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**SENSITIVE\***: *COMP Operations*

**Subject: State Aid SA.64469 (2021/N) – Italy**  
**COVID-19: Aid for undertakings operating open top tourist buses**

Excellency,

## 1. PROCEDURE

- (1) By electronic notification of 13 August 2021, updated on 29 September 2021, Italy notified support for uncovered fixed costs (*Beneficiari, requisiti e determinazione del contributo in favore delle imprese esercenti in via primaria e prevalente, le attività associate al codice ATECO 49.31.00, mediante autobus scoperti*<sup>1</sup>, the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).<sup>2</sup>
- (2) Upon request by the Commission of 1 October 2021, Italy provided additional information on 2 October 2021.

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<sup>1</sup> Unofficial translation: “Beneficiaries, requirements and determination of the aid for undertakings operating primarily and mainly, the activities associated with ATECO code 49.31.00, by means of open buses”.

<sup>2</sup> Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by 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).

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- (3) Italy exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958<sup>3</sup> and to have this Decision adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURE**

- (4) Italy considers that the COVID-19 pandemic affects the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the pandemic, to ensure that the disruptions caused by the pandemic do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the pandemic.
- (5) 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.
- (6) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.12 of the Temporary Framework.

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

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

### **2.2. Legal basis**

- (8) The legal basis for the measure is Article 182(1) of Decree-Law No 34 of 19 May 2020<sup>4</sup> and the Decree of the Minister of Tourism No. 223 of 11 August 2021<sup>5</sup> (notably Article 5).

### **2.3. Administration of the measure**

- (9) The Ministry of Tourism is responsible for administering the measure.

### **2.4. Budget and duration of the measure**

- (10) The estimated budget of the measure is EUR 7 million, originating from the State budget.

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

<sup>4</sup> Decreto-Legge 19 maggio 2020, n. 34: “*Misure urgenti in materia di salute, sostegno al lavoro e all'economia, nonché di politiche sociali connesse all'emergenza epidemiologica da COVID-19.*”

<sup>5</sup> Prot. n. SG / 223: “*Disposizioni applicative concernenti le modalità di ripartizione ed assegnazione delle risorse stanziare per gli anni 2021 e 2020 sul fondo di cui all'articolo 182, comma 1, del decreto-legge 19 maggio 2020, n. 34, convertito, con modificazioni, dalla legge 17 luglio 2020, n. 77, destinate ad agenzie di viaggio, tour operator, guide turistiche e accompagnatori turistici, ad imprese di trasporto turistico mediante bus scoperti, ad imprese turistico-ricettive nonché ad agenzie di animazione per feste e villaggi turistici*”

- (11) 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 2021.
- (12) The period for which beneficiaries could receive aid under the measure is 1 March 2020 until 30 June 2021 (the "eligible period").

## **2.5. Beneficiaries**

- (13) The final beneficiaries of the measure are SMEs and large enterprises<sup>6</sup>. However, financial institutions are excluded as eligible final beneficiaries.
- (14) The beneficiaries should be undertakings that are not subject to a public service obligation and are authorized pursuant to Legislative Decree No 422 of 19 November 1997 and the related regional implementing laws. In addition, they exercise exclusively or prevalently the activities referred to in ATECO<sup>7</sup> code 49.31.00 by means of open top tourist buses. An open top bus is usually a double-decker bus without a roof used for tourist and sightseeing activities.
- (15) Aid may not be granted under the measure to medium<sup>8</sup> and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")<sup>9</sup> on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid<sup>10</sup> or restructuring aid.<sup>11</sup>

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

- (16) The measure is open to the open top tourist buses sector and applies to the whole territory of Italy.

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<sup>6</sup> As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

<sup>7</sup> The Italian classification system of economic activities.

<sup>8</sup> As defined in Annex I to Commission Regulation (EU) No 651/2014.

<sup>9</sup> As defined in Article 2(18) of Commission Regulation (EU) No 651/2014, Article 2(14) of Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 193, 1.7.2014, p. 1), and Article 3(5) of Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 369, 24.12.2014, p. 37).

<sup>10</sup> 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.

<sup>11</sup> Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

## **2.7. Basic elements of the measure**

- (17) Besides the conditions stipulated in recital (14), to be eligible for the measure, the beneficiaries need to fulfil the following conditions:
- (a) Have a registered office in Italy;
  - (b) Have a registered VAT number prior to 23 February 2020; and
  - (c) Have fulfilled its obligations relating to social security, taxation and insurance.
- (18) Italy has split the EUR 7 million budget in two parts. The first part consists of EUR 5 million and is meant to cover the uncovered fixed costs in the 2020 part of the eligible period. The second part consists of EUR 2 million and is meant to cover the uncovered fixed costs in the 2021 part of the eligible period.
- (19) Italy has further provided the following elements concerning the measure:
- (a) The aid covers uncovered fixed costs incurred during the period 1 March 2020 and 30 June 2021, including such costs incurred in part of the eligible period;
  - (b) The maximum aid amount per beneficiary undertaking is EUR 10 million (gross, i.e. before any deduction of tax or other charge);
  - (c) The aid is granted on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30 % compared to the same period in 2019;
  - (d) Uncovered fixed costs are defined under the measure in accordance with point 87(c) of the Temporary Framework and the aid intensity shall not exceed 70% of the uncovered fixed costs, except for micro and small companies, where the aid intensity shall not exceed 90% of the uncovered fixed costs;
  - (e) The losses of the undertakings from their profit and loss statements during the eligible period are considered to constitute uncovered fixed costs;
  - (f) The aid under the measure may be granted based on forecasted losses on the basis of audited accounts;
  - (g) Any payment exceeding the final amount of the aid will be recovered.

## **2.8. Cumulation**

- (20) The Italian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations<sup>12</sup> or the GBER provided the provisions and cumulation rules of those Regulations are respected.

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<sup>12</sup> 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) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application

- (21) The Italian authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (22) The Italian authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.12 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 87(d) of that framework, will be respected.
- (23) The Italian authorities confirm that aid granted under the measure shall not be cumulated with other aid for the same eligible costs.

### **2.9. Monitoring and reporting**

- (24) The Italian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting<sup>13</sup>).

## **3. ASSESSMENT**

### **3.1. Lawfulness of the measure**

- (25) By notifying the measure before putting it into effect, the Italian authorities have respected their obligations under Article 108(3) TFEU<sup>14</sup>.

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

- (26) 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.
- (27) The measure is imputable to the State, since it is administered by the Ministry for Tourism and it is based on Article 182(1) of Decree-Law No 34 of 19 May 2020<sup>15</sup> and the Decree of the Minister of Tourism No. 223 of 11 August 2021 (recital

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of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

<sup>13</sup> Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014.

<sup>14</sup> A standstill clause is laid down in Article 8 of Decree No. 223.

<sup>15</sup> DECRETO-LEGGE 19 maggio 2020, n. 34: *“Misure urgenti in materia di salute, sostegno al lavoro e all'economia, nonche' di politiche sociali connesse all'emergenza epidemiologica da COVID-19.”*

(8)). It is financed through State resources, since it is financed by public funds from the State budget.

- (28) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (7)). The measure thus confers an advantage on those beneficiaries which they would not have had under normal market conditions.
- (29) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, namely undertakings operating open top tourist buses (recital (14)), excluding the financial sector.
- (30) 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.
- (31) 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**

- (32) 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.
- (33) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (34) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.
- (35) The measure aims at compensating undertakings for their uncovered fixed costs at a time when the normal functioning of markets is severely disturbed by the COVID-19 pandemic and that pandemic is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (36) The measure is one of a series of measures conceived at national level by the Italian authorities to remedy a serious disturbance in their economy. The importance of the measure to compensate undertakings operating open top tourist buses for their uncovered fixed costs in a period where they were not able or only able to a limited extent to generate income due to strict containment and control measures that aimed limiting the spread of the coronavirus is widely accepted by economic commentators. The tourism sector is important for the Italian economy (approximately 13 % of the Italian GDP is generated in this sector) and so are the undertakings operating in this sector, like for instance those operating open top buses. Furthermore, the measure has been designed to meet the requirements of a

specific category of aid (“*Aid in the form of support for uncovered fixed costs*”) described in section 3.12 of the Temporary Framework.

- (37) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:
- Aid is granted under the measure no later than 31 December 2021 (recital (11)) and covers uncovered fixed costs incurred during the period between 1 March 2020 and 30 June 2021 (recital (12)). The measure therefore complies with point 87(a) of the Temporary Framework.
  - Aid is granted under the measure on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019 (recital (19)(c)). The measure therefore complies with point 87(b) of the Temporary Framework.
  - Uncovered fixed costs are defined under the measure in accordance with point 87(c) of the Temporary Framework and the aid intensity will not exceed 70% of the uncovered fixed costs, except for micro and small companies, where the aid intensity will not exceed 90% of the uncovered fixed costs (recital (19)(d)). The losses of undertakings from their profit and loss statements during the eligible period<sup>16</sup> are considered to constitute uncovered fixed costs. The aid under this measure may be granted based on forecasted losses, while the final amount of aid will be determined after realisation of the losses on the basis of audited accounts. Any payment exceeding the final amount of the aid must be recovered (recital (19)(g)). The measure therefore complies with point 87(c) of the Temporary Framework.
  - The aid takes the form of direct grants (recital (7)). The overall nominal value of the direct grants will not exceed EUR 10 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (19)(b)). The measure therefore complies with point 87(d) of the Temporary Framework.
  - The aid under the measure shall not be cumulated with other aid for the same eligible costs (recital (23)). The measure therefore complies with point 87(e) of the Temporary Framework.
  - Aid may not be granted under the measure to medium<sup>17</sup> and large enterprises that were already in difficulty on 31 December 2019 (recital (15)). Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid<sup>18</sup> or restructuring aid<sup>19</sup>

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<sup>16</sup> One-off impairment losses are not included in the calculation of the losses.

<sup>17</sup> As defined in Annex I to Commission Regulation (EU) No 651/2014.

<sup>18</sup> 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.

(recital (15)). The measure therefore complies with point 87(f) of the Temporary Framework.

- (38) 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 (5)).
- (39) The Italian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (24)). The Italian authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recital (21)).
- (40) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

#### **4. CONCLUSION**

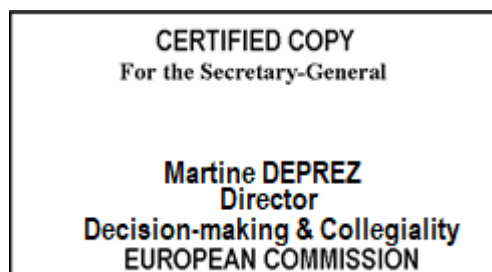
The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

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

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President



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<sup>19</sup> 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.