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Subject: State aid SA.39426 (2014/N) – Italy
Rescue aid to PICFIC in A.S., health care services operator in the Region of Lazio

Sir,

1. PROCEDURE

(1) By SANI notification 10282 of 28 August 2014, Italy formally notified rescue aid to Provincia Italiana della Congregazione dei Figli dell'Immacolata Concezione in Amministrazione Straordinaria ("PICFIC", "the beneficiary") registered under number SA39426.

(2) Italy submitted additional information on 5 September 2014. The Commission services requested additional information by letter of 25 September 2014. Italy replied to this request by letter of 27 October 2014.

(3) The Italian authorities accept that the decision is adopted in the English language.[1]

2. THE BENEFICIARY

2.1. DESCRIPTION

(4) PICFIC is an ecclesiastical, non-for-profit body active essentially in the health and social sectors. PICFIC is essentially based in the Region of Lazio and the city of Rome.

[1] As stated by letter of 25 September 2014.

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(5) PICFIC, as a religious order, was founded in 1858 with a vocation to serve in the health and social sectors. It is recognised as a legal person under the Italian Civil Code (*Ente Ecclesiastico Civilmente Riconosciuto*, "EECR") and is allowed to perform also economic activities according to Law 121/1985 and Law 222/1985.[2] The Italian authorities have underlined that, when performing economic activities, PICFIC is subject to the same taxation regime as business corporations (income tax, regional tax or property tax, among others) and does not benefit from any tax exemptions.

(6) PICFIC is active in the health sector by operating three specialised clinics:

(a) L'Istituto Dermopatico dell'Immacolata – "IDI IRCCS": located in the city of Rome, 188 beds. It is widely considered as an excellency hospital, especially in the field of dermatology and its related areas. Other areas of medicine are also practiced in IDI IRCCS, such as vascular surgery and oncology, some rare illnesses, among others, as well as epidemiologic research and research on health services. After a long history of experience in the sector, it was recognized as an "IRCCSS" (Institute for recovery and care with scientific character) in 1990.

(b) Ospedale San Carlo: also located in Rome, 214 beds. It is classified as a zonal hospital for the provision of emergency services and it is specialised in different areas of health (gynaecology, ophthalmology, among others).

(c) IDI IRCCS – Villa Paola: located in the municipality of Capranica Viterbo, 30 beds. It is a subsidiary of the Rome institute, with the aim of providing service in the northern area of the Lazio Region.

(7) PICFIC also operates two retirement homes ("*residenze sanitarie assistenzali*") for older people in the municipalities of Montefiascone and Velleteri.

(8) Finally, PICFIC develops charitable activities by means of 9 centres throughout Italy, in which it provides social and health assistance for sick people, children in difficulty or young mothers.

(9) PICFIC's high specialisation in the provision of health treatments has provided the beneficiary (and especially its IDI IRCCS centre in Rome), with widespread recognition at national level, especially in the area of dermatology. Indeed, according to the Italian authorities, PICFIC's clinics provide health treatments considered as essential and indispensable for the region, given both the high level of specialization of the services provided and their public recognition.

(10) The clinics operated by PICFIC provide healthcare services both privately and under the regime of "*accreditamento*".

(11) The Italian authorities have indicated that, when PICFIC's clinics provide healthcare services privately, they function as private clinics, providing their services at market prices and in competition with other private centres. Patients pay directly or through their private insurance for the services they receive.

(12) In addition, the Italian authorities have indicated that, under the regime of "*accreditamento*", PICFIC provides treatments to patients covered by the National Health System applying special conditions provided for by an agreement with

[2] Judgement by the Ordinary Court of Rome, Bankruptcy section, n. 432/13 of 29 May 2013.

public authorities. The three abovementioned PICFIC's clinics are all accredited ("*accreditate*") by the Lazio Region for the provision of healthcare services.

(13) PICFIC currently employs 1529 people, distributed in the different centres and activities as shown in Table 1 below. Since 2012, it reduced its workforce by 131 employees. Since the admission to the procedure of Extraordinary Administration (on 29 March 2013), no new employees have been hired.

Table 1: PICFIC's employees per centre and variation 212-2014.

Centre	Employees 31.12.2012	Employees 30.09.2014	Variation
IDI IRCCS	680	621	59
IDI Villa Paola	82	82	0
Ospedale San Carlo	612	564	48
Residenza Padre Luigi	159	152	7
Residenza Il Pigneto	19	16	3
Charity activities	108	93	15
Total	1,660	**1,529**	131

2.2. Extraordinary Administration

(14) The Italian authorities have indicated that in the years 2005 to 2012 the beneficiary was loss making (accumulating losses for an overall amount of approximately EUR 400 million). During that period, the management financed the organization by means of bank loans. In the last months of 2012, PICFIC's level of indebtedness became unsustainable and on 29 March 2013, the Ministry for Economic Development admitted the beneficiary into the procedure of Extraordinary Administration, considering that it also performs economic activities[3], appointing at the same time three Extraordinary Commissioners.

(15) The Extraordinary Commissioners have competences to reorganize all aspects of PICFIC’s health care structures, and have the duty to administrate the scarce resources available to face the costs related to the continuation of the provision of healthcare services.

(16) The objective of PICFIC's Extraordinary Administration is to maintain its current level of personnel and the continuity of the health activities provision, with the ultimate objective of facilitating the entry of new controlling undertakings in PICFIC's administration.

3. Description of the rescue measure

[3] See footnote 2 above.

(17) Italy intends to provide rescue aid to PICFIC through the Ministry of Economic Development. The measure consists of a 6-month State guarantee issued by the Ministry of Economics and Finance for lines of credits in order to meet liquidity needs of EUR 30 million. The guarantee will be put in place after the Commission's approval of the measure.

(18) The exact conditions of the credit lines are not yet defined, but the Italian Authorities have declared that the interest rates for these credit lines will follow normal banking conditions for active undertakings, and will not be lower than the Commission's reference rate.[4]

(19) 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.

4. ASSESSMENT OF THE MEASURE

(20) The Commission first assesses whether the measure under scrutiny entails State aid to PICFIC under Article 107(1) TFEU, and then whether such aid, if present, is lawful and compatible with the internal market.

4.1. Existence of State aid

(21) Under Article 107(1) TFEU, any aid granted to an undertaking 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, in so far as it affects trade between Member States, be incompatible with the internal market.

(22) In order to conclude whether State aid is present, the Commission must assess whether the cumulative criteria of Article 107(1) TFEU are met (i.e. qualification of the beneficiary as an undertaking, transfer of State resources, selective advantage, potential distortion of competition and affectation of intra-EU trade).

(23) Prior to examining if the measure involves State aid under Article 107(1) TFEU, the Commission notes that Italy considers that this is the case and in fact notified the present measure as a State aid pursuant to Article 108(3) TFEU.

(24) As noted in recital (5) above, the Italian authorities indicated that PICFIC is allowed to perform economic activities under national law and they consider that, since it does carry out such activities, it qualifies as an undertaking. They also indicated that the clinics operated by PICFIC provide healthcare services both privately and under the regime of "*accreditamento*". The Commission considers that, at least as far as those clinics provide healthcare services privately (at market

[4] 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.

prices and in competition with other private centres), they perform an economic activity and therefore qualify as an undertaking pursuant to Article 107(1) TFEU[5].

(25) As regards the presence of State resources, the Commission observes that the measure is granted by Ministry of Economic Development, and it consists in a loan guarantee by the Ministry of Economy and Finance. Given that the notion of Member State includes all levels of public authorities, the Commission concludes that the measure involves State resources and is imputable to the State.

(26) To be considered State aid, a measure must be specific or selective in that it favours only certain undertakings and/or the production of certain goods. The measure at stake is selective, as the measure will be granted only to the benefit of PICFIC.

(27) The measure, by allowing PICFIC to meet its urgent liquidity needs in order to ensure the continuity in the provision of the services in which it is specialised, confers an undue advantage to the beneficiary that it would not have been able to obtain under normal market conditions, considering its financial situation. Therefore the Commission concludes that the measure provides a selective advantage to PICFIC.

(28) The Commission has also analysed whether the measure distorts or threatens to distort competition and affects intra-EU trade. If 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.[6]

(29) By granting PICFIC access to liquidity at conditions which it would not otherwise obtain, the State guarantee is liable to improve the competitive position of the centres it operates in relation to its competitors in the internal market. It consequently distorts or threatens to distort competition and affects trade between Member States.

(30) Consequently, the measure is liable to improve the competitive position of the beneficiary 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

(31) In light of the above, the Commission concludes that the notified measure involves State aid under Article 107(1) TFEU and will therefore assess its lawfulness and compatibility with the internal market.

4.2. Legality of the aid

(32) The Commission takes note of the commitment of the Italian authorities to respect the stand-still obligation laid down in Article 108(3) TFEU and not to grant the aid until the Commission reaches a decision authorising the notified measure.

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5 Case C-222/04 Cassa di Risparmio di Firenze SpA and Others [2006] ECR I-289, paragraphs 107 and following.

6 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.

4.3. Compatibility of the aid

(33) Under Article 107(3)(c) TFEU, the Commission can authorise aid if it is granted to promote the development of certain economic sectors and if this aid does not adversely affect trading conditions to an extent contrary to the common interest. In view of the nature of the measure at stake, the Commission will assess whether the measure complies with the provisions on rescue aid laid down in the 2014 Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty[7] (the "R&R Guidelines").

4.3.1. Eligibility

(34) In order for an undertaking to be eligible for rescue aid, it must qualify as an undertaking in difficulty pursuant to section 2.2 of the R&R Guidelines. In particular, point 20 of the R&R Guidelines stipulates that an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. This would be the case when at least one of the circumstances described in point 20 of the R&R Guidelines occurs:

(a) In the case of a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital.

(b) In the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses.

(c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

(d) In the case of an undertaking that is not an SME, where, for the past two years: (i) the undertaking's book debt to equity ratio has been greater than 7.5 and (ii) the undertaking's EBITDA interest coverage ratio has been below 1.0.

(35) PICFIC is subject to collective insolvency proceedings in Italy as indicated in paragraphs 13 and 14 above. Therefore, the Commission concludes that PICFIC was a firm in difficulty in the sense of point 20 (c) of the R&R Guidelines in 2014.

(36) According to point 21 of the R&R Guidelines, a newly created undertaking is not eligible for rescue aid even if its initial financial position is insecure. As described in paragraph 5 above, PICFIC was founded in 1858 and has been operating in the Italian health sector since its foundation. Therefore, the Commission concludes that PICFIC is not a newly created undertaking.

(37) Finally, point 22 of the R&R Guidelines establishes that a company belonging to or being taken over by a larger business group is not normally eligible for aid, except

[7] Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C249, 31.7.2014, p.1.

where it can be demonstrated that the undertaking's difficulties are intrinsic and are not the result of arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself. The Commission notes that PICFIC does not belong to a larger business group.

(38) On this basis, the Commission concludes that the conditions of section 2.2 of the R&R Guidelines are met and that therefore PICFIC is eligible to receive rescue aid.

4.3.2. Contribution to an objective of common interest

(39) Under point 38(a) of the R&R Guidelines, in assessing whether the rescue aid can be declared compatible with the internal market, the Commission will consider whether the State aid contributes to a well-defined objective of common interest in accordance with Article 107(3) TFEU. In this respect, the Member State must provide clear evidence showing that the aid aims to prevent social hardship or address market failure.

(40) Under point 44 of the R&R Guidelines, this can be demonstrated in particular by showing that:

(a) the unemployment rate in the region or regions concerned (at NUTS level II) is either (i) higher than the Union average, persistent and accompanied by difficulty in creating new employment in the region or regions concerned, or (ii) higher than the national average, persistent and accompanied by difficulty in creating new employment in the region(s) concerned;

(b) there is a risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in (for example, a national infrastructure provider);

(c) the exit of an undertaking with an important systemic role in a particular region or sector would have potential negative consequences (for example as a supplier of an important input);

(d) there is a risk of interruption to the continuity of provision of an SGEI;

(e) the failure or adverse incentives of credit markets would push an otherwise viable undertaking into bankruptcy;

(f) the exit of the undertaking concerned from the market would lead to an irremediable loss of important technical knowledge or expertise; or

(g) similar situations of severe hardship duly substantiated by the Member State concerned would arise.

(41) The success of the procedure of Extraordinary Administration is necessary to avoid the risk of disruption in the provision of an important service which would be extremely hard to replicate in the Region of Lazio and in Italy. Indeed, PICFIC is considered as a strategic structure at national level due to its high degree of specialization, namely in the field of dermatology and its related areas, through its centre IDI IRCCS in Rome. PICFIC's disappearance would therefore, in the Commission's view, entail the loss of a very important provider at regional and national level, which cannot be immediately replaced by other hospitals offering similar services.

(42) In view of the above, the Commission concludes that the information provided by Italy demonstrates that points 38(a) and 44 (b) of the R&R Guidelines are respected.

4.3.3. Appropriateness

(43) Under point 38(c) of the R&R Guidelines, the Commission will not consider an aid measure to be compatible if other, less distortive measures allow the same objective to be achieved. In this respect, rescue aid must fulfil the conditions laid down in point 55 of the R&R Guidelines:

(a) it must consist of temporary liquidity support in the form of loan guarantees or loans;

(b) the financial cost of the loan or, in the case of loan guarantees, the total financial cost of the guaranteed loan, including the interest rate of the loan and the guarantee premium, must be set at a rate not less than the reference rate set out in the Reference Rate Communication[8] for weak undertakings offering normal levels of collateralisation;

(c) except as otherwise specified in point (d) below, any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after disbursement of the first instalment to the beneficiary;

(d) the Member State must undertake to communicate to the Commission, not later than six months after the rescue aid measure has been authorised or, in the case of non-notified aid, not later than six months after disbursement of the first instalment to the beneficiary: (i) proof that the loan has been reimbursed in full and/or that the guarantee has been terminated; or (ii) a restructuring plan as set out in section 3.1.2 of the R&R Guidelines if the beneficiary qualifies as an undertaking in difficulty (and not only faces acute liquidity needs),; or (iii) a liquidation plan setting out in a substantiated way the steps leading to the liquidation of the beneficiary within a reasonable time frame without further aid.

(e) Rescue aid may not be used to finance structural measures, such as acquisition of significant businesses or assets, unless they are required during the rescue period for the survival of the beneficiary.

(44) In the case at hand, the measure is a loan guarantee of EUR 30 million that PICFIC will use to meet its urgent liquidity needs. The exact conditions of the credit lines are not yet defined, but the Italian Authorities have declared that the interest rates for these credit lines will follow normal banking conditions for active undertakings, and will not be lower than the Commission's reference rate.

(45) Italy commits that the loan guarantee will be reimbursed within six months after the disbursement of the first instalment to PICFIC. Italy also undertakes to communicate to the Commission, not later than six months after the rescue aid measure has been authorised (i) proof that the loan has been reimbursed in full and/or that the guarantee has been terminated; or (ii) a restructuring plan as set out in section 3.1.2 of the R&R Guidelines if the beneficiary qualifies as an

[8] 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.

undertaking in difficulty (and not only faces acute liquidity needs); or (iii) a liquidation plan setting out in a substantiated way the steps leading to the liquidation of the beneficiary within a reasonable time frame without further aid. Finally, the Commission observes that Italy commits that PICFIC will not use the rescue aid to finance structural measures.

(46) In view of the information provided by Italy, the Commission concludes that the condition laid down in points 38(c) and 55 of the R&R Guidelines is met and therefore the form of the aid allows rescuing PICFIC in the least distortive way.

4.3.4. Proportionality of the aid / aid limited to the minimum

(47) Under point 38(e) of the R&R Guidelines, aid must not exceed the minimum needed to achieve the objective of common interest. As specified in point 60 of the R&R Guidelines rescue aid must be restricted to the amount needed to keep the beneficiary in business for six months. In determining that amount, the Commission will take into account the outcome of the formula set out in Annex I of the R&R Guidelines. The Commission will authorise any aid exceeding the result of that calculation only if it is duly justified by the provision of a liquidity plan setting out the beneficiary's liquidity needs for the coming six months.

(48) The Italian authorities have informed that the aid amount will be kept to the minimum necessary to pursue the objectives of the Extraordinary Administration.

(49) Based on the financial reports of PICFIC recorded in 2013, i.e. the year before notifying the aid, the Commission has identified the following elements to be taken into account in the formula for the case of PICFIC:

- EBIT in 2013: EUR -38 million.
- Depreciation in 2013: EUR 5 million.
- Working capital for 2013: EUR 232 million.
- Working capital for 2012: EUR 202 million.

(50) The outcome of the application of the formula is therefore EUR -31.5 million.

(51) The Commission first notes that the outcome of the application of the formula in the case of PICFIC is negative. Secondly, the amount of the rescue aid (EUR 30 million) is lower than the maximum resulting from the application of the formula. The Commission therefore concludes that the rescue aid is indeed restricted to a minimum amount, in line with point 60 of the R&R Guidelines.

4.3.5. Negative effects

(52) Under point 38(f) of the R&R Guidelines, the negative effects of the aid on competition and trade between Member States must be sufficiently limited, so that the overall balance of the measure is positive.

(53) Under points 70 and 71 of the R&R Guidelines, aid can be granted to undertakings in difficulty in respect of only one restructuring operation. Therefore, where less than 10 years have elapsed since rescue aid, restructuring aid or temporary restructuring support were granted to the beneficiary in the past (including any such aid granted before the entry into force of the R&R Guidelines and any non-

notified aid) or the restructuring period came to an end or implementation of the restructuring plan was halted – whichever occurred the latest –, the Commission will not allow further aid (the 'one time, last time' principle).

(54) On the basis of the information provided by Italy, PICFIC has not benefited from any rescue aid, restructuring aid or temporary restructuring support in the past 10 years. Therefore, the Commission concludes that the 'one time, last time' principle is respected.

4.3.6. Conclusion on the compatibility of the aid

(55) In the light of the findings above, the Commission concludes that the measure meets the compatibility conditions of the R&R Guidelines. The Commission therefore considers the rescue aid compatible with the internal market.

(56) In addition, the Commission reminds Italy of its obligation to submit annual reports to the Commission, in accordance with point 131 of the R&R Guidelines.

5. CONCLUSION

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

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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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