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SENSITIVE[*]: *COMP Operations*

Subject: **State Aid SA.104510 (2022/N) – Italy**
COVID-19: Scheme to support investments for a sustainable recovery of undertakings active in the Marche region

Excellency,

1. PROCEDURE

(1) By electronic notification of 10 October 2022, Italy notified a scheme to support investments for a sustainable recovery of undertakings active in the Marche region, affected by the COVID-19 pandemic (*Adozione del Regime quadro della Regione Marche ai sensi della Sezione 3.13 della Comunicazione della Commissione Quadro temporaneo di crisi per misure di aiuto di Stato a sostegno dell'economia nell'attuale emergenza del COVID-19*, "the measure") under section 3.13 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework")[1]. Italy provided additional information on 3 and 14 November 2022.

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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), C(2021) 8442 (OJ C 473, 24.11.2021, p. 1) and C(2022) 7902 (OJ C 423, 7.11.2022, p. 9).

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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[2] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(3) Italy considers that the COVID-19 pandemic continues to affect the real economy. The measure forms part of an overall package of measures and aims to support private investment as a stimulus to overcome an investment gap accumulated in the economy due to the crisis. According to an economic report[3] submitted by the Italian authorities, although the recovery in economic activity in the Region of Marche gradually strengthened in the course of 2021, the expansion did not allow to recover the levels recorded in that region before the spread of the COVID-19 pandemic.

(4) 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.

(5) The compatibility assessment of the measure is based on Article 107(3)(c) TFEU, in light of sections 2 and 3.13 of the Temporary Framework.

2.1. The nature and form of the aid

(6) The measure provides aid in the form of direct grants.

2.2. Legal basis

(7) The legal basis for the measure is the Draft Resolution of the Marche Regional Council (*Deliberazione della Giunta Regionale della Regione Marche*, hereinafter the "Draft Resolution") approving the framework scheme to support investments for a sustainable recovery of undertakings active in the Marche region, affected by the COVID-19 pandemic, including the annex to the Draft Resolution. Article 12 of the annex to the Draft Resolution provides for a standstill clause[4].

2.3. Administration of the measure

(8) The Marche Region is the responsible managing and granting authority for the measure. The Marche Region acts through its Departments, Directorates and Sectors, which are part of its internal organisation and which are responsible to adopt calls for aid applications under the measure.

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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 Banca d'Italia, Eurosistema, Economie regionali, "L'economia delle Marche, Rapporto annuale", Giugno 2022.

4 See also, to that effect, point 5 of the Draft Resolution.

(9) The aid will be granted directly to the beneficiaries on the basis of a written application submitted before the start of works[5] on the investment. The aid applications are submitted by the applicants to the Marche Regional administration.

2.4. Budget and duration of the measure

(10) The estimated budget of the measure is EUR 25 million. It will be financed by the own resources of the regional administration and may be co-financed by the European Regional Development Fund (ERDF), the European Social Fund + (ESF+) and the European Agricultural Fund for Rural Development (EAFRD). The Italian authorities confirm that the rules applicable to those funds will be respected. They further note that, in case a specific call under the measure were to be co-financed by the Regional Operational Programme (ROP) Marche ERDF, the quotas for EU funding of the ERDF Programme, as specified in the European Structural and Investment Funds ("ESIF") regulations, will be respected.

(11) The Italian authorities confirm that aid may be granted under the measure only as from the notification of the Commission's decision approving the measure until no later than 31 December 2023.

2.5. Beneficiaries

(12) The final beneficiaries of the measure are undertakings active in the Marche region, regardless of their size. Credit and financial institutions as well as undertakings active in the primary production of agricultural products, of forestry, of fisheries and of aquaculture are excluded as eligible beneficiaries. However, undertakings active in the processing and marketing of agricultural products, of forestry, of fisheries and of aquaculture are eligible.

(13) The estimated number of beneficiaries will be around 300.

(14) Aid may not be granted under the measure to large and medium enterprises[6] that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[7], the Agricultural Block Exemption Regulation ("ABER")[8] or the Fisheries Block Exemption Regulation ("FIBER")[9] respectively, on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER, ABER and FIBER on

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5 As defined in Article 2(23) of the 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).

6 As defined in Annex I of the GBER.

7 As defined in Article 2(18) of the GBER.

8 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 on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1).

9 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 24.12.2014, p. 37).

31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to a collective insolvency procedure under national law and they have not received rescue aid[10] or restructuring aid[11].

2.6. Sectoral and regional scope of the measure

(15) The measure applies to undertakings active in all sectors except the financial sector, the primary production of agricultural products, of forestry, of fisheries and of aquaculture. The processing and marketing of agricultural products, of forestry, of fisheries and of aquaculture are eligible sectors.

(16) The measure applies to the Marche region.

2.7. Basic elements of the measure

(17) The objective of the measure is to support undertakings in the implementation of investments to support the sustainable recovery of the economy.

(18) The aid is granted on the basis of a scheme.

(19) The eligible costs under the measure are costs of tangible and intangible assets related to the investment. Costs related to purchasing land and building refurbishment may be included only in as far as they are part of an investment for production of goods or provision of services. Financial investments are not eligible.

(20) The eligible costs above may be quantified in accordance with the simplified cost options set out in Regulation (EU) 2021/1060 of the European Parliament and of the Council[12], provided that the investment is at least partly financed through a Union fund that allows the use of those simplified cost options.

(21) The aid intensity may not exceed 15% of the eligible costs for large enterprises, 25% for medium-sized enterprises and 35% for micro and small enterprises.

(22) However, for investments in assisted areas covered by the regional aid map for Italy[13] that comply with the conditions of Article 14 GBER, excluding Article 14(14) GBER, the basic aid intensity of 15% mentioned in recital (21) may be

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10 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.

11 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.

12 Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

13 Commission Decisions C(2021) 8655 final, of 02.12.2021, State aid SA.100380 (2021/N) – Italy – Regional aid map for Italy (1 January 2022 – 31 December 2027), OJ C 60, 4.2.2022, p.1; and C(2022) 1545 final, of 18.3.2022, in case State aid SA.101134 (2021/N) – Italy – Amendment to the Regional aid map for Italy (1 January 2022 – 31 December 2027).

increased by the intensity laid down in that regional aid map (including the increased aid intensities for small and medium-sized enterprises[14]).

(23) The maximum individual aid amount that may be granted per undertaking will not exceed 1% of the total budget available referred to in recital (10), i.e. EUR 250 000. Moreover, the overall aid granted to beneficiaries on the basis of this measure and any other measure under section 3.13 of the Temporary Framework will not exceed EUR 10 million per undertaking in nominal terms regardless of the specific aid instrument or, in assisted areas, the maximum aid amount calculated in accordance with Article 14 GBER, with the exception of Article 14(14) GBER and based on the applicable regional aid map[15], increased by EUR 10 million in nominal terms, regardless of the specific aid instrument.

(24) Article 8 of the annex to the Draft Resolution establishes that aid under the measure does not support activities in breach of the 'do no significant harm' ("DNSH") principle. To this end, the Italian authorities will verify, upon assessment of aid applications, compliance with that principle under the same rules and procedures applicable to the Italian Recovery and Resilience Plan ("RRP") and according to what is provided under the specific programmes for the ESIF on the basis of the guidelines and instructions for the programmes co-funded under Cohesion policy 2021-2027, according to the Note DPCOE no. 9069 of 7 December 2021[16]. The activities referred to in section B of Annex V of Regulation (EU) 2021/523[17] are also excluded[18] as well as those that do not comply with the relevant national and EU environmental legislation.

(25) The Italian authorities confirm that aid will concern investments made after the notification of the Commission's decision approving the measure[19].

2.8. Cumulation

(26) The Italian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations[20] or the GBER, ABER and

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[14] See recital (50) of Commission Decision in case SA.101134.

[15] Commission Decisions in cases SA.100380 and SA.101134. See footnote 14.

[16] Nota "Attuazione del Principio orizzontale DNSH ("Do no significant harm principle") nei programmi cofinanziati dalla politica di coesione 2021-2027" del 7 dicembre 2021 prot. DPCOE-0009069-P-07/12/2021

[17] Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107 26.3.2021, p. 30).

[18] This exclusion concerns activities such as those that limit individual rights and freedoms or that violate human rights, production, distribution, processing and trade of tobacco-related products and activities, gambling (production, construction, processing, trade or software-related activities), or financial activities such as purchasing or trading in financial instruments.

[19] Italy already published a call in May 2022 (Decree No. 103/2022 of the Director for the Innovation and International cooperation sector), for which they received a number of applications for aid. The call is based both on the GBER and on the Temporary Framework. It contains a standstill clause, according to which its implementation is subject to authorisation of compatibility by the European Commission. No aid has yet been granted on the basis of that call, under either the GBER or the Temporary Framework.

FIBER, provided the provisions and cumulation rules of those Regulations are respected.

(27) The Italian authorities also 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) Aid under this scheme may be added to notifiable regional investment aid in accordance with point 91 of the Temporary Framework. The Italian authorities confirm that aid granted under the Temporary Crisis Framework[21] may not and will not be cumulated with aid under section 3.13 of the Temporary Framework for the same eligible costs. Under no circumstances may the total aid amount exceed 100% of eligible costs. As a result, cumulation with other aid instruments that allow the coverage of a funding gap is excluded.

2.9. Monitoring and reporting

(29) 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 fisheries sector on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[22]).

3. ASSESSMENT

3.1. Lawfulness of the measure

(30) By notifying the measure before putting it into effect (see recital (7)), the Italian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(31) 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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[20] 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 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 of 26.4.2012, p. 8).

[21] Communication from the Commission Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia C(2022) 7945 final (OJ C 426, 9.11.2022, p. 1). This Temporary Crisis Framework ('current Temporary Crisis Framework') replaces the Temporary Crisis Framework adopted on 23 March 2022 (OJ 131 I, 24.3.2022, p. 1) as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1) ('previous Temporary Crisis Framework'). The previous Temporary Crisis Framework was withdrawn with effect from 27 October 2022.

[22] Referring to information required in Annex III to the GBER.

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.

(32) The measure is imputable to the State, since it is administered by the administration of the Marche Region (recital (8)), and it is based on the legal basis mentioned in recital (7). It is financed through State resources, since it is financed by own resources of the regional administration and it may also be co-financed by ESIF, which are under the control of the State (recital (10)).

(33) The measure confers an advantage on its beneficiaries in the form of direct grants, that they would not have had under normal market conditions (recital (6)).

(34) The advantage granted by the measure is selective, since it is awarded only to undertakings active in the Marche region (recital (12)), excluding undertakings active in the financial sector and in the primary production of agricultural products, of forestry, of fisheries and of aquaculture (recitals (12) and (15)).

(35) 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.

(36) 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

(37) 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.

(38) Pursuant to Article 107(3)(c) TFEU, the Commission may declare compatible with the internal market "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*".

(39) When it amended the Temporary Framework on 18 November 2021, the Commission sought to provide options for Member States, to avoid a repetition of the post-crisis investment drop that occurred in the Union in the wake of the 2008 crisis, with the potential to hold back long-term growth. Investment support measures under section 3.13 of the Temporary Framework seek to overcome the negative economic effects of the COVID crisis, including a widening of the investment gap. The measure aims at supporting private investment in assets as a stimulus to overcome an investment gap accumulated in sectors of the economy of importance for a sustainable recovery (recitals (3) and (17)). The measure has been designed to meet the requirements of the specific category of aid ("*Investment support towards a sustainable recovery*") described in section 3.13 of the Temporary Framework. The Commission therefore assesses the compatibility of the measure based on Article 107(3)(c) TFEU, in light of section 3.13 of the Temporary Framework.

(40) The Commission considers that the measure facilitates the development of certain economic activities (recitals (12) and (15)) that are important for the economic recovery, is appropriate and necessary to address the economic consequences arising from the crisis induced by the COVID-19 pandemic. In particular:

(a) The aid is granted on the basis of a scheme and the maximum individual aid amount that may be granted per undertaking does not exceed 1% of the total budget of the scheme (recital (23)). The measure therefore complies with point 89(a) of the Temporary Framework.

(b) Eligible costs include the costs of investments in tangible and intangible assets as referred to in recital (19), excluding financial investments. The measure therefore complies with point 89(b) of the Temporary Framework.

(c) The measure applies to the territory of the Marche region (recital (16)). Furthermore, the sectoral scope of the measure is not designed in a manner that leads to an artificial limitation in the sense of point 89(c) of the Temporary Framework. Indeed, the sectoral scope encompasses a wide range of activities, except for a few sectors (see recital (15)), the potential beneficiaries are defined in a broad manner and a considerable number of enterprises may apply under the measure (recital (13)). Furthermore, the range of eligible investments is sufficiently wide. For these reasons, the measure complies with point 89(c) of the Temporary Framework.

(d) The aid intensities under the measure may not exceed the limits laid down in point 89(d) of the Temporary Framework (recital (21) and (22)).

(e) The overall limit of EUR 10 million per undertaking on the basis of this measure and any other measure under section 3.13 of the Temporary Framework in nominal terms or the maximum aid amount calculated in accordance with Article 14 GBER, with the exception of Article 14(14) GBER and based on the applicable regional aid map, increased by EUR 10 million in nominal terms (recital (23)) shall not be exceeded. The measure therefore complies with point 89(e) of the Temporary Framework.

(f) The aid is granted in the form of direct grants (recital (6)). The measure therefore complies with point 89(f) of the Temporary Framework.

(g) Aid may not be granted under the measure to large and medium enterprises that were already in difficulty within the meaning of the GBER ABER, or FIBER on 31 December 2019 (recital (14)). Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER, ABER or FIBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to a collective insolvency procedure under national law and they have not received rescue aid[23] or restructuring aid[24] (recital (14)). The measure therefore complies with point 92 of the Temporary Framework.

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23 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.

24 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.

(h) 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 2023 (recital (11)). Aid will only concern investments made after the notification of the approval of the measure by the Commission (recital (25)). The measure therefore complies with point 93 of the Temporary Framework.

(i) Aid may only be granted on the basis of an application submitted before works on the investment start (recital (9)). The aid under the measure therefore has an incentive effect pursuant to point 94 of the Temporary Framework.

(41) 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 (4)).

(42) The Italian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (29)).

(43) 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 (26) to (28)); they also confirm that the total aid amount cannot exceed 100% of the eligible costs (recital (28)). The measure therefore complies with points 20 and 91 of the Temporary Framework.

(44) The measure will facilitate the development of certain economic activities referred in recitals (12) and (15) which are of importance for a sustainable economic recovery because they accumulated an investment gap due to the crisis. The measure will have positive effects on the development of these activities, as it will contribute to a reduction of the investment gap that could hamper long-term economic growth. The measure will however strengthen the financial situation of undertakings operating in sectors where there is cross border competition; it will thus have negative effects on competition and trade (recital (35)).

(45) In weighing the positive effects of the aid against its negative effects on competition and trade (point 90 of the Temporary Framework), the Commission has paid particular attention to the fact that the measure does not support activities in breach of the DNSH principle. To this effect, as explained in recital (24), the Italian authorities will verify compliance with this principle under the same rules and procedures applicable to the Italian RRP and according to what is provided under the specific programmes for the ESI Funds. Furthermore, activities referred to in section B of Annex V of Regulation (EU) 2021/523 are excluded, as well as those that do not comply with the relevant national and EU environmental legislation. In addition, the measure was designed to meet the conditions laid down in section 3.13 of the Temporary Framework: as the measure is necessary, proportionate and appropriate, it is unlikely to have undue negative effects on competition and trade and such effects are limited to the minimum necessary. In particular, aid under section 3.13 can only finance investment costs relating to tangible and intangible assets related to the investment, it benefits a broad range of beneficiaries (all undertakings active in the Marche region, regardless of their

size), the aid amount is capped and the maximum aid intensity is lower when the size of the undertaking increases (recitals (21) and (22)).

(46) The Commission has taken due consideration that the measure facilitates the development of certain economic activities and of the positive effects of that measure on supporting the recovery from the health crisis provoked by the COVID-19 pandemic when balancing those effects against the potential negative effects of the measure on the internal market. The Commission considers that the positive effects of that measure outweigh its potential negative effects on competition and trade.

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.

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 of the Registry
EUROPEAN COMMISSION