EUROPEAN COMMISSION

Brussels, 20.7.2020
C(2020) 5069 final

SENSITIVE[*]: *COMP Operations*

Subject: State Aid SA.57984 (2020/N) – Republic of Malta COVID-19: Support to Bluefin tuna fishers

Excellency,

1. PROCEDURE

(1) By electronic notification of 8 July 2020, Malta notified aid in the form of limited amounts of aid (Support to Bluefin tuna fishers, "the measure") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended ("the Temporary Framework").[1]

(2) Malta exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU"), in conjunction with Article 3 of Regulation 1/1958[2] and to have this Decision adopted and notified in English.

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[*] Handling instructions for SENSITIVE information are given at https://europa.eu/!db43PX

[1] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I , 4.4.2020, p. 1 and by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3. and by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the 3rd Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3.

[2] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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2. DESCRIPTION OF THE MEASURE

(3) Malta considers that the COVID-19 outbreak affects the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.

(4) The measure aims at preserving employment by compensating self-employed fishermen for a loss of income resulting from measures adopted at national level to respond to the COVID-19 outbreak and, in particular, at supporting low earning self-employed individuals whose income has been negatively impacted, if not lost, as a result of that outbreak.

(5) The measure provides income support to self-employed fishermen who are trading, or would have been trading absent the COVID-19 outbreak.

(6) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

The nature and form of aid

(7) The measure provides aid in the form of direct grants.

Legal basis

(8) The legal basis for the measure is Chapter 146 of the Laws of Malta - Agricultural and Fishing Industries (Financial Assistance) Act of 28 January 1956.

Administration of the measure

(9) The Department of Fisheries and Aquaculture is responsible for administering the measure.

Budget and duration of the measure

(10) The estimated budget of the measure is 720 000 EUR (based on a rate of 2 EUR per Kg of assigned Bluefin tuna (BFT) quota in 2020) and the overall maximum aid amount per undertaking shall not exceed 120 000 EUR.

(11) Aid may be granted under the measure as from its approval until no later than 31 December 2020.

Beneficiaries

(12) The final beneficiaries of the measure are fishermen that are registered with the Department of Fisheries and Aquaculture as MFA (Full-time) and MFB (Part-time) and that were awarded a quota by the Department of Fisheries and Aquaculture to fish for BFT in 2020. Financial institutions are excluded as eligible final beneficiaries.

(13) Aid may not be granted under the measure to medium[3] and large enterprises that were already in difficulty on 31 December 2019 within the meaning of Regulation 1388/2014[4] (FIBER). Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019 if those enterprises, at the moment of the granting of the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid[5] or restructuring aid[6].

Sectoral and regional scope of the measure

(14) The measure is open only to the BFT sector. It applies to the whole territory of Malta.

Basic elements of the measure

(15) The scheme is directed towards fishermen owning BFT licenced vessels registered with the Department of Fisheries and Aquaculture as MFA (Full-Time Fishers) or MFB (Part-Time Fishers). The aid will be calculated on the basis of the quota assigned in 2020 by the Department of Fisheries and Aquaculture to the fishermen owning those MFA and MFB licences. The grant corresponds to a contribution equal to 2 EUR/kg.

(16) A significant change in consumption patterns has been registered in Malta during the COVID-19 outbreak, ultimately provoking a reduction of the selling price of BFT. More specifically, the price for 1 kg of BFT on the local market in May 2020 stood at 4.50 EUR/kg, which is 5.50 EUR/kg lower than the price of BFT during the same period in 2018. Moreover, the selling price until mid-June 2020 also fell by a further 1 EUR/kg to 3.50 EUR/kg.

(17) During the COVID-outbreak, exports of BFT have gone down, due to the disruptions in the supply chain (such as increased exportation costs), leaving fishermen to rely mainly on the domestic demand market. The domestic market price during that period amounted to an average for each fisherman of 21.54 kg (7.63% of his individual quota), which is far lower than the 126.48 kg that each fisherman traded, on average, on the local market during the same period in 2018 and 79.7 during that period in 2019. In 2017 and 2018, BFT for export was sold at 8 EUR/kg while in 2019 the price stood at 7.50 EUR/kg[7].

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[3] As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

[4] Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 373)

[5] Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

[6] Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

[7] See the study (attached to the notification) 'Impact Assessment of the adverse effects of COVID-19 on Bluefin Tuna exports'

(18) The impact assessment conducted in the fisheries industry in Malta[8] also analysed the average cost per kilogram of fish caught. The impact assessment study concluded that, since most fishermen have a quota of 350 kg, for the majority of fishermen 4 EUR/kg will cover just about their costs and therefore ensure that they preserve the continuity of their economic activity during and after the outbreak[9].

(19) No aid shall be provided to quota allocated by the Department of Fisheries and Aquaculture for by catch, recreational and contingency purposes.

(20) Aid granted under this scheme does not concern any of the categories of aid referred to in Article 1, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014.

Cumulation

(21) The Maltese authorities confirm that aid granted under the measure may be cumulated with aid under the *de minimis* Regulation[10] or the FIBER provided the provisions and cumulation rules of those Regulations are respected.

(22) The Maltese authorities confirm that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.

(23) The Maltese authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.

(24) The Maltese authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap of 120 000 EUR per undertaking, as set out in point 23(a) of that framework, will be respected.

(25) Applicants will be asked to sign a declaration in which they are to list any other State aid they have applied for and/or received, and in such cases, the granting authority will ensure that the provisions on cumulation of the relevant Regulations and/or the Temporary Framework, will be respected.

Monitoring and reporting

(26) The Maltese authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR

8 See foonote 7.

9 Malta indicated during the assessment of the scheme that fishermen have the option of either catching the assigned quota themselves and sell their catch on the EU market (including Malta) or transfer their quota to the purse seiner vessels who in turn catch the fish for fish farming purposes.

10 Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

10 000 on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[11]).

3. ASSESSMENT

Lawfulness of the measure

(27) By notifying the measure before putting it into effect, the Maltese authorities have respected their obligations under Article 108(3) TFEU.

Existence of State aid

(28) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(29) The measure is imputable to the State, since it is administered by the Department of Fisheries and Aquaculture of Malta and it is based on the Chapter 146 of the Laws of Malta - Agricultural and Fishing Industries (Financial Assistance) Act of 28 January 1956.

(30) It is financed through State resources, since it is financed by public funds.

(31) The measure confers an advantage on its beneficiaries in the form of direct grants. The measure thus relieves those beneficiaries of costs that they would have had to bear under normal market conditions.

(32) The advantage granted by the measure is selective, since it is awarded only to BFT fishermen.

(33) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(34) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Maltese authorities do not contest that conclusion.

Compatibility

(35) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(36) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid "*to remedy a serious disturbance in the economy of a Member State*".

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[11] Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014.

(37) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that, "*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*". The Commission concluded that "*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*".

(38) As mentioned in recitals (17) and (18), the measure aims at bringing the income of the BFT fishermen to the level of 4 EUR/kg of BFT[12], at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak, and that outbreak is leading to severe disturbances of the real economy of the Member State.

(39) The measure is one of a series of measures conceived at national level by the Maltese authorities to remedy a serious disturbance in their economy. The effects that can be expected to be produced by this measure are deemed to be of a scale enabling the fishermen concerned to remain operating in that market once recovery has taken place. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Aid in the form of direct grants*") described in section 3.1 of the Temporary Framework.

(40) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework, in particular:

- The aid takes the form of direct grants (recital (7)).
- Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (10). The measure therefore complies with point 22(b) of the Temporary Framework;
- Aid may not be granted under the measure to medium and large enterprises that were already in difficulty on 31 December 2019. Aid may neither be granted to micro and small enterprises that were in difficulty on 31 December 2019 if, at the moment of the granting of the aid, those enterprises are subject to collective insolvency procedure under national law and who have received rescue or restructuring aid (recital 13). The measure therefore complies with point 22(c) and 22(c) bis of the Temporary Framework.
- Aid will be granted under the measure no later than 31 December 2020. The measure therefore complies with point 22(d) of the Temporary Framework;

[12] Although this amount of 4 EUR/kg is significantly lower than that fishers used to get in previous years (in 2018, the market price of BFT stood at 8 EUR/kg, as indicated in recital (17) above), the Maltese authorities consider it sufficient for fishermen to preserve the continuity of their economic activity during and after the outbreak.

- The overall nominal value of the direct grants does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector (recital (10)). The measure therefore complies with point 23(a) of the Temporary Framework;

- Aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Regulation (EU) No 717/2014 (recital (20)). The measure therefore complies with point 23(c) of the Temporary Framework.

- Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with point 23(a) of the Temporary Framework, the Maltese authorities will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 120 000 is not exceeded per undertaking. The measure therefore complies with point 23bis of the Temporary Framework.

(41) The Maltese authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (24)). The Maltese authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recital (22)).

(42) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

4. 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)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION