



EUROPEAN COMMISSION

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SENSITIVE*: *COMP Operations*

**Subject: State Aid SA.63317 (2021/N) – Italy
COVID-19: Compensation scheme to support the trade fairs and
congress sector**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 4 August 2021, Italy notified a damage compensation measure to support the trade fairs and congress sector (the “measure”), on the basis of Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”) in accordance with Article 108(3) TFEU. The measure seeks to assist undertakings in that sector in light of their inability to operate for the periods from 9 March 2020 until 14 June 2020 and from 24 October 2020 until 14 June 2021. Italy submitted additional information on 18, 23 and 24 August 2021.
- (2) Italy exceptionally agrees to waive its rights deriving from Article 342 of the TFEU, in conjunction with Article 3 of Regulation 1/1958¹ and to have this Decision adopted and notified in English.

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

Onorevole Luigi Di Maio
Ministro degli Affari esteri e della Cooperazione Internazionale
P.le della Farnesina 1
I - 00194 Roma

2. DESCRIPTION OF THE MEASURE

2.1 Objective

- (3) The objective of the measure is to compensate the damage suffered by undertakings active in and/or engaged with the trade fairs and congress sector due to the lockdown measures adopted by Italy in response to the COVID-19 pandemic.
- (4) The Italian authorities explain that Italy was the first country in the European Union to adopt generalised lockdown measures, imposing specific restrictions on the holding of public events including fairs and congresses, as well as travel restrictions and to be subject to travel restrictions enforced by other Member States and third countries due to the COVID-19 outbreak. Restrictions on tourism, travel and mobility, including within Italian regions, have also affected the trade fairs and congress sector, limiting the possibility of exhibitors and visitors to travel and participate in those events.
- (5) In particular, the Italian authorities explain that the Decree of the President of the Council of Ministers (DPCM) of 9 March 2020, article 1 paragraphs 1 and 2, established a full lockdown for activities, such as fairs, congresses and events involving public gatherings, throughout Italy as of that date. Article 1 paragraph 1 letters i) and s) of DPCM of 26 April 2020 prolonged the relevant lockdown measure for trade fairs and congresses; these lockdown measures were in place until 14 June 2020. Following the worsening of the COVID-19 pandemic after the 2020 summer break, the lockdown measures were reintroduced through a DPCM of 24 October 2020 and maintained until 14 June 2021, as provided by legal acts prolonging the measures.
- (6) As a result of those measures, the Italian authorities imposed a full prohibition of the activities of trade fairs and congresses for the periods from 9 March 2020 until 14 June 2020 and from 24 October 2020 until 14 June 2021 (the “compensation periods”). During the compensation periods, those activities could not take place. As confirmed by Italy, the trade fairs and congress sector registered in 2020 a drop of approximately 70 % in the number of events, 70 % in the number of exhibitors, 80 % in the number of visitors, and 75 % in the turnover compared to 2019. As a consequence, losses for the operators in the sector were sizeable.
- (7) Italy wants to introduce a measure which aims to compensate the damage suffered by undertakings that own or manage fairs infrastructures, organise congresses and/or provide services in relation to the fairs and congress activity, and which suffered a considerable reduction in turnover and consequently losses during the compensation periods due to lockdown measures introduced in Italy in order to limit the COVID-19 pandemic.

2.2 The nature and form of aid

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

2.3 Legal basis

- (9) The legal basis for the measure is:

- (a) Article 183, paragraph 2 of the Law Decree No. 34 of 19 May 2020 and subsequent amendments,
 - (b) Article 38 of Law Decree No. 41 of 22 March 2021 as amended by Law Decree No. 73 of 23 May 2021,
 - (c) Draft implementing rules which will be finalised on the basis of the provisions of the notification as reflected in this Decision.
- (10) The measure will not enter into force until it is authorised by the Commission. To that end, Italy submitted that implementing rules will be adopted containing a standstill clause, according to which the measure may only take effect after the notification of the adopted Decision.

2.4 Administration of the measure

- (11) The Italian authorities indicate that the granting authority and the competent authority to manage the measure is the Ministry of Tourism.

2.5 Budget and duration of the measure

- (12) The estimated budget of the measure is EUR 520 million. It will be financed through the national budget.
- (13) Aid may be granted under the measure as from the notification of the Commission's approval until no later than 31 December 2021.

2.6 Beneficiaries

- (14) The beneficiaries are the following categories of undertakings:
- (a) fair agencies (“enti fiera”) and undertakings that own or manage fairs infrastructures and/or organise congresses with main ATECO code 82.30.00², “Organisation of congresses and fairs”³;
 - (b) providers of services for fairs and/or congresses, for example logistics, transport, stands building, catering, which registered in 2019 more than 50 % of their turnover deriving from operators and activities as reported in previous letter (a).
- (15) The beneficiaries must:
- (a) be active in Italy and be registered in the Italian Business Register⁴;
 - (b) have fulfilled obligations concerning social security, taxation and insurance matters;

² The Italian version of NACE codes: [Classificazione delle attività economiche Ateco 2007 \(istat.it\)](https://www.istat.it/it/nuovi-servizi/nuovi-codici-attivit%C3%A0-economiche-ateco-2007)

³ Italy stated that fair undertakings that own or manage fairgrounds are currently 39 and operate 41 fairs districts overall. 4 undertakings, out of them 39, in 2019, had a turnover greater than EUR 50 million (Bologna Fiere, Fiera Milano, IEG Exhibition and Verona Fiere); in addition, Bologna Fiere, Fiera Milano and IEG Exhibition employed more than 250 people each.

⁴ [Registro Imprese | I dati Ufficiali della Camera di Commercio.](https://www.registroimprese.it/)

- (c) not be subject to disqualifications pursuant to article 9, paragraph 2, of Legislative Decree No. 231 of 8 June 2001⁵.

2.7 Basic elements of the measure

- (16) The objective of the measure is to compensate damage to undertakings active in the trade fairs and/or congress sector and to their service providers, which registered a significant part of their turnover, namely more than 50 %, deriving from those operators and activities in 2019 (recital (14)), for the compensation periods (recital (6)). Only fairs and congresses requiring a physical presence and which could not take place because of the lockdown measures in place are eligible⁶.
- (17) The eligible periods under the measure are the compensation periods, namely from 9 March 2020 until 14 June 2020 and from 24 October 2020 until 14 June 2021.
- (18) For the purpose of the measure, Italy sets up the following method to calculate the maximum damage compensation:
- (19) With regard to the 2020 part of the compensation periods, namely from 9 March to 14 June and from 24 October to 31 December 2020, which are already audited and certified:
- (a) The Italian authorities explain that they will check the damage suffered by each beneficiary (maximum amount of the compensation) by calculating it as the difference between the earnings before interest, taxes, depreciation, and amortisation ('EBITDA')⁷ in 2019 for the reference period⁸, and the EBITDA in 2020, restricted to the periods of "full lockdown". The beneficiary will provide actual audited and certified data.
- (b) Below or equal to EUR 4 million of aid per month (on average for the 2020 part of the compensation periods):
- i. the maximum amount of the compensation will be determined using the following formula, which includes an adjustment of the EBITDA for the reference period equal to the GDP growth rate between 2019 and 2020 (-8.9 %, as provided by ISTAT data⁹):

$$\text{Maximum damage compensation} = [\text{EBITDA for the reference period} * (1 - 0.089)] - [\text{EBITDA for the compensation periods}].$$

⁵ Sanctions imposed to undertakings which had committed administrative offences, for example, ban from operating their activity, exclusion from contracting with the public administration ([Gazzetta Ufficiale](#)).

⁶ Fairs and congresses expecting a physical presence but then held on-line would not be eligible for compensation.

⁷ The EBITDA used will be the one related to the prohibited activities.

⁸ The reference periods are the corresponding periods in 2019, respectively from 9 March to 14 June and from 24 October to 31 December 2019 for the compensation period in 2020 and from 1 January to 14 June 2019 for the compensation period in 2021.

⁹ Source: Istat – Istituto nazionale di statistica, available at [Stima preliminare del Pil e dell'occupazione a livello territoriale \(istat.it\)](#).

- ii. whenever a month is not fully covered by the compensation periods, a daily pro rata scale adjustment will apply, as follows:

Maximum monthly pro rata damage compensation = [number of days of the month covered by the compensation periods / number of days of the month] * maximum monthly damage compensation.

- (c) Above EUR 4 million of aid per month (on average for the 2020 part of the compensation periods)¹⁰, for each beneficiary concerned, the EBITDA for the activities concerned for the reference period will be adjusted to exclude the economic effects of the decline in demand due to lower aggregate demand, or to greater customer reluctance, or the generally applicable restrictions on capacity and social distancing measures affecting the sector. In particular, the actual impact of the restrictions will be established by comparison with periods in 2020 and 2021, where such eligible restrictions were not enforced while other economic effects or general restrictions were in place. Only in case it is demonstrated that an individual adjustment of the counterfactual is not possible, a reduction of 20 %¹¹ on the EBITDA of the reference period would apply.
- (20) With regard to the 2021 part of the compensation periods, namely from 1 January until 14 June 2021, or for periods for which the audited and certified accounts are not yet available:
- (a) The compensation will be granted according to the approach set out in recital (19) on the basis of the beneficiary's provisional accounts, subject to an ex-post control as soon as the accounts are audited and certified;
 - (b) If the aid provisionally granted based on letter (a) above exceeds the damage calculated ex post based on the audited and certified data according to the approach set up in recital (19), the difference will be clawed back. The latest date for the ex-post control will be 30 June 2022.
- (21) Italy confirms that the formula reported in recital (19) sets the maximum amount of compensation. Italy will compensate the beneficiaries taking into consideration the available budget of the measure. In any case, Italian authorities will control that the compensation actually granted does not exceed the maximum amounts calculated according to recitals (19) and (20), avoiding any risks of overcompensation.
- (22) Italy clarifies that, whenever the EBITDA related to the prohibited activities is not readily available in the monthly profit and loss statements, the following formula

¹⁰ In order to determine whether the ceiling of EUR 4 million is exceeded Italy should calculate the damage compensation without applying the deduction of the 8.9 % GDP decline to the EBITDA for the reference period.

¹¹ Having regard to the overall economic downturn in Italy between 2019 and 2020, which led to a GDP growth rate of -8.9 %, and in the absence of sector-specific economic growth indicators for those years, the Italian authorities consider that a 20 % reduction can be deemed conservative, since it represents double the growth rate in Italy between 2019 and 2020 and factors in an additional correction to avoid overcompensation.

will be used to approximate and scale it in proportion to the revenues related to the prohibited activities:

EBITDA prohibited activities in the reference period = [revenues of prohibited activities in the reference period / total revenues in the reference period] * total EBITDA in the reference period

and

EBITDA prohibited activities in the compensation period = [revenues of prohibited activities in the reference period / total revenues in the reference period] * total EBITDA in the compensation period

- (23) The same methodology as reported in recitals (19), (20) and (22) will be applied also to providers of services (recital (14)(b)).
- (24) Beneficiaries active in the sector concerned or providing services to that sector, to the extent they were also engaged in other, non-prohibited activities, may have used their capacity differently and have shifted their activity to more profitable non-prohibited activities. The operating profits of that other related or linked activity, which have become more profitable as a result of that shift, are to be identified and taken into account in the calculation of the eligible damage¹². The damage compensation will be limited to that of the activities effectively prohibited by the restrictive measures and limited to the overall loss (EBITDA difference between reference and compensation period) of the undertaking¹³. In addition, the compensation will be excluded in cases where the activity of the beneficiary, seen in its entirety, is more profitable in the compensation period than in the reference period. Losses suffered by activities not prohibited by the lockdown decisions and not related or linked to the prohibited activity will be excluded from the eligible damage calculation. In that way, Italy is confident to exclude any risk of overcompensation for the damage suffered.
- (25) The Italian authorities also confirm that any payment exceeding the damage suffered as a direct consequence of the COVID-19 pandemic will be recovered.
- (26) The Italian authorities confirm that the payment made to beneficiaries will 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.
- (27) The Italian authorities confirm 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

¹² Italy commits that in such a case beneficiaries will either need to have an account separation between the activity affected by the restrictive measures and the remaining activities that are not affected by the restrictive measures, and in that case, the damage will be capped to the restricted activities, or where it is not possible the revenue shares of the activities from 2019 are used to allocate the operating results.

¹³ The EBITDA of the reference period will be adjusted taking into consideration the GDP growth rate between 2019 and 2020 (-8.9 %).

2.8 Cumulation

- (28) The Italian authorities confirm that aid under the measure cannot be cumulated with other aid for the same eligible costs.
- (29) According to Italy, aid granted under section 3.12 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”¹⁴)¹⁵ would be deducted from the eligible damage as calculated for this measure under Article 107(2)(b) TFEU. Alternatively, the beneficiary may repay the section 3.12 aid before applying for aid under the measure.

2.9 Monitoring and reporting

- (30) The Italian authorities also committed to provide a report on the State aid granted under the scheme no later than 1 year after the date of this Decision.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (31) By notifying the measure before putting it into effect (recital (10)), the Italian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (32) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (33) The measure is imputable to the State, since it is administered by the Ministry of Tourism (recital (11)) and it is based on the national legal basis as reported in recital (9). It is financed through State resources, since it is financed by public funds (recital (12)).
- (34) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (8)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (35) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries (recital (14)). It also affects trade between Member

¹⁴ 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).

¹⁵ In particular Italy made reference to the scheme SA.61294, “COVID-19 – Support to undertakings in the trade fair sector under section 3.12 TF”, approved by Commission Decision C(2021) 1879 of 16 March 2021, not yet published.

States, since those beneficiaries are active in sectors in which intra-Union trade exists.

- (36) The advantage granted by the measure is selective, since it is awarded only to undertakings that meet the conditions set out in recitals (14) and (15), and not to any other undertakings that might be in a comparable factual and legal situation in light of the objective of the measure.
- (37) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (38) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market. Following the notification of the Italian authorities, the Commission has examined the measure pursuant to Article 107(2)(b) TFEU.

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

- (39) Article 107(2)(b) TFEU provides 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 settled case-law of the Court of Justice of the European Union¹⁶, has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (40) The Commission assesses whether an event qualifies as an exceptional occurrence on a case-by-case basis, having regard to its previous decision-making practice¹⁷. For an event to be regarded as an exceptional occurrence, it needs to meet the

¹⁶ Judgements of the Court of Justice of 11 November 2004, *Spain v Commission*, C-73/03, EU:C:2004:711, paragraph 37, and of 23 February 2006, *Atzeni and others*, Joined Cases C-346/03 and C-529/03, EU:C:2006:130 paragraph 79.

¹⁷ Exceptional occurrences that have been accepted by the Commission in the past 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, 1.07.2014, p. 53).

following cumulative criteria: (i) be unforeseeable or difficult to foresee¹⁸; (ii) have significant scale/economic impact¹⁹, and (iii) be extraordinary²⁰.

3.3.2. *The COVID-19 pandemic as an exceptional occurrence*

- (41) Following the first report of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities 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, spreading not only to other parts of China but also 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.
- (42) The declaration of the World Health Organization of a pandemic²¹, 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 rapidity of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption²². The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from that acknowledgement. Such measures can result in far-reaching disruption of various economic sectors, which is clearly outside the normal functioning of the market.
- (43) In view of the above, this event qualifies as an exceptional occurrence because: (i) it was not foreseeable; (ii) it clearly distinguishes itself from ordinary events by its character and effects on both the undertakings directly affected and the economy as a whole; and (iii) it lies outside of the normal functioning of the market.

¹⁸ Commission Decision of 1 August 2008, 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.

¹⁹ Elements taken into account by the Commission to consider that the occurrence reached a significant scale include: (i) the fact that negative consequences cannot be contained (Commission Decision of 4 October 2000 on case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France); (ii) the significant number of dead or injured people (Commission Decision of 11 April 2012 on 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 on case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19); (iii) the occurrence of immense ecological and economic damage (Commission Decision of 11 April 2012 on case SA.33487, recital 36); (iv) the amount of material damage, despite the local character of the industrial accident (Commission Decision of 2 May 2002 on case N 241/2002, recital 19).

²⁰ In its Decision of 19 May 2004 in case C-59/2001 (OJ L 62, 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. In fact, it was an unforeseeable event but formed part of the normal commercial risks to which an undertaking is exposed.

²¹ [WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020.](#)

²² ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

- (44) In that context, the COVID-19 pandemic can be regarded as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

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

- (45) The Court has held that only damage caused by natural disasters or exceptional occurrences may be compensated for under Article 107(2)(b) TFEU. It follows that there must be a direct link between the damage and the exceptional occurrence, for which the State measure provides compensation and that an assessment as precise as possible must be made of the damage suffered by the beneficiary concerned.²³ The COVID-19 pandemic qualifies as exceptional occurrence (recital (44)).
- (46) As described in detail in recitals (4) and (5), the COVID-19 pandemic has led to the adoption of lockdown measures by Italy, which resulted in the prohibition of the activities carried out by undertakings that own or manage fairs infrastructures, organise congresses and/or provide services in relation to the fairs and/or congress activity (recital (6)) in the periods from 9 March 2020 until 14 June 2020, and from 24 October 2020 until 14 June 2021. Those restrictive measures were intended to prevent the spread of the virus, but they negatively affected the undertakings active in that sector (recital (14)(a)). Those lockdown measures also affected undertakings that derived in 2019 a significant part of their turnover, namely more than 50%, from operators active in that sector (recital (14)(b)). The damage suffered by undertakings as identified in recital (14) is therefore directly linked to the COVID-19 pandemic through the lockdown measures imposed by the Italian government.
- (47) The measure aims at compensating those beneficiaries for the damage suffered due to the imposition of the lockdown measures linked to the COVID-19 pandemic²⁴. For the calculation of the damage, the Italian authorities have considered as compensation periods the periods from 9 March 2020 until 14 June 2020, and from 24 October 2020 until 14 June 2021 (recital (6)) which are the periods when lockdown measures applied to the sector concerned (see recital (7)).
- (48) The Commission considers that, for the purposes of calculating the damage subject to compensation under Article 107(2)(b) TFEU, losses occurring during the compensation periods can be considered as damage directly linked to the exceptional occurrence. Given the mandatory character of the restrictive measures introduced by the Italian government, beneficiaries of this measure as identified in recital (14) suffered significant financial damage owing to ban on them carrying out their activities (recital (6)).
- (49) The Commission concludes that the measure aims to cover the losses incurred by the beneficiaries as a direct consequence of the COVID-19 pandemic due to the related restrictive measures in the compensation periods.

²³ See case-law referred to in footnote 16.

²⁴ As reported in recital (16), only fairs and congresses requiring a physical presence and which could not take place because of the lockdown measures in place are eligible.

3.3.4. *Proportionality of the aid measure*

- (50) 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; it should only make good the damage caused by the exceptional occurrence.
- (51) The Commission notes that the compensation is limited to the losses of the beneficiaries due to the prohibition of the activities under lockdown. Activities other than the ones prohibited, as identified in recital (16), are excluded from compensation under the measure. The same methodology applies to service providers (recital (14)(b) and (recital (23)).
- (52) The level of compensation is established in relation to a clear and adequate counterfactual period, which is in principle the corresponding period of the compensation periods in 2019 (footnote (8)).
- (53) A rigorous damage calculation of the measure is further ensured, as summarised in the following recitals.
- (54) With regard to the part of the compensation periods in 2020, namely from 9 March until 14 June, and from 24 October until 31 December 2020, which are already audited and certified:
- (a) The Italian authorities will calculate the maximum damage as the difference between the EBITDA in 2019 for the reference period and the EBITDA in 2020 restricted to the periods of “full lockdown” on the base of actual audited and certified data (recital (19)(a)).
 - (b) If the monthly aid per individual beneficiary is below or equal, on average, over the 2020 part of the compensation periods to EUR 4 million, the Italian authorities will apply an adjustment to the EBITDA in the reference period when calculating the difference with the EBITDA with the compensation periods which will correspond to the growth rate of GDP between 2019 and 2020, which is estimated, based on official data, at -8.9 % (see recital (19)(b)(i)). Whenever a month is not fully covered by the compensation periods, a daily pro rata scale adjustment will apply (recital (19)(b)(ii)).
 - (c) In addition, if the monthly aid per individual beneficiary exceeds, on average over the eligible period, EUR 4 million, the counterfactual profits must be determined on a case-by-case basis. In that analysis for each beneficiary concerned, the individual counterfactual profits have to be adjusted for the economic effects of declines in demand due to lower aggregate demand, or to greater customer reluctance, or the generally applicable restrictions on capacity and social distancing measures. In particular, the actual impact of the restrictions will be established by comparison with periods in 2020 and 2021, where such eligible restrictions were not in force. If it is demonstrated that an individual adjustment is not possible in certain cases, a reduction of 20 % on the average profits of the reference period will be applied (recital (19)(c)). The Commission considers that a 20 % EBITDA reduction is an appropriate proxy for a restriction-free counterfactual since it corresponds to a fall in demand of over twice the fall in the growth rate of GDP in Italy between 2019 and 2020 (i.e. -8.9 %),

while also factoring in an additional correction to avoid overcompensation. The Commission is of the view that such an approach, based on figures relating to the performance of the Italian economy overall, is an appropriate one in the absence of sector-specific data (footnote (11)), in light of its highly prudent character.

- (55) With regard to the part of the compensation periods in 2021, namely from 1 January until 14 June, or for periods for which the audited and certified accounts are not yet available the compensation will be granted on the basis of the beneficiary's provisional accounts, subject to an ex-post control as soon as the accounts are audited and certified (recital (20)(a)); if the aid provisionally granted in accordance with recital (20)(a) exceeds the damage calculated ex post based on the audited and certified data according to the approach set out in recital (19), the difference will be clawed back. The latest date for the ex-post control will be 30 June 2022 (recital (20)(b)).
- (56) Whenever the EBITDA related to the prohibited activities is not readily available in the monthly profit and loss statements, the EBITDA will be approximated and scaled in proportion to the revenues related to the prohibited activities (recital (22)).
- (57) With regard to providers of services (recital (14)(b)), the same methodology as reported in recitals (54) to (56) will apply (recital (23)).
- (58) As reported in recital (21), the damage calculation as reported in recitals (19) and (20) defines the maximum amount of compensation. Italy will distribute the aid to beneficiaries taking into consideration the available budget of the measure. In any case, the compensation granted will not exceed the maximum damage calculation, thus avoiding any risks of overcompensation.
- (59) The measure ensures that, ultimately, the compensation is strictly limited to the losses caused by the application of the restrictive measures. As stated in recital (24), the damage compensation will be limited to that of the activities effectively prohibited by the restrictive measures and limited to the overall loss (EBITDA difference between reference and compensation period) of the undertaking. In addition, the compensation will be excluded in cases where the activity of the beneficiary, seen in its entirety, is more profitable in the compensation period than in the reference period. Losses suffered by activities not prohibited by the lockdown decisions and not related or linked to the prohibited activity will be excluded from the eligible damage calculation, thus excluding any risk of overcompensation for the damage suffered.
- (60) As stated in recital (25), any payment exceeding the damage suffered as a direct consequence of the COVID-19 pandemic will be recovered.
- (61) As described in recital (26), payments made to the beneficiaries are net of any amount obtained from insurance, litigation, arbitration or any other sources, which compensates for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary.
- (62) The aid is excluded for any applicant who did not take measures to mitigate its damage, for any applicant who is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation (recital (27)).

- (63) Italy also confirms that aid under the measure cannot be cumulated with other aid for the same eligible costs (recital (28)).
- (64) Moreover, aid granted under section 3.12 of the Temporary Framework would be deducted from the eligible damage as calculated for this measure under Article 107(2)(b) TFEU. As an alternative, the beneficiary may repay the aid received under section 3.12 of the Temporary Framework before applying for aid under the measure (recital (29)).
- (65) The Commission notes that Italy committed to provide a report on the State aid granted under the scheme no later than 1 year after the date of this Decision (recital (30)).
- (66) 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 pandemic.

3.3.5. Conclusion on compatibility of aid with Article 107(2)(b) TFEU

- (67) In view of the above, the Commission considers that the damage compensation under 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 notified aid on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

