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Subject: **State Aid SA.62392 (2021/N) – Italy  
COVID-19: Damage compensation for tour operators and travel  
agencies**

Excellency,

## 1. PROCEDURE

- (1) By electronic notification of 18 March 2021, the Italian authorities notified a scheme (“the measure”), on the basis of Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”), to compensate tour operators and travel agencies who have suffered financial losses as a result of the COVID-19 containment measures during the period from 1 March to 31 July 2020 (the “compensation period”).
- (2) On 25 March, 30 April and 3 June 2021 the Commission services sent requests for additional information, to which the Italian authorities replied, respectively, on 6 April, 20 May and 9 June 2021.
- (3) Italy exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,<sup>1</sup> and to have this Decision adopted and notified in English.

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<sup>1</sup> 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

- (4) The objective of the measure is to provide compensation to tour operators and travel agencies who have suffered damage as a result of the COVID-19 pandemic due to restrictive measures adopted by the Italian authorities in the compensation period. The measure aims to support those tour operators and travel agencies which, from 1 March to 31 July 2020, suffered a reduction in turnover which, by applying the methodology provided for by the measure and illustrated in the following sections, gives right to contributions above EUR 1.8 million. In that regard, the Italian authorities refer to the previous Commission decisions of 4 December 2020 (in case SA.59755 (2020/N))<sup>2</sup> and 29 March 2021 (in case SA.62356 (2021/N))<sup>3</sup>, where the Commission already authorized contributions for tour operators and travel agencies up to a maximum of EUR 1.8 million per undertaking in accordance with section 3.1 of the Temporary Framework<sup>4</sup>.
- (5) Therefore, the measure only concerns beneficiaries entitled to receive compensation for damages above EUR 1.8 million, net of what has already been received under the measures approved under the Temporary Framework.

### 2.1. The restrictive measures related to the COVID-19 outbreak

- (6) The Italian authorities explain that Italy was the first country in the European Union to adopt a generalized lockdown measure, impose travel restrictions and be subject to travel restrictions enforced by other Member States and countries due to the COVID-19 outbreak.
- (7) The Italian authorities provided relevant information on the restrictive measures that hit tour operators and travel agencies during the compensation period. In particular:
- The creation of the so-called “red zones” to prevent the spread of the COVID-19, pursuant to Decree-Law No. 6 of 23 February 2020, granted the competent authorities the power to prohibit travel into and outside a municipality or regional area, suspend demonstrations, events, private and public meetings, and close museums, art galleries and other public areas. That measure remained in force from 23 February until 31 July 2020.
  - The imposition of a full ban on national and international travel, including a ban on leaving people’s own home residence (the so-called total national “lockdown”), except for exceptional reasons (such as proven health or work-

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<sup>2</sup> Commission decision of 4 December 2020 in SA.59755 COVID-19: Aid to tour operators and travel agencies – Italy, OJ C 439, 18.12.2020, p. 1.

<sup>3</sup> Commission decision of 29 March 2021 in SA.62356 Modifications to SA.59755 (2020/N) – Italy – COVID-19: Aid for tour operators and travel agencies and SA.59992 (2020/N) - Italy - COVID-19: Support measure for the congress and fair industry, OJ C 223, 11.6.2021, p.1.

<sup>4</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 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).

related needs), pursuant to Prime Ministerial Decree of 9 March 2020<sup>5</sup>. The ban on leaving people's own home residence remained in force from 10 March to 18 May 2020, while travel between Italian regions and to any other country outside Italy remained fully prohibited until 2 June 2020.

- The travel ban to and from extra-EU/Schengen countries, which remained in place from 10 March 2020 until 31 July 2020, except for proven work needs, absolute urgency or health reasons, pursuant to Decree of the President of the Council of Ministers ("DPCM") of 11 June 2020, Ministry of Health Ordinance of 30 June 2020 and DPCM 14 July 2020.<sup>6</sup>
  - DPCM of 25 March 2020 suspended organized events (including cultural events), congresses and conferences until 31 July 2020. In some Italian northern regions<sup>7</sup>, that prohibition entered into force with DPCM of 1 March 2020.
  - DPCM of 25 March 2020 declared the closure of museums and places of culture until 15 June 2020. In some Italian northern regions, such closure entered into force with DPCM of 1 March 2020.
  - DPCM of 25 March 2020 suspended school trips until 31 July 2020. In some Italian northern regions, that ban entered into force with DPCM of 1 March 2020.
  - DPCM 11 June 2020 also introduced severe limitations for the hospitality and bathing sector, in particular strict containment measures to counter the spread of the COVID-19 outbreak regarding the sanitation of environments open to the public, such as bathing establishments, wellness centres and spas.
  - Ministerial Decree of 19 March 2020 (issued jointly by the Ministries of Transport and Health) and further subsequent extension decrees which suspended cruising holidays until 14 July 2020.
- (8) As regards the period from 1 March to 9 March 2020, the Commission noted in the course of the notification exchanges that the travel restrictions did not apply consistently throughout the whole Italian territory and for travels to and from other (EU or non-EU/Schengen) countries. By contrast, in the period starting on 10 March 2020, when the full travel bans were enforced across the whole country and for travels outside Italy. In light of the above, the Commission services requested the Italian authorities to provide further explanations and data supporting evidence of the impact of the restrictive measures applied during that earlier period for the relevant beneficiaries and the economic sector concerned (see section 2.2 below).

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<sup>5</sup> The Italian authorities explain that in certain Italian northern regions and provinces (in particular in Lombardy and Veneto) a ban had already entered in force since before 10 March 2020 pursuant to DPCM of 1 March 2020. The list of those regions and provinces affected by that ban is included in annexes 1 and 2 of that DPCM. In addition, the Italian authorities indicate that since 25 February 2020 many foreign countries enforced entry restrictions for Italian citizens and adopted restrictive measures against Italy such as recommendations to avoid non-essential travels, suspension of air traffic to certain Italian airports, entry bans and border controls.

<sup>6</sup> The Italian authorities indicate that this ban was further extended with subsequent legislation.

<sup>7</sup> In this respect, prohibitions started applying earlier in the northern regions of Lombardy and Veneto.

- (9) In that respect, the Italian authorities noted that a number of restrictions, limitations or bans for travel to and from Italy applied over the period from 1 to 9 March 2020, as also accepted by the Commission in State aid case SA.59029 (2020/N)<sup>8</sup> (see recital (9) of the Commission decision in that case), in particular on the entry of persons coming from or through Italy. Those restrictive measures consisted in travel warnings to avoid non-essential travels to Italy, suspension of flights from Italy and to some Italian destinations (or the whole of Italy), entry bans on travellers coming from Italy and Italian residents, quarantine measures and other health checks for travellers arriving from Italy, etc. All those restrictions started applying between the end of February and the beginning of March and were followed, in the successive days and weeks, by more severe restrictions, which lasted for several months.

## **2.2. Impact of the restrictive measures on the Italian tour operators and travel agents**

- (10) The Italian authorities stress that the COVID-19 outbreak and the restrictive measures adopted by the public authorities in response to it have had significant negative economic effects on the Italian economy and Italian companies. The impact of that occurrence and the related restrictive measures has been particularly prominent in the tourism sector in Italy, which generates 13 % of Italy's GDP.
- (11) According to data provided by the representative bodies of the sector in 2019,<sup>9</sup> the total annual turnover of tour operators and travel agencies amounted to EUR 13 billion, of which EUR 6.6 billion only in the period between 23 February and 31 July 2019 (see Table 1). In the same period in 2020, the sector lost around 5.8 billion, which represents approximately 90 % of the relevant turnover.

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<sup>8</sup> Commission decision of 22 December 2020 in case SA.59029 COVID-19- Compensation scheme for carriers having an Italian operating licence, OJ, C 77, 5.3.2021, p. 1. In this respect, the Italian authorities refer to a non-exhaustive list of measures enforced by several countries and affecting flights to/from Italy between late February and 10 March 2020, as indicated in recital (9) and Table 1 of that Commission decision.

<sup>9</sup> The Italian authorities submitted data coming from the two main trade associations in the tourism sector, i.e. ASTOI Confindustria Viaggi – Associazione Tour Operator Italiani and FTO - Federazione Turismo Organizzato. The data submitted by the Italian authorities is broken down into different sets of tables and includes data on the differences between turnover and passenger traffic for tour operators and travel agencies in Italy for the period between February and July of 2020 and for the same period in 2019, including additional breakdowns for more limited periods and data with relevant figures concerning reductions in turnover and number of passengers for (i) Italy, (ii) Europe – Schengen area (Italy not included), (iii) extra-Schengen countries, and (iv) all countries.

**Table 1: period from 23 February to 31 July 2020**

ITALY								
Product	Turnover 2018/19	Turnover 2019/20	Turnover Delta	Turnover Delta (%)	Passengers 2018/19	Passengers 2019/20	Passengers Delta	Passengers Delta (%)
ITALY	632.292.748	235.574.568	<b>(396.718.180)</b>	<b>-62,7%</b>	1.009.523	457.712	<b>(551.811)</b>	<b>-54,7%</b>
EUROPE SCHENGEN AREA (ITALY NOT INCLUDED)								
Product	Turnover 2018/19	Turnover 2019/20	Turnover Delta	Turnover Delta (%)	Passengers 2018/19	Passengers 2019/20	Passengers Delta	Passengers Delta (%)
EUROPE/SCHENGEN	1.532.487.933	73.431.241	<b>(1.459.056.691)</b>	<b>-95,2%</b>	2.099.197	323.660	<b>(1.775.537)</b>	<b>-84,6%</b>
EXTRA SCHENGEN COUNTRIES								
Product	Turnover 2018/19	Turnover 2019/20	Turnover Delta	Turnover Delta (%)	Passengers 2018/19	Passengers 2019/20	Passengers Delta	Passengers Delta (%)
EXTRA SCHENGEN	4.447.774.095	407.634.226	<b>(4.040.139.869)</b>	<b>-90,8%</b>	4.445.635	1.270.040	<b>(3.175.595)</b>	<b>-71,4%</b>
ALL COUNTRIES								
Product	Turnover 2018/19	Turnover 2019/20	Turnover Delta	Turnover Delta (%)	Passengers 2018/19	Passengers 2019/20	Passengers Delta	Passengers Delta (%)
ALL COUNTRIES	6.612.554.776	716.640.035	<b>(5.895.914.741)</b>	<b>-89,2%</b>	7.554.354	2.051.412	<b>(5.502.942)</b>	<b>-72,8%</b>

- (12) The Italian authorities therefore underline that the restrictive measures adopted by the Italian authorities have significantly reduced the activities of travel agencies and tour operators in Italy, in particular with regard to the sale of travel services to extra-EU/Schengen destinations, which is the core business of the sector and the relevant beneficiaries.
- (13) The Italian authorities underline that the application of those restrictive measures severely limited business operation in the travel agency and tour operator sector. In particular, in the period from the beginning of March to mid-June 2020, the prohibitions on travelling from people's home residence made any tourist activity impossible. As a result, tour operator and travel agency businesses had to cancel all trips that had been booked for any travel destination in the world and interrupt all tourist flows to and from Italy.
- (14) In addition, in the period between 3 June and 31 July 2020, although tour operators and travel agencies were able to sell some limited destinations (for national travels in Italy and in Europe), they were unable to operate towards extra-EU/Schengen destinations, which constitute the core business of those operators (amounting to 46.8 % in the period between 15 June and 31 July in 2019), as a result of the travel restrictions in force.

**Table 2: period from 15 June to 31 July 2020**

ITALY								
Product	Turnover 2018/19	Turnover 2019/20	Turnover Delta	Turnover Delta (%)	Passengers 2018/19	Passengers 2019/20	Passengers Delta	Passengers Delta (%)
ITALY	516.277.097	233.953.821	<b>(282.323.276)</b>	<b>-54,7%</b>	824.291	454.563	<b>(369.728)</b>	<b>-44,9%</b>
EUROPE SCHENGEN AREA (ITALY NOT INCLUDED)								
Product	Turnover 2018/19	Turnover 2019/20	Turnover Delta	Turnover Delta (%)	Passengers 2018/19	Passengers 2019/20	Passengers Delta	Passengers Delta (%)
EUROPE/SCHENGEN	1.061.972.299	46.589.517	<b>(1.015.382.782)</b>	<b>-95,6%</b>	1.454.686	205.351	<b>(1.249.335)</b>	<b>-85,9%</b>
EXTRA SCHENGEN COUNTRIES								
Product	Turnover 2018/19	Turnover 2019/20	Turnover Delta	Turnover Delta (%)	Passengers 2018/19	Passengers 2019/20	Passengers Delta	Passengers Delta (%)
EXTRA SCHENGEN	1.391.827.224	1.438.741	<b>(1.390.388.483)</b>	<b>-99,9%</b>	1.391.158	4.483	<b>(1.386.675)</b>	<b>-99,7%</b>
ALL COUNTRIES								
Product	Turnover 2018/19	Turnover 2019/20	Turnover Delta	Turnover Delta (%)	Passengers 2018/19	Passengers 2019/20	Passengers Delta	Passengers Delta (%)
ALL COUNTRIES	2.970.076.620	281.982.080	<b>(2.688.094.541)</b>	<b>-90,5%</b>	3.670.135	664.397	<b>(3.005.739)</b>	<b>-81,9%</b>

- (15) As regards the period from 1 March to 9 March 2020, the Italian authorities stress that tour operators and travel agencies were affected by the negative consequences of the COVID-19 crisis even before the start of the full travel bans across the whole Italian territory, on 10 March 2020. Those earlier negative effects arose notably due to both the travel bans applied by the Italian authorities in some Italian northern regions and the travel bans immediately imposed since the end of February on Italian citizens and Italian routes at EU and extra-EU level (see recitals (7) and (8)). Given those restrictive measures, the aid beneficiaries reported a significant decrease in passenger traffic and revenues already as of 1 March 2020 (see Table 3). Those sharp decreases resulted from the restrictions adopted by other Member States and third countries to/from which the beneficiaries were operating and/or the severe restrictions put in place in those Italian areas where bans started applying since 1 March 2020. In particular, the data provided by the Italian authorities show a turnover decrease of -91.3 % and -77.6 % for Europe/Schengen and extra Schengen travels respectively, compared to the same data in 2019, and an overall turnover decrease (for travels to all countries) of -78.3 % in the period concerned compared to the data relevant to the same period in 2019<sup>10</sup>.

<sup>10</sup> See footnote [9] as concerns the source of the data.

**Table 3: period from 1 to 9 March 2020**

EUROPE SCHENGEN AREA (ITALY INCLUDED)								
Product	Turnover 2018/19	Turnover 2019/20	Turnover Delta	Turnover Delta (%)	Passengers 2018/19	Passengers 2019/20	Passengers Delta	Passengers Delta (%)
EUROPE/SCHENGEN	16.021.760	1.397.760	(14.624.000)	-91,3%	26.368	1.382	(24.986)	-94,8%

  

EXTRA SCHENGEN COUNTRIES								
Product	Turnover 2018/19	Turnover 2019/20	Turnover Delta	Turnover Delta (%)	Passengers 2018/19	Passengers 2019/20	Passengers Delta	Passengers Delta (%)
EXTRA SCHENGEN	281.066.240	63.096.320	(217.969.920)	-77,6%	212.595	68.288	(144.307)	-67,9%

  

ALL COUNTRIES								
Product	Turnover 2018/19	Turnover 2019/20	Turnover Delta	Turnover Delta (%)	Passengers 2018/19	Passengers 2019/20	Passengers Delta	Passengers Delta (%)
ALL COUNTRIES	297.088.000	64.494.080	(232.593.920)	-78,3%	238.963	69.670	(169.293)	-70,8%

- (16) Based on the data provided by the Italian authorities, the approximate total turnover generated per destination by tour operators and travel agencies during the period from 1 March to 31 July 2019<sup>11</sup> shows that the best-selling products by the Italian tour operators and travel agencies during a period similar to the compensation period relate to extra-EU/Schengen destinations. In that respect, the Italian authorities underline that travels have remained prohibited for the entire compensation period, save for exceptional cases.

### 2.3. Form and budget of the measure

- (17) The measure provides aid in the form of direct grants.
- (18) The Italian authorities indicate that the overall budget of the measure is EUR 625 million, taken from the same appropriation as the measures approved in cases SA.59755 (2020/N) and SA.62356 (2021/N) under the Temporary Framework.
- (19) The Italian authorities explain that the overall budget is set out as follows:
- EUR 25 million pursuant to Article 182 (1) of Law Decree of 19 May 2020 n. 34, converted with amendments into Law No 77 of 17 July 2020;
  - EUR 220 million as part of the amount referred to in Article 77 (1) (c) of Law Decree n. 104 of 14 August 2020, converted into Law No 126 of 13 October 2020, as per Ministerial Decree of 5 October 2020;
  - EUR 380 million as part of the amount referred to in Article 5 (2) of Law Decree n. 137 of 28 October 2020, as per Ministerial Decree of 2 November 2020.

<sup>11</sup> This data is divided as follows: a) 9.6 % for destinations in Italy; b) 23.2 % for EU/Schengen destinations; c) 67.3 % for extra-EU/Schengen destinations.

## 2.4. National legal basis

- (20) The Italian authorities indicated that the legal basis of the measure comprises the following provisions:
- Article 182, paragraph 1, of Decree Law no. 34 of 19 May 2020, on urgent measures in the field of health, support for work and the economy and social policies related to the COVID-19, converted with amendments by Law no. 77 of 17 July 2020;
  - Article 77, paragraph 1, letter c), of Decree Law no. 104 of 14 August 2020, on urgent measures to support and relaunch the economy, converted with amendments by Law no. 126 of 13 October 2020;
  - Article 5, paragraph 2, of Decree Law no. 137 of 28 October 2020 on additional urgent measures in the field of health protection, support for workers and businesses, justice and safety in relation to the epidemiological emergency COVID-19;
- (21) The aforementioned provisions have been detailed through the following implementing decrees:
- Decree of the Minister for Cultural Heritage and Activities and Tourism of 12 August 2020 containing "Implementing provisions for the allocation of the fund's resources referred to in Article 182, paragraph 1, of the Decree-Law of 19 May 2020, no. 34 intended for the restoration of travel agencies and tour operators", registered by the Court of Auditors on 26 August 2020, No. 1789;
  - Decree of the Minister for Cultural Heritage and Activities and Tourism of 5 October 2020 containing further implementing provisions for the allocation of the fund resources referred to in Article 182, paragraph 1, of the Decree-Law of 19 May 2020, no. 34, converted with amendments by Law 17 July 2020, n. 77, for travel agencies and tour operators (only budget increase and reference to the Ministerial Decree of 12 August 2020);
  - Decree of the Minister for Cultural Heritage and Activities and Tourism of 2 November 2020 (only budget increase and reference to the Ministerial Decree of 12 August 2020);
  - Decree of the Director General for Tourism of 15 September 2020 containing a public notice for the assignment and payment to travel agencies and tour operators following the COVID-19 containment measures;
  - Decree of the Director General of Tourism of 9 November 2020, which identifies the beneficiaries.
- (22) The measure will not enter into force until the notification of the approval by the Commission. To this end, the Italian legal basis contains a standstill clause,

according to which the measure may only be implemented after it has been approved by the Commission.

## **2.5. Administration of the measure**

- (23) The Italian authorities indicate that the granting authority and competent authority to manage the measure is the Ministry for Cultural Heritage and Activities and Tourism (Directorate General for Tourism).

## **2.6. Beneficiaries**

- (24) The beneficiaries of the measure are travel agencies and tour operators that, at the time of submitting the application, suffered a reduction in turnover giving them right to contributions exceeding EUR 1.8 million per beneficiary and which meet the following requirements:
- (25) The applicant must:
- a. carry out primary or predominant business activities identified by the ATECO<sup>12</sup> codes 79.1, 79.11 and 79.12;
  - b. be registered in the Italian Register of Companies under the ATECO codes referred to in the previous sentence;
  - c. be a firm that is not in difficulty and has no ongoing insolvency proceedings;
  - d. be active in Italy;
  - e. have fulfilled its obligations to protect against insolvency or bankruptcy laid down in Legislative Decree No 79 of 23 May 2011;
  - f. not be subject to disqualifications within the meaning of Article 9(2) of Legislative Decree No. 231 of 8 June 2001;
  - g. have fulfilled obligations relating to social security, taxation and insurance;
  - h. not to be encumbered by impediment clauses that could prohibit the beneficiary from concluding contracts with the public administration.
- (26) The Italian authorities estimate that there will be around 23 beneficiaries under the measure.

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

- (27) The measure is open to undertakings operating travel agencies and tour operator activities.
- (28) The measure applies to the whole territory of Italy and excludes the financial sector.

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<sup>12</sup> Italian equivalent of the European Nomenclature “NACE”. It refers to the national classification of economic activities used by the ISTAT (Italian Institution for Statistics).

## 2.8. Basic elements of the measure

- (29) The Italian authorities explain that to date the aid amounts related to the measure approved in case SA.59755 have been calculated by following the methodology indicated in the Commission decision in that case ("the Ministry's methodology"). According to that methodology the aid is determined by applying a percentage (ranging from 5 % to 20 %, on the basis of the classes of revenue identified in Article 3(3) of the Ministerial Decree of 12 August 2020) to the difference between the amounts of turnover and fees from 23 February 2020 to 31 July 2020 and the amount of turnover and fees for the corresponding period of 2019, net of any aid granted under Article 25 of Decree-law No 34 of 19 May 2020.<sup>13</sup>
- (30) For the calculation of the damages under the measure, the Ministry for Cultural Heritage and Activities and Tourism will request further data from the potential beneficiaries, with the aim of verifying that the compensation paid is not higher than what can be granted in light of the methodology commonly accepted by the Commission for aid under Article 107(2)(b) TFEU ("the updated methodology"). As regards that latter methodology, the Italian authorities explain that in order to determine the amount to be compensated to each beneficiary during the compensation period the amount is to be calculated as the difference between the reduction of turnover and fees for the period of 1 March to 31 July 2020 as compared to the same period in 2019. Then, all costs not incurred (both variable and fixed) will be deducted and the incremental costs (i.e. costs specifically incurred due to the pandemic) will be added. Any aid already received (i.e., non-repayable grants pursuant to Article 25(3) of Decree-Law No. 34 of 19 May 2020 and advances of EUR 1.8 million paid pursuant to the Commission Decisions in cases SA.59755 (2020/N) and SA.62356 (2021/N)) will also be deducted from the compensable damage.
- (31) The Italian authorities explain that the damage to be compensated under the measure will be calculated by using both methodologies (the Ministry's methodology and the updated methodology). More precisely, the compensation will not exceed the lower of the two amounts. In particular, if the amount of compensation calculated on the basis of the Ministry's methodology is higher than the amount resulting from the updated methodology, the compensation will be reduced accordingly. Therefore, the damage compensated on the basis of the Ministry's methodology will never be higher than the damage resulting from the application of the updated methodology.
- (32) As regards the period following the full travel bans, i.e. the period starting on 3 June until 31 July 2020, the Commission services noted in the course of the notification exchanges that some of the travel restrictions indicated by the Italian authorities (see recital (7) above) did not apply during that (whole) period. In particular, some of the travel bans for national and intra-EU/Schengen travel ceased to apply starting on 3 June 2020.

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<sup>13</sup> Measure approved by Commission decision of 8 July 2020 in State Aid SA. 57752(2020/N) – Italy COVID-19: Grants to small businesses and self-employed, C(2020) 4758 final, OJ C 236, 17.7.2020, p. 1.

- (33) For the above-mentioned reasons, in order to avoid any risks of overcompensation for the period between 3 June and 31 July, the Italian authorities committed to ensure that at least 20 % of each beneficiary's turnover during the reference period in 2019 related to travel to/from extra EU/Schengen destinations, and that the aid granted to the relevant beneficiaries in relation to the period between 3 June and 31 July 2020 only relates to the extra EU/Schengen prohibitions and does not exceed the damage resulting from those prohibitions, which remained in place until 31 July 2020. To that end, the Italian authorities also explain that at the time of submitting the application each operator will have to provide data, duly certified by an independent expert, relating to the damages incurred in the period from 3 June to 31 July 2020, specifying those attributable to the non-operation of extra-EU/extra-Schengen travel destinations. In addition, the Italian authorities also committed to grant compensation for the period between 3 June until 31 July only to beneficiaries that can demonstrate, based on concrete and solid evidence, that they were affected by the COVID-19 outbreak and the applicable restrictions over that specific period. That evidence, in particular, should include, per each single beneficiary, concrete figures on, inter alia, number of carried passengers, ticket sales on a daily/weekly basis, number of no-show, load factor, number of cancellations of tickets, number of departures, etc. The evidence should also demonstrate that each single beneficiary strongly suffered from the restrictions in place after the lifting of the measures related to the full lockdown.
- (34) As regards the period from 1 to 9 March 2020, the Italian authorities also committed to grant compensation only to beneficiaries that can demonstrate, based on concrete and solid evidence, that they were affected by the COVID-19 outbreak and the applicable restrictions already in the period between 1 March and 9 March 2020, i.e. prior to the application of the "full lockdown" across Italy. That evidence, in particular, should include, per each single beneficiary, concrete figures on, inter alia, number of carried passengers, ticket sales on a daily/weekly basis, number of no-show, load factor, number of cancellations of tickets, number of departures, etc. The evidence should also demonstrate that each single beneficiary strongly suffered from the restrictions in place already prior to the full lockdown.
- (35) The Italian authorities committed in all cases to ensure that an independent expert will confirm the veracity of the data provided by the relevant beneficiaries relating to the damage suffered during the compensation period and confirm the existence of a direct causal link between the damage suffered and the restrictive measures adopted by the Italian authorities to combat the COVID-19 outbreak over the compensation period.
- (36) Any aid already received by the beneficiaries will be deducted from the compensable damage (i.e. the non-repayable contributions pursuant to article 25, paragraph 3, of the decree-law of 19 May 2020, n.34 and the advances of EUR 1.8 million when the increase in the ceiling for the first part of the measure will be authorized) paid pursuant to the Commission decision of 3 December 2020).
- (37) In addition to the ex ante control at the time of the application, the Italian authorities will also carry out regular checks and ex post controls, using the National Register of State aids, which can be consulted by the Italian authorities in order to extract timely monitoring reports (in particular, for the purpose of verifying any other contributions granted that could contribute to covering the

same losses). The Italian authorities confirm that any proven overcompensation will be subject to recovery by the Italian authorities.

- (38) The period for the submission of applications was open from 21 September 2020 to 9 October 2020; however, eligible beneficiaries will be required to produce additional documentation in order to be entitled to benefit from support under the present measure.
- (39) The Italian authorities confirmed that any payment exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be recovered.
- (40) The Italian authorities confirmed that the payment made to beneficiaries shall be net of any amount recovered by insurance, litigation, arbitration or other sources for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary.
- (41) The Italian authorities confirmed that the benefit of the aid is excluded for any beneficiary who is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damage.
- (42) The Italian authorities indicate that the latest date in which beneficiaries can be granted aid under the measure is 31 December 2021.

### **2.9. Cumulation**

- (43) The Italian authorities confirm that aid under the measure cannot be cumulated with other aid for the same eligible costs.

### **2.10. Monitoring and reporting**

- (44) The Italian authorities have committed to provide a report no later than one year after the date of the present decision specifying the amount of compensation and recoverable advances granted and including a summary of all recoveries ordered under the measure.

## **3. ASSESSMENT**

### **3.1. Legality of the measure**

- (45) 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**

- (46) 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.

- (47) The measure is imputable to the State, since it is granted by the Ministry for Cultural Heritage and Activities and Tourism (see recital (23)). It is financed through State resources, since it is financed by the State general budget (see recitals (18) and (19)).
- (48) The measure confers an advantage on its beneficiaries in the form of direct grants (see recital (17)). The measure thus confers on beneficiaries an advantage that they would not have had under normal market conditions.
- (49) The advantage granted by the measure is selective, since it is awarded only to certain entities that meet the eligibility requirements of the measure (see recital (24)).
- (50) 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.
- (51) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

### **3.3. Compatibility**

- (52) 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. Following the notification of the Italian authorities, the Commission has examined the notified measure pursuant to Article 107(2)(b) TFEU.
- (53) This assessment has led to the following observations.

#### *3.3.1. The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU*

- (54) Article 107(2)(b) TFEU stipulates that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU nor other Union legislation contains a precise definition of the notion of ‘exceptional occurrence’. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the consolidated Union case-law<sup>14</sup>, has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (55) The characterisation of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field<sup>15</sup>. In this regard, the following indicators relating to the event concerned

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<sup>14</sup> Judgement of the Court of Justice of 11 November 2004, *Spain v Commission*, C-73/03, EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, *Atzeni and others*, in *Joined Cases C-346/03 and C-529/03*, EU:C:2006:130 paragraph 79.

<sup>15</sup> Exceptional occurrences which have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see *Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020*, paragraph 330 (OJ C 204, 1.7.2014, p. 53).

must be cumulatively met: (i) unforeseeable or difficult to foresee<sup>16</sup>; (ii) significant scale/economic impact<sup>17</sup>; and (iii) extraordinary<sup>18</sup>.

### 3.3.2. *COVID-19 as an exceptional occurrence*

- (56) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, affecting not only other parts of China but spreading to the majority of countries worldwide. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (57) The WHO declaration of a pandemic<sup>19</sup>, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 determine the exceptional nature of the circumstances. The rapidness of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption<sup>20</sup>. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement. Such measures can result in far-reaching disruption of various economic sectors. This disruption is thus clearly outside the normal functioning of the market.
- (58) In view of the above, this event qualifies as an exceptional occurrence as it was not foreseeable, as it clearly distinguishes itself from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lies outside of the normal functioning of the market.<sup>21</sup>

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<sup>16</sup> Commission Decision of 1 August 2008 in case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, recital 31.

<sup>17</sup> Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 in case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France), or because of the number of dead or injured people (Commission Decision of 11 April 2012 in case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, recital 35; Commission Decision of 2 May 2002 in case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 in case SA.33487, recital 36), the amount of material damage despite the local character of the industrial accident (Commission Decision of 2 May 2002 in case N 241/2002, recital 19).

<sup>18</sup> In its Decision of 19 May 2004 in case C-59/2001 (OJ L 32, 6.2.2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination, did not constitute in itself an exceptional occurrence. It was yet an unforeseeable event, but formed part of the normal commercial risks to which an undertaking is exposed.

<sup>19</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

<sup>20</sup> ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

<sup>21</sup> See also Commission Decision of 12 March 2020, SA.56685 - Denmark - Compensation scheme for cancellation of events related to COVID-19, OJ C 125, 17.4.2020, p. 8.

- (59) In this context, the COVID-19 outbreak can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

3.3.3. *Causal link between COVID-19 outbreak and damage compensated by the measure*

- (60) The Commission has examined the measure pursuant to Article 107(2)(b) TFEU, which requires a direct link between the damage and the exceptional occurrence for which the State aid measure provides compensation. That assessment has led to the following observations.
- (61) As described in detail in section 2.1, the COVID-19 outbreak has led to restrictive measures in Italy, EU and worldwide, which resulted in the closing down of the activities carried out by tour operators and travel agencies. Those restrictive measures were intended to avoid the spread of the virus, but they negatively affected the tourism sector. The damage suffered by tour operators and travel agencies benefitting from the measure is therefore directly linked to the COVID-19 outbreak through the travel restrictions and other restrictive measures imposed by the Italian government and other governments around the world.
- (62) The measure aims at compensating those beneficiaries for the damage suffered due to the imposition of the travel restrictions and the restrictive measures linked to the COVID-19 outbreak (see section 2.1). For the calculation of the damage, the Italian authorities have considered a compensation period running from 1 March to 31 July 2020 (see section 2).
- (63) The Commission considers that, for the purposes of calculating the damage subject to possible compensation under Article 107(2)(b) TFEU, losses occurring during the national lockdown period (10 March to 2 June 2020) and the period immediately before (1 to 9 March 2020) and after (3 to 31 July 2020) can be considered as damage directly linked to the exceptional occurrence, as it will be explained as follows.

3.3.3.1. *Period from 1 to 9 March 2020*

- (64) Italy was the first Member State severely affected by the COVID-19 outbreak and this led to the early adoption of restrictive measures imposed on Italian citizens and travel to and from Italy both at national and international level already in late February 2020 (see recitals (6) and (7)).
- (65) A national lockdown was declared on 9 March 2020. It included the imposition of a full ban on national and international travel, and in particular a ban on leaving people's own home residence, except for exceptional reasons. Nevertheless, those measures already applied in some Italian northern regions since the beginning of March 2020, pursuant to DPCM of 1 March 2020. In the meantime, other countries within and outside the EU either imposed travel restrictions specific to Italy or published travel warnings targeting Italian citizens, residents, and/or Italian travel routes between the end of February and the beginning of March 2020 (see recital (9)).
- (66) Those restrictions altogether had an impact on the business activities of tour operators and travel agencies in Italy in that period.

- (67) In addition, the Italian authorities committed that they will grant compensation for the period at issue only to the beneficiaries that can demonstrate, based on concrete and solid evidence, that they were affected by the COVID-19 outbreak already in the period between 1 March and 9 March 2020 (see recital (34)). The evidence should in particular demonstrate that each single beneficiary strongly suffered from the restrictions in place already prior to the full lockdown.
- (68) Therefore, the Commission considers that the period from 1 to 9 March 2020 can be included as part of the reference period for the compensation.

#### 3.3.3.2. Period from 10 March to 2 June 2020

- (69) The Commission notes that in the period from 10 March to 2 June 2020 lockdown measures were extensively and widely in force (see section 2.1 above) in Italy and within the European Union, together with a travel ban on national and international travel and bans on operating tourism and travel activities.
- (70) Therefore, the Commission considers that this period can be included as part of the reference period for the compensation.

#### 3.3.3.3. Period from 3 June to 31 July 2020

- (71) The Commission notes that, while national and intra-EU/Schengen travel bans were lifted as of 3 June 2020, other travel bans continued to apply following the lifting of the above-mentioned bans in relation to extra-EU/Schengen travel.
- (72) In particular, extra-EU/Schengen travel bans applied until the end of the compensation period, i.e. until at least 31 July 2020<sup>22</sup>. They severely affected the activities of tour operators and travel agencies in terms of both turnover and passenger traffic. In that regard, it is worth noting that the sale of travels to extra-EU/Schengen destinations is the core business of tour operators and travel agencies, amounting to 46.8 % in the period between 15 June and 31 July in 2019, and 67.3 % in the period between 1 March and 31 July in 2019.
- (73) In any case, the Italian authorities committed to ensure that at least 20 % of each beneficiary's turnover during that same period in 2019 related to travel to/from extra EU/Schengen destinations and that the aid granted to the relevant beneficiaries in relation to the period at issue only relates to extra-EU/Schengen prohibitions and does not exceed the damage resulting from those prohibitions which remained in place until 31 July 2020.
- (74) Furthermore, the Italian authorities committed to grant compensation for that period only to the beneficiaries that demonstrate, based on concrete and solid evidence, that they were directly affected by the COVID-19 outbreak between 3 June and 31 July 2020. The evidence should demonstrate that each single beneficiary strongly suffered from the restrictions in place also after the lifting of the measures related to the full lockdown.
- (75) Therefore, the Commission considers that the period from 3 June to 31 July 2020 can be included as part of the reference period for the compensation.

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<sup>22</sup> The Italian authorities stress that these bans were further extended even after that date.

#### 3.3.3.4. Conclusion on the direct link between the damage and the exceptional event

- (76) The Commission concludes that the measure aims to cover the losses incurred by tour operators and travel agencies as a direct effect of the COVID-19 outbreak and related restrictive measures between 1 March and 31 July 2020, subject to a factual demonstration from each beneficiary of their damages.

#### 3.3.4. Proportionality of the aid

- (77) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage and should only make good the damage caused by the exceptional occurrence.
- (78) The Italian authorities have put in place the following additional safeguards, so that the compensation under the measure does not exceed what is necessary to make good the actual damage suffered and thus meets the above-mentioned criteria.
- (79) First, the damage is calculated as the lower amount, resulting from the application of the Ministry's methodology and the updated methodology, as described in recitals (30) and (31) that is considered directly attributable to the restrictive measures that have prevented the relevant beneficiaries from performing their economic activities in the compensation period.
- (80) Second, any aid granted under the measure will be net of any aid already received pursuant to other measures (see recital (5)).
- (81) Third, only damages incurred during the application of the full travel bans (from 10 March until 2 June 2020) may be compensated (see recital (30)). Instead, as regards the period from 3 June until 31 July 2020, aid can be granted to the relevant beneficiaries only in relation to extra EU/Schengen travel bans and should not exceed the damage resulting from those prohibitions, which remained in place until the end of July and only to those beneficiaries that can demonstrate, based on concrete and solid evidence, that they were affected by the COVID-19 outbreak and the applicable restrictions over that period (see recital (33)). Likewise, as regards the period from 1 to 9 March 2020, aid may only be granted to those beneficiaries that can demonstrate, based on concrete and solid evidence, that they were affected by the COVID-19 outbreak and the applicable restrictions already in that period (see recital (34)).
- (82) Fourth, as described in recital (40), the Italian authorities confirmed that the payment made to beneficiaries shall be net of any amount recovered by insurance, litigation, arbitration or other sources for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary.
- (83) Fifth, as described in recital (41), the benefit of the aid is excluded for those beneficiaries who are responsible for the damage suffered, who did not conduct their activities with due diligence or in compliance with applicable legislation, or who did not take appropriate measures to mitigate the damage.

- (84) Sixth, as mentioned in recital (37), the Italian authorities will verify ex post the exact amount of damage incurred by each beneficiary of the measure. Any payments under the measure exceeding the damage suffered as a direct consequence of the COVID-19 outbreak will be recovered.
- (85) Italy also confirms that aid under the measure cannot be cumulated with other aid for the same eligible costs (see recital (43)).
- (86) Italy has therefore ensured that the compensation under the measure will not exceed the damage directly suffered by each beneficiary from the loss of revenue caused by the COVID-19 outbreak.
- (87) In view of the above, the Commission considers that the measure is compatible with the internal market in accordance with Article 107(2)(b) TFEU.

#### **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(2)(b) TFEU.

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

