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PUBLIC VERSION

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**Subject: State Aid SA.59283 (2020/N) – Malta  
National Pig Welfare Scheme**

Excellency,

The European Commission ("the Commission") wishes to inform the Republic of Malta that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided not to raise any objections to the relevant scheme as it is compatible with the internal market pursuant Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

#### **1. PROCEDURE**

- (1) By letter of 30 October 2020, registered by the Commission on the same day, the Republic of Malta notified, according to Article 108(3) TFEU, the above mentioned aid scheme.
- (2) The Commission sent a request for additional information to the Maltese authorities on 21 December 2020 which the Maltese authorities answered by letter of 20 January 2021, registered by the Commission on the same day.

Hon. Evarist Bartolo  
Minister for Foreign and European Affairs  
Palazzo Parisio  
Merchants Street  
Valletta, VLT 1171  
Malta

## **2. DESCRIPTION**

### **2.1. Title**

- (3) National Pig Welfare Scheme.

### **2.2. Objective**

- (4) With the present notification, the Maltese authorities wish to encourage pig producers to undertake higher commitments in terms of animal welfare and will compensate them for additional costs resulting from such commitments.

### **2.3. Legal basis**

- (5) The legal basis comprises the following national acts:
- (a) Agriculture and Fishing Industries (Financial Assistance) Act (CAP 146 of the Laws of Malta);
  - (b) Guidelines for the National Pig Welfare Scheme.

### **2.4. Duration**

- (6) From the date of the notification of the Commission's decision until 31 December 2025.

### **2.5. Budget**

- (7) The overall budget is EUR 2 232 000. The annual budget is EUR 446 400. The granting authority is the Agriculture and Rural Payments Agency (ARPA).

### **2.6. Beneficiaries**

- (8) The beneficiaries are small and medium-sized enterprises that are swine producers registered in Malta and who fulfil the following conditions:
- (a) are active farmers in the meaning of Article 9 of Regulation (EU) No 1307/2013<sup>1</sup>;
  - (b) are registered in the IACS Farmer Registry;
  - (c) enter into a five year commitment. The applicant is required to submit an annual application claim each year of the commitment, until the commitment is complete. Should the applicant decide to stop the commitment, he/she will have to reimburse all the funds paid under the scheme.
- (9) The aid will not be granted to:

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<sup>1</sup> Regulation of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, OJ L 347, 20.12.2013, p. 608.

- (a) undertakings in difficulty within the meaning of point (35)(15) of the 2014 European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas<sup>2</sup> ("the Guidelines");
- (b) undertakings subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.

## **2.7. Aid instrument**

- (10) Direct grant.

## **2.8. Description of the aid scheme**

- (11) The scheme provides support to swine producers for undertaking higher commitments in terms of animal welfare and compensate them for additional costs resulting from such higher commitments.
- (12) The scheme is based on a multi-annual commitment for a period of five years, during which the farmers opting-in would ensure that the stocking density and space available for sows would meet dimensions going beyond the minimum animal welfare requirements. The amount of the aid is EUR 150/animal for sows and gilts; as the livestock co-efficient for breeding sows weighing fifty kilogrammes or more is 0.5, the maximum aid granted under the proposed scheme for one livestock unit would result in EUR 300. The Paying Agency will perform checks on all applications to ensure that these limits are respected. The maximum amount of aid permissible per farmer shall be the amount of eligible heads reared in reference year 2018 so as not to encourage beneficiaries to increase production. The aid is granted annually. No aid will be granted for transaction costs.
- (13) The scheme will grant aid to swine producers for increased sow spacing namely 10% additional area per animal over legal minimums. In Malta sows are normally kept in groups of 5 per pen and thus the minimum space requirement of 2.475 m<sup>2</sup> per sow is required. The beneficiaries of the scheme must provide an additional space of 10% or more for each sow, at least 2.73 m<sup>2</sup> of unobstructed area per sow. The statistical analysis submitted indicates that an increase in the area available would increase overhead costs by EUR 172.53 per sow, reflected directly in farm net income. This justifies the need for the aid scheme to compensate for the additional costs resulting from the commitment.
- (14) The Maltese authorities explained that the requirements under the planned scheme go beyond the current mandatory requirements established by Union and national legislation and in particular beyond the relevant requirements of Chapter I of Title VI of Regulation (EU) No 1306/2013<sup>3</sup>.

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<sup>2</sup> OJ C 204, 1.7.2014, p.1. Amended by the Notices published in OJ C 390, 24.11.2015, p. 4; OJ C 139, 20.4.2018, p. 3, OJ C 403, 9.11.2018, p. 10 and OJ C 424, 08.12.2020, p.30. and by the Corrigendum published in OJ C 265, 21.7.2016, p. 5.

<sup>3</sup> Regulation of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, OJ L 347, 20.12.2013, p. 549.

- (15) The aid is not part of the current Rural Development Programme (RDP) of Malta, however in line with Priority 3 of the RDP in section 5.2.3. setting out as main priorities the promotion of food chain organisation, including processing and marketing of agricultural products, animal welfare and risk management in agriculture.
- (16) The Maltese authorities explained that the notified aid does not have any impact on the environment and does not constitute a breach of applicable Union environmental protection legislation.
- (17) The aid cannot be cumulated with aid from other sources for the same eligible costs. Aid will only be granted for activities undertaken after an application containing data on the beneficiary, on the activity, on the commitment period and the eligible costs, together with all necessary documents, properly submitted to the competent authority and accepted by the latter.
- (18) Value added tax (VAT) will not be eligible for aid, except where it is not recoverable under national VAT legislation. The maximum aid amount is calculated by the granting authority when granting the aid and the eligible costs are supported by clear, specific and contemporary documentary evidence.
- (19) Malta has informed the Commission that in order to comply with the transparency requirement the publication of the aid scheme and the individual aid awards above EUR 60 000 will be done through the following web page: <https://eufunds.gov.mt/en/SAMB/Pages/SAMBHome.aspx>.
- (20) The Maltese authorities committed to adapt the notified scheme to the new rules applicable to State aid in the agricultural sector after the expiry of the current Guidelines.

### **3. ASSESSMENT**

#### **3.1. Existence of aid - Application of Article 107(1) TFEU**

- (21) According to Article 107(1) of the TFEU, "[s]ave as otherwise provided in the Treaties, any aid granted 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) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (23) The measure is imputable to the State, since it is administered by ARPA and it is based on legal acts (recitals (5) and (7)). It is financed through State resources, since it is financed by public funds (recital (7)).

- (24) The scheme in question confers an advantage on its recipients in the form of a direct grant (recital (10)). The measure thus confers on those beneficiaries an advantage that they would not have received under normal market conditions.
- (25) The scheme benefits only certain business sectors and certain undertakings (swine producers registered in Malta and who fulfil the conditions listed in recitals (8)-(9)). The scheme is selective because other undertakings in a comparable legal and factual situation, within the agriculture sector or other sectors, are not eligible for aid and thus will not receive the same advantage. The scheme therefore gives only certain undertakings a selective economic advantage, by strengthening their competitive position on the market. According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition.<sup>4</sup>
- (26) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade.<sup>5</sup> The beneficiaries of aid operate on a market where intra-EU trade takes place.<sup>6</sup> The sector concerned is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.
- (27) In light of the above, the conditions of Article 107(1) of the TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. Due to the fact that the notified measure is an act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner (recitals (5), (8)-(9)), the Commission considers that it is an aid scheme within the meaning of point 35(4) of the Guidelines. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.

### **3.2. Lawfulness of the aid – Application of Article 108(3) TFEU**

- (28) The aid scheme was notified to the Commission on 30 October 2020. It has not been implemented yet. Therefore, Malta has complied with its obligation under Article 108(3) TFEU.

### **3.3. Compatibility of the aid**

#### *3.3.1. Application of Article 107(3)(c) TFEU*

- (29) Under Article 107(3)(c), an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities

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<sup>4</sup> Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209.

<sup>5</sup> See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities*, ECLI:EU:C:1988:391.

<sup>6</sup> In 2019, the EU-intra trade in swine meat and live swine amounted to EUR 4 647 million for imports and EUR 1 492 million for exports, source: Eurostat.

or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

- (30) For this derogation to be applicable, the aid must comply with the relevant Union State aid rules.

### *3.3.2. Application of the Guidelines*

- (31) As regards the notified aid scheme, Part II, Section 1.1.5.2 "Aid for animal welfare commitments" of the Guidelines is applicable. Thus, the Commission will examine below whether the notified scheme complies with the common assessment principles of the Guidelines as well as the specific conditions in Part II, Section 1.1.5.2.

#### *Contribution to a common objective*

- (32) The notified aid scheme pursues rural development objectives as provided for in the RDP of Malta. As described in recital (15), the notified aid scheme can be regarded as fitting into and consistent with the RDP. The Commission thus considers that the conditions of point 47 of the Guidelines are met and that the scheme contributes to the objectives of rural development.
- (33) The Maltese authorities have provided information about the environmental impact of the scheme and have declared that the applicable legislation will not be infringed as required by point 52 of the Guidelines (recital (16)).

#### *Need for State intervention*

- (34) In accordance with point 55 of the Guidelines, the Commission considers that the market is not delivering the expected objectives without State intervention concerning the aid measures fulfilling the specific conditions laid down in Part II of the Guidelines. Therefore, such aid should be considered necessary to achieve the objectives of common interest specified under Section 3.1. of Part I of the Guidelines. The current aid scheme fulfils the specific conditions laid down in Part II, Section 1.1.5.2 of the Guidelines, as described in recitals (42)-(48) below, and therefore point 55 of the Guidelines is complied with.

#### *Appropriateness of aid*

- (35) Since the notified scheme fulfils the specific conditions laid down in Part II, Section 1.1.5.2 of the Guidelines (see recitals (42)-(48) below), the Commission considers, in line with point 57 of the Guidelines that the aid is an appropriate policy instrument.
- (36) The aid is a direct grant (recital (10)) chosen by Malta as aid instrument. That instrument is provided for in Section 1.1.5.2. of the Guidelines (point 237 of the Guidelines). Therefore the premium is an appropriate aid instrument by virtue of point 60 of the Guidelines.

#### *Incentive effect and need for aid*

- (37) As described in recital (17) above, the aid will be granted only for commitments that start after the submission of the application, which contains data on the beneficiary, the activity, the eligible area and the commitments. Therefore, the

incentive effect requirements under points 70 and 71 of the Guidelines are complied with.

#### *Proportionality of the aid and cumulation*

- (38) Points 82 and 84 of the Guidelines stipulate that if the aid amount does not exceed the eligible costs and if the aid intensity respects the ceilings set out in Part II of the Guidelines, the aid is deemed to be proportionate. The current scheme fulfils the specific conditions regarding the eligible costs and the aid intensity laid down in Section 1.1.5.2 of Part II of the Guidelines (recital (48)) and therefore the provisions of points 82 and 84 thereof are complied with. With regard to point 85 of the Guidelines, the maximum aid amount is calculated by the granting authority when granting the aid and the eligible costs are supported by clear, specific and contemporary documentary evidence (recital (17)).
- (39) VAT is not eligible for aid, except where it is not recoverable under national legislation (recital (18)) which is in line with point 86 of the Guidelines. In addition, as aid under the notified scheme cannot be cumulated with aid from other sources to cover the same eligible costs (recital (17)**Error! Reference source not found.**), points 100 and 104 of the Guidelines are not relevant. On this basis, the criterion of proportionality is fulfilled.

#### *Avoidance of undue negative effects on competition and trade*

- (40) According to point 113 of the Guidelines, the Commission considers that, where an aid fulfils the conditions laid down in the applicable Sections of Part II of the Guidelines, the negative effect on competition and trade is limited to the minimum. The aid scheme fulfils the conditions laid down in Part II, Section 1.1.5.2 of the Guidelines, as described in recitals (42)-(48) below, and therefore point 113 of the Guidelines is complied with.

#### *Transparency*

- (41) The transparency requirement of point 128 of the Guidelines is complied with, as shown in recital (19).

##### 3.3.2.1. Specific assessment according to the category of aid

- (42) According to point 232 of the Guidelines, animal welfare payments must be granted to undertakings active in the primary agricultural production which undertake, on a voluntary basis, to carry out operations consisting of one or more animal welfare commitments and which are active farmers. These requirements are fulfilled as the beneficiaries are registered agricultural producers breeding pigs and are active farmers (see recital (8)).
- (43) According to point 233 of the Guidelines, the aid covers only those commitments going beyond the relevant mandatory standards. The Maltese authorities have identified the relevant mandatory standards (see recital (14)) and explained how the voluntary commitments go beyond them (see recital (14)). Therefore, the provisions of point 233 of the Guidelines are fulfilled.
- (44) According to point 234 of the Guidelines, the animal welfare commitments eligible for aid must provide upgraded standards of production methods in one of

the areas listed there. The animal welfare commitments under the notified scheme provide upgraded standards in the area listed in letter (b) of point 234 of the Guidelines, namely housing conditions, such as increased space allowances, flooring surfaces, enrichment materials, natural light (see recital (13)(12)). Therefore, the provisions of point 234 of the Guidelines are fulfilled.

- (45) According to point 235 of the Guidelines, the animal welfare commitments must be undertaken for a renewable period of one to seven years. The commitment period under the current notified scheme is five years (see recital (8)(c) and recital (12)) and therefore this requirement is fulfilled.
- (46) According to point 237 of the Guidelines, the aid must be granted annually and may compensate undertakings active in primary agricultural production for all or part of the additional costs and income foregone resulting from the commitment made by them. These provisions are complied with as shown in recital (13).
- (47) As no aid for transaction costs are foreseen (see recital (12)), points 238 and 239 of the Guidelines are not relevant.
- (48) The aid amounts (see recital (12)) are set below the maximum level provided for in point 240 of the Guidelines which is 500 EUR per livestock unit.

### *3.3.3. Other considerations*

- (49) The Commission takes note that aid will not be granted to undertakings in difficulty nor to undertakings having at their disposal an earlier unlawful aid that was declared incompatible by a Commission decision (recital (9)), in compliance, respectively, with point 26 and point 27 of the Guidelines.
- (50) Pursuant to point 719 of the Guidelines, the Commission only authorizes schemes of limited duration. Aid schemes other than those benefiting from co-financing under Regulation (EU) No 1305/2013<sup>7</sup> and its implementing regulation should not apply for more than seven years. It follows from recital (6) that this requirement is met.
- (51) The Maltese authorities took a commitment to adapt the legal basis to the provisions applicable after the expiry of the current Guidelines (see recital (20)).

## **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)(c) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of

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<sup>7</sup> Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, OJ L 347, 20.12.2013, p. 487.



the letter in the authentic language on the Internet site:  
<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President