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Subject: **State aid / Italy**
SA.107569 (2023/N)
RRF - Agro-industrial development contracts – 2023

Excellency,

The European Commission (the 'Commission') wishes to inform Italy that, having examined the information supplied by your authorities on the measure referred to above, notified as a scheme (recital (57)), it has decided not to raise any objections to the relevant measure (the 'scheme') as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ('TFEU').

The Commission has based its decision on the following considerations:

1. PROCEDURE

(1) By letter of 19 May 2023, registered by the Commission on the same day, Italy notified the above-mentioned scheme in accordance with Article 108(3) TFEU. The Commission sent requests for additional information to the Italian authorities on 3 July 2023 and 9 August 2023 to which the Italian authorities responded on 12 July 2023 and 28 August 2023, respectively.

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

[1] 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

2.1. Objective

(3) The objective of the scheme is to foster the development and resilience of the national agro-industrial system by stimulating and supporting the implementation of productive investment programmes with strategic and innovative characteristics and significant financial dimensions, also in order to ensure positive spill-over effects on national agricultural production.

2.2. Legal basis

(4) The legal basis of the scheme is:

- Articolo 43 del decreto-legge 25 giugno 2008, n. 112 convertito dalla legge 6 agosto 2008, n. 133 (‘Article 43 of Decree-Law No 112 of 25 June 2008 converted by Law No 133 of 6 August 2008’);

- Decreto del Ministro dello Sviluppo Economico del 9 dicembre 2014 e s.m.i. (‘Decree of the Minister of Economic Development of 9 December 2014, as amended’);

- Decreto del Ministro delle Imprese e del Made in Italy del 19 aprile 2023 (‘Decree of the Minister of Enterprises and Made in Italy of 19 April 2023’).

2.3. Budget

(5) The budget of the scheme is EUR 910 million and is partly made available through the Recovery and Resilience Facility (RRF)[2]. The Italian authorities explain that the resources deriving from the RFF can be quantified at an estimated EUR 200 million, as part of investment 5.2 ‘Competitiveness and resilience of supply chains’ under Mission 1 ‘Digitization, innovation, competitiveness, culture and tourism’ within Component 2 that has the purpose of promoting innovation and digitization of the production system.

2.4. Beneficiaries

(6) The beneficiaries of the scheme are undertakings active in primary production of agricultural products and the processing and marketing of agricultural products in Italy, irrespective of size. In that regard, the Italian authorities explain that undertakings engaged in agricultural activities are also eligible under the scheme to the extent that the investment projects relate solely to processing and marketing of agricultural products[3].

(7) The number of beneficiaries ranges between 101-500.

(8) Under the scheme, no aid will be granted to:

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[2] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17.

[3] Investment projects concerning primary agricultural activities, as defined in point (33)46 of the Guidelines for State aid in the agricultural and forestry sectors and in rural areas, are not eligible.

a) undertakings in difficulty within the meaning of point (33)63 of the Guidelines for State aid in the agricultural and forestry sectors and in rural areas[4] (the ‘Guidelines’); and

b) undertakings that have received and, subsequently, not reimbursed or deposited in a blocked account, aid identified as unlawful or incompatible by the European Commission.

2.5. Duration

(9) From the date of the notification of the Commission decision approving the scheme until 31 December 2029.

2.6. Description of the scheme

(10) The instrument chosen by the Italian authorities, i.e., development contracts, is subject to an exemption[5] under Regulation (EU) No 651/2014[6]. The present notification concerns specifically development contracts aimed at investments in the processing and marketing of agricultural products, which must be notified under the Guidelines.

(11) The scheme essentially reintroduces a previous scheme that was approved in SA.47694 (2017/N) ‘Agro-industrial development contracts’[7], and prolonged by SA.59101 (2020/N)[8] ‘Prolongation of the aid schemes […] SA.47694’ until 31 December 2022 (the ‘previous scheme’). The Italian authorities notified the scheme to allow undertakings intending to carry out development programmes relating to the processing and marketing of agricultural products to benefit from aid under development contracts within the limits laid down in the Guidelines. They further note that applications submitted up to 31 December 2022 under the previous scheme, for which no aid has been granted by the same date, will be assessed on the basis of the conditions and requirements set out under the scheme[9].

(12) In general, the instrument at hand aims to encourage the attraction of investment, including foreign investments, and the implementation of business development projects that are important (including from a financial dimension) to strengthen the country’s productive structure.

(13) More specifically, the Italian authorities explain that the scheme is aimed at supporting the implementation of large-scale investments in projects with strategic characteristics that transcend a merely local scope. Such characteristics, together with the required dimension of the intervention, place the eligible investments on a significantly higher level than those that can ordinarily be made by enterprises in the sector at stake.

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4 OJ C 485, 21.12.2022, p. 1.

5 SA.101250 (2021/X), which extended SA.41081 (2015/X) until 31 December 2023.

6 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.

7 See Commission decision C(2017) 3867 final of 9 June 2017.

8 See Commission decision C(2020) 9152 final of 16 December 2020.

9 The Italian authorities note that there is no automaticity in the granting of aid, and that the applications in question will represent a limited subset with respect to the pool of possible beneficiaries under the scheme which envisages long-term operation (i.e., until 31 December 2029).

(14) Against that background, the aid is necessary to encourage investments by undertakings that, in the absence of the aid, would be inclined not to carry out the projects or to make investments of a smaller financial size and with more ordinary characteristics, to the detriment of the general objectives pursued by the public intervention.

(15) The Italian authorities note that the scheme will also contribute to the achievement of the objectives of the Common Agricultural Policy (‘CAP’). This is because, in light of the characteristics of the eligible projects, investments under the scheme appear capable of positively affecting several development objectives. The scheme is expected to contribute significantly to fostering a smart, competitive, resilient and diversified agricultural sector ensuring long-term food security and supporting and strengthening environmental protection.

(16) More specifically, the Italian authorities consider that the scheme could contribute to enhancing market orientation and increasing farm competitiveness both in the short and long term, including greater focus on research, technology and digitalisation, contributing to climate change mitigation and adaptation, including by reducing greenhouse gas emissions and enhancing carbon sequestration, as well as promoting sustainable energy and fostering sustainable development and efficient management of natural resources such as water, soil and air, including by reducing chemical dependency.

(17) The Italian authorities explain that, while sharing some specific aims with interventions under the CAP Strategic Plan 2023-2027 (and potentially the Rural Development Programmes 2014-2022), the scheme targets investments capable of determining a significant impact on the country’s production structure and therefore has a value that goes beyond the strict regional scope and extends to the supra-regional one. The scheme therefore addresses a target of potential projects that are not covered by those types of intervention.

(18) Nevertheless, the Italian authorities note that consistency will be ensured with the CAP Strategic Plan 2023-2027 (and potentially the Rural Development Programmes 2014-2022). Verification of such consistency is delegated to the managing body which, during the preliminary investigation, is also required to consult the Regions involved in the investments in order to acquire their opinion regarding the consistency of the projects with the regional programmes.

(19) The management of development contracts is entrusted to the National Agency for the Attraction of Investment and Enterprise Development S.p.A. (‘Invitalia’), which operates under the direction and supervision of the Ministry of Undertakings and Made in Italy. The managing body will decide about granting the aid upon receipt of an application and after verifying the fulfilment of the conditions laid down in the legal basis.

(20) A development programme may be submitted by a single company (proposing entity) or by several companies jointly (proposing entity and member companies), provided that the individual programmes are closely linked and functional in relation to the final products.

(21) Where they relate to the processing and marketing of agricultural products, a development programme must include eligible expenditure of an amount exceeding EUR 7.5 million. The proposing entity’s investment project must provide for an

eligible expenditure of not less than EUR 3 million. The investment project proposed by the member companies cannot be less than EUR 1.5 million.

(22) Aid under the scheme may be granted in respect of investment projects in the processing and marketing of agricultural products, as defined in points (33)47 and (33)38 of the Guidelines, of the following types:

(a) creation of a new production unit;

(b) extension of the capacity of an existing production unit;

(c) conversion of an existing production unit as a diversification of production to produce products which do not fall within the same class (four-digit numerical code) of the ATECO 2007 classification of previously manufactured products;

(d) restructuring of an existing production unit, understood as a fundamental change in the existing production process through the introduction of a new production process or a significant improvement in the existing production process, capable of increasing the level of efficiency or flexibility in carrying out the economic activity covered by the investment programme, which can be assessed in terms of cost reduction, increase in product and/or process quality, reduction of environmental impact and improvement of occupational safety conditions.

(23) The following investment projects are not eligible under the scheme:

(a) aimed at producing biofuels produced from food and feed crops;

(b) implemented in order to comply with the European Union standards in force; and

(c) consisting of mere replacement investments.

(24) The eligible costs include:

(a) farm land and its installations, up to a limit of 10 % of the total eligible costs of the investment project, masonry and similar work, up to a limit of 40 % of the total eligible costs of the investment project, and company-specific infrastructure pursuant to point (173)(a) of the Guidelines;

(b) miscellaneous factory machinery, installations and equipment up to their market value pursuant to point (173)(b) of the Guidelines;

(c) the acquisition or development of computer software, cloud solutions and similar solutions and the acquisition of patents, licences, copyrights and trademarks pursuant to point (173)(d) of the Guidelines;

(d) consultancy related to the investment project, in particular to categories (a) and (b), up to a maximum of 4 % of the total eligible amount of the investment project, pursuant to point (173)(c) of the Guidelines.

(25) The following expenditure is not eligible:

(a) expenditure on used machinery, installations and equipment, working capital, notarial costs, taxes, stocks, and the purchase of buildings which have already benefited, in the ten years preceding the date on which the aid application was submitted, from other aid, except in the case of fiscal aid, except in cases of withdrawal and full recovery of the aid by the competent authorities;

(b) individual goods of a value of less than EUR 500,00, exclusive of Value Added Tax (‘VAT’);

(c) costs relating to internal procurement;

(d) VAT on eligible expenditure, except where it is not recoverable under the relevant Italian legislation;

(e) in the case of assets acquired through the leasing system, the costs connected with the leasing contract such as lessor’s margin, interest refinancing costs, overheads and insurance charges.

(26) The Italian authorities also clarify that the costs related to wiring or cabling for data networks outside the private property are not eligible under the scheme.

(27) Beneficiaries are under the obligation to keep subsidised assets in the production unit covered by the subsidised investment project for at least five years, or three years in the case of SMEs, from the date of completion of the project. Completion date means the date of the last eligible expenditure. In any case, the replacement of obsolete or broken installations or equipment within that period is permitted.

(28) The Italian authorities explain that the aid will be provided not only in the form of direct grants but also in the form of subsidised financing according to the combination considered most appropriate for the implementation of the individual investment programme. The use of those forms of aid and their combination will be defined based on a negotiation procedure in relation to the characteristics of the projects and the demands of undertakings.

(29) As regards the use of direct grants, the Italian authorities further note that direct grants appear to be the most appropriate form of aid to foster the implementation of investments considering the characteristics of the scheme. Other forms of aid might lead to the investment projects being implemented to a reduced extent and/or with features of less technological or environmental relevance or even not being implemented at all.

(30) Nevertheless, beneficiaries are obliged to make a financial contribution, either through their own resources or external financing in a form free of any kind of public support, amounting to at least 25 % of the total eligible expenditure.

(31) The subsidised financing is granted in terms of a nominal percentage of eligible expenditure up to a maximum of 75 % and must be backed by appropriate mortgage, bank and/or insurance guarantees up to the principal amount of the loan. The subsidised financing will have a maximum duration of ten years plus a period of use and preamortisation commensurate with the duration of the specific project forming part of the development programme and, in any event, not exceeding four years.

(32) The subsidised rate of financing is equal to 20 % of the reference rate in force at the date on which the aid was granted, based on what is established by the Commission. Advantages granted in the form of subsidised financing are calculated

in gross grant equivalent as the discounted value of the aid at the date of granting. Eligible costs payable in several instalments will be actualised to the date of the grant. The interest rate to be applied for discounting purposes will be the reference rate applicable at the time of granting, determined based on the base rate fixed by the Commission in accordance with Communication on the revision of the method for setting the reference and discount rates[10].

(33) The aid amount (gross grant equivalent) will correspond to the discounted value of the difference between the amount of interest at the reference rate, calculated as described in the previous recital, and the amount of interest calculated at the subsidised rate (20 % of the reference rate in force on the date the aid was granted).

(34) The Italian authorities confirm their commitment to suspend the application of method for calculating the aid amount if the Commission communication on the Commission on the revision of the method for setting the reference and discount rates should cease to be in force or adapt the method to any changes made to the communication.

(35) The maximum intensities provided for by the scheme are identified on the basis of the territory in which the selected projects are carried out, in accordance with the following:

- (a) 40 % for large enterprises, 50 % for medium-sized enterprises and 60 % for small enterprises in respect of projects carried out in areas of the national territory eligible for the derogation provided for in Article 107(3)(a) TFEU, as identified in the regional aid map applicable for the period 2022-2027;
- (b) 30 % for large enterprises, 40 % for medium-sized enterprises and 50 % for small enterprises for projects carried out in the rest of the national territory.

(36) In addition, as regards applications already submitted under the previous scheme, the maximum aid intensity will be 50 % in the regions referred to in point (171)(c) of the Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020[11], and 40 % in the rest of Italy. The Italian authorities note that those aid intensities are compatible with the ones provided under the Guidelines.

(37) Projects must be launched after the aid application has been submitted. For this purpose, the start of the project means either the start date of the construction works or the date of the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible, whichever is the sooner. The purchase of land and preparatory works such as applying for permits or carrying out feasibility studies are not considered to be the start of the project.

(38) Aid applications will include at least the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid required to carry it out and the eligible costs.

(39) Large undertakings must describe in the aid application the counterfactual of any alternative projects or activities that could be realised in the absence of aid, and provide supporting documents to support that counterfactual scenario. In the course

[10] OJ C 14, 19.1.2008, p. 6.
[11] OJ C 204, 1.7.2014, p. 1.

of the checks, the managing body checks the credibility of the counterfactual scenario and confirms that the aid has an incentive effect.

(40) In the case of large undertakings, aid may not exceed the amount of the net extra cost of implementing the investment in the region concerned compared to the counterfactual scenario in the absence of aid and, in any event, must not exceed the minimum necessary to make the project sufficiently profitable. In particular, the aid will be granted to an extent that the internal rate of return ('IRR') of the investment does not exceed the normal rates of return applied by the undertaking concerned to other similar investment projects or the cost of capital of the undertaking as a whole or beyond the rates of return normally observed in the sector concerned.

(41) The granting authority will calculate the maximum aid intensity and the aid amount per project at the time of granting. The eligible costs must be demonstrated by clear, specific and up-to-date documentary evidence. For the purposes of calculating the aid intensity and the eligible costs, all figures used must be taken before any deduction of tax or other charge.

(42) Aid under the scheme may not be cumulated with other public concessions granted for the same costs, including those granted under *de minimis* rules under Regulation (EU) No 1407/2013, with the exception of those obtained exclusively in the form of tax benefits and guarantees and in any event within the maximum aid intensities referred to recitals (35)-(36). In addition, aid may not be cumulated with the payments referred to in Articles 145(2) and 146 of Regulation (EU) 2021/2115[12] and, where applicable, the payments referred to in Articles 81(2) and 82 of Regulation (EU) No 1305/2013[13].

2.7. Other commitments

(43) The Italian authorities commit to publish the information mentioned in point (112) of the Guidelines in the European Commission's transparency award module and on a comprehensive State aid website at national or regional level. In addition, pursuant to point (114) of the Guidelines, the Italian authorities confirm that such information will be published after the decision to grant the aid has been taken, kept for at least 10 years and be available for the general public without restrictions.

(44) The Italian authorities confirm that investments involving eligible costs in excess of EUR 25 million, or where the gross grant equivalent exceeds EUR 12 million, will be subject to individual notifications to the Commission pursuant to Article 108(3) TFEU.

(45) The Italian authorities confirm that the investments targeted by the scheme must respect the prohibitions and restrictions laid down in Regulation (EU) No

[12] Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013, OJ L 435, 6.12.2021, p. 1.

[13] Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, OJ L 347, 20.12.2013, p. 487.

1308/20138[14], even if those prohibitions and restrictions only concern Union support provided for in that Regulation.

(46) The Italian authorities further confirm that the scheme does not entail a violation of relevant Union law and is compatible with the provisions governing the common organisation of the markets in agricultural products. In addition, they note that the award of aid is not subject to the obligation for the beneficiary undertaking to use national products or services, and the scheme does not restrict the possibility for the beneficiary undertaking to exploit the research, development and innovation results in other Member States. Finally, they confirm that the scheme does not constitute aid for export-related activities to third countries or to Member States which would be directly linked to the quantities exported, aid contingent upon the use of domestic over imported goods, or aid to establish and operate a distribution network or to cover any other expenditure linked to export activities.

(47) The Italian authorities note that each investment project must comply with national and Union legislation on environmental protection. Where the investments require an environmental impact assessment within the meaning of Directive 2011/92/EU, the aid must be granted only on condition that the investment project has been the subject of such an assessment and has been authorised before the date on which the aid was granted.

(48) The selection process carried out by the managing body at the preliminary stage includes verification that all proposed investments comply with national and EU legislation on environmental protection, including the environmental requirements set out in the Italian CAP Strategic Plan in its national and regional components, also through the involvement of the relevant regional structures.

(49) In this regard, the Italian authorities further explain that the relevant national provisions include that on liability for environmental damage introduced by Legislative Decree No 152/2006, as amended, laying down the ‘Consolidated Environmental Act’, which transposes the Community principles of precaution, prevention and polluter pays.

(50) The Italian authorities consider that the scheme is likely to have positive effects on the environment. This is because it represents a crucial lever for modernising production and has led - also based on experience under the previous scheme - to the introduction and use of advanced technologies that are essential for the pursuit of the sustainable development of the sector. Indeed, the implementation of the previous scheme made it possible to select investment programmes that were able to determine positive impacts on the environment, from the point of view of energy efficiency and emission reduction, as well as from that of an efficient use of resources through the application of the principles of the circular economy.

(51) By way of example, the Italian authorities highlight the selection of programmes in various sectors aiming at: reaching a ‘zero waste’ scenario thereby also limiting atmospheric emissions in the meat sector; at an efficient use of resources and a systemic approach to the reduction, recycling and reuse of food waste in the dairy

[14] Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347, 20.12.2013, p. 671.

sector; limiting environmental impacts through the recovery of processing waste and process water in the fruit and vegetable sector; and achieving an integrated territorial and sectorial model of environmental sustainability by, among other things, reducing energy consumption, road transport and greenhouse gas emissions in the wine sector.

(52) Finally. the Italian authorities confirm that no aid will be granted pursuant to the standstill clause set out in the legal basis until after the European Commission has authorised the scheme.

2.8. Evaluation

(53) Pursuant to point (640) of the Guidelines, an evaluation plan is required because the budget of the scheme exceeds EUR 750 million over its total duration. For this reason, the Italian authorities submitted, in line with best practices[15], an evaluation plan together with the scheme.

(54) The evaluation plan proposes to adopt the same methodological approach and plan agreed with the Commission and the Joint Research Centre for development contracts exempted under Regulation (EU) No 651/2014, in particular the exempted scheme SA.101250 (2021/X)[16]. This is because the scheme essentially follows the same intervention logic and operating mechanisms applied by previous measures regarding development contracts, which have already been the object of rigorous counterfactual evaluation. The Italian authorities note that a final evaluation report on the impact of the scheme will be submitted by 31 March 2029, that is 9 months before the end.

3. ASSESSMENT

3.1. Existence of aid - Application of Article 107(1) TFEU

(55) According to Article 107(1) TFEU, '*[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market*'.

(56) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.

(57) Since the measure is governed by an act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined in a general and abstract manner (sections 2.4 and 2.6), the

[15] See Commission Staff Working Document on Common methodology for State aid evaluation, Brussels, 28.5.2014, SWD(2014) 179 final.

[16] SA.101250 (2021/X) amended SA.41081 (2015/X) by increasing the estimated yearly budget to EUR 528 million and prolonging its duration until 31 December 2023.

Commission considers that this measure constitutes an aid scheme within the meaning of point (33)13 of the Guidelines.

(58) The scheme is imputable to the State as it is based on the legal acts described in recital (4) and administered by a public authority, i.e., Invitalia under the direction and supervision of the Ministry of Undertakings and Made in Italy (recital (19)).

(59) The scheme is financed through State resources because it is financed through public funds (recital (5)).

(60) The scheme confers an advantage on its beneficiaries, in the form of direct grants and subsidised financing (recital (28)). It thus confers an advantage on those beneficiaries, which they would not have otherwise obtained under normal market conditions.

(61) That advantage is selective because it only benefits certain undertakings in the agricultural sector (recitals (6)-(7)). Undertakings in a comparable legal and factual situation, in the light of the objective pursued by the scheme, in other sectors beyond the processing and marketing of agricultural products are not eligible for aid and thus will not receive the same advantage.

(62) The scheme therefore gives only certain undertakings a selective economic advantage, by strengthening their competitive position on the market. According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit, which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition[17].

(63) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade[18]. The beneficiaries of aid operate in the agriculture sector where intra-EU trade takes place. The sector concerned is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the scheme is liable to distort competition and to affect trade between Member States.

(64) Therefore, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the scheme constitutes State aid within the meaning of that provision. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.

3.2. Lawfulness of the aid – Application of Article 108(3) TFEU

(65) The Commission notes that the Italian authorities complied with their obligation under Article 108(3) TFEU. As noted in recital (52), the scheme is subject to a standstill clause and will be implemented only following the Commission's authorisation.

17 Judgment of 17 September 1980, *Philip Morris v Commission*,730/79, EU:C:1980:209.

18 See, in particular, judgment of 13 July 1988, *France v Commission*, 102/87, EU:C:1988:391.

3.3. Compatibility of the aid

3.3.1. Application of Article 107(3)(c) TFEU

(66) The Commission has assessed the scheme on the basis of Article 107(3)(c) TFEU.

(67) Under Article 107(3)(c) TFEU, an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, compatible aid under that provision of the Treaty must fulfil two conditions (i) the measure should contribute to the development of certain economic activities or of certain economic areas and (ii) it should not distort competition in a way contrary to the common interest.

3.3.2. Application of the Guidelines

(68) As regards the scheme, Part II, Chapter 1, Section 1.1.1.3 of the Guidelines regarding 'Aid for investments in connection with the processing of agricultural products or the marketing of agricultural products' is applicable.

(69) Pursuant to point (169) of the Guidelines, the Commission will consider aid for investments in connection with the processing of agricultural products or the marketing of agricultural products compatible with the internal market under Article 107(3)(c) TFEU, if it complies with Part I, Chapter 3, of the Guidelines, the general condition for investment aid set out in point (143) and the conditions set out in Section 1.1.1.3 thereof.

(70) In this context, the Commission will determine whether the scheme facilitates the development of a certain economic activity or certain economic areas (first condition) and whether it adversely affects trading conditions to an extent contrary to the common interest (second condition).

3.3.2.1. First condition: the aid must facilitate the development of an economic activity or of certain economic areas

A. Facilitation of the aided economic activity

(71) Pursuant to point (43) of the Guidelines, the Member State must demonstrate that the aid aims at facilitating the development of the identified economic activity. Point (44) of the Guidelines states that Member States must also describe whether and, if so, how the aid will contribute to the achievement of the objectives of the CAP and within that policy to the objectives of Regulation (EU) 2021/2115 and describe more specifically the expected benefits of the aid.

(72) The Italian authorities explain that the scheme supports strategic, innovative investments of a significant financial scale in the processing and marketing of agricultural products with economic benefits for the entire agro-industrial sector (recitals (3) and (12)-(13)). Therefore, the scheme facilitates economic activities regarding in the processing and marketing of agricultural products. In addition, the Italian authorities note that the aid will contribute to the objectives of the CAP (recitals (15)-(16)).

(73) Therefore, the Commission considers that points (43) and (44) of the Guidelines are respected.

B. Incentive effect

(74) Pursuant to point (47) of the Guidelines, the scheme has an incentive effect if it changes the behaviour of undertakings in such a way that they engage in additional activity contributing to the development of the sector, in which they would have normally not engaged in without aid or would have engaged in a different or restricted manner.

(75) Points (50) and (51) of the Guidelines provide that the project should not start before an application for aid is lodged and this application must include at least the name of the applicant, its size, a description and location of the project, the duration, the aid needed and the eligible costs. In addition, point (52) of the Guidelines requires that large enterprises must describe in the application the situation without the aid, which situation is referred to as the counterfactual scenario or alternative project or activity and submit documentary evidence in support of the counterfactual described in the application.

(76) As described in recitals (37)-(39), the scheme fulfils those requirements.

(77) Therefore, the Commission considers that the principle of incentive effect is respected.

C. No breach of relevant provisions and general principles of Union law

(78) Pursuant to point (61) of the Guidelines, if a State aid measure, the conditions attached to it, including its financing method when the financing method forms an integral part of the State aid measure, or the activity it finances entails a violation of relevant Union law, the aid cannot be declared compatible with the internal market.

(79) The Italian authorities confirm that the scheme does not entail any such violation (recital (46)).

(80) Pursuant to point (62) of the Guidelines, the Commission will not authorise State aid which is incompatible with the provisions governing the common organisation of the market or which would interfere with the proper functioning of the common organisation.

(81) The Italian authorities confirm that the scheme is compatible with and does not interfere with the proper functioning of the common organisation of the markets in agricultural products (recital (46)).

(82) Pursuant to point (63) of the Guidelines, State aid cannot be declared compatible with the internal market where the award of aid is subject to the obligation for the beneficiary undertaking to use national products or services, as well as for aid restricting the possibility for the beneficiary undertaking to exploit the research, development and innovation results in other Member States.

(83) The Italian authorities confirm that the scheme does not provide for any such obligations or restrictions (recital (46)).

(84) Pursuant to point (64) of the Guidelines, the Commission will not authorise State aid for export-related activities to third countries or to Member States which would be directly linked to the quantities exported, aid contingent upon the use of domestic over imported goods, or aid to establish and operate a distribution network or to cover any other expenditure linked to export activities.

(85) The Italian authorities confirm that the scheme does not fall in any of those categories (recital (46)).

(86) Therefore, the Commission has no indications that the scheme, or the supported activities, would entail a violation of relevant Union law or otherwise interfere with the common organisation of the markets in agricultural products.

3.3.2.2. Second condition: the aid must not affect trading conditions to an extent contrary to the common interest

A. Need for State intervention

(87) Pursuant to point (70) of the Guidelines, State aid must be targeted to situations where aid can bring about a material development that the market cannot deliver, for example by remedying a market failure to the aided activity or investment in question. Point (71) of the Guidelines states the Commission considers that the market is not delivering the expected objectives without State intervention concerning the aid measures fulfilling the specific conditions laid down in Part II[19].

(88) The Italian authorities explain that the scheme aims at encouraging investments by undertakings that, in the absence of the aid, would be inclined not to carry out the projects or to make investments of a smaller financial size and with more ordinary characteristics (recital (14)).

(89) The Commission also notes that the scheme fulfils the specific requirements laid down in Section 1.1.1.3 of Part II of the Guidelines (recital (137)).

(90) Therefore, the Commission considers that there is a need for State intervention.

B. Appropriateness of aid

Appropriateness among alternative policy instruments

(91) Pursuant to point (73) of the Guidelines, the Commission considers that aid granted in the agricultural and forestry sector which fulfils the specific conditions laid down in the relevant Section of Part II of the Guidelines is an appropriate policy instrument. Point (74) of the Guidelines states that, where a Member State decides to put in place a rural development-like aid measure financed exclusively from national funds, when at the same time the same intervention is provided for in the relevant CAP Strategic Plan, the Member State should demonstrate the advantages of such a national aid instrument compared to the CAP Strategic Plan intervention at stake.

[19] Point (71) of the Guidelines incorrectly refers, instead of Part II of the Guidelines, to Part I of the Guidelines. The Commission will in the future consider that point (71) of the Guidelines refers to Part II of the Guidelines instead of Part I of the Guidelines.

(92) The Commission notes that the scheme fulfils the specific requirements laid down in Section 1.1.1.3 of Part II, Chapter 1, of the Guidelines (recital (137)). In addition, the Italian authorities explain that, while sharing some specific aims with interventions under the CAP Strategic Plan 2023-2027 (and potentially the Rural Development Programmes 2014-2022), the scheme addresses a target of potential projects that are not covered by those types of interventions (recital (17)). Finally, aid under the scheme may not be cumulated with payments under Regulation (EU) 2021/2115 or, where applicable, Regulation (EU) No 1305/2013 (recital (42)).

(93) Therefore, the Commission considers that the scheme is an appropriate policy instrument.

Appropriateness among different aid instruments

(94) Pursuant to point (75) of the Guidelines, aid can be granted in various forms, but the Member State should ensure that the aid is granted in the form that is likely to generate the least distortions of trade and competition.

(95) Point (79) of the Guidelines states that, as regards investment aid not included in a CAP Strategic Plan or as additional financing for such a rural development intervention, where the aid is granted in forms that provide a direct pecuniary advantage (for example, direct grants, exemptions or reductions in taxes, social security or other compulsory charges, etc.), the Member State must demonstrate why other potentially less distortive forms of aid such as repayable advances or forms of aid that are based on debt or equity instruments (for example, low-interest loans or interest rebates, State guarantees or an alternative provision of capital on favourable terms) are less appropriate.

(96) The Commission notes that the scheme provides not only for direct grants, but also for a less distortive form of aid, i.e., subsidised financing (recital (28)), and that direct grants generally provide a greater incentive to timely participate in a scheme than, for example, loans (recital (29)). The scheme also requires a significant financial participation from beneficiaries in the investments concerned, that is at least 25 % of the eligible expenditure (recital (30)).

(97) Therefore, the Commission considers that principle of appropriateness of aid is respected.

C. Proportionality of aid

(98) Pursuant to point (83) of the Guidelines, aid is considered proportionate if the amount of aid per beneficiary is limited to the minimum necessary. Point (86) of the Guidelines state that if the eligible costs are correctly calculated and the maximum aid intensities or maximum aid amounts set out in Part II are respected, the criterion of proportionality is deemed to be fulfilled.

(99) The maximum aid intensity under the scheme will reach up to 60 %, which is in line with point (175) of the Guidelines (recitals (35)-(36)).

(100) Pursuant to point (87) of the Guidelines, the maximum aid intensity and aid amount must be calculated by the granting authority when granting the aid. The eligible costs must be supported by documentary evidence which should be clear, specific

and contemporary. For the purposes of calculating the aid intensity and the eligible costs, all figures used must be taken before any deduction of tax or other charge.

(101) The Italian authorities confirm that those requirements are fulfilled under the scheme (recital (41)).

(102) Pursuant to point (88) of the Guidelines, VAT is not eligible for aid, except where it is not recoverable under national VAT legislation.

(103) The Italian authorities confirm that VAT is not eligible for aid, unless it is not recoverable under national VAT legislation (recital (25)).

(104) Pursuant to point (89) of the Guidelines, where aid is granted in a form other than a grant, the aid amount is the gross grant equivalent of the aid. Point (90) of the Guidelines states that aid payable in several instalments is discounted to its value at the moment of granting the aid. The eligible costs are discounted to their value at the moment of granting the aid. The interest rate to be used for discounting purposes is the discount rate applicable on the date of granting the aid. Point (91) of the Guidelines states that aid payable in the future, including aid payable in several instalments, is discounted to its value at the moment it is granted.

(105) The Italian authorities confirm that, as regards aid granted in the form of subsidised financing, the aid amount is the gross grant equivalent of the aid, and that aid will be discounted to its value at the moment of granting (recital (33)).

(106) Pursuant to point (98) of the Guidelines, in the case of investment aid granted to large enterprises under notified schemes, Member States must ensure that the aid amount is limited to the minimum on the basis of a 'net-extra cost approach', with maximum aid intensities as a cap. Point (99) of the Guidelines states that the aid amount should not exceed the minimum necessary to render the project sufficiently profitable. For example, the aid amount should not lead to an increase of its internal rate of return ('IRR') beyond the normal rates of return applied by the undertaking concerned in other investment projects of a similar kind or, if these rates are not available, to an increase of its IRR beyond the cost of capital of the undertaking as a whole or beyond the rates of return commonly observed in the sector concerned.

(107) The Italian authorities confirm that, in the case of investments by large undertakings, it will be ensured that the aid amount limited to the minimum necessary to render the project sufficiently profitable in accordance with the Guidelines (recital (40)).

(108) Therefore, the Commission considers that the aid provided for in the scheme is proportionate.

D. Avoidance of adverse negative effects on competition and trade

(109) Pursuant to point (116) of the Guidelines, for an aid to be compatible, its negative effects in terms of distortions of competition and impact on trade between Member States must be minimised. Point (118) of the Guidelines states that, if the aid is well targeted, proportionate and limited to the net extra costs, the negative impact of the aid is softened and the risk that the aid will adversely distort competition will be more limited.

(110) In the present case, the scheme is well targeted (recital (6)-(7) and (14)), proportionate and limited to the next extra costs (recital (108)).

(111) Pursuant to point (120) of the Guidelines, because investment aid to undertakings active in the processing of agricultural products and the marketing of agricultural products and to undertakings active in other sectors, for example, in the food processing sector, tends to have similar distortive effects on competition and trade, the general competition policy considerations on the effect on competition and trade should apply equally to all those sectors. Point (122) of the Guidelines requires that the Member State concerned demonstrate that any negative effects will be limited to the minimum taking into account, for example, the size of the projects concerned, the individual and cumulative aid amounts, the expected beneficiaries as well as the characteristics of the targeted sectors.

(112) The Commission notes that the aid is provided not only as a direct grant but also in the less distortive form of subsidised financing (recital (28)), remains below the limits set out in the Guidelines and its intensity is adjusted downwards according to the size of the undertaking and the location of the intervention (recitals (35)-(36)). In case of large undertakings, it will be ensured that the aid amount is limited to the minimum necessary to render the project sufficiently profitable (see recital (40)). In addition, the Commission notes that the budget is intended to be distributed across a significant number of beneficiaries, i.e., up to 500, further mitigating potential effects on competition and trade. Lastly, the Commission acknowledges that the scheme essentially reintroduces an instrument, i.e., development contracts, which was already assessed in the agricultural sector in SA.47694 (2017/N) (recital (11)) and subject to rigorous counterfactual evaluation (recital (54)).

(113) Therefore, the Commission considers that adverse negative effects on competition and trade are kept to the minimum.

E. Cumulation

(114) The Italian authorities explain that cumulation of aid for the same costs is not possible, with the exception of aid in the form of tax benefits and guarantees, and only within the maximum aid intensities prescribed in the Guidelines. Moreover, aid may not be cumulated with payments under Articles 145(2) and 146 of Regulation (EU) 2021/2115 or, where applicable, under Articles 81(2) and 82 of Regulation (EU) No 1305/2013 (recital (42)).

(115) Therefore, the requirements relating to cumulation of aid are complied with.

F. Transparency

(116) The Italian authorities commit to respect the transparency requirements set out in points (112) and (114) of the Guidelines (recital (43)).

(117) Therefore, the Commission considers that transparency requirements are fulfilled.

G. Duration of the scheme

(118) Pursuant to point (638) of the Guidelines, the Commission only authorises aid measures of a limited duration. Aid measures other than those benefiting from co-

financing under Regulation (EU) No 1305/2013 and its implementing regulation should not apply for more than seven years.

(119) The scheme will apply for less than seven years (recital (9))

(120) Therefore, the Commission considers that this requirement is met.

3.3.2.3. <u>Specific assessment according to the category of aid: Section 1.1.1.3 of the Guidelines – Aid for investments in connection with the processing of agricultural products or the marketing of agricultural products</u>

(121) Pursuant to point (143) of the Guidelines, aid for investment under Sections 1.1.1.1, 1.1.1.2 and 1.1.1.3 of Part II thereof must not be granted in contravention of any prohibition or restriction laid down in Regulation (EU) No 1308/2013, even where such prohibitions and restrictions only refer to the Union support provided for in that Regulation.

(122) The Italian authorities confirm that investments under the scheme respect those prohibitions and restrictions (recital (45)).

(123) Pursuant to point (170) of the Guidelines, aid for food and feed crops based biofuels should not be granted under Section 1.1.1.3 of the Guidelines.

(124) The Italian authorities confirm that no aid is granted for food and feed crops based biofuels (recital (23)).

(125) Pursuant to point (171) of the Guidelines, Section 1.1.1.3 applies to aid for investments in tangible assets and intangible assets in connection with the processing of agricultural products and the marketing of agricultural products as defined in point (33)47 and point (33)38.

(126) The Italian authorities confirm that the scheme targets investments in tangible assets and intangible assets in accordance with the Guidelines (recital (22)).

(127) Pursuant to point (172) of the Guidelines, Member States may grant aid for investments in connection with the processing of agricultural products or the marketing of agricultural products if the aid fulfils all the conditions of one of the following: (a) Commission Regulation (EU) No 651/2014 (52); (b) the Guidelines on regional State aid; (c) Section 1.1.1.3 of Part II, Chapter 1 of the Guidelines.

(128) The scheme fulfils the conditions laid down in Section 1.1.1.3 of Part II, Chapter 1 of the Guidelines (recital (137)).

(129) Pursuant to point (173) of the Guidelines, the aid may cover the categories of eligible costs listed in point (a) to (d) of that provision.

(130) The costs eligible under the scheme match those categories (recital (24)).

(131) Pursuant to point (174) of the Guidelines, the categories of costs listed in sub-points (a) to (d) of that provision are not eligible.

(132) The Italian authorities confirm that the scheme does not include any such costs (recitals (23), (25) and (26)).

(133) Pursuant to point (175) of the Guidelines, the aid intensity must not exceed 65 %.

(134) Maximum aid intensities under the scheme will not exceed that ceiling (recitals (35) and (36)).

(135) Pursuant to point (177) of the Guidelines, individual aid exceeding the notification threshold referred to in point (35)(a) must be notified to the Commission in accordance with Article 108(3) TFEU.

(136) The Italian authorities confirm that such aid will be notified to the Commission (recital (44)).

(137) Therefore, the Commission considers that the scheme complies with the specific provisions of Section 1.1.1.3 of Part II, Chapter 1, of the Guidelines.

3.3.2.4. Weighing up the positive and the negative effects of the aid (balancing test)

(138) Pursuant to point (134) of the Guidelines, the Commission assesses whether the positive effects of the aid measure outweigh the identified negative effects on competition and trading conditions. The Commission may conclude on the compatibility of the aid measure with the internal market only where the positive effects outweigh the negative ones.

(139) Point (136) of the Guidelines states that, as part of the assessment of the positive and negative effects of the aid, the Commission will take into account the impact of the aid on the achievement of the general and specific objectives of the CAP set out in Articles 5 and 6 of Regulation (EU) 2021/2115, that aim to foster a smart, competitive, resilient and diversified agricultural sector, support and strengthen environmental protection, including biodiversity, and climate action and to contribute to achieving the environmental and climate-related objectives of the Union and to strengthen the socio-economic fabric of rural areas.

(140) The Italian authorities explain that the scheme will contribute to the achievement of the objectives of the CAP, including the objectives of Regulation (EU) 2021/2115 (recitals (15)-(16)).

(141) Pursuant to point (139) of the Guidelines, all State aid notifications should contain an assessment on whether or not the aided activity is expected to have any environmental and/or climate impact, taking into account environmental protection legislation, and the standards of good agricultural and environmental condition (GAEC) under Regulation (EU) 2021/2115. Where it is demonstrated that aid has positive environmental and climate impact, the Commission will consider that the positive effects of such aid have been established.

(142) Point (140) of the Guidelines states that, in addition, the Commission may also take into account, where relevant, whether the aid brings about other positive or negative effects. Where such other positive effects reflect those embodied in Union policies, such as the European Green Deal, the Farm to Fork Strategy, the Strategy on adaptation to climate change, the Communication on Restoring Sustainable Carbon Cycles, the Forest Strategy and the Biodiversity Strategy then aid aligned with such Union policies can be presumed to have such wider positive effects.

(143) The Italian authorities note that under that scheme it will be ensured that investments do not have a negative impact on the environment or climate. To the contrary, the Italian authorities expect investments to produce a positive impact (recitals (47)-(51)).

(144) Therefore, the positive effects of the scheme outweigh its negative effects on competition and trade.

(145) Finally, the Commission also notes that, under the scheme, aid will not be granted to undertakings in difficulty or undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid unlawful and incompatible with the internal market (recital (8)).

3.3.2.5. Ex post evaluation plan

(146) The scheme represents a large measure, with an overall annual budget of approximately EUR 1 billion. Pursuant to point (640) of the Guidelines, it is subject to an *ex-post* evaluation requirement.

(147) The objective of the evaluation plan is to demonstrate, by means of both quantitative and qualitative analyses, the direct effects of the aid measure, its proportionality and appropriateness; as well as a number of indirect effects including potential distortive effects on competition.

(148) The Italian authorities submitted an evaluation plan in the context of the notification as an integral part of it. The Commission considers that the notified evaluation plan contains all the necessary elements: the objectives of the scheme to be evaluated, the evaluation questions, the result indicators, the envisaged methodology to conduct the evaluation and the proposed timing of the evaluation (recitals (53)-(54)).

(149) The Commission recalls that the scheme must be suspended if the final evaluation report was not submitted in good time and sufficient quality.

3.3.3. *Conclusion with regard to the compatibility of the scheme*

(150) In light of the above, the Commission concludes that the scheme facilitates the development of an economic activity and does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers that the scheme is compatible with the internal market based on Article 107(3)(c) TFEU as interpreted by the relevant provisions of the Guidelines.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Didier REYNDERS
Member of the Commission