EUROPEAN COMMISSION

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Subject: State Aid SA.59509 (2020/N) – Italy
COVID-19: Support measures for undertakings carrying out activities in the agricultural, forestry, fishery and aquaculture sectors and the activities related thereto, in relation with the COVID-19 outbreak crisis

Excellency,

1. PROCEDURE

(1) By electronic notification of 12 November 2020, supplemented by additional information sent by letters of 20 November 2020 and 2 December 2020, Italy notified an amendment to the State aid scheme SA.57947 (2020/N) ("the existing aid scheme") approved by Commission Decision C(2020) 4977 final of 15 July 2020 ("the initial decision") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended on 3 April, 8 May and 29 June 2020 ("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

[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. 1-9, 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, 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 Third 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.

Onorevole Luigi Di Maio
Ministro degli Affari esteri e della Cooperazione Internazionale
P.le della Farnesina 1
I - 00194 Roma

Article 3 of Regulation 1/1958[2] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(3) By this notification, the Italian authorities wish to amend the existing aid scheme to adapt it to the fourth amendment to the temporary Framework[3] and to provide for a budget increase.

(4) As concerns the adaptation the fourth amendment to the temporary Framework, Italy wishes to widen the scope of the existing aid scheme, which was based on section 3.1, to include the aid in the form of support for uncovered fixed costs provided for in section 3.12 and to prolong the duration of the existing aid scheme.

(5) The amendment provides also for an increase of the initial budget by EUR 300 million.

(6) All the other conditions of the existing aid scheme remain unchanged and as described in the initial decision.

2.1. Legal basis

(7) The legal basis for the measure is the new draft decree of the Ministry for agricultural, food and forestry policies concerning measures to support undertakings active in the agricultural, forestry, fishery and aquaculture sectors and performing activities related to the agricultural, forestry, fishery and aquaculture sectors in relation to the Covid-19 outbreak crisis *("Decreto del Ministro delle politiche agricole alimentari e forestali concernente le misure a sostegno delle imprese attive nei settori agricolo e forestale, nei settori della pesca e acquacoltura e nelle attività connesse ai settori agricolo e forestale, ai settori della pesca e acquacoltura in relazione all'emergenza epidemiologica da Covid-19")* which repeals the decree of the Ministry for agricultural, food and forestry policies n. 9053186 of 13 August 2020.

2.2. Budget and duration of the measure

(8) The Italian authorities will amend the estimated overall budget from EUR 1.2 billion to EUR 1.5 billion.

(9) Aid may be granted under the notified measure until 30 June 2021.

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

[3] and by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

2.3. Beneficiaries

(10) The final beneficiaries of the scheme are undertakings of all size active in Italy. Financial institutions are excluded as eligible final beneficiaries.

(11) Aid may not be granted under the measure to medium[4] and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[5], of the Agricultural Block Exemption Regulation ("ABER")[6] and the Fishery Block Exemption Regulation ("FIBER")[7] on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER, the ABER and the FIBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid[8] or restructuring aid[9].

2.4. Basic elements of the measure

(12) The notified scheme provides aid to the eligible beneficiaries under Section 3.12 of the Temporary Framework.

(13) Aid will be granted to undertakings that suffer a decline in turnover of at least 30% between 1 March 2020 and 30 June 2021 (the eligible period) compared to the same period in 2019[10].

(14) The eligible costs are the uncovered fixed costs incurred during the eligible period, in so far as those costs are not covered by profit contribution or by other sources. They include profit losses[11] and loss statements during the eligible period.

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[4] 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.

[5] As defined in Article 2(18) of 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 Article 3(5) of 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, OJ L 369, 24.12.2014, p. 37.

[6] As defined in Article 2(14) of the Commission Regulation (EU) 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, OJ L 193 of 1.7.2014, p.1.

[7] As defined in Article 3(5) of the 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, OJ L 369 of 24 December 2014, p. 37.

[8] 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.

[9] 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.

[10] The reference period is a period in 2019 irrespective of whether the eligible period is in 2020 or in 2021.

[11] With the exclusion of one-off impairment losses.

(15) The aid under the notified scheme may be granted also on the basis of forecasted losses. In this case, the final amount of aid shall be determined on the losses actually incurred and justified on the basis of audited accounts or, in case those are missing, on the basis of tax accounts. The Italian authorities explained that tax accounts are considered as acceptable if certified accounts are missing due to the special tax regime to which agricultural undertakings are subject. Any aid exceeding the final amount of the aid will be recovered.

(16) The aid intensity will not exceed 70% of the uncovered fixed costs, except for micro and small companies (within the meaning of the GBER, the ABER and the FIBER", for which the aid intensity can be up to 90% of the uncovered fixed costs.

(17) The aid will be granted in the form of direct grants, guarantees and loans, reduction or cancellation of the payment of social security and welfare contributions and of outstanding debts with the public administration. In any event, the overall aid shall not exceed EUR 3 million per undertaking provided the total nominal value of such measures remains below the overall cap of EUR 3 million per undertaking; all figures used will be gross.

(18) Aid for uncovered fixed costs that is granted in the form of guarantees and loan falls within the framework of the approved schemes SA.57068 (2020/N)[12], SA.57185 (2020/N)[13], SA.56963 (2020/N)[14] and SA.56966 (2020/N)[15], which imply that aid is granted through either credit institutions or other financial institutions authorised to operate in Italy. For this purpose, the safeguards to ensure that the aid channelled through credit institutions or other financial institutions reaches the undertakings contained in the schemes mentioned above[16] will be applicable to the notified scheme.

2.5. Cumulation

(19) The Italian 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 3.12 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 87(d) of that framework, will be respected.

[12] Case SA.57068 (2020/N) "Loan guarantees and grants under the ISMEA Guarantee Fund according to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak", approved by Decision C(2020) 2621 final of 21.4.2020, as subsequently modified.

[13] Case SA.57185 (2020/N) "COVID-19: Loans provided by ISMEA in favour of undertakings of the agricultural and fishery sector affected by the COVID-19 outbreak", approved by Decision C(2020) 2999 final of 4.5.2020, as subsequently modified

[14] Case SA.56963 (2020/N), "Guarantee scheme under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak", approved by Decision C(2020) 2371 final of 13.4.2020.

[15] Case SA.56966 (2020/N) "COVID-19: Loan guarantee schemes under the Fondo di garanzia per le PMI" approved by Decision C(2020) 2370 final of 13.4.2020, as subsequently modified.

[16] See recital (20) of Decision C(2020) 2621 final of 21.4.2020, recital (19) of Decision C(2020) 2371 final of 13.4.2020 and recital (19) of Decision C(2020) 2370 final of 13.4.2020

(20) The Italian authorities confirm that aid granted under the measure shall not be cumulated with other aid for the same eligible costs.

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

(22) 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.

(23) Recitals (27) to (32) of the initial decision establish that the existing measure constitutes State aid. The amendments introduced by the Italian authorities do not affect those findings, which are applicable also to these amendments, including the new type of measure described in recitals (12) to (18) above.

3.3. Compatibility

(24) 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.

(25) 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*".

(26) 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*".

(27) In the initial decision, the Commission concluded that the existing aid scheme was compliant with the compatibility conditions set out by the Temporary Framework.

(28) With regard to the newly notified aid in the form of support for uncovered fixed costs described above, the Commission considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of Italy and meets all the relevant conditions of the Temporary Framework. In particular: the elements of the notified measure described in recitals (12) to (20)

above meet all the applicable conditions provided for by Section 3.12 of the Temporary Framework

- Aid is granted under the measure no later than 30 June 2021 and covers uncovered fixed costs incurred during the period between 1 March 2020 to 30 June 2021 (recital (14)). The measure therefore complies with point 87(a) of the Temporary Framework;

- Aid is granted under the measure on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019 (recital (13)). The measure therefore complies with point 87(b) of the Temporary Framework;

- Uncovered fixed costs are defined under the measure in accordance with point 87(c) of the Temporary Framework (recital (14)) and the aid intensity will not exceed 70% of the uncovered fixed costs, except for micro and small companies, where the aid intensity will not exceed 90% of the uncovered fixed costs (recital (16)). The losses of undertakings from their profit and loss statements during the eligible period[17] are considered to constitute uncovered fixed costs. The aid under this measure may be granted based on forecasted losses, while the final amount of aid will be determined after realisation of the losses on the basis of audited accounts or, if missing, on the basis of tax accounts. The use of tax accounts for the agricultural undertakings is justified given the special simplified tax regime to which agricultural undertakings are subject in Italy that does not require the certification of accounts (recital (15)). Any payment exceeding the final amount of the aid must be recovered (recital (15)). The measure therefore complies with point 87(c) of the Temporary Framework;

- The aid takes the form of direct grants, guarantees and loan, reduction or cancellation of the payment of social security and welfare contributions and of outstanding debts with the public administration. The overall nominal value of direct grants, guarantees and loan, reduction or cancellation of the payment of social security and welfare contributions and of outstanding debts with the public administration will not exceed EUR 3 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (17)). The measure therefore complies with point 87(d) of the Temporary Framework;

- aid granted under the measure may not be cumulated with other aid for the same eligible costs. The measure therefore complies with point 87(e) 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 be granted to micro and small enterprises (within the meaning of Annex I of the GBER, ABER and FIBER) that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they

[17] One-off impairment losses are not included in the calculation of the losses.

have not received rescue aid[18] or restructuring aid[19] (recital (11)). The measure therefore complies with point 87(f) of the Temporary Framework;

- As aid for uncovered fixed costs granted in the form of guarantees and loan will be granted in the framework of the approved schemes SA.57068 (2020/N), SA.57185 (2020/N), SA.56963 (2020/N) and SA.56966 (2020/N), the same safeguards established therein to ensure that credit institutions or other financial institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries are applicable. Thus reference is made to the evaluation of the compatibility with the applicable conditions of section 3.4 of the Temporary Framework described in the four above mentioned approved schemes[20]. The measure therefore complies with points 28 to 31 of the Temporary Framework.

(29) The Italian authorities further confirm that the aid under the measure may only be cumulated with other aid under the measure or aid under other measures approved by the Commission under section 3.12 provided the overall maximum cap per undertaking, as set out in point 87(d) of the Temporary Framework is respected (recital (19)).

(30) 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. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND REGULATION (EU) 806/2014

(31) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (**"**BRRD**"**)[21] and of Regulation (EU) 806/2014 on the Single Resolution Mechanism (**"**SRMR**"**),[22] in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of the BRRD and the SRMR.

(32) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[23] Nevertheless, any such indirect aid granted under the

[18] 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.

[19] 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.

[20] Recital (48) of Decision C(2020) 2621 final of 21.4.2021, recital (37), 8th bullet, of decision C(2020) 2371 final of 13.4.2020 and recital (46) of decision C(2020) 2370 final of 13.4.2020.

[21] OJ L 173, 12.6.2014, p. 190.

[22] OJ L 225, 30.7.2014, p. 1.

[23] Points 6 and 29 of the Temporary Framework.

measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Article 2(1)(28) BRRD and Article 3(1)(29 SRMR.

(33) Moreover, as indicated in recital (28) above, the measure applies safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

(34) The Commission therefore concludes that the measure does not violate any intrinsically linked provisions of the BRRD and the SRMR.

5. CONCLUSION

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