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Subject: State Aid SA.57289 (2020/N) – Italy
COVID-19: Capital-strengthening measures for medium-sized companies

Excellency,

1. PROCEDURE

(1) Following pre-notification contacts, by electronic notification of 22 July 2020, Italy notified aid in the form of grant subsidies and tax credits linked to equity investments, tax credit and subordinated debt under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework"). [1]

(2) Italy 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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1 Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, 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, 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 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 MEASURES

(3) Italy considers that the COVID-19 outbreak has started to affect the real economy. The measures form part of an overall package of measures and aim 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 compatibility assessment of the measures is based on Article 107(3)(b) TFEU, in light of sections 2, 3.1 and 3.3 of the Temporary Framework, as well as on Article 107(3)(b) TFUE directly.

2.1. The nature and form of aid

(5) The measures provide aid in the form of subsidies and tax credits in relation to equity investments, tax credits and subordinated debt. Specifically, the Italian authorities will implement three different measures:

(a) Non-repayable subsidy to small and medium-sized undertakings (the "investee undertakings") associated with a tax credit for the investors that invest in those investee undertakings ("Measure A");

(b) Tax credit scheme for small and medium-sized undertakings ("Measure B");

(c) Subordinated loan scheme for medium-sized undertakings ("Measure C").

2.2. National legal basis

(6) The legal basis for the measures is Article 26 of the Italian Decree Law n. 34 of 19 May 2020[3] (the "Decree Law"), as converted in law with amendments by the Italian Law No. 77 of 17 July 2020 (the "Law")[4].

2.3. Budget and duration of the measures

(7) The overall budget of the measures amounts to EUR 6 billion. The budget for Measures A and B, under section 3.1 of the Temporary Framework, amounts to EUR 2 billion. The budget for Measure C, under section 3.3 of the Temporary Framework, amounts to EUR 4 billion, allocated to a dedicated fund (the "Fund").

(8) Aid may be granted under the following conditions:

(a) For Measure A: upon the finalisation of an equity investment by private investors into an investee undertaking, until 31 December 2020;

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[3] Published in the *Gazzetta Ufficiale* n. 128 of 19 May 2020.

[4] Published in the *Gazzetta Ufficiale* n. 180 of 18 July 2020. The measure only becomes effective as of the adoption date of the present State aid decision.

(b) For Measure B: the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2020;

(c) For Measure C: as from its first implementation until 31 December 2020.

2.4. Administration of the measures

(9) The Italian Ministry of Economic and Finance is responsible for granting the measures. The Fund referred to in recital (7) will be managed by the *Agenzia nazionale per l'attrazione degli investimenti e lo sviluppo d'impresa* – Invitalia, a company wholly owned by the Italian State or by Mediocredito Centrale – MCC, a subsidiary of Invitalia.

2.5. Beneficiaries

(10) All three measures benefit undertakings that:

(a) have a registered office in Italy[5];

(b) are incorporated in the form of *società per azioni*, *società in accomandita per azioni*, *società a responsabilità limitata* (also *semplificata*), *società cooperative*, *società europee*[6] and *società cooperative europee*[7];

(c) are not financial institutions and do not perform insurance activities;

(d) are small or medium-sized enterprises (SMEs)[8] and for tax year 2019 recorded a turnover between EUR 5 million and EUR 50 million (to be calculated on a consolidated basis if the undertaking is part of a group);

(e) were not already undertakings in difficulty within the meaning of Regulation (EU) No 651/2014, Regulation (EU) No 702/2014 and Regulation (EU) No 1388/2014 on 31 December 2019, unless they qualify as small enterprises that are not subject to collective insolvency procedure under national law and that have not received rescue aid[9] or restructuring aid[10];

(f) due to the COVID-19 epidemiological emergency, have registered in the months of March and April 2020 an overall reduction of at least 33% in their turnover vis-à-vis the same period of the previous year (to

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5 The requirements for the eligibility to the measures do not include that the parent company of the relevant Italian entity is located in Italy.

6 Regulation (CE) n. 2157/2001 of 8 October 2001.

7 Regulation (CE) n. 1435/2003 of 22 July 2003.

8 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, 26.6.2014, p. 1.

9 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 Temporary Framework.

10 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 Temporary Framework.

be calculated on a consolidated basis if the undertaking is part of a group);

(g) have approved and executed, after the entry into force of the Decree-Law and by 31 December 2020, a fully paid-up capital increase.

(11) In order to be eligible to receive a tax credit under Measure B or to be eligible to receive a subordinated loan under Measure C, beneficiaries must also fulfil the following conditions:

(a) comply with tax and social contribution obligations;

(b) comply with the provisions in force concerning building and urban planning, work, accident prevention and environmental protection legislation;

(c) not be among the undertakings that have received and, subsequently, not reimbursed or paid into a blocked account any aid declared illegal or not compatible by the Commission;

(d) not fulfil impedimental conditions referred to in Article 67 of Legislative Decree No 159 of 6 September 2011[11];

(e) not have a final judgment against directors, members of the Board or beneficial owners, for crimes committed in violation of the rules for the repression of tax evasion with respect to income tax and added value tax in cases in which the accessory penalty referred to in Article 12, paragraph 2, of Legislative Decree No 7 of 10 March 2000 is applied.

(12) In addition to those conditions, in order to be eligible to receive a subordinated loan under Measure C, companies must be medium-sized[12].

(13) Beneficiaries under Measure A who obtain tax credits as a result of their investments into investee undertakings can be natural or legal persons that:

(a) acquire participations in the beneficiaries mentioned under recital (10);

(b) alternatively or additionally, invest in Italian permanent establishments of undertakings registered in other Member States or in countries belonging to the European Economic Area that fulfil all the conditions of recital (10);

(c) are in no way related to the undertakings whose acquired participation allows them to benefit from the measure (they do not control them neither directly nor indirectly, nor are they subject to common control or connected or controlled by the invested undertaking);

[11] The Legislative Decree sets out a series of measure to prevent criminal activities. The impedimental conditions consist mainly of the personal prevention measures applied by the judicial authority.

[12] They must employ fewer than 250 persons and the turnover for the year 2019 will be between EUR 10 million and EUR 50 million.

(d) hold the equity participation referred to in letter (a) until 31 December 2023;

(e) are not financial institutions and do not perform insurance activities;

(f) were not undertakings already in difficulty within the meaning of Regulation (EU) No 651/2014, Regulation (EU) No 702/2014 and Regulation 1388/2014 on 31 December 2019, unless they qualify as micro or small enterprises that are not subject to collective insolvency procedure under national law and that have not received rescue aid[13] or restructuring aid.[14]

2.6. Sectoral and regional scope of the measures

(14) The measures are open to all sectors. The financial and insurance sectors are excluded, as direct or indirect beneficiaries, from all the measures. The measures apply to the whole territory of Italy.

2.7. Basic elements of the measures

2.7.1. Measure A

(15) The aid is granted in the form of a non-repayable subsidy to investee undertakings fulfilling the conditions outlined in recital (10) as a result of the investments made by private investors that undertake an equity investment in compliance with the conditions outlined in recital (13). The measure is linked to a tax credit for the investors, aiming to incentivise private investment in Italy and is also open to investors that may not find themselves facing a sudden shortage or even unavailability of liquidity due to the COVID-19 outbreak.

(16) The amount of the non-repayable subsidy, which is equal to the associated tax credit, is quantified as the lower of: -

- 20% of the invested amount[15] referred to in recital (13); and
- EUR 120 000, if the investor and/or the investee undertaking is active in the fishery and aquaculture sector; EUR 100 000 if the investor and/or the investee undertaking is active in the primary production of agricultural products; EUR 800 000 for all other eligible undertakings. All thresholds have to be calculated net of the aid received by the investee undertaking pursuant to section 3.1 of the Temporary Framework.

(17) The investor must hold the equity investment resulting from the contribution until 31 December 2023. If the investee undertaking distributes reserves before that date, the investor must return the amount equal to the tax credit, together with legal interest.

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[13] 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 Temporary Framework.

[14] 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 Temporary Framework.

[15] With a cap on the maximum investment on which to calculate the tax advantage set at EUR 2 million.

(18) The investment can take place directly or through units or shares in collective investment undertakings resident in the Union or in the European Economic Area, which invest more than 50% in the share capital of the companies referred to in recital (10).

(19) In order to obtain the tax credit, the investor must receive a certification from the investee undertaking stating that the aid cumulation limits set in the Temporary Framework and referred to in paragraph 20 of Article 26 of the Decree Law[16] have not been exceeded. If a tax credit of 20% of the invested amount would exceed the limits set in the Temporary Framework and referred to in paragraph 20 of Article 26 of the Decree Law, the certification can indicate the amount of tax credit that would allow compliance with the above-mentioned limits.

(20) The investor can claim the tax credit upon completion of the equity investment. The amount is disbursed over time, i.e. it can be used by the investor in its income tax declaration for the year 2020 (the tax period in which the investment is carried out), and in subsequent ones, if the tax liability for 2020 is lower than the amount of the tax credit, until the amount is fully used up. Furthermore, starting from the tenth day following the submission of the tax declaration for year 2020, the tax credit can be used also to offset other liabilities pursuant to Article 17 of Legislative Decree No 241 of 9 July 1997.

(21) As Measure A provides the subsidy to undertakings fulfilling the conditions outlined in recital (10), Italy confirmed that the investee undertakings under Measure A are all eligible for State support under the terms of section 3.1 of the Temporary Framework.

(22) As concerns the investee undertakings under Measure A, the Italian authorities indicated that:

- aid granted to undertakings active in the processing and marketing of agricultural products[17] is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned;

- aid to undertakings active in the primary production of agricultural products is not fixed on the basis of the price or quantity of products put on the market;

[16] EUR 120 000, if the investor and/or the investee undertaking is active in the fishery and aquaculture sector; EUR 100 000 if the investor and/or the investee undertaking is active in the primary production of agricultural products; EUR 800 000 for all other eligible undertakings.

[17] As defined in Article 2(6) and Article 2(7) of Commission Regulation (EC) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

– aid to undertakings active in the fishery and aquaculture does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Commission Regulation (EU) No 717/2014[18]; and

– where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, the Italian authorities will ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of these activities.

2.7.2. Measure B

(23) The aid is granted in the form of a tax credit to the eligible beneficiaries, as described in recitals (10) and (11), following the approval of the financial statements for the year 2020.

(24) The amount of the tax credit is equal to 50% of the losses registered in 2020 exceeding 10 percent of the net equity of the beneficiary, gross of the losses. That amount is capped to the lower of:

– 30% of the capital increase referred to in recital (10); and

– EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products or EUR 800 000 for all other eligible undertakings, minus in each of the cases the amount received under Measure A and any other aid received pursuant to section 3.1 of the Temporary Framework.

(25) The distribution of any type of reserves before 1 January 2024 entails the loss of the benefit and the obligation to return the amount, together with legal interest.

(26) The tax credit can be used by the eligible beneficiary in its tax declaration as well as to offset liabilities pursuant to Article 17 of Legislative Decree No 241 of 9 July 1997, starting from the tenth day following the presentation of the tax declaration for the year 2020.

(27) The Italian authorities also confirm that the conditions listed under recital (22) are complied with in the context of Measure B.

2.7.3. Measure C

(28) The subordinated debt investment aid under section 3.3 of the Temporary Framework may be granted to medium-sized companies fulfilling the conditions outlined under recitals (10), (11) and (12).

(29) The eligible beneficiaries will commit to:

[18] Commission Regulation (EC) No (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 90, 28.6.2014, p. 45.

– not approve or make, from the date of the application and until full repayment of the subordinated debt, any distribution of reserves and acquisition of its own shares as well as not to repay shareholders' loans;

– allocate the financing to cover personnel, investments or working capital costs used in production plants and business activities located in Italy;

– provide the authority granting the measure with a periodic report.

(30) The subordinated debt instruments are issued by 31 December 2020 at the latest and rank, in insolvency, junior to senior debt, *pari passu* with other subordinated instruments issued by the beneficiary and senior to equity and to loans granted to the beneficiary by the shareholders (in case the beneficiary is a *società a responsabilità limitata*).

(31) The subordinated debt instruments have a maximum maturity of six years, but can be repaid in advance, after a period of three years since subscription, on the decision of the issuer.

(32) The limits set out in the first paragraph of Article 2412 of the Italian Civil Code can be derogated from, but the maximum amount of the subordinated debt instruments, taking into account the amount of deferred coupons (recital (33)) as well as any other aid measure in the form of subordinated debt granted in the context of COVID-19[19], is the lower of:

– three times the amount of the capital increase referred to in recital (10); or

– 12.5% of the turnover for 2019.

(33) The applicable annual interest rates for the subordinated loans granted under the measure are made of:

– a base rate equal to the 1-year IBOR applicable as of 1 January 2020; plus

– a credit risk margin, according to a step-up approach (yearly premiums increase progressively with the increase of the duration), equal to: 175 basis points for the first year, 200 basis points for the years 2 and 3, and 250 basis points for the years 4 to 6.

(34) The coupons attached to the subordinated debt instruments are mandatory but can be deferred to maturity and capitalised over the life of the instrument. If the beneficiaries defer the payment of interest and the coupon is capitalised, this will be taken into account in determining the applicable ceilings under recital (32).

[19] Except for aid in the form of subordinated debt granted in compliance with section 3.1 of the Temporary Framework.

2.8. Cumulation

(35) The Italian authorities confirm that aid granted under the measures may be cumulated with aid under *de minimis* Regulations[20] or the the General Block Exemption Regulation ("GBER")[21], the Agricultural Block Exemption Regulation ("ABER")[22] and the Fisheries Block Exemption Regulation ("FIBER")[23], provided the provisions and cumulation rules of those Regulations are respected.

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

(37) The Italian authorities confirm that aid granted under the measures 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.

(38) The Italian authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measures in this decision or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in points 22(a) and 23(a) of that framework, shall be respected.

(39) The Italian authorities confirm that aid granted under section 3.2 of the Temporary Framework will not be cumulated with aid granted for the same underlying loan principal under section 3.3 of that framework and vice versa. Aid granted under section 3.2 and section 3.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) or in point 27(d) of the Temporary Framework.

(40) The Italian authorities confirm that a beneficiary may benefit in parallel from multiple schemes under section 3.3 provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 27(d) of the Temporary Framework.

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[20] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p.1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), 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) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

[21] 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.

[22] Commission Regulation (EU) No 702/2014 of 25 June 2014, OJ L 193, 1.7.2014, p. 1.

[23] Commission Regulation (EU) No 1388/2014 of 16 December 2014, OJ L 369, 24.12.2014, p. 37.

2.9. Monitoring and reporting

(41) The Italian 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 the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[24]).

3. ASSESSMENT

3.1. Lawfulness of the measures

(42) By notifying the measures before putting it into effect, the Italian authorities have respected their obligations under Article 108(3) TFEU. The Commission notes that Article 26 of the Decree Law entered into force on 19 May 2020 but its application and its implementation are conditional upon the approval of the Commission.

3.2. Existence of State aid

(43) 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.

(44) The measures are imputable to the State, since they are based on the legislative act mentioned in recital (6) and they are administered by Italian Ministry of Economy and Finance and by Invitalia or MCC, which are, respectively, a national agency owned and controlled by the Italian Ministry of Economy and Finance and a banking subsidiary of the former.

(45) The measures are financed through State resources, since they are financed by public funds. However regarding the Measure A, while the investee undertaking receives equity from third parties, only 20% of it can be associated with a tax credit for the investors that invest in those companies and thus is stemming from State resources.

(46) The measures confer an advantage on the beneficiary investee undertakings in the form of non-repayable subsidies linked to private equity investment backed up a tax credit to investors, tax credits to the investee companies and subordinated debt (recital (5)). The measures thus relieve the beneficiaries of costs that they would have had to bear under normal market conditions. In addition, under Measure A, the investors into the investee undertakings are entitled to receive the associated tax credit and benefit from it. The investors are instrumental to the measure as they provide the injection of equity into the investee undertakings.

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[24] 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 to Commission Regulation (EU) No 1388/2014. For repayable subordinated debt and other forms of aid, the nominal value of the underlying instrument will be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

(47) The advantage granted by the measures is selective, since they are awarded only to certain undertakings, i.e. SMEs facing a liquidity shortage and investors investing equity in those companies, as illustrated in recitals (10) to (12). While it is possible that not all investors will be undertakings,[25] it cannot be excluded that at some of the investors will be undertakings carrying out investments as a service for remuneration.

(48) The measures are liable to distort competition, since they strengthen the competitive position of their beneficiaries. They also affect trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(49) In view of the above, the Commission concludes that the measures constitute aid within the meaning of Article 107(1) TFEU. The Italian authorities do not contest that conclusion.

3.3. Compatibility

(50) Since the measures involve aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether those measures are compatible with the internal market.

(51) 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*".

(52) 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*".

(53) The Commission will hereinafter assess the measures in two parts. First, it will assess the aid to the investee undertakings under Measure A, Measure B and Measure C. It will then assess the aid to the investors under Measure A.

3.3.1. Aid to the investee undertakings under Measure A, Measure B and Measure C

(54) The measures aim at facilitating the access of undertakings to external capital financing at a time when the COVID-19 containment initiatives by Italy have an impact on the economic situation of undertakings, thereby threatening their viability. The Commission acknowledges that the normal functioning of capital markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

[25] Judgment of the Court of Justice of 10 January 2006, Cassa di Risparmio di Firenze SpA and Others, C-222/04, ECLI:EU:C:2006:8, paragraphs 107 to 118 and 125.

(55) The measures are part of a series of measures conceived at national level by the Italian authorities to remedy a serious disturbance in their economy. The importance of the measures to support the viability of the undertakings, therefore preserving employment and economic continuity, is widely accepted by economic commentators and the measures are of a scale, which can be reasonably anticipated to produce effects across the entire Italian economy.

(56) Furthermore, the measures have been designed to meet the requirements of specific categories of aid ("*Limited amount of aid in the form of equity*", "*Limited amount of aid in the form of tax credits*" and "*Aid in the form of subordinated debt*") described in sections 3.1 and 3.3 of the Temporary Framework.

(57) The Commission accordingly considers that the aid to the investee undertakings under Measure A, the aid under Measure B and that under Measure C are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meet all the conditions of the Temporary Framework, for the reasons set out immediately hereunder.

(58) Before the Commission examines the compliance with the requirements of the Temporary Framework of Measure A insofar as it concerns investee undertakings, it is necessary to set out why the amount of the advantage obtained by those beneficiaries is equal to the nominal amount of the tax credit obtained by private investors under Measure A. Under Measure A, the tax credit to private investors is aimed as a lever to inject capital in certain companies. The amount is calibrated in a way to incite the investors to make an investment in the company, which they would normally not make. However, while the company gets a support of 100%, only 20% can be associated to State resources, the remaining 80% are private funds. While it is true that in particular section 3.1 of the Temporary Framework is concerned with nominal amounts, this is always limited to the State measure (here the tax advantage, *cf.* point 22 of the Temporary Framework). A comparison can be made with an interest subsidy by the State, where it is that interest subsidy and not the entire loan provided by a third party that is considered as State aid. Finally, while it cannot be excluded that part of the advantage entailed by the tax credit is retained by the investor, the Commission concludes that the compatibility of the aid to the investee undertaking should be assessed on the maximum available amount of advantage, i.e. the entire tax credit. This is consistent with the assessment of other instruments, compatible under section 3.1 of the Temporary Framework, such as guarantees, whose aid amount is considered equivalent to the nominal amount of the guarantee, even if the actual use by the final beneficiary may eventually result in an advantage smaller than the nominal amount. On that basis, it is thus possible to look at compliance with the requirements of the Temporary Framework.

(59) In particular:

Measures A and B: subsidy to equity support and tax credit for SMEs (section 3.1 of the Temporary Framework)

- The aid to the investee undertakings under Measure A takes the form of a non-repayable subsidy linked to 20 % of an equity injection by third party investors (recitals (5) and (21)), while the aid under Measure B takes the form of a tax credit (recitals (5) and (23)); both measures must comply with the conditions laid down in section 3.1 of the Temporary Framework.

- The overall aid amount will not exceed EUR 800 000 per undertaking, except for undertakings active in the fishery and aquaculture sector and in the primary production of agricultural products; all figures used must be gross, that is, before any deduction of tax or other charges (recitals (16) and (24)). The measures therefore comply with point 22(a) of the Temporary Framework.

- The overall aid amount does not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products (recitals (16) and (24)). The measures therefore comply with point 23(a) of the Temporary Framework.

- Aid is granted under the measures on the basis of a scheme with an estimated budget (recital (7)). The measures therefore comply with point 22(b) of the Temporary Framework.

- Aid will not be granted to undertakings that were already in difficulty on 31 December 2019, unless they qualify as micro or small enterprises, provided they are not subject to collective insolvency procedure under national law and have not received rescue aid or restructuring aid (recitals(10) and (13)). Measures A and B therefore comply with point 22(c) of the Temporary Framework.

- As aid to the investee undertakings under Measure A is in the form of a subsidy granted upon the finalisation of a capital-increasing investment and because that capital increase has to take place before 31 December 2020, the aid to the investee undertaking is granted before 31 December 2020. As the aid under Measure B is in form of tax credits, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2020 (recital (8)). Both the measures therefore comply with point 22(d) of the Temporary Framework.

- Aid to undertakings active in the processing and marketing of agricultural products are excluded when the aid is conditional on being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers, or put on the market by such producers (recitals (22) and (27)). Measures A and B therefore comply with point 22(e) of the Temporary Framework.

- Aid to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products put on the market (recitals (22) and (27)). Measures A and B therefore comply with point 23(b) 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, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014 (recitals (22) and (27)). Measures A and B therefore comply 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 points 22(a) and 23(a) of the Temporary Framework, Italy 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 800 000 is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a) of the Temporary Framework, the overall maximum amount of EUR 120 000 is not exceeded per undertaking (recitals (22) and (27)). Measures A and B therefore comply with point 23bis of the Temporary Framework.

Measure C: Subordinated debt (section 3.3 of the Temporary Framework)

- Subordinated debt granted under the measure relates to investment and working capital needs (recital (29)). The measure therefore complies with point 27(f) of the Temporary Framework.

- The contracts are signed by 31 December 2020 at the latest and are limited to a maximum of 6 years (recitals (30) and (31)). The measure therefore complies with point 27(c) of the Temporary Framework.

- The maximum amount of the subordinated debt per beneficiary is limited to 12.5% of the beneficiary's total turnover in 2019 for SMEs and takes into account the amount of deferred coupons that are capitalised over the lifetime of the instrument (recital (32)). The measure therefore complies with point 27bis of the Temporary Framework.

- The applicable interest rates for subordinated debt granted under the measure are equal to the base rate (1 year IBOR or equivalent as published by the Commission)[26] applicable on 1 January 2020 and credit risk margins corresponding to the levels set out in point 27(a) of the Temporary Framework plus 150 basis points for SMEs (recital (33)). The measure therefore complies with point 27bis of the Temporary Framework.

- Undertakings already in difficulty on 31 December 2019 are excluded from benefitting from the measure (recital (12)). The measure therefore complies with point 27(g) of the Temporary Framework.

- The cumulation rules set out in point 26bis of the Temporary Framework are respected (recital (40)).

(60) The Italian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (41)). The Italian authorities further confirm that the aid under the measures 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 (recitals (35) to (40)).

(61) The Commission therefore considers that those measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of

[26] Base rates calculated in accordance with 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).

a Member State pursuant to Article 107(3)(b) TFEU since they meet all the relevant conditions of the Temporary Framework.

3.3.2. Aid to investors in form of a tax credit under Measure A

(62) In section 3.1 of the Temporary Framework, the Commission explains how it will assess aid in the form of limited amounts of aid taking the form of tax advantage (a notion which comprises tax credits). Points 21 to 23bis set out the compatibility criteria that the Commission will use to assess such tax credits.

(63) From the perspective of the investor, Measure A assessed in this Decision has many similarities with aid in the form of tax credits covered by section 3.1 of the Temporary Framework. The aid is granted in the form of a tax credit to undertakings that invest into eligible beneficiaries affected by the COVID-19 outbreak. However, point 21 of the Temporary Framework considers aid compatible only for "*undertakings that find themselves facing a sudden shortage or even unavailability of liquidity*", which is not necessarily the case for Measure A, which may also target investors that are not affected by the COVID-19 outbreak.

(64) Nevertheless, in view of the overall nature of the investment, the Commission considers that aid measure may be declared compatible with the internal market directly under Article 107(3)(b) TFEU with regard to the investors concerned by the tax credit. This is so because the latter is not provided for its own end, but merely in order to facilitate the private investment into the investee undertaking, whose resulting aid is compatible with the internal market under the Temporary Framework.

(65) As for any derogation from the prohibition on State aid enshrined in Article 107(1) TFEU, the compatibility exception pursuant to Article 107(3)(b) TFEU must be interpreted and applied restrictively. Such a strict application requires taking into account, in particular, the nature and the objective seriousness of the disturbance of the economy of the Member State concerned, on the one hand, and the appropriateness, necessity and proportionality of the aid to address it, on the other.

Appropriateness

(66) In order to be compatible, the aid has first to be appropriate to reach its objective, i.e. in this case to remedy a serious disturbance in the economy. This would not be the case if the disturbance would also disappear in the absence of the measure or if the measure is not appropriate to remedy the disturbance.

(67) As indicated above in recital (3), there exists a liquidity shortage due to the COVID 19 outbreak, which heavily impacts the viability of the undertakings. As a consequence the capital markets are currently malfunctioning, which results in a serious risks of capital constraints for companies and eventually a significant damage to the real economy of Italy.

(68) In such an environment, Measure A aims at incentivising private investments into companies severely affected by the COVID-19 outbreak, thereby maintaining access to capital and preventing mass insolvencies at a time when the normal functioning of capital markets is severely disturbed by the COVID-19 outbreak.

(69) The importance of the measure to stimulate investment by private investors to eligible undertakings during the COVID-19 outbreak is widely accepted by economic commentators and Measure A is of a scale which can be reasonably anticipated to produce effects across the entire Italian economy.

(70) Therefore, the Commission considers that the measure is appropriate, as it addresses the current malfunctioning of the capital markets with its associated imminent and serious risks of a significant further damage to the real economy of Italy.

Necessity

(71) Second, Measure A must in its amount and form, be necessary to achieve the objective. That implies that it must be of the minimum amount necessary to reach this objective.

(72) The Italian authorities have chosen to implement a scheme which gives a tax incentive to the investors not for its own benefit but for the benefit of third parties, i.e. companies that lack capital. The measure should incentivize the investors to carry out investment activities into eligible beneficiaries despite the negative consequences of the COVID-19 outbreak. Instead of the State providing directly aid to the investee companies, it has decided to provide 1/5 of the amount to third party investors, with the sole purpose of leveraging private investment. The measure thus maximises the impact of the State resources and provides a five-fold support to address the absence of capital injections into eligible beneficiaries affected by the COVID-19 outbreak.

(73) Given that the measure is not directed at the investors but at the investee undertakings and is therefore addressing solvent investors, the investor support itself is not conditional upon the investors itself being affected by the outbreak. Such conditionality, which is generally required by point 21 of the Temporary Framework for tax advantages, would have the adverse effect of targeting the aid to investors that may not be in a position themselves to provide capital to eligible beneficiaries in order to preserve their own viability and limit risk-taking behaviours. In turn, the flow of capital support to the real economy would likely be hampered significantly in absence of a broader investor base participating in the measure. Therefore, the Commission considers it is neither appropriate nor necessary to require the investors themselves to be affected by the COVID-19 outbreak. Instead, it considers the intermediation to be indispensable to carrying out a leveraged financing support, which is itself meeting the requirements of the Temporary Framework as indicated in section 3.3.1.

(74) In fact, the measure is directed at companies that have been severely affected by the outbreak and which (i) comply themselves with all the compatibility conditions set by section 3.1 of the Temporary Framework, (ii) have registered, due to the outbreak, an overall reduction of at least 33% in the turnover between March and April 2020 compared to the same period of the previous year and (iii) are in the process of executing a capital raise (recital (10)).

(75) Based on the above, the Commission concludes that the tax credit granted to the investors is necessary to provide a lever for investments in the companies affected by the COVID-19 outbreak and therefore contributes to the objective to remedy a disturbance in the Italian economy.

Proportionality

(76) The positive effects of the measure must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measure's objectives.

(77) The Commission notes that the Temporary Framework, although not directly applicable, can provide guidance to identify the relevant principles to assess the proportionality of the measure:

- First, it should be noted the aid is capped at the relevant ceilings provided in points 22(a) and 23(a) of the Temporary Framework, thus always remaining within the limits set by the latter.
- Second, the measure is limited in time and aid cannot be granted beyond 31 December 2020, thus always remaining within the limits set in point 22(d) of the Temporary Framework.
- Third, the measure is limited in scope as it does not apply to investors that were in difficulty, within the meaning of GBER, on 31 December 2019 (recital (13)(f)). The measure therefore respects the objective of point 22(c) of the Temporary Framework which aims at targeting the aid to viable undertakings.

(78) In addition, the measure provides additional constraints also in view of limiting the possible distortions of competition in particular with respect to the requirements to hold the acquired participations until 31 December 2023, as detailed in recital (recital (13)).

(79) The Commission accordingly considers that the aid to investors under Measure A is appropriate, necessary and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU.

(80) In context of the serious disturbance to the economies of all Member States caused by the on-going COVID-19 outbreak, the positive effects of the aid as a means to remedy that serious disturbance as it affects Italy outweighs the negative effects on trade and competition in the Union, for the reasons given in sections 1 and 2 of the Temporary Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid measures on the grounds that they are 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