

# DECISIONS

## COMMISSION DECISION

of 13 July 2011

**on the State aid SA.28903 (C 12/10) (ex N 389/09) implemented by Bulgaria in favour of Ruse Industry**

(notified under document C(2011) 4903)

(Only the Bulgarian text is authentic)

(Text with EEA relevance)

(2012/706/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(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 pursuant to the provisions cited above <sup>(1)</sup>,

Whereas:

### I PROCEDURE

- (1) On 30 June 2009 the Bulgarian authorities notified the Commission a restructuring measure in favour of Ruse Industry AD (hereinafter 'Ruse Industry' or 'the company'), in form of deferral and rescheduling of public debt amounting to EUR 9,85 million.
- (2) A detailed information request was sent to the Bulgarian authorities on 28 July 2009. Bulgaria replied partially on 24 August 2009 and asked for an extension of delay by the same letter, which was granted by letter of 28 August 2009. Bulgaria submitted further information on 30 September 2009. The Commission asked further clarification on 27 November 2009 to which Bulgaria replied on 15 December 2009. A further extension to complete the missing information was granted on 20 December 2009. Bulgaria submitted further information on 17 February 2010.
- (3) By letter dated 14 April 2010 the Commission informed Bulgaria that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union <sup>(2)</sup> ('TFEU') in respect of the aid.

- (4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* <sup>(3)</sup>.
- (5) The Commission received no comments from interested parties.
- (6) Bulgaria submitted comments to the Commission's opening decision by letter dated 10 May 2010, sent to the Commission and registered by it on 17 June 2010. On 7 June 2010 the Bulgarian authorities provided further information.
- (7) A further request for information was sent by the Commission on 29 October 2010, to which the Bulgarian authorities replied by letter dated 12 November 2010, sent to the Commission and registered on 23 November 2010 and by letter dated 3 December 2010, sent to the Commission and registered on 6 December 2010.
- (8) On 11 November 2010 the Bulgarian authorities filed bankruptcy proceedings against the company.
- (9) By letter dated 14 June 2010 sent to the Commission on 23 November 2010, the Bulgarian authorities withdrew their notification of 30 June 2009.

### II DESCRIPTION

#### The beneficiary

- (10) The beneficiary of the aid measure is Ruse Industry. The company (initially called Ruse Shipyard <sup>(4)</sup>) was created in 1991 and is located in Ruse, Bulgaria, a region eligible for aid under Article 107(3)(a) TFEU. The company was privatised in April 1999, when 80 % of its shares were sold to the German firm Rousse Beteiligungsgesellschaft mbH.

<sup>(1)</sup> OJ C 187, 10.7.2010, p. 7.

<sup>(2)</sup> With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU; the two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

<sup>(3)</sup> Cf. footnote 2.

<sup>(4)</sup> On 4 April 2009 the trade register of Bulgaria recorded the change of the name of Ruse Shipyard into Ruse Industry

- (11) Ruse Industry is engaged in the production and repair of metal structures as well as the manufacturing of cranes, ships and marine equipment <sup>(5)</sup>. The company had 196 employees in 2009.
- (12) Financially, the company showed a constant trend of declining turnover and growing losses over several years prior to the notification, as indicated in the table below. In 2008 the company featured a negative operating profit and negative cash flow.

Table 1

**Ruse Industry's annual turnover and profit**

in million BGN <sup>(1)</sup>	2005	2006	2007	2008
Annual turnover	76 239	65 086	17 963	7 035
Profit before tax	(2 091)	1 977	(827)	(3 924)

<sup>(1)</sup> The exchange rate EUR/BGN is fixed at 1,9558 as of 5 July 1999 due to the currency board regime operating in Bulgaria.

**The debt of Ruse Industry to the State**

- (13) Ruse Industry owed EUR 9,85 million to the Bulgarian State at the time of the notification.
- (14) The debt originates from loan agreements <sup>(6)</sup> dating back to 1996 and 1997 between the State Reconstruction and Development Fund and Ruse Shipyard concerning a principal at the time of USD 8,45 million.
- (15) In April 1999 an agreement ('the 1999 rescheduling') was concluded between the Ministry of Finance (hereinafter 'MoF') which has taken over the claims of the State Reconstruction and Development Fund, under which USD 8 million out of the debt described above plus interest accrued were renominated <sup>(7)</sup> in EUR and Rousse Beteiligungsgesellschaft mbH undertook to repay this sum between 1 December 2000 and 30 June 2006 under a rescheduled reimbursement plan.
- (16) On 21 May 2001 the MoF and Ruse Industry concluded a further agreement, according to which the full reimbursement of the company's public debt <sup>(8)</sup>, plus the interest accrued, was deferred until 30 September 2015, with a grace period (with payment of only interest, not principal) until 31 March 2006 ('the 2001 rescheduling').
- (17) According to the 2001 rescheduling the entire debt was as follows: the principal was set at EUR 7,97 million and the interest (accrued until 1 April 1999) set at EUR 2 million. According to this agreement, the principal was subject to an interest of 1 % p.a., whereas penalty interest of 3 % p.a. was applicable on overdue amounts (i.e. in case the company is late with the reimbursement).
- (18) In September 2005, just before the end of the grace period, the beneficiary requested a new rescheduling of its public debt (in addition to the 2001 agreement). In December 2006 the Bulgarian Competition Commission found this request inadmissible under Bulgaria's State aid rules. Ruse Industry lodged an appeal against the Competition Commission's decision before the Supreme Administrative Court, which was rejected in July 2007. A further appeal against this decision was ruled out as well. Nevertheless, the State did not attempt to effectively enforce the debt overdue in accordance with the 2001 rescheduling.
- (19) In July 2008 the beneficiary offered voluntarily to pay EUR 1 million of the amount overdue in two equal instalments. According to this offer the first instalment was to be paid by October 2008 and the second one by February 2009. When Ruse Industry did not pay any of these, the State – upon the company's request – extended twice the deadline of the first instalment, until December 2008 and until January 2009, respectively.
- (20) Given that no reimbursement of the amounts promised by Ruse Industry took place, the Bulgarian authorities sent a reminder for payment in February 2009. Additional reminders for reimbursement of the amounts overdue were filed in April and twice in June 2010. Nevertheless, the State failed to effectively enforce the debt which was not paid in respect to the 2001 rescheduling.
- (21) By letter dated 4 June 2009 Ruse Industry asked further the Bulgarian authorities to reschedule the public debt until 2019 with a grace period until 2012. Upon this request and in accordance with Article 108(3) of TFEU Bulgaria notified the envisaged debt rescheduling as restructuring aid.
- (22) By letter dated 28 June 2010 Ruse Industry offered again to the State to repay its outstanding liabilities according
- <sup>(5)</sup> This was the information received in the notification. It shall be noted, that at a later stage Bulgaria claimed that the company does not manufacture vessels, only metal parts.
- <sup>(6)</sup> Agreement of 15.11.1996 on a foreign currency loan of USD 1 402 341,08; agreement of 22.11.1996 on an amount of USD 450 131,17; and agreement of 27.1.1997 on the repayment of the company's earlier debt of USD 6 597 658,92 (principal) and USD 365 575,86 (interest payable as of 1.11.1996). All these debts were transferred to DFRR from *Stopanska Banka* (State bank which went bankrupt).
- <sup>(7)</sup> The Bulgarian authorities did not indicate the exchange rate of this transaction.
- <sup>(8)</sup> I.e. the entire debt which originally amounted to USD 8 450 131,17 and out of which they have already redenominated/rescheduled USD 8 million on 8.4.1999.

to the repayment arrangements of the 2001 rescheduling. In July 2010 the company undertook to cover all amounts overdue and unpaid in two equal instalments: the first one due by the end of July 2010 and the second by the end of August 2010. However, the company failed to fulfil this arrangement.

- (23) According to the information submitted by the Bulgarian authorities, by the end of 2010 the beneficiary has reimbursed EUR 1 million out of the total amounts due under the 2001 rescheduling. At the end of 2010, the unpaid and overdue debt in respect of the total sum owed amounted to EUR 3.7 million.

### Non-enforcement of the public debt

- (24) It results from the correspondence between Ruse Industry and the Bulgarian authorities that the latter have been sending several reminders for the payment of the amounts due but unpaid. Although the beneficiary expressed willingness, or voluntarily offered repayment, in practice it never covered in full the outstanding amounts under rescheduling 2001. Apart from reminders, there is no evidence that the Bulgarian authorities took any steps to seek to enforce effectively their claims.
- (25) With regard to the principal, Ruse Industry did not pay the stipulated amounts <sup>(9)</sup> and thus did not comply with the half-yearly repayment schedule. Besides, the ordinary interest was paid only until July 2008.
- (26) As regards the penalty interest, the Bulgarian authorities indicated that the contractually stipulated 3 % (see paragraph (17) above) was charged on the due instalments as from 2006, when the company was supposed to start repaying the instalments. These penalty interests were paid by Ruse only between August 2006 and July 2008. Since July 2008 the company did not pay the charged penalty interest.
- (27) On 3 November 2010 the Bulgarian authorities made an official request for repayment. At the time of this request the overdue debt amounted to EUR 3,7 million (of which EUR 3,4 million principal, EUR 151 000 interest and EUR 140 000 penalty interest).
- (28) At the time of this request the beneficiary had reimbursed in total EUR 1 million due under the 2001 rescheduling (of which EUR 245 000 principal, EUR 705 000 interest and EUR 50 000 penalty interest). The latest actual reimbursement that Ruse Industry made was on 11 July 2008.
- (29) Following the request and the company's failure to comply with its obligations the national authorities filed for insolvency proceedings against the beneficiary on 11 November 2010 (i.e. nine years after the 2001 rescheduling, more than four years after the end of the grace period and over two years since the last payment of any kind by Ruse Industry).

- (30) On 11 November 2010 the Bulgarian authorities filed for bankruptcy proceedings against the beneficiary.

### III THE OPENING DECISION

- (31) As mentioned above (see paragraph (21)) in June 2009, the beneficiary submitted further request for rescheduling the debt outstanding under the 2001 agreement. This planned rescheduling was the measure that was notified to the Commission as restructuring aid on 30 June 2009.
- (32) According to the notification, the plan would have provided for the repayment of the debt of EUR 9,85 million over a period of 10 years (i.e. until 2019), with a grace period until 30 June 2012.
- (33) Bulgaria was of the view that the planned measure is compatible with the Internal Market on the basis of the *Communication from the Commission Community Guidelines on State aid for rescuing and restructuring firms in difficulty* <sup>(10)</sup> as restructuring aid.
- (34) The Commission had doubts with regard to the compatibility of the notified aid. Accordingly, on 14 April 2010 the Commission initiated the procedure laid down in Article 108(2) of TFEU.
- (35) In addition, the opening decision raised doubts as to whether the past non-enforcement of the company's liabilities overdue under the 2001 rescheduling agreement might constitute further State aid.
- (36) The Bulgarian authorities withdrew this notification on 23 November 2010, therefore the formal investigation with regard to the notified measure became without object.

### IV BULGARIA'S COMMENTS TO THE OPENING DECISION

- (37) Concerning the non-enforcement of the debt, Bulgaria merely asserts that the State behaved in a private market economy investor manner, which maximises the chances to recover its debt by allowing for voluntary repayment. No detailed arguments were submitted by Bulgaria in this regard.

### V ASSESSMENT

#### The notified restructuring aid

- (38) Bulgaria withdrew the notification of the rescheduling of the public debt of Ruse Industry in November 2010. As a result, the formal investigation with regard to the notified restructuring aid measure has become without object pursuant to Article 8(2) 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>(11)</sup>.

<sup>(9)</sup> Ruse Industry only paid, in 2008, a part of the first instalment due in 2006 (EUR 245 000). The other instalments were never paid.

<sup>(10)</sup> OJ C 244 1.10.2004, p. 2.

<sup>(11)</sup> OJ L 83, 27.3.1999, p. 1.

### Non-enforcement of past debt

#### *Existence of State aid*

- (39) The measure under assessment is the non-enforcement of the debt in compliance with the 2001 Rescheduling.
- (40) With regard to Bulgaria's accession to the EU and thus whether this non-enforcement of the debt as of 1 January 2007 potentially constitutes new aid in the sense of Article 1(e) of the Procedural Regulation, the Commission notes that the failure of the beneficiary to repay the amounts due under the 2001 rescheduling and the lack of State action led to changes in the total exposure of the State under the 2001 rescheduling. This increase in the liability of the State (i.e. the non-enforcement) produces effects after the date of accession and therefore the measure is to be regarded as applicable after accession and thus to involve new State aid.
- (41) It must be also noted that this non-notified measure was not covered by Appendix to Annex V of Bulgaria's Act of accession<sup>(12)</sup>. In particular, it was a) neither put into effect before 31 December 1994, b) nor listed in the Appendix to Annex V, and c) nor covered by the interim mechanism that applied in connection with the accession.
- (42) Against this background, the Commission will assess in the following whether the non-enforcement of the debt as from 1 January 2007 constitutes new aid in the meaning of Article 107(1) TFEU.
- (43) According to Article 107(1) TFEU, 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 between Member States is incompatible with the Internal Market.
- (44) The measure is financed by State resources – as it results in forgone revenues to the State – and the decisions of the MoF are directly imputable to the State.
- (45) The non-enforcement of the debt also concerns Ruse Industry individually and as such is selective.
- (46) In addition, Ruse Industry is an undertaking producing goods which are freely traded within the Union. The Commission thus considers that the condition of the affectation of competition and trade within the Union is fulfilled.
- (47) The Commission should further assess whether the measure in the form of non-enforcement of debt confers an advantage to the company which it would not have been able to obtain otherwise in the market.
- (48) As explained above, the debt dates back to 1996-97 and has been rescheduled already twice (in 1999 and 2001).

With regard to the non-enforcement of the debt under the 2001 rescheduling and the company's previous failures to meet its obligations, no private creditor would have behaved like the Bulgarian State. Indeed, from the information available it results that no concrete steps were taken to enforce the debt as from 30 March 2006, when the grace period ended and the first instalments of the principal became due but were not paid. Moreover, the company's financial situation was weak (see Table 1 above) as it showed diminishing turnover and increasing losses, and there was no prospect of the company returning to profitability. Furthermore, it has to be also noted that even if part of the debt (BGN 1,13 million<sup>(13)</sup>) was secured with collaterals<sup>(14)</sup>, the Bulgarian authorities did not take any steps to enforce that part of the debt either.

- (49) In fact, the Bulgarian authorities did not provide any justifications as to why the repayment schedule was not enforced and did not justify their claim that waiting for voluntary repayment (in the light of the debt default history of the company) would have maximised their chance for the recovery of the debt.
- (50) In similar circumstances, a private creditor would have pursued the enforcement of the agreement. Therefore, the non-compliance with the 2001 rescheduling and Bulgaria's failure to enforce its debt confers an advantage to Ruse Industry.

#### *Conclusion on the existence of State aid*

- (51) On the basis of the above, the Commission considers the non-enforcement of public debt in favour of Ruse industry constitutes new aid as from 1 January 2007 in the meaning of Article 107(1) TFEU.

#### *Compatibility*

- (52) Concerning possible compatibility of the measure, it should be noted that Bulgaria did not bring forward any arguments in this respect.
- (53) Even if Ruse Industry were to formally qualify as a company in difficulty in the sense of the *Communication from the Commission Community Guidelines on State aid for rescuing and restructuring firms in difficulty*, the criteria for compatible rescue or restructuring aid are not met. In particular as regards rescue aid, it has not been demonstrated that the measure would be restricted to the minimum necessary, would be warranted on the grounds of serious social difficulties and has no unduly adverse spill-over effects on other Member States. Moreover, it goes beyond 6 months. From the restructuring aid point of view in the absence of restructuring plan, the restoration of long-term viability is not proven. In addition it has not been demonstrated that the aid is kept to a minimum, and that undue distortions of competition are avoided.

<sup>(13)</sup> Ca. EUR 565 thousand

<sup>(14)</sup> In 2001 the pledged assets had a value of BGN 1,18 million (ca EUR 590 thousand).

<sup>(12)</sup> OJ L 157, 21.6.2005, p. 93.



- (54) The company is located in an assisted area pursuant to Article 107(3)(a) TFEU and as such eligible for regional aid under the *Guidelines on national regional aid for 2007-2013* <sup>(15)</sup> (hereinafter: 'RAG'). The measure, however, does not comply with the RAG. In particular, as regards possible operating aid, this aid does not facilitate the development of any activities or economic areas and it is not limited in time, degressive or proportionate to what is necessary to remedy specific economic handicaps.
- (55) No other grounds for compatibility seem to apply. Therefore, the aid is unlawful and incompatible with the TFEU.

#### Recovery

- (56) According to the TFEU and the Court of Justice's established case law, the Commission is competent to decide that the State concerned must abolish or alter aid <sup>(16)</sup> when it has found that it is incompatible with the internal market. The Court has also consistently held that the obligation on a State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation <sup>(17)</sup>. In this context, the Court has established that that objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored <sup>(18)</sup>.
- (57) Following that case-law, Article 14 of Regulation (EC) No 659/1999 laid down that 'where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary.'
- (58) Thus, given that the measure at hand is to be considered as unlawful and incompatible aid, the amounts of aid must be recovered in order to re-establish the situation that existed on the market prior to the granting of the aid. Recovery shall be hence affected from the time when the advantage occurred to the beneficiary, i.e. when the aid was put at the disposal of the beneficiary and shall bear recovery interest until effective recovery.
- (59) The incompatible *aid element* of the measures is calculated as the amount due and unpaid according to 2001 rescheduling starting from 1 January 2007 until 11 November 2010, when Bulgaria registered its claim in the liquidation procedure. At that time, the overdue amount was estimated to be EUR 3,7 million. The exact recovery amount and the recovery interest to be applied on these amounts have to be calculated by Bulgaria. Payments made other than the amounts paid under the agreement may be deducted from the sum to be recovered as unlawful and incompatible aid.

#### VI CONCLUSION

- (60) First, the Commission notes that Bulgaria withdrew the notification concerning the notified debt rescheduling of EUR 9,85 million, the formal investigation procedure with regard to this measure has thus become without object.
- (61) Second, the Commission concludes that non-enforcement of public debt as from 1 January 2007 constitutes new State aid in favour of Ruse industry in the meaning of Article 107(1) TFEU.
- (62) As this State aid is illegal and incompatible, it has to be recovered from the beneficiary.

HAS ADOPTED THIS DECISION:

#### Article 1

The Commission has decided to close the formal investigation procedure under Article 108(2) of the Treaty on the Functioning of the European Union in respect of the notified debt rescheduling of EUR 9,85 recording that Bulgaria has withdrawn its notification.

#### Article 2

The State aid unlawfully granted by Bulgaria in breach of Article 108(3) of the Treaty on the Functioning of the European Union, in favour of Ruse Industry, by way of non-effective enforcement of public debt as from 1 January 2007, is incompatible with the internal market.

#### Article 3

1. Bulgaria shall recover the aid referred to in Article 2 from the beneficiary.
2. The sums to be recovered shall bear interest from 1 January 2007 until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 <sup>(19)</sup>.

#### Article 4

1. Recovery of the aid referred to in Article 2 shall be immediate and effective.
2. Bulgaria shall ensure that this decision is implemented within four months following the date of notification of this Decision.

#### Article 5

1. Within two months following notification of this Decision, Bulgaria shall submit the following information to the Commission:
  - (a) the total amount (principal and recovery interests) 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.

<sup>(15)</sup> OJ C 54, 4.3.2006, p. 13.

<sup>(16)</sup> Case C-70/72 *Commission v Germany* [1973] ECR 813, point 13.

<sup>(17)</sup> Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, point 75.

<sup>(18)</sup> Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, points 64-65.

<sup>(19)</sup> OJ L 140, 30.4.2004, p. 1.

2. Bulgaria 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 2 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 recovery interest already recovered from the beneficiary

*Article 6*

This Decision is addressed to Bulgaria.

Done at Brussels, 13 July 2011.

*For the Commission*  
Joaquín ALMUNIA  
*Vice-President*

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