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SENSITIVE*: *COMP Operations*

**Subject: State Aid SA.64217 (2021/N) – Italy
COVID-19: Subsidised loans for large enterprises in temporary
difficulty**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 22 July 2021, amended on 30 July and 3 August 2021, Italy notified aid in the form of loans with subsidised interest rates (Fund for the business continuity for large enterprises in temporary difficulty, the “measure”) 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 1/1958² 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 (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

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

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2. DESCRIPTION OF THE MEASURE

- (3) Italy considers that the COVID-19 pandemic affects the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the pandemic, to ensure that the disruptions caused by the pandemic do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the pandemic.
- (4) Italian authorities report findings of the Italian National Institute of Statistics that the Italian GDP in 2020 decreased by 8.9% due to the COVID-19 pandemic, and that the economic crisis has an impact on all undertakings independent of their size. In all macro-sectors the share of undertakings with a sharp decline in turnover, as well as that of undertakings at operational risk, tends to fall as the undertakings' size increases. In this context, even large undertakings are therefore also affected by the crisis, albeit by a smaller percentage than smaller undertakings: between 10 and 15% of medium- and large-sized undertakings reported serious operational risks. Among large industrial undertakings, this figure stands at 8% of the total.
- (5) Italy confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (6) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.3 of the Temporary Framework.

2.1. The nature and form of aid

- (7) The measure provides aid in the form of loans with subsidised interest rates.

2.2. Legal basis

- (8) The legal basis for the measure is Article 37, entitled "Support for large enterprises", of Decree-Law No 41 of 22 March 2021 containing urgent measures to support businesses and economic operators, workers, health and local services related to the COVID-19 emergency, converted, with amendments, into Law No 69 of 21 May 2021 (so called "Sostegni"-Decree), as further defined by Article 24, comma No 1, entitled "Refinancing of the Fund to support large enterprises", of Decree-Law No 73 of 25 May 2021 containing urgent measures related to the emergency from COVID-19, for businesses, work, young people, health and local services (so called "Sostegni-bis"-Decree).
- (9) The implementing provision is the Decree of the Minister for Economic Development, in agreement with the Minister for Economic Affairs and Finance, of 5 July 2021.³

³ This decree cannot be put into effect until the measure is notified and approved by the Commission (recital (31)).

2.3. Administration of the measure

- (10) The granting authority is the Ministry of Economic Development, Directorate General for Business Incentives. The measure provides the possibility for other authorities or bodies to contribute with their own resources (recital (20)). The competent authority to manage the measure is the National Agency for Inward Investment and Economic Development S.p.A. (“Invitalia” or the “managing entity”).

2.4. Budget and duration of the measure

- (11) The financial endowment of the measure is EUR 450 million, of which EUR 400 million will be financed directly by the Ministry of Economic Development and an estimate of EUR 50 million possibly co-financed by other authorities or bodies (recital (20)).
- (12) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure until no later than 31 December 2021.

2.5. Beneficiaries

- (13) The final beneficiaries of the measure are large enterprises⁴ which:⁵
- (a) are in a situation of temporary financial difficulty in connection with the economic crisis linked to the COVID-19 pandemic;
 - (b) present prospects for the resumption of activity (assessed as set out in recital (24)); and
 - (c) have their registered office and their place of business in Italy.
- (14) An enterprise is considered⁶ in a situation of temporary financial difficulty where either: (i) it has prospective cash flows that are inadequate to meet its planned obligations on a regular basis; or (ii) is in difficulty.⁷ The former case will be

⁴ See Article 2(24) and 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 (“GBER”); Article 2(26) and Annex I to 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, 1.7.2014, p. 1 (“ABER”) and Annex I to 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 (“FIBER”).

⁵ See Article 5(1) and (3) of the Decree of the Minister for Economic Development of 5 July 2021.

⁶ The situation of temporary financial difficulty is assessed at the date of submission of the application for access to the measure. See Article 5(1) of the Decree of the Minister for Economic Development of 5 July 2021.

⁷ As defined in Article 2(18) of the GBER, Article 2(14) of the ABER and Article 3(5) of the FIBER.

assessed at the entity level, whereas the latter case will be assessed at the consolidated or group level.

- (15) In any event, the following enterprises will not be beneficiaries of the measure: (i) large enterprises that were already in difficulty on 31 December 2019;⁸ and (ii) financial and insurance institutions.⁹
- (16) Aid is granted under the measure directly to the beneficiaries.

2.6. Sectoral and regional scope of the measure

- (17) The measure is open to all sectors except the financial and insurance sectors and it applies to the whole territory of Italy.

2.7. Basic elements of the measure

2.7.1. Nature of the instrument

- (18) The measure provides for financing in the form of loans with subsidised interest rates relating to investment and/or working capital needs with a maximum duration of five years and to be granted by 31 December 2021 at the latest.

2.7.2. Maximum amount of the loan

- (19) The overall amount of the loans per beneficiary will not exceed:
- (a) double the annual wage bill (including social charges as well as the cost of personnel working on the undertaking's site but formally in the payroll of subcontractors) of the beneficiary for 2019 or for the last year available. In the case of undertakings established on or after 1 January 2019, the maximum loan may not exceed the estimated annual wage bill for the first two years of operation; or
 - (b) 25 % of the beneficiary's total turnover in 2019.
- (20) For each beneficiary, the total amount of financing granted directly by the Ministry of Economic Development may not exceed EUR 30 million. Such amount can be increased if the region concerned by the plan (recital (23)) or other authorities or bodies participate with their own resources. In any event, the maximum amount of aid per each beneficiary cannot exceed the limits specified in the preceding recital.¹⁰
- (21) If the beneficiary belongs to a group, the limit in recital (19) applies in respect of the whole group.

⁸ See footnote 5.

⁹ See Article 5(4) of the Decree of the Minister for Economic Development of 5 July 2021.

¹⁰ See Article 7 of the Decree of the Minister for Economic Development of 5 July 2021.

2.7.3. Remuneration of the loans

- (22) The loans under the measure are granted at reduced interest rates which are at least equal to the base rate (1-year IBOR or equivalent as published by the European Commission) applicable at the time of notification plus the credit risk margins as set-out in below¹¹:

| Type of recipient | Credit risk margin for 1st year | Credit risk margin 2nd and 3rd year | Credit risk margin 4th and 5th year |
|-------------------|---------------------------------|-------------------------------------|-------------------------------------|
| Large enterprises | 50bps | 100bps | 200bps |

2.7.4. Additional provisions

- (23) The eligible beneficiaries are requested to submit¹² a realistic and credible plan that contains detailed information on:¹³
- (a) the corporate structure of the applicant beneficiary, with particular reference to its entrepreneurial skills;
 - (b) the situation of temporary financial difficulty (recital (14)), with an indication of its causes linked to or aggravated by the economic crisis caused by the spread of the COVID-19 pandemic;
 - (c) the actions to be put in place to support the recovery or continuity of the business activity in order to restore viability in the medium term and allow repayment of the financing at maturity; and
 - (d) the needs and timing of the implementation of these actions, with a specific indication of the purposes for which the financing is used, linked to investments and/or working capital requirements.
- (24) The granting of the loan is subject to the assessment by the managing entity, which will evaluate:¹⁴
- (a) the prospects for the continuation of the activity, assessed by reference both to the skills and competences of the applicant and to the market in which it operates;
 - (b) the capacity of the actions identified in the plan to pursue business continuity and the restoration of profitability in the medium term;

¹¹ The minimum all in interest rate (base rate plus the credit risk margins) should be at least 10bps per year.

¹² The plan is to accompany the application for access to the measure. See Article 8(1) of the Decree of the Minister for Economic Development of 5 July 2021.

¹³ See Article 6 of the Decree of the Minister for Economic Development of 5 July 2021.

¹⁴ See Article 9(2) of the Decree of the Minister for Economic Development of 5 July 2021.

- (c) the adequacy of the applicant's forward-looking cash flows in relation to the financial commitments entered into by the applicant, including the financing required;
- (d) the consistency of the proposed plan with those submitted or approved in relation to any insolvency procedure to which the applicant is subject.

2.8. Cumulation

- (25) The Italian authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations¹⁵ the GBER, ABER and FIBER provided the provisions and cumulation rules of those Regulations are respected.
- (26) The Italian authorities confirm that aid granted to the primary agriculture and to the fisheries sectors under the measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (27) The Italian authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (28) 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*.¹⁶ 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.
- (29) 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. Aid granted under the measure and/or other measures approved by the Commission under section 3.3 of the Temporary Framework which has been reimbursed before 31 December 2021 shall not be taken into account in determining whether the relevant ceiling is exceeded.

¹⁵ 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, 26.4.2012, p. 8).

¹⁶ See Article 10 of the Decree of the Minister for Economic Development of 5 July 2021.

2.9. Monitoring and reporting

- (30) 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 each individual aid above EUR 100 000 granted under the measure and EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting.¹⁷

3. ASSESSMENT

3.1. Lawfulness of the measure

- (31) By notifying the measure before putting it into effect, the Italian authorities have respected their obligations under Article 108(3) TFEU (See also recital (9)).¹⁸

3.2. Existence of State aid

- (32) 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.
- (33) The measure is imputable to the State, since the granting authority is the Ministry of Economic Development (recital (10)).¹⁹ The legal basis of the measure is a Decree-Law of the State and its implementing provision is a Decree of the Minister for Economic Development (recitals (8) and (9)). The measure is financed through State resources, since it is financed by public funds (recitals (10) and (20)).
- (34) The measure confers an advantage on its beneficiaries in the form of loans with subsidised interest rates (recital (18)). The measure thus relieves those beneficiaries of costs that they would have had to bear under normal market conditions.
- (35) The advantage granted by the measure is selective, since it is awarded only to large enterprises meeting the conditions described in recitals (13) to (15), excluding the financial and insurance sectors.

¹⁷ Referring to information required in Annex III to the GBER, Annex III to the ABER and Annex III to the FIBER. For loans the nominal value of the underlying instrument shall be inserted per beneficiary.

¹⁸ See Article 2(2) of the Decree of the Minister for Economic Development of 5 July 2021, which clarifies that the decree cannot be put into effect until the measure is notified and approved by the Commission.

¹⁹ See Article 3 of the Decree of the Minister for Economic Development of 5 July 2021.

- (36) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (37) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Italian authorities do not contest that conclusion.

3.3. Compatibility

- (38) 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.
- (39) 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*”.
- (40) 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*”.
- (41) At a time when the normal functioning of markets is still severely disturbed by the COVID-19 pandemic, the measure aims at supporting large enterprises that are in a situation of temporary financial difficulty due to the economic crisis in Italy related to the COVID-19 pandemic and that have prospects of resumption of activity. The intervention is implemented through the granting of a loan with subsidised rates, aimed at supporting the recovery or continuity of the activity, to be ensured exclusively within the framework of realistic and credible plans to relaunch the enterprise (see recitals (23) and (24)).
- (42) The measure is one 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 measure to preserve employment and economic continuity is widely accepted by economic commentators and the measure is of a scale that can be reasonably anticipated to produce effects across the entire Italian economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Aid in the form of subsidised interest rates for loans*”) described in section 3.3 of the Temporary Framework.
- (43) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:
 - (a) The applicable interest rates for loans granted under the measure are equal to the base rate (one year IBOR or equivalent as published by the

Commission)²⁰ available at the moment of notification plus a credit risk margin of 50bps for the first year, 100bps for the second and third year and 200bps for the fourth and fifth year for large enterprises²¹ (recital (22)). The measure therefore complies with point 27(a) of the Temporary Framework.

- (b) The loan contracts are signed by 31 December 2021 at the latest and are limited to a maximum of five years (recital (18)). The measure therefore complies with point 27(c) of the Temporary Framework.
 - (c) The maximum loan amount per beneficiary is limited in line with point 27(d) of the Temporary Framework (recitals (19) to (21)).
 - (d) Loans granted under the measure relate to investment and working capital needs (recitals (18) and (23)(d)). The measure therefore complies with point 27(f) of the Temporary Framework.
 - (e) Aid may not be granted under the measure to large enterprises that were already in difficulty on 31 December 2019 (recital (15)). The measure therefore complies with point 27(g) of the Temporary Framework.
 - (f) The cumulation rules set out in point 26bis of the Temporary Framework are respected (recitals (28) to (29)).
- (44) The Italian authorities confirm that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (5)).
- (45) The Italian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (30)). The Italian authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recitals (25) to (29)).

²⁰ Base rates calculated in accordance with the Commission's Communication on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

²¹ The minimum all in interest rate (base rate plus the credit risk margins) should be at least 10bps per year.

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

