EUROPEAN COMMISSION

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SENSITIVE[*]: *COMP Operations*

Subject: State Aid SA.102137 (2022/N) – Italy
COVID-19: Additional tax concession for the tourism and spa sectors

Excellency,

1. PROCEDURE

(1) By electronic notification of 1 March 2022, Italy notified aid in the form of limited amounts of aid ("*Additional tax concession for the tourism and spa sector*", hereinafter referred to as "the measure") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework").[1] On 10 and 31 March 2022, the Commission services requested further clarifications from the Italian authorities, which they provided on 16 March and 5 April 2022.

(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

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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), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

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

2. DESCRIPTION OF THE MEASURE

(3) Italy considers that the COVID-19 pandemic affects the real economy. The Italian authorities submit that Italy was the very first Member State of the European Union to be affected by the COVID-19 pandemic and to declare, with a resolution of the Council of Ministers of 31 January 2020, a state of emergency. Since the declaration of the state of emergency, various decrees have been enacted, which have entailed, among other things, restrictions on people's mobility, gatherings, transport of passengers and the organization of events.

(4) In particular, the Italian authorities stress that amongst the various restrictive measures, Decree-Law No 6 of 23 February 2020, concerning "*urgent measures for the containment and management of the epidemiological emergency presented by COVID-19*", granted the competent authorities the power to ban inbound and outbound travel to or from a municipality or area where at least one person was tested positive to the COVID-19 coronavirus, to suspend demonstrations, events, private and public meetings, the closure of museums and art galleries and more. After the adoption of Decree-Law No 6 of 23 February 2020, which was followed by other restrictive measures, a long period of lockdown entered into force and a long period of limitations and suspensions of activities took place Italy.

(5) In particular, Italy explains that the COVID-19 pandemic has had a negative impact on the tourism sector. Italy submits that in 2020 tourism generated 4.1% of the country's GDP, which is a decrease from 13% in 2019. Italy also submits that in 2020, due to the COVID-19 pandemic and the containment measures taken by the Italian authorities, the sector saw a drastic drop in tourist inflow. Inbound tourism saw the number of tourists drop by 54.6% compared to 2019 and suffered a loss of about EUR 35 billion in revenues compared to the previous year. According to the information provided by Italy, the tourism sector continued to be impacted negatively in 2021. In particular, in the first 9 months of 2021, the accommodation sector saw a decline in the number of customers of 38.4% compared to 2019. In addition, the number of foreign tourists arriving in Italy declined by 56.1% compared to 2019.

(6) The Italian authorities explain that the objective of the measure is to support the beneficiary undertakings, in view of their lack of liquidity that results from the COVID-19 pandemic, and help them take the necessary measures to face the persistence of the pandemic, including stimulating interventions that would allow a continued and resilient activity of those beneficiaries and their future recovery. In this respect, Italy submits that it is necessary to support investments in the tourism sector and for the relevant beneficiaries to stimulate a recovery of the losses caused by the pandemic. Italy adds that at present, the tourism sector is, on the national scene, the one in relation to which the worst performances are estimated. In particular, the Italian accommodation sector is very exposed to the effects of the COVID-19 pandemic due to its characteristics, as Italian hotels are

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

mostly made up of small structures not affiliated to chains. In this respect, Italy submits that the measure will be particularly helpful in facing the reduction of liquidity in the sector. In addition, according to the Italian authorities, the hospitality sector needs support to make up for the capital loss together with liquidity in order to combat the risk of stopping structural interventions to relaunch tourism.

(7) The Italian authorities therefore consider that it is crucial to help the industry cope with the contingency, in order to avoid as much as possible the closure of facilities and tackle the recovery in the most efficient manner. In particular, Italy considers that the tax credits to be granted under the measure will reduce the need for liquidity faced by the eligible beneficiaries and will create a virtuous circle. Italy also considers that the measure is necessary to support further investments in the tourism sector and for the relevant beneficiaries, to stimulate a recovery of the losses caused by the pandemic, but also with a view to encouraging new investments, reviving the businesses and facing the future challenges of the sector by seeking to make businesses more resilient. Thus, Italy would like to stimulate the beneficiaries to proceed with new investments to recover the sector from the pandemic by increasing its resilience to such events.

(8) 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.

(9) 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.

(10) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

(11) The measure is an aid scheme through which aid is provided in the form of a tax credit.

2.2. Legal basis

(12) The legal basis for the measure is a combination of the following legal provisions:

(a) Article 79 of Decree-Law No 104 of 14 August 2020;[3] and

(b) Draft Interministerial Decree on “Implementing Provisions for the attribution of the tax credit in favor of tourist-hotel, agritourism, spa and open-air accommodation facilities pursuant to Article 79 of Decree-Law

[3] Decreto Legge 14 agosto 2020, n. 104 “*Ulteriori agevolazioni fiscali per il settore turistico e termale*”.

No 104 of 14 August 2020, converted, with modifications, by Law No. 126 of 13 October 2020".

2.3. Administration of the measure

(13) The Ministry of Tourism is responsible for administering and granting the measure.

2.4. Budget of the measure

(14) The estimated budget of the measure is EUR 380 million.

(15) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 30 June 2022[4].

2.5. Beneficiaries

(16) The beneficiaries of the measure are tourist-hotel accommodation undertakings, undertakings that carry out agri-tourism accommodation activities[5], open-air accommodation facilities and spas as listed in Article 79 of Decree-Law No. 104 of 14 August 2020. The Italian authorities estimate that there will be around 2 500 beneficiaries.

(17) The Italian authorities indicate that financial institutions are excluded as eligible beneficiaries under the measure.

(18) Aid may not be granted under the measure to medium[6] and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[7] on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER 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]

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4 The tax liability in relation to which the aid is granted must have arisen no later than 30 June 2022, in line with footnote 24 of the Temporary Framework.

5 The Italian authorities confirmed that the measure does not apply to undertakings active in the processing and marketing of agricultural products.

6 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.

7 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

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.

2.6. Sectoral and regional scope of the measure

(19) The measure is open to undertakings active in the tourism sector as identified in Article 79 of Decree-Law No. 104 of 14 August 2020 (see recital (16)). It applies to the whole territory of Italy.

2.7. Basic elements of the measure

(20) The measure consists in aid in the form of tax advantages as described in recital (11), and more precisely a tax credit.

(21) The Italian authorities explain that the tax credit should be used to cover costs necessary for increasing liquidity to facilitate recovery from the COVID measures and for improving the resilience of the undertakings for the future. The eligible costs under the measure will concern the redevelopment and improvement of the beneficiary undertakings' facilities as well as the elimination of architectural barriers, the increase of energy efficiency, the adoption of anti-seismic measures and the acquisition of equipment necessary to carry out the relevant activities. Italy explains in this respect that the measure will help facing the reduction of liquidity in the sector. In particular, the Italian authorities submit that the tax advantages granted under the measure will reduce the need for liquidity faced by the eligible beneficiaries and will stimulate further investments in the tourism sector and for the relevant beneficiaries. In addition, the measure will help a steady recovery of the losses caused by the pandemic, including with a view to encouraging new investments, will help the businesses to restore and face the future challenges of the sector in a more resilient manner.

(22) The tax credit granted under the measure is recognized in the amount of a 65 % of the relevant expenses incurred during the time period of the application of the measure up to a maximum of EUR 200 000 per undertaking and can only be used in compensation of a tax liability. The tax credit must be used and claimed exclusively through the electronic services offered by the Italian Revenue Agency.

(23) For the purposes of carrying out the control of the tax credit that is granted to each beneficiary, the Ministry of Tourism transmits to the Revenue Agency, by means of telematic methods, the list of the eligible beneficiary undertakings and the amount of tax credit to be granted, including information on possible modifications and revocations of the amounts.

(24) The tax credits granted under the measure to the relevant beneficiaries will cover the period from 1 February 2020 until 6 November 2021.

(25) The Italian authorities indicate that the aid cannot be combined with other contributions, grants and public subsidies granted for the same investment.

(26) The Italian authorities confirm that in any case the amount of aid per undertaking cannot exceed the overall maximum aid amount of EUR 2.3 million per undertaking[10].

[10] All figures used must be gross, i.e. before any deduction of tax or other charge.

2.8. Cumulation

(27) The Italian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations[11] or the General Block Exemption Regulation[12] provided the provisions and cumulation rules of those Regulations are respected.

(28) 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.

(29) 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 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point(s) 22(a) of that framework, will be respected.

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 on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[13]).

3. ASSESSMENT

3.1. Lawfulness of the measure

(31) The Italian authorities commit not to grant or pay out aid under the measure before the notification of a Commission decision approving it. 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

(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.

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[11] 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 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).

[12] 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.

[13] 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 tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

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 it is administered by the Ministry of Tourism (recital (13)) and it is based on the legal acts mentioned in recital (12). It is financed through State resources, since it is financed by public funds (recital (14)).

(34) The measure confers an advantage on its beneficiaries in the form of a tax credit (recital (11)). The measure thus relieves those beneficiaries of costs which 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 certain undertakings, in particular tourist-hotel accommodation undertakings, undertakings that carry out agricultural tourism activities, open-air accommodation facilities and spas as detailed in Article 79 of Decree-Law No. 104 of 14 August 2020 (see recital (16)), excluding the financial sector.

(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) The measure aims at providing liquidity support to undertakings active in the tourism sector at a time when the normal functioning of markets is severely disturbed by the COVID-19 pandemic and that pandemic is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(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 in the tourism sector is widely accepted by economic commentators and the measure is of a scale which 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 (“*Limited amounts of aid”*) described in section 3.1 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:

- The aid takes the form of tax advantages, and more precisely of a tax credit (recital (11)).

  The overall nominal value of the tax advantages will not exceed EUR 2.3 million per undertaking (recital (26)); all figures used must be gross, that is, before any deduction of tax or other charges. The measure therefore complies with point 22(a) of the Temporary Framework.

- Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (14). The measure therefore complies with point 22(b) of the Temporary Framework.

- Aid may not be granted under the measure to medium[14] and large enterprises that were already in difficulty on 31 December 2019 (recital (18)). The measure therefore complies with point 22(c) of the Temporary Framework. Aid may be granted to micro and small enterprises 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 have not received rescue aid[15] or restructuring aid[16] (recital (18)). The measure therefore complies with point 22(c)bis of the Temporary Framework.

- Aid will be granted under the measure no later than 30 June 2022. In particular, the tax liability in relation to which the advantage is granted must have arisen no later than 30 June 2022 (recital (15)). The measure therefore complies with point 22(d) of the Temporary Framework.

(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

[14] 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.

[15] 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.

[16] 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.

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 (9)).

(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 (recital (27)).

(46) 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 sections 2 and 3.1 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
Decision-making & Collegiality
EUROPEAN COMMISSION