COMMISSION DECISION

of 17 September 2003

on the State aid which Italy is planning to implement for Aquafil Technopolymers SpA

(notified under document number C(2003) 3240)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2004/314/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 pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 28 February 2002, the Italian authorities notified a plan to grant investment aid to Aquafil Technopolymers SpA, a producer of polymers, a chemical product used for the production of synthetic fibres.

(2) By letter dated 5 June 2002, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid.

(4) The Commission received comments from interested parties. It forwarded them to Italy, which was given the opportunity to react.

II. DETAILED DESCRIPTION OF THE AID

(5) Aquafil Technopolymers SpA is a wholly owned subsidiary of Aquafil SpA, which is itself part of Gruppo Bonazzi SpA, the holding company of the Bonazzi family. The group, which is a major producer of synthetic fibres, has recently carried out a vertical integration of its production chain, setting up new companies for the production of the different chemical raw materials it needs for its internal use.

(6) The new investment is part of this strategy. Aquafil Technopolymers SpA, which was founded recently, groups together the chemical compounding activities and the production of base polymers for compounding. The new plant is to produce two main types of compounds: 'masterbatch', initially only for the group's self-consumption, and compounds of polyamide 6,66 and 12, mainly for sale outside the group, with 60 % to be placed on the Italian market and the remainder in the rest of Europe. The investment costs relate to the acquisition of an existing industrial building (EUR 6.2 million) and the installation therein of the necessary equipment (EUR 1,3 million).

(7) Aquafil's main competitors at European level are Nyltech, Radici Novacips, Lati, Basf, Bayer, Dupont General Electronics, Ems, Huels.

(8) The notified aid consists of a grant equal to 10 % of the investments costing EUR 7 457 000,30 to be undertaken by Aquafil Technopolymers SpA. The grant is to be awarded by the Autonomous Province of Trento under Provincial Law No 6 of 13 December 1999, hereinafter referred to as 'Law No 6/1999', governing all aid granted by the Province to businesses.

(9) The Italian authorities base their notification on two provisions of Law No 6/1999. Article 2(3) provides that large firms are eligible for aid under the Law for purposes other than horizontal objectives, subject to prior notification and approval of individual grants by the Commission. This would be the case where the aid is necessary for the firm to remain on the market, in competitive terms, or to safeguard jobs. Article 9(4) of the Law states that in the case of a replacement activity, aid for investment can be increased by 10 % in relation to the aid intensity laid down in the Community rules. Replacement activity is defined therein as the creation or expansion of a company that reabsorbs a significant proportion of previously lost jobs.

(10) The Italian authorities consider that the investment planned by Aquafil Technopolymers SpA is necessary to safeguard jobs and qualifies as a replacement activity, because the building acquired with this investment and where the new plant is to be installed belongs to Komarek SpA, a company in liquidation, from which Aquafil Technopolymers SpA will also be taking some employees. Out of the extra 20 new jobs to be created at this new plant, the company has undertaken to fill at least nine with former employees of Komarek SpA.

[1] OJ C 170, 16.7.2002, p. 7.
[2] See footnote 1.

III. GROUNDS FOR INITIATING THE PROCEDURE

(11) In its decision initiating proceedings, the Commission doubted that any of the exceptions provided for in Article 87 could be applicable to the notified aid. It could not be regarded as aid for a company to remain on the market or to safeguard jobs, or, in other words, as rescue and restructuring aid. The Commission noted that the investment was not part of a restructuring process but, on the contrary, it was an investment for expansion/consolidation in the market of the company and of the group it belonged to. The Italian authorities had not provided any restructuring plan, nor did they claim that the investment formed part of a restructuring plan for the company. Moreover, Aquafil Technopolymers SpA was established at Arco in the Province of Trento, and Trento was not eligible for regional investment aid.

IV. COMMENTS FROM INTERESTED PARTIES

(12) The only interested party that submitted comments is the beneficiary of the planned aid. Aquafil claimed that it carried out the investment trusting that it would receive the aid provided for in Law No 6/1999. It also maintained that it was not rescue or restructuring aid but aid for a replacement activity as provided for in Law No 6/1999. It claimed that the size of the workforce had been maintained, since it had taken over some of Komarek's workers and had hired new ones, so that the employment level had remained basically the same. Finally, it maintained that the investment had a favourable impact on the environment (reduction of waste, since the plant used as raw material waste produced in another plant; reduction of transport, since the plant was located close to another plant which was to use the final product; refurbishment of the roof of the building in order to prevent asbestos dust escaping into the air).

V. COMMENTS FROM ITALY

(13) The Italian authorities maintained that the aid could not be classed as rescue or restructuring aid. It involved an increase of 10 % in the allowable aid intensity for investments concerning a replacement activity making it possible to take over some of the workers of a company that had ceased trading within the meaning of Article 9 of the Regional Law, which had been approved by the Commission. Italy requested the Commission not to call into question the provisions of Law No 6/1999 when it examined individual projects notified to it and to evaluate the planned aid to Aquafil, where appropriate making its approval subject to conditions.

VI. ASSESSMENT OF THE AID

(14) In accordance with Article 87(1) of the EC Treaty, 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 shall, insofar as it affects trade between Member States, be incompatible with the common market.

(15) The proposed aid to Aquafil Technopolymers SpA consists of an outright grant to be financed by State resources from the Autonomous Province of Trento. The production of Aquafil Technopolymers SpA in particular and of Aquafil in general is widely traded throughout Europe. The proposed grant to Aquafil Technopolymers SpA therefore constitutes State aid within the meaning of Article 87(1) of the Treaty.

(16) The notification was made under Article 2(3) of the Regional Law, which provides that, except for *de minimis* aid, aid for environmental protection and R & D aid, large undertakings qualify for the aid measures provided for in the Law only where the aid is necessary for them to remain on the market, in competitive terms, or to safeguard jobs, subject to prior notification and approval of the individual grants by the Commission.

(17) The notified aid to Aquafil Technopolymers SpA cannot be regarded as aid to enable a company to remain on the market or safeguard employment or, in other words, as rescue and restructuring aid. The company is not in difficulty and the investment is not part of a restructuring process; on the contrary, it is an investment for expansion/consolidation in the market of the company and of the group it belongs to, Gruppo Bonazzi SpA. This group, one of the largest in Italy in the synthetic fibres sector, has been implementing in recent years an industrial strategy of vertical integration. The Italian authorities have not provided any restructuring plan, nor have they (or the beneficiary) claimed that the investment forms part of a restructuring plan for the company.

(18) Neither can the aid be regarded as aid to safeguard jobs. In accordance with Article 9(5) of Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment (hereinafter the employment aid regulation) [3], aid to maintain jobs consists of financial support given to an undertaking to retain workers who would otherwise be laid off. In the present case, however, the Commission notes that the aid is for investment for the company's expansion/consolidation in the market which has entailed the creation of jobs.

(19) The Commission therefore considers that the aid is not covered by the approved scheme and that, accordingly, the provisions of Article 9(4) of Law No 6/1999 are not applicable.

[3] OJ L 337, 13.12.2002, p. 3.

(20) In these circumstances, the Commission must examine whether the aid can be considered to be compatible with the common market under the provisions of Article 87(3)(a) or (c) of the Treaty.

(21) The Commission has decided, on proposals from the Member States, which areas in each of the Member States qualify for the geographical exceptions under the abovementioned provisions; such areas are indicated on the 'regional aid maps'. Aquafil Technopolymers SpA is located in Arco, Trento. According to the regional aid map for Italy [4], Trento is not eligible for regional investment aid. The Commission therefore considers that the proposed aid cannot qualify for the regional exception to the general ban laid down in Article 87(1).

(22) The Commission has also set out in different communications, guidelines and regulations, the rules it applies when assessing and approving State aid with horizontal objectives which qualifies for an exception pursuant to the first sentence of Article 87(3)(c). Such aid is for environmental protection, research and development, employment and vocational training.

(23) The Commission notes that, under Article 4(2) of the employment aid regulation, large firms located outside areas or sectors eligible for regional aid do not qualify for aid to create employment. Moreover, in accordance with Article 9(5) of the regulation, firms located outside areas eligible for the derogation under Article 87(3)(a) are not eligible for aid to maintain jobs. The Commission also notes that the Italian authorities have not considered the investment eligible for aid for environmental protection and therefore have not provided any information allowing the Commission to examine it under the Community guidelines on State aid for environmental protection [5].

(24) In these circumstances the Commission considers that the notified aid is not eligible for the exception provided for in the first sentence of Article 87(3)(c).

VII. **CONCLUSION**

(25) In view of the foregoing, the Commission finds that the State aid that Italy intends to implement in favour of Aquafil is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy is planning to implement for Aquafil Technopolymers SpA, amounting to EUR 745 700, is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 September 2003.

For the Commission

Mario MONTI

Member of the Commission

[4] Approved by the Commission on 1 March 2000 (OJ C 175, 24.6.2000) and 20 June 2001 (letter SG 2001 D/289334).

[5] OJ C 37, 3.2.2001, p. 3.