EUROPEAN COMMISSION

Brussels, 25.3.2020
C(2020) 1984 final

PUBLIC VERSION

This document is made available for information purposes only.

Subject: State Aid SA.56690 (2020/N) – Italy
State guarantee to support debt moratorium by banks to SME borrowers under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak

Excellency,

1. PROCEDURE

(1) By electronic notification of 23 March 2020, Italy notified aid in the form of a guarantee on certain credit facilities available to SMEs subject to a debt moratorium ("*Misure di sostegno finanziario alle micro, piccole e medie imprese colpite dall'epidemia di COVID-19*"[1], "the measure") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework").[2]

(2) The Italian authorities confirm that the notification does not contain confidential information..

(3) Italy exceptionally agrees to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958,[3] and to have this Decision adopted and notified in English.

---

[1] Article 56 of the Italian Decree Law n. 18 of 17 March 2020

[2] Communication from the Commission - Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, C(2020) 1863 final, https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html, not yet published in the OJ.

[3] 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

(4) Italy considers that the COVID-19 outbreak has started to affect 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 damage inflicted upon those undertakings which have been impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak.

(5) Italy takes the view that the measure is based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU"), as interpreted by Section 2 of the Temporary Framework.

2.1. The nature and form of aid

(6) The measure provides aid in the form of a guarantee on selected credit facilities, i.e. unused parts of existing overdraft facilities and bank advances, and certain bullet and instalment loans (see Section 2.7 for further details).

2.2. National legal basis

(7) The legal basis for the measure is the Italian Decree Law n. 18 of 17 March 2020[4] (the "Decree Law").

2.3. Administration of the measure

(8) The publicly-controlled Guarantee Fund for SMEs ("*Fondo di garanzia per le PMI*"[5]) (the "Guarantee Fund") is responsible for administering the measure.

2.4. Duration of the measure

(9) Aid may be granted under the measure as from its approval until 30 September 2020. Specifically, a guarantee may be granted on selected credit facilities eligible for a debt moratorium, which will end on 30 September 2020 (see Section 2.7 for further details).

2.5. Beneficiaries

(10) The final beneficiaries of the measure are all SMEs located in Italy fulfilling certain conditions (see Section 2.7 for further details). Italy submits that only SMEs whose exposures with banks are not classified as non-performing on 17 March 2020 can benefit from the guarantee on the exposures under the moratorium.. Aid under the measure is granted through credit institutions and other financial institutions as financial intermediaries.

2.6. Sectoral and regional scope of the measure

(11) The measure is open to SMEs in all sectors. It applies to the whole territory of Italy.

---

4 Published in the *Gazzetta Ufficiale* n.70 of 17 March 2020

5 As established by Article 2(100) of the Italian Law n. 662 of 23 December 1996

2.7. Basic elements of the measure

(12) The Decree Law sets out a mechanism intended to help SMEs to overcome the most critical economic phase related to the COVID-19 outbreak, and to avoid that the large decline in demand will have permanent effects on the activity of a large number of companies and that these effects are exacerbated by a credit crunch.

(13) As a first element of this mechanism, Italy obliges all financial intermediaries located in Italy (the "Financial Intermediaries") – i.e. banks and other undertakings engaged in credit provision – to apply a moratorium (the "Moratorium") limited in time until 30 September 2020 (the "Moratorium End Date") on the following types of credit facilities:

(a) unused overdraft facilities and bank advances, for which credit limits which were in place on 29 February 2020, shall be maintained until 30 September 2020;

(b) bullet loans maturing before 30 September 2020, of which the maturity shall be extended until 30 September 2020, without modifying the other contractual conditions;

(c) the payment of the instalments due on existing loans, mortgages or leasing exposures shall be suspended until 30 September 2020, whereby the adjustment of the amortisation schedules will not lead to higher or additional costs for the borrower.

(14) The Moratorium can be invoked by SMEs[6] which are located in Italy and which have no non-performing credit exposures with banks on 17 March 2020 (i.e. the date of the publication of the Decree Law) (the "Eligible SMEs").

(15) In order to benefit from the Moratorium, Eligible SMEs need to provide a legal self-certification[7] declaring that they have suffered a partial or total reduction in their business activity as a result of the COVID-19 outbreak.

(16) As a second element of this mechanism, the Guarantee Fund provides a guarantee (the "Guarantee") on the following exposures covered by the Moratorium ("Moratorium Exposures"):

(a) any additional use of the overdraft facility beyond the use of the overdraft facility or bank advance on 17 March 2020 (i.e. the date of the publication of the Decree Law) and up to the overdraft limit under the Moratorium;

(b) the principal and interest of the bullet loans which are extended until the end of the Moratorium;

(c) the instalments of existing loans, mortgages or leasing exposures due by 30 September 2020 as postponed under the Moratorium.

---

6 As defined in the Commission Recommendation 361/2003 of 6 May 2003

7 A false self-certification under Art. 47 of the Decree of the President of the Republic n. 445/2000 is prosecuted under Italian criminal law.

(17) A Financial Intermediary can call on the Guarantee until 31 March 2022 (*"escussione della garanzia"*) if the following conditions are met:

(a) a Moratorium Exposure is subject to a Credit Event, as described in recital (18);

(b) the Financial Intermediary has initiated recovery proceedings *(“procedure esecutive”*) with regard to that Moratorium Exposure within 18 months following the Moratorium End Date (i.e. up to 31 March 2022);

(c) the Financial Intermediary provides an estimate of the final loss on the Moratorium Exposure to the Guarantee Fund.

(18) Under the measure, a Credit Event is defined as follows:

(a) there is a partial or full failure to repay the additional use of an overdraft facility or bank advance as described in recital (13)(a);

(b) there is a partial or full failure to repay a loan as described in recital (13)(b);

(c) there is a failure to pay one or more instalments of the loans as described in recital (13)(c);

(19) The Guarantee covers the losses stemming from a credit event described in recital 18 incurred by a Financial Intermediary up to 33% of the Moratorium Exposure.

(20) The Guarantee is free of charge. The Decree Law specifies further the provisions under which the guarantee is settled with the financial intermediary in case it is triggered.

2.8. Cumulation

(21) The aid ceilings and cumulation maxima fixed under the measure shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.

(22) The Italian authorities confirmed that aid granted under Section 3.2 of the Temporary Framework will not be cumulated with other aid granted for the same underlying loan principal under Section 3.3 of the Temporary Framework, and vice versa.

2.9. Monitoring and reporting

(23) The Italian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework in view of this measure (*e.g.*, by 31 December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.).

3. ASSESSMENT

3.1. Legality of the measure

(24) By notifying the measure before putting it into effect, the Italian authorities have respected their obligations under Article 108(3) TFEU.[8]

3.2. Existence of State aid

(25) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(26) The measure is imputable to the State, since it is administered by the Guarantee Fund for SMEs and based on a Decree Law. It is financed through State resources, since it is financed by public funds.

(27) The measure confers an advantage on its beneficiaries in the form of a moratorium on certain credit facilities supported by a State guarantee, which would not have been available under normal market conditions. The measure allows the beneficiaries to maintain access to financing and thus relieves them of costs which they would have had to bear under normal market conditions.

(28) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular SMEs located in Italy which self-certify that they have suffered a partial or total reduction in their business activity as a result of the COVID-19 outbreak, and which do not have non-performing exposures with banks on 17 March 2020 (i.e. the date of the publication of the Decree Law).

(29) 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.

(30) 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

(31) Since the measure involves State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(32) 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*".

---

[8] See footnote 10

(33) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (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*".

(34) The measure aims at facilitating the access of SMEs to external finance at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(35) 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, which is to ensure continuous lending by Financial Intermediaries to Eligible SMEs during the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Italian economy. Furthermore, the measure has been designed to meet the requirements of the specific category of aid ("*Aid in the form of guarantees and loans channelled through credit institutions or other financial intermediaries*") described in Section 3.2 of the Temporary Framework.

(36) The Commission notes that Italy passed the Decree Law on 17 March 2020, two days before the Commission adopted the Temporary Framework. In this regard, the Commission considers of particular importance that on 13 March 2020 it had already considered that a serious disturbance in the economy existed in Italy.[9] Given the urgency of the situation, Italy thus prepared and adopted this measure without yet having full knowledge of the Temporary Framework. The Commission will take this into account in its assessment of the present measure.

(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 the conditions of the Temporary Framework to the greatest extent possible. In particular:

- Regarding point 25(a) of the Temporary Framework, the Commission notes that this point is not applicable in light of the applicability of point 31, last sentence, of the Temporary Framework.

- Regarding point 25(c) of the Temporary Framework, the Commission notes that – as stated in recital (9) above – the Guarantee is granted for the exposures resulting from a debt moratorium on selected credit facilities, which will end on 30 September 2020. Therefore, the Guarantee under the measure can de facto be granted up to the Moratorium End Date. The measure thus complies with point 25(c) of the Temporary Framework.

[9] Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup on Coordinated economic response to the COVID-19 Outbreak, COM(2020) 112 final of 13.03.2020.

- Regarding points 25(d) and 25(e) of the Temporary Framework, the Commission notes that the credit facilities under the Moratorium – as described in recital (13) above – may *de facto* mature before or after 31 December 2020, apart from the exposures described in recital (13)(b) which mature by 30 September 2020 at the latest. The Commission therefore assesses whether the amount of the Moratorium Exposures is appropriately justified and proportional, as required under recitals 25(d)(iii) and 25(e) of the Temporary Framework. The Commission notes that recital 25(d)(iii) allows for the coverage of liquidity needs of SMEs for a period of 18 months, while the Moratorium only lasts until September 2020. Moreover, the Moratorium Exposures relate to Eligible SMEs' existing credit facilities. With a view to recital (36) of this Decision, the Commission considers this to be sufficient evidence that those facilities correspond to a portion of the SMEs' liquidity needs before the Moratorium End Date, and that therefore a self-certification of liquidity needs by the beneficiary is not necessary. Regarding proportionality, the Commission considers that the amount of Moratorium Exposures is ring-fenced for each of the types of credit facilities covered, as described in recital (13). Given these elements, the Commission considers that the measure complies with point 25(d) and 25(e) of the Temporary Framework.

- Regarding the maximum duration of the guarantee in accordance with point 25(f) of the Temporary Framework, the Commission notes that – as described in recital (17) above – the measure limits the duration of the guarantee from its entry into force on 25 March 2020[10] up to 31 March 2022, which corresponds to a maximum duration of slightly over two years. This is because a Financial Intermediary must call on the Guarantee within 18 months following the Moratorium End Date, following the occurrence of a Credit Event. The measure therefore complies with point 25(f) of the Temporary Framework.

- Regarding the coverage of the guarantee in accordance with point 25(f) of the Temporary Framework, the Commission notes that – as stated in recital (19) above – the Guarantee covers 33% of the loss on a Moratorium Exposure, calculated by netting the proceeds of a Financial Intermediary's recovery proceedings. In view of recital (36) of this Decision, the Commission considers that this is sufficient to ensure that the measure complies with point 25(f) of the Temporary Framework.

- Regarding point 25(g) of the Temporary Framework, the Moratorium Exposures under the Guarantee relate to credit facilities typically used by SMEs for investments and working capital purposes. Therefore, the Commission considers that the measure complies with point 25(g) of the Temporary Framework.

[10] The Decree Law was adopted on 17 March 2020, but the Italian authorities confirmed that the Guarantee only becomes effective as of the adoption date of the present State aid decision, in accordance with Art. 108(3) TFEU (standstill clause),.

- Regarding point 25(h) of the Temporary Framework, the Commission notes that – as stated in recital (14) above – SMEs cannot have any non-performing credit exposures on 17 March 2020 in order to be eligible for the Moratorium. In view of recital (36) of this Decision, the Commission considers that this is sufficient to ensure that the Guarantee will only benefit undertakings that were not in difficulty[11] on 31 December 2019. Therefore, the Commission considers that this provision can be deemed to comply with point 25(h) of the Temporary Framework.

- The measure introduces safeguards in relation to the possible indirect aid in favour of the Financial Intermediaries to limit undue distortions to competition. In particular, Financial Intermediaries are obliged to extend the Moratorium to Eligible SMEs (as stated in recital (13) of this Decision). With regard to the credit facilities described in recitals 15(a) and 15(b) of this Decision, the Financial Intermediaries are obliged to maintain the same conditions, including the interest rate, applicable at the time the SME applies for the Moratorium. With regard to the credit facilities described in recital (13)(c), the adjustment of the loans' amortisation schedule may not lead to higher or additional costs for the borrower. Finally, Financial Intermediaries are obliged to initiate and complete recovery proceedings on Moratorium Exposures subject to a Credit Event before they can request the settlement of the Guarantee, which is limited to 33% of the loss (net of any proceeds from the recovery proceedings) (see recitals (17)(b) and (19)) . These safeguards help to ensure that Financial Intermediaries, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries, and that any indirect advantage is minimised. The measure therefore complies with points 28 to 31 of the Temporary Framework.

- The Italian authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (see recital (23)).

- The cumulation rules are respected (see recital (22)).

- Lastly, the mobilisation of the guarantees is linked to specific conditions which have been defined in the Decree Law and equally apply to the Moratorium Exposure of all Eligible SMEs (see recitals (17) and (18) of this Decision).

(38) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member

---

[11] As defined in Article 2 (18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1, Article 2 (14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1, and Article 3 (5) of the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

State pursuant Article 107(3) (b) TFEU and meets all the relevant conditions of the Temporary Framework.

4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND REGULATION (EU) 806/2014

(39) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution **("BRRD")[12]** and of Regulation (EU) 806/2014 on the Single Resolution Mechanism ("SRMR"),[13] in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of BRRD and of SRMR.

(40) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[14] Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Art. 2(1) No 28 BRRD and Art. 3(1) No 29 SRMR.

(41) Moreover, as indicated in recital (37) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

(42) The Commission therefore concludes that the measure does not appear to violate any intrinsically linked provisions of the BRRD and SRMR.

[12] OJ L 173, 12.6.2014, p. 190-348.

[13] OJ L 225, 30.7.2014, p. 1-90.

[14] Points 6 and 29 of the Temporary Framework.

5. 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.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION