EUROPEAN COMMISSION

Brussels, 28.9.2020
C(2020) 6755 final

PUBLIC VERSION

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Subject: **State Aid SA. 57717 (2020/N) – Italy**
COVID-19: State guarantee to support debt moratorium by banks to SME borrowers under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak – Amendment to the scheme SA.56690

Excellency,

1. PROCEDURE

(1) By electronic notification of 18 September 2020, Italy notified an amendment to the State aid scheme approved by Commission Decision of 25 March 2020 in case SA.56690 (2020/N)[1] ("the amendment", "the initial scheme" and "the initial decision" respectively) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak[2] ("the Temporary Framework").

(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

1 Commission Decision C(2020), JOCE C/144/2020

2 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. 1-9, 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. 1–9 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. 3–15, 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. 3–8.

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Article 3 of Regulation 1/1958,[3] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(3) The objective of the initial scheme was to ensure that sufficient liquidity remained available in the market to counter the damage inflicted upon those undertakings that have been impacted by the COVID-19 outbreak and to preserve the continuity of economic activity during and after such outbreak.

(4) The scheme is administrated by the publicly-owned and -controlled Central Guarantee Fund for SMEs[4] (the "Guarantee Fund").

(5) The main elements of the initial scheme, as described in details in recitals (12)-(20) of the initial decision, are:

(a) the legal obligation for all financial intermediaries located in Italy (the "Financial Intermediaries") to apply a moratorium (the "Moratorium") on certain credit facilities;

(b) a State guarantee (the "Guarantee"), extended by the Guarantee Fund and proportional in nature[5], on the exposures covered by the Moratorium ("Moratorium Exposures");

(6) The legal basis for the amended scheme consists of Articles 65 and 77(2) of Decree-Law 104/2020 of 14 August 2020.[6]

(7) The Italian authorities have introduced the following amendments:

(a) The Moratorium is extended, with its end date changed from 30 September 2020 to:

– 31 January 2021 for:

- companies active in any sector (including the tourism industry), concerning the credit facilities mentioned in recitals (13)(a) and (13)(b) of the initial decision;

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

[4] "Fondo di garanzia per le PMI", as established by Article 2(100) of the Italian Law n. 662 of 23 December 1996. This is the administrator of the measure, as described in recital (8) of the initial Decision.

[5] This implies that the State and the financial intermediary will sustain losses on Moratorium Exposures proportionally and under the same conditions.

[6] Decreto-Legge 14 agosto 2020, n. 104, *Misure urgenti per il sostegno e il rilancio dell'economia* (published in the *Gazzetta Ufficiale*, Serie Generale n. 203 of 14-08-2020 - Supplemento Ordinario n. 30)

- companies active in other sectors than the tourism industry, concerning the credit facilities mentioned in recital (13)(c) of the initial decision;

– 31 March 2021 for companies active in the tourism industry, concerning credit facilities mentioned in recital (13)(c) of the initial decision.

(b) Correspondingly, for a Financial Intermediary to be able to call on the Guarantee, that Financial Intermediary must have initiated recovery proceedings with regard to a Moratorium Exposure by:

– 31 July 2022 instead of 31 March 2022, concerning the credit facilities mentioned in recitals (13)(a) and (13)(b) and available to companies active in any sector (including the tourism industry), and concerning the credit facilities mentioned in recital (13)(c) of the initial decision and available to companies active in other sectors than the tourism industry;

– 30 September 2022 instead of 31 March 2022, concerning credit facilities mentioned in recital (13)(c) of the initial decision and available to companies active in the tourism industry.

(8) The extension of the Moratorium, and the related State guarantee, will be granted automatically for credit facilities that were already covered by the initial scheme. However, beneficiaries can opt out from the extension by 30 September 2020, informing the Financial Intermediaries. A company can also apply[7] for the Moratorium with regard to a credit facility not yet covered by the initial scheme, and have to do so by 31 December 2020 at the latest to activate the Moratorium on such a new eligible exposure. The State guarantee on the credit facility under the Moratorium is granted by the Guarantee Fund for SMEs, without further assessment (i.e. automatically), upon request of the Financial Intermediary. Italy submits that the State guarantee on Moratorium Exposures must be granted by 31 December 2020 at the latest.

(9) Italy estimates the State's maximum exposure stemming from the Guarantee to be ca. EUR 28 billion, calculated as 33% of the volume of the estimated Moratorium Exposures which in turn amount to EUR 85 billion.[8]

[7] As explained in recital (15) of the initial decision, companies have to do so based on a legal self-certification declaring that they have suffered a partial or total reduction in their business activity as a result of the COVID-19 outbreak.

[8] As explained in recital (16) of the initial decision, the Moratorium Exposures, covered by the State guarantee, consist of the additional use of the overdraft facilities, the principal and interest of the bullet loans, the instalments of the loans, mortgages or leasing exposures, subject to the Moratorium. Accordingly, the State guarantee does not cover the full nominal amount of all these facilities.

3. ASSESSMENT

3.1. Lawfulness of the measure

(10) By notifying the amendment to the initial scheme before putting it into effect, the Italian authorities have respected their obligations under Article 108(3) TFEU. The Commission notes that Decree-Law 104/2020 entered into force on 15 August 2020 but contains provisions that make the implementation of the measure conditional upon the approval of the Commission.

3.2. Existence of State aid

(11) 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.

(12) Recitals (25) to (30) of the initial decision establish that the initial scheme gives rise to the granting of State aid. The amendments introduced by the Italian authorities do not affect those findings, which are applicable also to these amendments. In particular, companies in difficulties (within the meaning of the applicable regulations as described in recital (12) of the initial decision) remain excluded from the scheme. Accordingly, the measure remains selective. Moreover, while the amendments allow a subset of financial intermediaries to become eligible for benefitting from the guarantees under Section 3.2 of the Temporary Framework, other financial intermediaries, notably credit institutions, remain excluded as final beneficiaries.

3.3. Compatibility

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

(14) 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*".

(15) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (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*".

(16) In recitals (31) to (42) of the initial decision, the Commission concluded that the initial scheme fulfilled the conditions set out in Sections 3.2 and 3.4 of the Temporary Framework.

(17) None of these amendments affect the compatibility assessment made under the initial decision. In particular:

- Regarding point 25(c) of the Temporary Framework, the Commission notes that – as stated in recital (8) above – the Guarantee must in any case be granted by 31 December 2020 at the latest, irrespective of the fact that the Moratorium will end on 31 January 2021 or 31 March 2021 (see recital (7)(a) of the present decision). The measure thus continues to comply with point 25(c) of the Temporary Framework.

- Regarding the maximum duration of the guarantee in accordance with point 25(f) of the Temporary Framework, the Commission notes that – as described in recital (7)(b) above – the amendment limits the duration of the Guarantee from its entry into force on 25 March 2020 up to 31 July 2022 or 30 September 2022, which corresponds to a maximum duration no longer than around two years and six months. This is because a Financial Intermediary may call on the Guarantee only after having initiated recovery proceedings within 18 months from the new end date of the Moratorium (i.e. 31 July 2022 or 30 September 2022) following the occurrence of a Credit Event (see recital (18) of the initial decision). The measure therefore complies with point 25(f) of the Temporary Framework.

(18) The Commission notes that the Guarantee on the exposures subject to the Moratorium which Italy imposed on its banks will remain free of charge, and recalls that it had already accepted this feature of the scheme in its initial decision (see recital (20) and the first bullet point of recital (37) of the initial decision). The Temporary Framework in its currently applicable amended version does not include the sentence which featured as the last sentence in point (31) of the Temporary Framework in its first version of 19 March 2020. The Commission considers that in the specific and unique circumstances of the Moratorium constructed and enacted by Italy, it is justified to exceptionally deviate from the currently applicable guidelines in light of the specific legally mandatory construction of the measure.

(19) The Commission therefore considers that the amended scheme 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

Martine DEPREZ
Director of the Registry
EUROPEAN COMMISSION