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**Subject: State Aid SA.59827 (2020/N) – Italy  
COVID-19: Amendment to SA.57021 – Regime Quadro - addition of  
aid measure 3.12 of the Temporary Framework**

Excellency,

**1. PROCEDURE**

- (1) Following pre-notification contacts<sup>1</sup>, by electronic notification of 9 December 2020, the Italian authorities notified an amendment (“the notified amendment”) to the aid scheme *SA.57021- COVID 19 Regime Quadro* as amended by *SA.58547– Italy COVID-19: amendment to SA.57021 – Regime Quadro – aid to small and micro enterprises* and by *SA.59655- COVID-19: Modifications to SA.57021, SA.56966, SA.59295, SA.58802, SA.59255, SA.57947, SA.57891, SA.56786 and SA.56690* (altogether “the existing aid scheme”) approved, respectively, by Decision C(2020) 3482 final of 21 May 2020 (“Regime Quadro Decision”), Decision C(2020) 6341 of 11 September 2020 and Decision C(2020)9121 of 10 December 2020. The notified amendment consists in widening the scope of the existing aid scheme to include aid in the form of support for uncovered fixed costs under section 3.12 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”)<sup>2</sup>.

<sup>1</sup> By letter dated 26 November 2020, the Italian authorities pre-notified the amendment.

<sup>2</sup> 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 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, 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 and by Communication from the Commission C(2020) 7127 final of 13 October

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- (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 1/1958<sup>3</sup> and to have this Decision adopted and notified in English.

## **2. DESCRIPTION OF THE NOTIFIED AMENDMENT**

- (3) Italy considers that the COVID-19 outbreak is affecting the real economy. The economic situation of March 2020 has not improved substantially (if it has improved at all) for undertakings hit by the COVID-19 outbreak, especially following the adoption of additional restrictive measures.
- (4) To respond to a new surge of infections and the threatened overburdening of the health system occurring in autumn 2020, the Italian authorities introduced in November 2020 a series of measures on significant parts of the economy and cultural life, such as closures or partial bans on economic activities (*i.e.*, shops, restaurants, pubs, *etc.*), closures of theatres, cinemas, gyms, ban of movements between regions or internally within the same region, *etc.*
- (5) Following that second wave of restrictive measures those sectors of the economy that were hit already by the shutdown imposed in February/March 2020 were further affected by the autumn restrictive measures.
- (6) Because the situation described above has worsened rapidly, Italy has decided to contribute to the uncovered fixed costs of those undertakings for which the COVID-19 outbreak resulted in the suspension or reduction of their business activity. In particular, Italy has decided to modify the existing aid scheme to include support for uncovered fixed costs in line with section 3.12 of the Temporary Framework.
- (7) Apart from an increase in the budget of the existing aid scheme of EUR 1 billion, related to the inclusion of the support for uncovered fixed costs in line with section 3.12 of the Temporary Framework, the Italian authorities confirm that no further modifications are proposed to the existing aid scheme. Therefore, all other conditions of the existing aid scheme remain unchanged and as described in the Regime Quadro Decision, as modified.
- (8) The Italian authorities confirmed that the aid under the notified amendment 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.

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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.

<sup>3</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

- (9) The compatibility assessment of the notified amendment is based on Article 107(3)(b) TFEU, in light of sections 2, 3.4 and 3.12 of the Temporary Framework.

### **2.1. The nature and form of aid**

- (10) The notified amendment provides support for uncovered fixed costs that will take the form of direct grants, guarantees and loans.

### **2.2. Administration of the notified amendment**

- (11) As already established in the existing aid scheme<sup>4</sup>, the aid granted by the Regions, the Autonomous Provinces, other territorial bodies and Chambers of commerce will be administered by those entities. The aid will be financed by the budget of the respective territorial entities.

### **2.3. Legal basis**

- (12) The legal basis of the notified amendment is article 107 of the “Disegno di Legge relativo al Bilancio di previsione dello Stato per l’anno finanziario 2021 e il bilancio pluriennale per il triennio 2021-2023” (“DDL”)<sup>5</sup>, which introduces article 60-bis in the Decree-Law No. 34 of 19 May 2020, converted in the Law No. 77 of 17 July 2020<sup>6</sup>.

### **2.4. Budget and duration of the notified amendment**

- (13) The aid will be implemented at various administrative levels, therefore it is difficult to estimate its budget. The Italian authorities have however provided an estimated budget of approximately EUR 1 billion.
- (14) Aid may be granted under the measure as from its approval by the Commission until no later than 30 June 2021.

### **2.5. Beneficiaries**

- (15) The final beneficiaries of the notified amendment remain the same as those already identified under the existing aid scheme<sup>7</sup>. They are all undertakings registered in Italy (i.e. SMEs, large undertakings, self-employed persons and family businesses engaged in craft or other activities and partnerships or associations regularly engaged in an economic activity), with the exception of credit institutions and other financial institutions such as financial intermediaries.

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<sup>4</sup> See recital 11 of the Regime Quadro Decision.

<sup>5</sup> Draft law to be adopted by Italy.

<sup>6</sup> This was the legal basis of the measures authorised by the Regime Quadro Decision, and it has been subsequently amended by Article 62 of Decree Law No. 104 of 14 August 2020 that was the legal basis of the amendments authorised by Commission Decision in case SA.58547– Italy COVID-19: amendment to SA.57021 – Regime Quadro – aid to small and micro enterprises.

<sup>7</sup> See recital 15 of the Regime Quadro Decision.

- (16) Aid may not be granted under the notified amendment to undertakings that were already in difficulty (within the meaning of the General Block Exemption Regulation (“GBER”)<sup>8</sup>, of the Agricultural Block Exemption Regulation (“ABER”)<sup>9</sup> and the Fishery Block Exemption Regulation (“FIBER”)<sup>10</sup> on 31 December 2019. In derogation to the above<sup>11</sup>, aid can be granted to micro or small enterprises (within the meaning of the GBER, the ABER and the FIBER) that were already in difficulty on 31 December 2019 provided that they are not subject to collective insolvency procedure under national law, and that they have not received rescue aid or restructuring aid<sup>12</sup>.
- (17) As already established under the existing aid scheme<sup>13</sup>, also the aid under the notified amendment is granted either directly or through credit institutions and other financial institutions such as financial intermediaries that are allowed under Italian law to provide credit in Italy.

## **2.6. Sectoral and regional scope of the measure**

- (18) The notified amendment is open to all sectors and it applies to the whole territory of Italy, as for the other measures under the existing aid scheme. Credit institutions and other financial institutions such as financial intermediaries are excluded as eligible final beneficiaries under the measure under examination as already established for the other measures under the existing aid scheme<sup>14</sup>.

## **2.7. Basic elements of the notified amendment**

- (19) The notified amendment aims at supporting undertakings temporarily facing difficulties to cover part of their uncovered fixed costs within the meaning of section 3.12 of the Temporary Framework because the COVID-19 outbreak

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<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> By means of the amendment of Article 61, subparagraph 1-bis, of Decree-Law No. 34 of 19 May 2020, introduced by subparagraph 1, letter c of Article 107 of DDL.

<sup>12</sup> Alternatively, if they have received rescue aid, they must have reimbursed the loan or terminated the guarantee at the moment of granting of the aid; if they have received restructuring aid, they must no longer be subject to a restructuring plan at the moment of granting of the aid.

<sup>13</sup> See recital 16 of the Regime Quadro Decision.

<sup>14</sup> Except under section 3.10, if aid is provided to employees of credit or financial institutions in the form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak (see recital 17 of the Regime Quadro Decision).

resulted in the suspension or reduction of their business activity. The aid has the following features:

- (a) The aid will be granted no later than 30 June 2021 and will cover uncovered fixed costs incurred during the period between 1 March 2020 and 30 June 2021 ('eligible period')<sup>15</sup>.
- (b) The aid is granted to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019. The reference period is a period in 2019 irrespective of whether the eligible period is in 2020 or in 2021<sup>16</sup>.
- (c) Uncovered fixed costs are the fixed costs<sup>17</sup> incurred by undertakings during the eligible period which are not covered by the difference between revenues and variable costs during the same period and which are not covered by other sources, such as insurance, other State aid measures or support from other sources. The aid intensity shall 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), where the aid intensity shall not exceed 90% of the uncovered fixed costs. For this point, the losses of undertakings from their profit and loss statements during the eligible period are considered to constitute uncovered fixed costs<sup>18</sup>.
- (d) The aid under this measure may be granted based on forecasted losses, while the final amount of aid shall be determined after realisation of the losses on the basis of audited accounts or, on the basis of tax accounts. The Italian authorities explained that not all undertakings are required to prepare audited commercial accounts under the Italian civil code or other relevant law in the matter. In order to be proportionate, Italy accepts in those cases the use of tax accounts to determine the final amount of aid after realisation of the losses. Any payment exceeding the final amount of the aid shall be recovered<sup>19</sup>.
- (e) In any event, the overall aid shall not exceed EUR 3 million per undertaking. The aid may be granted in the form of direct grants, guarantees and loans provided the total nominal value of such measures remains below the overall cap of EUR 3 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charge<sup>20</sup>.

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<sup>15</sup> See subparagraph 2, letter a, of Article 60-bis of Decree-Law No. 34 of 19 May 2020 introduced by Article 107 of DDL.

<sup>16</sup> See subparagraph 2, letter b, of Article 60-bis of Decree-Law No. 34 of 19 May 2020 introduced by Article 107 of DDL.

<sup>17</sup> For this point, fixed costs are incurred independently of the level of output, while variable costs are incurred depending on the level of output.

<sup>18</sup> See subparagraph 3 of Article 60-bis of Decree-Law No. 34 of 19 May 2020 introduced by Article 107 of DDL.

<sup>19</sup> See subparagraph 4 of Article 60-bis of Decree-Law No. 34 of 19 May 2020 introduced by Article 107 of DDL.

<sup>20</sup> See subparagraph 5 of Article 60-bis of Decree-Law No. 34 of 19 May 2020 introduced by Article 107 of DDL.

- (20) Moreover, the specific rules to ensure that the benefits of the aid channelled through financial intermediaries are passed, to the largest extent possible, to the final beneficiaries applied for the measures under the existing aid scheme<sup>21</sup>, also applies to the notified amendment.

## **2.8. Cumulation**

- (21) 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.
- (22) The Italian authorities confirm that aid granted under the measure shall not be cumulated with other aid for the same eligible costs<sup>22</sup>.

## **2.9. Monitoring and reporting**

- (23) The Italian authorities have already confirmed under the Regime Quadro Decision that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework. In any event, the Italian authorities have reconfirmed to comply with all the monitoring and reporting provisions in section 4 of the Temporary Framework, by electronic notification of 9 December 2020.

# **3. ASSESSMENT**

## **3.1. Lawfulness of the notified amendment**

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

## **3.2. Existence of State aid**

- (25) 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.
- (26) Recitals (31) to (36) of the Regime Quadro Decision establish that the measures under the existing aid scheme constitute State aid. The aid measure introduced with the notified amendment by the Italian authorities does not affect those findings, which are applicable also to that amendment<sup>23</sup>.

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<sup>21</sup> See recital 21 of the Regime Quadro Decision.

<sup>22</sup> See subparagraph 6 of Article 60-bis of Decree-Law No. 34 of 19 May 2020 introduced by Article 107 of DDL.

<sup>23</sup> See recitals 32 to 36 of the Regime Quadro Decision.

### 3.3. Compatibility

- (27) The Commission assessed the existing aid scheme on the basis of Articles 107(3)(b) and 107(3)(c) TFEU and concluded that it complied with the compatibility conditions set out in the Temporary Framework.
- (28) The Commission refers to its analysis of compatibility as set out in in recitals (37) to (58) of the Regime Quadro Decision.
- (29) As regards the notified amendment by the Italian authorities:
- (a) Aid is granted no later than 30 June 2021 and covers uncovered fixed costs incurred during the period between 1 March 2020 and 30 June 2021 (recital (19)(a)). The notified amendment therefore complies with point 87(a) of the Temporary Framework.
  - (b) Aid is granted to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019 (recital (19)(b)). The notified amendment therefore complies with point 87(b) of the Temporary Framework.
  - (c) Uncovered fixed costs are defined in accordance with point 87(c) of the Temporary Framework and the aid intensity shall not exceed 70% of the uncovered fixed costs, except for micro and small companies, where the aid intensity shall not exceed 90% of the uncovered fixed costs (recital (19)(c)). The losses of undertakings from their profit and loss statements during the eligible period are considered to constitute uncovered fixed costs. The aid may be granted based on forecasted losses, while the final amount of aid shall be determined after realisation of the losses on the basis of audited accounts or on the basis of tax accounts. The Italian authorities have justified that the use of tax accounts would be proportionate in cases where undertakings are not required to produce commercial audited accounts under the Italian civil code or other relevant law in the matter (recital(19)(d)). The Commission considers that the justification provided is appropriate. Any payment exceeding the final amount of the aid shall be recovered (recital (19)(d)). The notified amendment therefore complies with point 87(c) of the Temporary Framework.
  - (d) The aid takes the form of direct grants, guarantees and loans (recital (19)(e)). The overall nominal value of direct grants, guarantees and loans shall not exceed EUR 3 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (19)(e)). The notified amendment therefore complies with point 87(d) of the Temporary Framework.
  - (e) The aid shall not be cumulated with other aid for the same eligible costs (recital (22)). The notified amendment therefore complies with point 87(e) of the Temporary Framework.
- (30) Aid may not be granted to undertakings that were already in difficulty on 31 December 2019 (recital (16)). 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 or restructuring aid (recital

(16)). The notified amendment therefore complies with point 87(f) of the Temporary Framework.

- (31) As aid for uncovered fixed costs will also take the form of guarantees and loans, the same safeguards established of the Regime Quadro Decision 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 (see recital (20)). 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 Regime Quadro Decision<sup>24</sup>. The notified amendment therefore complies with points 28 to 31 of the Temporary Framework.
- (32) The Commission notes that the cumulation conditions as well as the monitoring and reporting requirements are complied with (see recitals (21) to (23)).
- (33) In view of the above, the Commission considers that the notified amendment meets the conditions of the Temporary Framework and does not alter its conclusions on the compatibility of the aid schemes as set out in the Regime Quadro Decision, as amended.

#### **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/ejojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President

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<sup>24</sup> See recital 47 and section 4 of the Regime Quadro Decision.