidation of the company. See Commission Decision of 4.7.2006 in case NN 16/06, *CIT* (OJ C 244, 11.10.2006, p. 14).

<sup>(7)</sup> OJ C 244, 1.10.2004, p. 2.

- (29) The Commission, moreover, emphasised that the rescue aid could not be essentially aimed at delaying insolvency but must be channelled towards restructuring. Still, it appeared to the Commission that the purpose of the rescue aid seemed to be solely to reschedule debt repayments and thereby to save the company from insolvency. The Commission asked, among other things, for evidence that Ixfin was attempting to draw up a restructuring plan during this period.
- (30) The Commission also questioned whether the aid abided by point 25(c) of the Guidelines, which stipulates that the Member State must communicate, not later than six months after the first implementation of a rescue aid measure, a restructuring plan or a liquidation plan or proof that the guarantee has been terminated.
- (31) The Commission further expressed doubts if the 'one time, last time' principle as stipulated in points 72 *et seq.* of the Guidelines was complied with.
- (32) Moreover, in the opening Decision the Commission expressed doubts whether Ixfin benefited from additional aid (see recital 25 of the present Decision) in order to facilitate the outcome of the bankruptcy proceedings. The Commission noted that, even if such aid had been granted under Law No 181 of 1989 (or its later prolongations), it would not make it compatible with the Commission Decision in case N 214/2003, since the authorisation was allegedly based on the exclusion pursuant to Article 9 of companies in difficulty. Ixfin is, however, clearly a company in difficulty on the basis of point 10(c) of the Guidelines since it is the subject of bankruptcy proceedings. Therefore, the Commission observed that any such support can only be considered compatible as restructuring aid if it complies with the conditions stipulated in points 31-51 of the Guidelines.
- (33) However, the Commission did not receive any restructuring aid notification nor was it informed of any restructuring plan, which might have enabled the aid to fulfil the basic conditions required for authorisation as restructuring aid under the Guidelines. In particular, the Commission had serious doubts as to whether, had a restructuring plan existed, it would have been capable of restoring the operational and financial profitability of the company.

#### IV. COMMENTS FROM THE ITALIAN AUTHORITIES

- (34) On 15 January 2008 the minutes of the meeting of 9 January 2008 on Ixfin held at the Ministry were forwarded to the Commission. It transpired from those minutes that the Ministry had decided to lodge an appeal

against the court's decision not to admit Ixfin to *amministrazione straordinaria*.

- (35) On 12 March 2008 the Italian authorities informed the Commission by email that they had had difficulties obtaining the information requested and asked for an interim solution. On 25 March 2008 the Italian authorities confirmed that the alleged restructuring aid, amounting to EUR 40 million, had indeed not been granted to Ixfin.

#### V. COMMENTS FROM THIRD PARTIES

- (36) By letter dated 27 March 2008, the Commission received comments from the Administrator of Ixfin.
- (37) As regards the insolvency of Ixfin, the Administrator explained that at that time Ixfin was still the subject of *fallimento* proceedings. For *fallimento* proceedings to be transformed into *amministrazione straordinaria* proceedings, there were indeed procedural and substantive requirements. By its order of 4 January 2008, the Court ruled that the conditions to restore the economic equilibrium of the company were lacking and thus the *fallimento* proceedings could not be replaced by *amministrazione straordinaria* proceedings. That ruling was challenged by the Ministry before the Naples Court of Appeal (hereinafter 'the Court of Appeal').
- (38) Moreover, the Administrator explained that, since the company was still engaged in *fallimento* proceedings, its economic activity had ceased.
- (39) As for the *Protocollo*, the Administrator explained that that agreement was adopted by the Prime Minister's Office on 20 June 2007. On 25 October 2007, a coordination group met which was supposed to draw up a more precise investment programme. However, as is apparent from the Administrator's comments, especially from the Court's ruling, there was no concrete follow-up on the investment programme, which remained an abstract document containing no indications of the projects to be supported or any funds which might be used. The Administrator further emphasised that no other public resources, apart from the rescue aid, were granted for the rescue and/or restructuring of Ixfin.

- (40) The Administrator also indicated that on 23 June 2006 Ixfin submitted a draft restructuring plan to Sviluppo Italia SpA, which had not been acted upon in view of the company's bankruptcy. The Administrator forwarded a copy of the draft restructuring plan, drawn up by a consultant, to the Commission.

(41) With respect to the adequacy of the amount of rescue aid, the Administrator passed on to the Commission the applications for rescue aid which were submitted by Ixfin to Sviluppo Italia SpA on 30 September 2005 and 11 November 2005.

(42) Since the Commission had asked for the balance sheets of Pufin and Maxfin for the years 2004, 2005 and 2006, the Administrator submitted copies of them.

(43) As for the execution of the state guarantee, the Administrator stated that on 3 July 2006 the Bank had asked the Ministry to repay the guaranteed loan.

#### VI. ITALY'S COMMENTS ON THE THIRD-PARTY OBSERVATIONS

(44) The Italian authorities commented on the third-party observations. They stated, among other things, that they were now in a better position than before to respond to the allegations contained in the Decision to open the formal investigation procedure.

(45) As regards the state guarantee on the EUR 15 million loan from the Bank, the Italian authorities clarified the following points.

(46) First, the Italian authorities confirmed that the guaranteed was limited to a EUR 15 million loan and was thus not raised to EUR 17,3 million. They emphasised, moreover, that the amount of rescue aid had been calculated according to the formula contained in the Annex to the Guidelines.

(47) Second, the Ministry, by its submissions dated 21 April 2008 and 30 October 2008, informed the Commission that the Bank had called the guarantee on the EUR 15 million loan plus relevant interest, for a total amount of EUR 15 154 457,72, on 3 July 2006. The Italian authorities also forwarded a letter of 20 September 2006, on the basis of which the Ministry of the Economy and Finance paid the Bank on 27 September 2006. By this payment, the Ministry obtained the rights as creditor for that amount in respect of Ixfin.

(48) Third, the Italian authorities submitted a copy of a letter of 30 November 2006 by which the Ministry asked the competent authorities (the Naples public prosecutor's office) to submit a request for it to be added to the list of creditors, in accordance with Article 93 of Legislative Decree No 270/1999.

(49) As regards Ixfin's *fallimento* proceedings, the Italian authorities stated that from the declaration of bankruptcy

on 5 July 2006, the company had remained subject to *fallimento* proceedings and confirmed the information submitted by the Administrator in that respect. Furthermore, the Italian authorities confirmed that the appeal against the court's ruling was still pending.

(50) As for the *Protocollo*, the Italian authorities annexed a copy of it and stated that it does not provide for any aid for Ixfin.

(51) The Italian authorities, moreover, sent the Commission a copy of the draft notification of the restructuring plan, which, however, as they stated, was not subsequently sent to the Commission since the Court had officially declared Ixfin insolvent.

(52) The Italian authorities also submitted a copy of the loan agreement between the Bank and Ixfin, from which it transpires that the loan was granted on 30 December 2005 at an interest rate of 3,591 % (see recital 20 of this Decision) and not 3,752 %, as indicated in point 15 of the opening Decision on the basis of the information initially available.

#### VII. EVENTS SUBSEQUENT TO THE OPENING OF THE FORMAL INVESTIGATION PROCEDURE

(53) By its order of 4 June 2008, notified on 15 July 2008, the Court of Appeal upheld the ruling of the Court and thus the conclusion that the substantive conditions did not exist to replace the *fallimento* proceedings by *amministrazione straordinaria* proceedings. The Ministry has lodged an appeal against the ruling with the Supreme Court of Cassation, which has yet to give its final ruling on the case.

(54) In this regard the Commission observes that pursuant to Articles 66 to 68 of the Notice from the Commission — Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid<sup>(8)</sup> — national authorities are allowed to support the continuation of the economic activity of the beneficiary only as far as it allows immediate and effective recovery of aid.

#### VIII. ASSESSMENT OF THE AID

##### VIII.1. Existence of State aid

(55) Article 87(1) of the EC Treaty 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 is, in so far as it affects trade between Member States, incompatible with the common market.

<sup>(8)</sup> OJ C 272, 15.11.2007, p. 4.

(56) The guarantee for Ixfin was granted by the Italian State with its own funds, as Ixfin did not pay any premium for it. It enabled Ixfin to obtain a loan, which, as a company in severe financial distress, it could not have obtained without the state guarantee. Therefore, by providing a guarantee for the loan, a selective advantage was conferred on Ixfin through state resources.

(57) Rescue and restructuring aid is regarded as being among the most distortive types of State aid since it makes it possible to sustain a company which, without state intervention, would exit the market. Ixfin was active in the production and distribution of electronic components for both the automotive and the telecommunications sectors. These products are traded within the EU and the relevant market is supranational, as pointed out in the decision from the Italian competition authority<sup>(9)</sup>. Moreover, at the time of receiving the aid, Ixfin planned to resume its production activity. Thus, the advantage it obtained through the guarantee enabled it to take measures to rescue the company and eventually continue the economic activity for a certain period. Therefore, it can be concluded that the aid in question distorts or is likely to distort competition and affect trade between Member States, by favouring certain undertakings.

(58) Moreover, point 3(2)(a) of the Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees<sup>(10)</sup> (hereinafter 'the Notice') sets out a number of requirements to exclude from a public guarantee any element of State aid: the beneficiary must not be in financial difficulties, the guarantee must not cover more than 80 % of the outstanding loan, and a market-oriented premium must be paid. In the present case the guarantee covers the totality of the loan, no premium has been paid and, as will be shown below in Section VIII.2.1, the beneficiary is a company in difficulty.

(59) The measure therefore constitutes State aid within the meaning of Article 87(1) of the EC Treaty.

#### VIII.2. Compatibility of State aid with the common market

(60) The exemptions pursuant to Article 87(2) of the EC Treaty do not apply in the present case. As for the exemptions pursuant to Article 87(3) of the EC Treaty, since the primary objective of the aid is to restore the long-term viability of the company, only the exemption in Article 87(3)(c) of the EC Treaty, which allows for State aid to be granted to facilitate the development of

certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, can be applied. The aid can only be considered compatible with the common market on the basis of Article 87(3)(c) of the EC Treaty if the conditions laid down in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty are respected.

##### VIII.2.1. Eligibility of the company in difficulty for State aid

(61) According to point 9 of the Guidelines, the Commission considers a firm to be in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term. Point 11 of the Guidelines indicates that the usual signs of a firm in difficulty are increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil asset value. Table 1 shows that debts were increasing, cash flow was declining and turnover went from EUR 104 million to EUR 3 million in just 17 months.

(62) According to point 10(c) of the Guidelines a firm is also regarded as being in difficulty where it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings. In the present case, signs of insolvency, namely the inability of the company to fulfil its obligations in a timely manner, appeared as early as September 2004. Moreover, Italy claimed that it granted rescue aid before the notification due to urgent liquidity needs of the company. Finally, the bankruptcy of Ixfin was declared by the competent court on 5 July 2006.

(63) Based on the above, the Commission considers that Ixfin is a firm in difficulty within the meaning of points 10 and 11 of the Guidelines.

(64) It should, however, be noted that, according to point 13 of the Guidelines, companies that are part of a group are as a rule not eligible for 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.

<sup>(9)</sup> Autorità Garante della Concorrenza e del Mercato – Decision No 11479, *Pufin/Finmek Automotive-Nicofin*, of 5.12.2002.

<sup>(10)</sup> OJ C 155, 20.6.2008, p. 10.

(65) Ixfin is part of the Pufin group. It should first be noted that Ixfin has debts of EUR 3,7 million towards its parent company Maxfin. Second, after the opening of the formal investigation, the Italian authorities submitted to the Commission the balance sheets of Maxfin of 30 April 2005, 30 April 2006 and 30 June 2006 and balance sheets of Pufin of 30 June 2004, 30 June 2005 and 30 June 2006. The financial results of Pufin and Maxfin from 2003 to 2005 are shown in Table 2. Table No 2 demonstrates that neither the financial situation of Maxfin nor that of Pufin was such as to enable them to grant Ixfin the resources required on a scale comparable to the rescue aid granted by Italy. Third, the financial means of Ixfin's subsidiaries are not such as to have enabled them to free up these sources necessary to save Ixfin. It can be thus concluded that neither Pufin, nor Maxfin nor Ixfin's subsidiaries were able to finance the rescue of Ixfin and thus that Ixfin's difficulties were too serious to be dealt with by the group itself.

Table 2

(in EUR)

	2003	2004	2005
Maxfin	20 037 975	2 529 725	(997)
Pufin	12 710 759	(148 361)	(24 349)

(66) In order to dispel the Commission's doubts as to whether the company's difficulties were intrinsic and not the result of an arbitrary allocation of costs within the group, the Italian authorities first provided information which indicates that the difficulties of the company were due to several factors: a decrease in orders, mainly from its principal clients, and an increase of debts, in particular after the company was managed by the investor between March and December 2004 (as indicated in recital 17 of this Decision). Second, the Italian authorities pointed out that the parent company, after having bought back Ixfin, did not carry out any transaction which would amount to an arbitrary allocation of costs within the group.

(67) Therefore the Commission, basing itself on the information at its disposal, considers that Ixfin complies with the conditions laid down in point 13 of the Guidelines.

#### VIII.2.2. Compatibility of the rescue aid with the common market

(68) Rescue aid must meet the conditions set out in point 25 of the Guidelines in order to be compatible with the common market.

(69) According to point 25(a) of the Guidelines, rescue aid must consist of liquidity support in the form of loan guarantees or loans; in both cases, the loan must be granted at an interest rate at least comparable to those observed for loans to healthy firms.

(70) First, in the present case the rescue aid consists of liquidity support (see recital 20 of this Decision). As far as the interest rate is concerned, the Commission has to review its preliminary finding that this seemed to correspond to the rate normally applied to healthy companies. In fact, since the interest rate actually applied to the guaranteed loan was 3,591 %, compared to the Commission's reference rate for Italy of 4,08 %, the Commission concludes that it is not comparable to that normally applied to healthy companies. The Commission therefore considers that the rescue aid granted to Ixfin does not comply with the criteria of point 25(a) of the Guidelines.

(71) As regards, in the present case, the conditions in point 25(b) of the Guidelines, the Commission considers that they have been met, since the rescue aid is aimed at mitigating serious social difficulties, while it has no unduly adverse spillover effects on other Member States.

(72) According to point 25(d) of the Guidelines, rescue aid must be restricted to the amount needed to keep the firm in business for the period during which the aid was authorised; the amount necessary should be based on the liquidity needs of the company stemming from losses. The Commission observes that, although the amount of aid complies with the formula set out in the Annex to the Guidelines for determining the liquidity needs of the company, it amounts to over EUR 10 million and the Italian authorities have not provided sufficient elements to explain why this amount corresponded to what was specifically required by Ixfin in order to remain afloat. Therefore, the Commission considers that it has not been sufficiently proven that the amount of aid received constitutes the minimum necessary to keep the company in business in the rescue period as required by point 25(d) of the Guidelines.

(73) According to point 25(e) of the Guidelines, aid must be granted in accordance with the 'one time, last time' principle as stipulated in points 72 *et seq.* of the Guidelines. The Italian authorities have submitted that the 'one time, last time' principle has been complied with, i.e. that the company did not benefit from any rescue or restructuring aid in the last ten years. The Commission, therefore, on the basis of the information at its disposal, considers that the criterion in point 25(e) of the Guidelines has been met.

(74) In the present case, the period of six months during which rescue aid can be granted according to point 25(c) of the Guidelines started on 30 December 2005 and elapsed on 30 June 2006. According to the last clause of point 25(a) of the Guidelines, 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. Moreover, the last clause of point 25(c) stipulates that 'in the case of non-notified aid the Member State must communicate, no later than six months after the first implementation of a rescue aid measure, 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'. An exception to the six-month rule exists pursuant to point 26 of the Guidelines, if the Member State submits a restructuring plan or a liquidation plan within the six-month period. Neither restructuring plan nor liquidation plan was submitted to the Commission within the aforementioned period. Further, the guarantee was called on 3 July 2006 and Ixfin did not reimburse the loan at all. Therefore, the rescue aid to Ixfin must be considered as incompatible with the common market.

#### VIII.2.3. *Restructuring aid*

(75) The Commission cannot consider the rescue aid as a restructuring measure. First, no restructuring plan was submitted to the Commission. Second, the rescue aid does not comply with the requirements of points 31 *et seq.* of the Guidelines, which lay down the conditions of compatibility of restructuring measures with the common market. The Commission does not therefore possess any more elements that would allow it to regard the rescue aid as compatible as a restructuring measure.

(76) As regards the presumed granting of restructuring aid, on the basis of the information submitted to the Commission in the course of the formal investigation procedure, any doubts as to whether restructuring aid (see recital 32 of this Decision) was granted to Ixfin were dispelled. Therefore, since the existence of the restructuring aid has not been confirmed, assessing its compatibility with the common market has become irrelevant.

### IX. CONCLUSION

(77) The Commission terminates the formal investigation procedure initiated by the Decision of 11 December 2007 concerning the unlawfully granted rescue aid and a presumed restructuring aid measure.

(78) The Commission concludes that the State aid in the form of a guarantee on a loan amounting to EUR 15 million unlawfully granted by Italy to Ixfin SpA, in breach of Article 88(3) of the EC Treaty, is incompatible with the

common market. Italy must recover the incompatible aid from the company.

(79) In quantifying the amount of aid, the Commission would refer to paragraph 4.1(a) of the Notice, where it is stated that 'for companies in difficulty, a market guarantor, if any, would, at the time the guarantee is granted charge a high premium given the expected rate of default. If the likelihood that the borrower will not be able to repay the loan becomes particularly high, this market rate may not exist and in exceptional circumstances the aid element of the guarantee may turn out to be as high as the amount effectively covered by that guarantee'.

(80) In the light of the severe financial difficulties of Ixfin at the time the guarantee was granted, the Commission considers that it was highly unlikely that the company would have been able to obtain a bank loan on the market without the state intervention; therefore, the Commission concludes that the amount of aid corresponds to the totality of the amount of the loan.

(81) The formal investigation regarding the presumed restructuring aid is closed since, during the course thereof, the granting of restructuring aid to Ixfin was not confirmed,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The State aid in the form of a guarantee, unlawfully granted by Italy in breach of Article 88(3) of the EC Treaty, to cover the loan granted by BancApulia on 30 December 2005 to Ixfin, is a State aid measure and 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. This interest should be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 <sup>(1)</sup>.

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.

<sup>(1)</sup> OJ L 140, 30.4.2004, p. 1.

*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 its notification.

*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 planned 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 planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiary.

*Article 5*

This Decision is addressed to Italian Republic.

Done at Brussels, 28 October 2009.

*For the Commission*

Neelie KROES

*Member of the Commission*

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