



EUROPEAN COMMISSION

Legal Service

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Corte dei Conti
Sezione Controllo Liguria

By email: sezione.controllo.liguria@corteconti.it

SUBJECT: THE REQUEST FOR OPINION FROM THE CORTE DEI CONTI SEZIONE LIGURIA IN CASE 62738/11/2020

Dear Sir or Madam,

- 1) On 23 November 2020, the Commission received a request for an opinion from the Italian Court of Auditors, Regional Section for Liguria (“Corte dei Conti”) within the meaning of Article 29(1) of Regulation 2015/1589¹ (the “request for opinion”). The request was made in the context of the Corte dei Conti’s institutional activity.² In this case, the Regional Audit Section for Liguria, when examining the report of the Region of Liguria for 2018 and 2019, identified a company operation, financed from the regional budget, where there is a doubt as to the existence of State aid contrary to Article 107 and 108 of the Treaty on the Functioning of the European Union.
- 2) In particular, the Corte dei Conti refers to an operation consisting in the merger between two companies, both controlled by the Region of Liguria through a holding company Finanziaria Ligure per lo Sviluppo Economico S.p.a. (hereinafter Fi.L.S.E. S.p.a.). These companies are:
 - I.R.E. S.p.a., a company operating in the field of infrastructure and acting as the central purchasing body for measures of regional interest (the acquiring company), and
 - I.P.S. S.c.p.a, active in the field of initiatives aimed at the redevelopment of the territory and in the real estate market of the province of Savona.
- 3) It follows from the request for opinion, that the merger operation was divided into two stages³: the first consisting of the transfer from I.P.S. to I.R.E. of the only part

¹ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, Official Journal of the European Union (“OJ”) L 248, 24.9.2015, p. 9.

² The Regional Audit Chamber of the Court of Auditors, in carrying out its role as a court responsible for protecting the public purse and supervising the proper management of public resources, examines annually the accounts of the Regions pursuant to Article 1 (5) of Decree-Law No 174 of 10 October 2012, converted into Law No 213 of 7 December 2012.

³ See Decision No 14 of the Regional Council of the Region Liguria of 24 July 2018,

of its business relating to the technical activities (excluding real estate assets and liabilities), and the second is the contribution by the shareholders of I.P.S. to I.R.E. of shares representing up to 100 % of the capital of I.P.S. (owner of the real estate business only).

- 4) As a preliminary phase of the merger operation, the share capital of I.R.E. – the acquiring company – was to be increased. Fi.L.S.E. was to subscribe up to EUR1,1 million, to an increase in the capital of I.R.E. and the Executive of the Region of Liguria was to enter into a loan agreement or other form of indebtedness up to a maximum amount of EUR 1,1 million to cover that investment.
- 5) It is understood that the Corte dei Conti has doubts as to the conformity of this operation with State aid rules, in essence, for two reasons.
- 6) Firstly, it appears that the first phase of the merger operation involved a negative balance for I.R.E. of EUR 1.281.585 (debts v/I.R.E.), which is the result of the value of transferred assets of EUR 1.120.967 and of the amount of liabilities attached to these assets of EUR 2.402.552. Corte dei Conti observes that these liabilities were settled by I.R.E between 2018 and 2019, while no reimbursement was made by I.P.S to I.R.E in return.
- 7) Secondly, Corte dei Conti observes that after the merger operation, I.P.S., which has accumulated losses over the last years, was not absorbed by I.R.E. but continued its activities in the real estate sector and was able, thanks to the transaction and in spite of its apparent difficulties, to repay certain of its financial liabilities.
- 8) Corte dei Conti asserts in conclusion, that the entire purpose of the merger operation involving the financing of the Region of Liguria, was to “enable [I.P.S.], a company which is constantly loss-making and has negative equity, to continue to operate on the real estate market, thereby giving rise to unlawful State aid”.
- 9) On 29 January 2021, Corte dei Conti has sent to the Commission, without any comment, documents that were sent to its registry by the Region of Liguria. The submission contains (i) a letter from the Region of Liguria to the President of Corte dei Conti referring to the merger operation at issue and requesting him to inform the Commission about the dissolution and liquidation of I.P.S., (ii) a description of the context and the purpose of the merger operation concerned and (iii) resolution of the Extraordinary General Meeting of I.P.S. of 30 December 2020, approving a dissolution and liquidation of the company.
- 10) The Region of Liguria contests the factual findings and the legal analysis of those findings made by Corte dei Conti in its request for opinion. It explains that the sole purpose of the merger operation was to strengthen the activities of I.P.S. and its role as contracting authority and central purchasing body, by strengthening the organisation and assets of that company. That operation also made it possible to merge into a single company similar activities carried out by two separate companies for the benefit of the partner bodies, all of which are part of the public authorities.
- 11) The Region of Liguria also submits that the balance of the business branch of real estate activities of I.P.S. is positive, whereas the balance of in-house services activities, acquired by I.R.E. in the first phase of the merger operation, is negative. I.P.S. remains liable to I.R.E. for the negative balance between the liabilities and

the assets forming the part of the business sold and the claim by I.R.E against I.P.S will be repaid with the proceeds from the sale of the remaining real estate assets of I.P.S. The Region of Liguria claims that the capacity of I.P.S.’ assets to cover the debt has been certified by the valuations carried out in 2019.

- 12) Most importantly, the Region of Liguria asserts that the maintenance of the real estate activity is intended solely to liquidate the assets of I.P.S. In other words, I.P.S. will remain in existence only for the purpose of disposing of the properties already in its possession — which relate to a single real estate transaction called ‘Parco Doria’ in Savona — by extinguishing the bank loan and covering the debt to I.R.E. The dissolution and liquidation of I.P.S was decided at the Extraordinary General Meeting of I.P.S. of 30 December 2020.
- 13) In conclusion, the Region of Liguria contends, first, that the entire merger operation differs substantially from the situation assessed by the Court of justice of the European Union in the case C-385/18, Arriva Italia⁴, which constitutes the basis of the legal reasoning made by Corte dei Conti in the request for opinion. Secondly, according to the Region, the merger operation is entirely in line with the behaviour of a private investor in a market economy and does not involve State aid.
- 14) The Commission has doubts whether the Corte dei Conti submitted its request for an opinion in the present the present case in its function as a jurisdictional body. Indeed, as recitals 37 and 38 of Regulation 2015/1589 emphasise, the arrangements for cooperation set established by Article 29 of that Regulation is targeted as national courts (“*les juridictions*” in the French version).
- 15) Therefore, the Commission kindly requests the Corte dei Conti to explain whether it made its request in the framework of jurisdictional functions.
- 16) According to point 80 of the Enforcement Notice, when supporting national courts, the Commission must respect its duty of professional secrecy and safeguard its own functioning and independence. The Commission is therefore committed to remaining neutral and objective. Since the Commission’s assistance to national courts is part of its duty to defend the public interest, the Commission has no intention to serve the private interests of the parties involved in the case pending before the national court. Therefore, the Commission does not hear any of the parties involved in the national proceedings about its assistance to the national court.
- 17) The submission of the Region of Liguria has been merely transferred to the Commission by Corte dei Conti without any comment and without any further assessment of the arguments and evidence provided. This submission appears therefore to be a submission of a party involved in the case pending before the Corte dei Conti, that the Commission cannot take into account, in accordance with point 80 of the Enforcement Notice.
- 18) However, the Commission notes that the Region of Liguria provided an important piece of evidence, which is posterior to the request for opinion, i.e. the resolution of the Extraordinary General Meeting of I.P.S. of 30 December 2020 on the dissolution and liquidation of I.P.S. This evidence, which was not available to Corte dei Conti at the moment of sending of the request, puts into question one of

⁴ Judgement of the Court of 19 December 2019, C-385/18, ECLI:EU:C:2019:1121.

the key findings of that Court according to which I.P.S was to continue its operations on the real estate market.

- 19) Therefore, the Commission kindly requests Corte dei Conti to share with the Commission its assessment of the evidence and the arguments put forward by the Region of Liguria in its submission. The Commission asks Corte dei Conti to revise or confirm its request for opinion.

Faithfully yours,

Daniel CALLEJA CRESPO
Director General

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