



EUROPEAN COMMISSION

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SENSITIVE (*): *COMP Operations*

**Subject: State Aid SA.104304 (2022/N) – Italy
COVID-19: Aid to travel agencies and tour operators**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 15 September 2022, the Italian authorities notified a scheme for the compensation of damages incurred in the context of the COVID-19 pandemic by travel agencies and tour operators during the period from 1 January 2021 to 31 December 2021 (hereinafter the “measure” or the “scheme”) on the basis of Article 107(2)(b) of the Treaty on the Functioning of the European Union (“TFEU”). The notification was put on hold at the request of the Italian authorities from 5 October 2022 until 22 November 2022. The Commission services sent requests for information on 10 January 2023, 22 March 2023 and 14 July 2023. Italy provided this information on 26 January 2023, 15 May 2023, and 4 August 2023 respectively, with a further submission on 15 September 2023.
- (2) Italy exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958 ⁽¹⁾, and to have this Decision adopted and notified in English.

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

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2. DESCRIPTION OF THE MEASURE

2.1. The COVID-19 pandemic in Italy and the official reaction of the Italian authorities

- (3) Italy explained that it was the first Member State of the European Union to declare, with a resolution of the Council of Ministers of 31 January 2020, a state of emergency and to impose a generalised lockdown. The state of emergency introduced on 31 January 2020 was repeatedly extended, namely to 15 October 2020, to 31 January 2021, to 30 April 2021, to 31 July 2021, to 31 December 2021, and finally to 31 March 2022 when it ended.
- (4) Since the beginning of the state of emergency, various decrees and ordinances were enacted until the first months of 2022, which had a negative impact on the tourism sector. Some of those measures, which were particularly stringent (e.g. restrictions on mobility, travel bans to and from Italy, limitations on public places, limitations to gatherings, restrictions on museums, cultural sites and events, time-limited validity of COVID-19 certificates, the need for vaccination to carry out many activities), effectively influenced the flow of tourists and tourist activities in Italy throughout the state of emergency period.
- (5) Among others, the following pieces of legislation introduced or extended restrictions in the second half of 2020 and the entirety of 2021, resulting in unpredictable and volatile market conditions for travel agencies and tour operators:
 - (a) Decree of the Presidency of the Council of Ministers (hereinafter ‘DPCM’) of 13 October 2020 and DPCM of 24 October 2020 limiting travel (e.g. suspension of educational tourism, permission for regions to ban, restrict or limit transport, recommendation not to move except for cases of necessity), tourist activities (e.g. restriction of access to ski facilities to athletes) and the activities of places open to the public from 22.00 to 5.00.
 - (b) DPCM of 3 November 2020 confirming travel restrictions for extra-EU/Schengen countries, extended with the DPCM of 3 December 2020.
 - (c) Decree-Law No.172/2020 of 18 December 2020 banning travel within the country except for limited numbers of family members and forbidding organised parties.
 - (d) Decree-Law No. 1/2021 of 5 January 2021 confirming the ban on travel between Italian regions until 15 January 2021.
 - (e) Decree-Law No. 2/2021 of 14 January 2021 confirming the ban on travel between Italian regions and limiting movements also within municipalities until 15 February 2021.
 - (f) DPCM of 14 January 2021 extending a number of restrictions (e.g., curfew from 22.00 until 5.00, no trips except for work needs, health reasons or situations of necessity, ban on in-person conferences and congresses, limit of public transport capacity by at least 50%, etc.) until 5 March 2021 and banning extra-UE/Schengen travel.
 - (g) Decree-Law No. 12/2021 of 12 February 2021 confirming the ban on travel between regions until 25 February 2021.
 - (h) Ordinance of the Ministry of Health of 14 February 2021 postponing the reopening of ski lifts to 5 March 2021.

- (i) DPCM of 2 March 2021 extending the restrictions in the previous DPCM of 14 January 2021 (e.g., curfew from 22.00 until 5.00, no trips except for work needs, health reasons or situations of necessity, ban on in-person conferences and congresses, limit of public transport capacity by at least 50%, etc. and the ban on extra-UE/Schengen travel) until 6 April 2021.
- (j) Decree-Law No. 44/2021 of 1 April 2021 extending the restrictions in the DPCM of 2 March 2021 (e.g., curfew from 22.00 until 5.00, no trips except for work needs, health reasons or situations of necessity, ban on in-person conferences and congresses, limit of public transport capacity by at least 50%, etc. and the ban on extra-UE/Schengen travel) until 30 April 2021.
- (k) Decree-Law No. 52/2021 of 22 April 2021 extending the restrictions in the DPCM of 2 March 2021 (e.g., curfew from 22.00 until 5.00, no trips except for work needs, health reasons or situations of necessity, ban on in-person conferences and congresses, limit of public transport capacity by at least 50%, etc. and the ban on extra-UE/Schengen travel) with a limited easing of the restrictions (e.g. from 1 June 2021, the reopening of restaurants indoors, previously banned except for families; from 15 June 2021, the resumption of parties resulting from civil or religious ceremonies, even indoors, with the requirement that participants have a COVID-19 certification, etc.) in the so-called yellow areas ⁽²⁾ until 31 July 2021.
- (l) Decree-Law No. 65/2021 of 22 May 2021 allowing activities in yellow areas subject to several health and safety restrictions.
- (m) Decree-Law No. 105/2021 of 23 July 2021 introducing the obligation of a COVID-19 certificate from 6 August 2021 to access certain services and activities (e.g., restaurants, sporting events, museums), while maintaining a number of limitations.
- (n) Ordinance of the Ministry of Health of 29 July 2021 requiring COVID-19 certificates for all travel to and from abroad and maintaining the restrictions on non-EU/Schengen travel from 31 July 2021 until 30 August 2021. The ordinance was extended on 28 August 2021 and its effects ended on 25 October 2021.
- (o) Decree-Law No. 111/2021 of 6 August 2021 mandating that, starting from 1 September 2021 and up to 31 December 2021, access to certain means of transport (e.g., passenger air transport, interregional ferries) shall require the use of a COVID-19 certificate.
- (p) Decree-Law No. 127/2021 of 21 September 2021 confirming the need for a COVID-19 certificate in public and private workplaces.
- (q) Decree-Law No. 139/2021 of 8 October 2021 regulating access to cultural, sporting and recreational activities (e.g. in yellow areas, shows open to the public in theatre halls, concert halls, cinemas, entertainment venues, live music and other venues or spaces, including outdoors, as well as sporting events, could be carried out exclusively with pre-assigned seats and provided that the interpersonal distance of at least one meter was ensured with a capacity limit of 50 %).

⁽²⁾ Italian regions were divided according to a ‘traffic light’ system in white, yellow, orange and red areas depending on infection/hospitalisation rates and other indicators.

- (r) Ordinance of the Ministry of Health of 14 December 2021 limiting intra-EU circulation, allowing tourist activities only with a ‘reinforced’ COVID-19 certificate ⁽³⁾.
- (6) More specifically regarding tourism, travel abroad was prohibited starting from the lockdown declared by the DPCM of 9 March 2020. Even when the restrictions were eased, for example through Decree-Law No. 65/2021 of 22 May 2021 (see recital (5)(l)), bans on travel to and from non-EU/Schengen countries remained in force throughout 2021 (e.g., see DPCM of 3 December 2020, DPCM of 14 January 2021, DPCM 2 March 2021) ⁽⁴⁾ ⁽⁵⁾. The COVID-19 free travel corridors ⁽⁶⁾ were introduced only at the end of September 2021 with significant safety restrictions and requirements.

⁽³⁾ In this case, ‘reinforced’ means that the certificate could only be obtained through vaccination or recent COVID-19 contamination but not through a COVID-19 test.

⁽⁴⁾ Regarding outgoing tourism, the relevant legal acts for 2021 are the following: DPCM of 3 December 2020, Ordinance of the Ministry of Health of 20 December 2020, Ordinance of the Ministry of Health of 23 December 2020, Ordinance of the Ministry of Health of 16 January 2021, DPCM of 14 January 2021, Ordinance of the Ministry of Health of 13 February 2021, DPCM of 2 March 2021, Ordinance of the Ministry of Health of 9 March 2021, Ordinance of the Ministry of Health of 30 March 2021, Decree-Law No. 44/2021 of 1 April 2021, Ordinance of the Ministry of Health of 2 April 2021, Ordinance of the Ministry of Health of 16 April 2021, Decree-Law No. 52/2021 of 22 April 2021, Ordinance of the Ministry of Health of 25 April 2021, Ordinance of the Ministry of Health of 29 April 2021, Ordinance of the Ministry of Health of 6 May 2021, Ordinance of the Ministry of Health of 14 May 2021, Ordinance of the Ministry of Health of 14 May 2021, Ordinance of the Ministry of Health of 30 May 2021, Ordinance of the Ministry of Health of 18 June 2021, Ordinance of the Ministry of Health of 29 July 2021, Ordinance of the Ministry of Health of 28 August 2021, Ordinance of the Ministry of Health of 28 September 2021, Ordinance of the Ministry of Health of 22 October 2021, Ordinance of the Ministry of Health of 26 November 2021, Decree-Law No. 172/2021 of 26 November 2021 and Ordinance of the Ministry of Health of 14 December 2021.

⁽⁵⁾ Regarding domestic and incoming tourism, the relevant legal acts for 2021 are the following: DPCM of 3 December 2020, Ordinance of the Ministry of Health of 2 January 2021, Ordinance of the Ministry of Health of 8 January 2021, Decree-Law No. 2/2021 of 14 January 2021, DPCM of 14 January 2021, Ordinance of the Ministry of Health of 16 January 2021, Ordinance of the Ministry of Health of 22 January 2021, Ordinance of the Ministry of Health of 23 January 2021, Ordinance of the Ministry of Health of 29 January 2021, Ordinance of the Ministry of Health of 9 February 2021, Ordinance of the Ministry of Health of 12 February 2021, Ordinance of the Ministry of Health of 14 February 2021, Ordinance of the Ministry of Health of 19 February 2021, Ordinance of the Ministry of Health of 27 February 2021, Decree-Law No. 15/2021 of 23 February 2021, DPCM of 2 March 2021, Ordinance of the Ministry of Health of 5 March 2021, Ordinance of the Ministry of Health of 12 March 2021, Ordinance of the Ministry of Health of 13 March 2021, Ordinance of the Ministry of Health of 19 March 2021, Ordinance of the Ministry of Health of 26 March 2021, Decree-Law No. 44/2021 of 1 April 2021, Ordinance of the Ministry of Health of 2 April 2021, Ordinance of the Ministry of Health of 9 April 2021, Ordinance of the Ministry of Health of 16 April 2021, Decree-Law No. 52/2021 of 22 April 2021, Ordinance of the Ministry of Health of 23 April 2021, Ordinance of the Ministry of Health of 30 April 2021, Ordinance of the Ministry of Health of 7 May 2021, Ordinance of the Ministry of Health of 14 May 2021, Decree-Law No. 65/2021 of 18 May 2021, Ordinance of the Ministry of Health of 21 May 2021, Ordinance of the Ministry of Health of 28 May 2021, Ordinance of the Ministry of Health of 4 May 2021, Ordinance of the Ministry of Health of 11 May 2021, Ordinance of the Ministry of Health of 18 June 2021, Ordinance of the Ministry of Health of 22 June 2021, Ordinance of the Ministry of Health of 25 June 2021, Decree-Law No. 105/2021 of 27 July 2021, Ordinance of the Ministry of Health of 29 July 2021, Decree-Law No. 111/2021 of 6 August 2021, Ordinance of the Ministry of Health of 27 August 2021, Ordinance of the Ministry of Health of 10 September 2021, Ordinance of the Ministry of Health of 24 September 2021, Ordinance of the Ministry of Health of 8 October 2021, Decree-Law No. 139/2021 of 8 October 2021, Ordinance of the Ministry of Health of 22 October 2021, Ordinance of the Ministry of Health of 28 October 2021, Ordinance of the Ministry of Health of 26 November 2021, Decree-Law No. 172/2021 of 26 November 2021, Ordinance of the Ministry of Health of 3 December 2021, Ordinance of the Ministry of Health of 11 December 2021, Ordinance of the Ministry of Health of 14 December 2021, Ordinance

- (7) Moreover, educational tourism for students in Italian schools was suspended for the entirety of 2021. More specifically, it was expressly banned between February 2020 (e.g., see DPCM of 23 February 2020) and 31 December 2021⁽⁷⁾. From August 2021 to 31 December 2021, educational trips were only allowed in white areas (see Decree of the Ministry of Education of 6 August 2021).⁽⁸⁾

2.2. The economic impact of the COVID-19 restrictions

- (8) The Italian authorities explained that the COVID-19 pandemic had a negative impact on the tourism sector. The succession of measures with short timescales (as these measures were renewed approximately every three weeks with risk areas updated every week by the Ministry of Health) both before and during 2021 caused uncertainty for travel agencies and tour operators, preventing the regular scheduling of activities for the entire duration of the state of emergency (from 31 January 2020 until 31 March 2022). Travel agencies and tour operators, under normal market conditions, require a certain degree of stability to be able to plan trips for their customers. The instability and volatility of the restrictions made it almost impossible to operate for many undertakings in those sectors.
- (9) According to the Italian authorities, the main cause of reduced economic activity in the tourism sector was the decrease in international, EU and domestic tourists due to the restrictions on movements and gatherings of people. The 2021 tourism data for Italy shows a generalised decrease in tourism activity in all areas of Italy. Before the COVID-19 pandemic, the tourism sector generated 13 % of Italy's gross domestic product, while in 2021 the contribution of tourism activities to gross domestic product was only 2.6 %⁽⁹⁾. Data from the Italian National Institute of Statistics ("ISTAT") and the Bank of Italy show that, after a decrease in 2020 (compared to 2019) of inbound tourism by 54.6 %, and of domestic tourism by 39.2 %, the continued spread of COVID-19 variants did not allow an effective recovery in 2021. In 2021, stays in accommodation establishments were far below the levels of 2019 with a decrease of 48.2 %. In particular, foreign tourists decreased by 56.1 % compared to 2019.
- (10) The Italian authorities submitted that the evolution of tourism activities in Italy over the different quarters of 2021 was as follows⁽¹⁰⁾:
- (a) In the first quarter of the year 2021, Italy faced a decline of 81.7 % in tourist arrivals and 79.7 % in overnight stays compared to the same quarter of 2019. In

of the Ministry of Health of 17 December 2021, Decree-Law No. 221/2021 of 24 December 2021, Ordinance of the Ministry of Health of 24 December 2021 and Ordinance of the Ministry of Health of 31 December 2021.

⁽⁶⁾ Itineraries departing and arriving in the national territory to and from a selected number of destinations (Aruba, Maldives, Mauritius, Seychelles, Dominican Republic, Egypt limited to the tourist areas of Sharm El Sheikh and Marsa Alam), aimed at enabling controlled tourist travel, including the stay in selected accommodation facilities, according to specific health safety measures suitable to guarantee that the services used were rendered in compliance with the standards and precautions for the prevention of the risk of COVID-19 infection.

⁽⁷⁾ Regarding educational tourism, the relevant legal acts for 2021 are the following: DPCM of 3 December 2020, DPCM of 14 January 2021, DPCM of 2 March 2021, Decree-Law No. 44/2021 of 1 April 2021, Decree-Law No. 52/2021 of 22 April 2021 and Decree-Law No. 105/2021 of 23 July 2021, covering the overall period from 4 December 2020 until 31 December 2021.

⁽⁸⁾ As explained in footnote 2, Italian regions were divided according to a 'traffic light' system in white, yellow, orange and red areas depending on infection/hospitalisation rates and other indicators.

⁽⁹⁾ Data from the Italian authorities.

⁽¹⁰⁾ Data from the ISTAT and Bank of Italy.

this period, the decrease was particularly strong for foreign tourists, where the decrease in overnight stays reached 93.7 %, while overnight stays from domestic tourists decreased just of over 30 % .

- (b) In the second quarter of the year 2021, the decrease in tourist presences, defined as the number of nights spent by customers, both Italian and foreign, in accommodation establishments, in Italy compared to 2019 was less significant. It decreased by 61.4 % overall in the second quarter (and more specifically of 85.4 %, 65.1 % and 46.8 % for the months of April, May, and June respectively). Tourists originating outside of Italy decreased by 95.9 % in April, 82.2 % in May and 68.8 % in June.
 - (c) In the third quarter of the year 2021, given the resumption of inter-regional travel, tourist flows showed a substantial recovery, albeit still down compared to 2019. The decline in total presences between the years 2019 and 2021 was 21.8 % for July, 9.1% for August, and 11 % for September. Overall, total presences were around 86 % of those recorded in the same quarter of 2019, but again with a significant decline in foreign tourists (30.5 %).
 - (d) The arrival of the Omicron variant of COVID-19 resulted in a worsening of the situation in the fourth quarter, with tourism flows decreasing by 31.2 % and overnight stays by 20.1% compared to 2019.
- (11) The Italian authorities submitted that in the context of the general tourism crisis (described in recitals (9) and (10)), travel agencies and tour operators in Italy suffered a loss of turnover of 81.2 % in 2021 compared to 2019. The Italian authorities explained that this was the result of the broader set of limitations to movements and gatherings, as these restrictions effectively impeded the regular operations and business planning of travel agencies and tour operators.
 - (12) In particular, the number of trips of Italian residents to all foreign destinations showed a decrease of 92 % compared to 2019 due to the closure of almost all non-EU/Schengen routes. This had a disproportionate impact on travel agencies and tour operators as on average around 60 % of their activities are related to travel abroad and it was economically unfeasible to replace the economic activity related to long-distance travel with domestic travel. In addition, business travel suffered a reduction in turnover by 75 % in comparison to 2019, while educational tourism completely disappeared, the latter constituting around 10 % of the sector’s activity before the pandemic.
 - (13) The Italian authorities explain that, in light of the severe damages suffered by travel agencies and tour operators during the pandemic, they decided to establish the measure assessed in this decision.

2.3. Legal basis

- (14) The legal bases for the measure are:
 - (a) Article 4, paragraph 1 of Decree-Law No. 4/2022 of 27 January 2022 on “*Urgent measures on supporting businesses and economic, work, health operators, and local services, related to the emergency from COVID-19, as well as for the containment of price increases in the electricity sector*”, converted into law with amendments by Conversion Law No. 25/2022 of 28 March 2022; and
 - (b) Decree of the Ministry of Tourism No. 12331 of 28 June 2023: “*Implementing provisions concerning the methods of distribution and allocation of resources destined to support travel agencies and tour operators pursuant to article 4, paragraph 1, of the D.L. 27 January 2022, No. 4, converted by the law of 28*

March 2022, No. 25, from the fund referred to in Article 1, paragraph 366, of the Law of 30 December 2021, No. 234, as refinanced for the year 2023 by Law No. 197 of 29 December 2022”.

- (15) Italy has confirmed that, in line with the standstill clause observed in the national legal bases of the measure ⁽¹¹⁾, the aid will not be granted before the notification of the Commission’s decision approving the measure.

2.4. Objectives of the measure

- (16) The objective of the measure is to compensate the damages suffered by undertakings whose activities were negatively impacted by specific restrictions ⁽¹²⁾ which were in place due to the COVID-19 pandemic in the period between 1 January 2021 until 31 December 2021 (“compensation period”). In particular, the measure will compensate the beneficiaries for turnover losses resulting from the impact of the restrictions implemented by the Italian government to prevent the spread of COVID-19.
- (17) The Italian authorities argue that the restrictions adopted at the national and regional level as a reaction to the exceptional occurrence of the COVID-19 pandemic, directly caused a damage to the undertakings carrying out the activities defined in recital (23).

2.5. Budget and duration of the measure

- (18) The Italian authorities notified a budget of EUR 39 million for the measure.
- (19) Aid under the measure can be granted as of the notification of the Commission’s decision approving the measure and until no later than 31 December 2023.

2.6. Geographical scope

- (20) The measure applies to the whole territory of Italy.

2.7. Form of aid

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

2.8. Administration of the measure

- (22) The measure will be managed by the Ministry of Tourism.

2.9. Beneficiaries

- (23) The beneficiaries of the measure are travel agencies and tour operators that (i) carry out business activities identified by the Classification of Economic Activity (ATECO) ⁽¹³⁾ codes 79.1, 79.11 or 79.12, (ii) are registered in the Business Register (‘Registro delle Imprese’) with the aforementioned codes, and (iii) meet the following requirements:

⁽¹¹⁾ As laid down in Article 6 of the Decree of the Ministry of Tourism No. 12331 of 28 June 2023: “*The contributions referred to in this Decree shall be recognised and paid in accordance with Article 107(2)(b) of the Treaty on the Functioning of the European Union, with the prior authorisation of the European Commission pursuant to Article 108(3) TFEU*”.

⁽¹²⁾ This Decision refers to restrictions at national level as well as restrictions at regional level.

⁽¹³⁾ ATECO is the classification of economic activities adopted by ISTAT for statistical purposes, i.e. for the production and dissemination of official statistical data.

- (a) They are active undertakings and are not subject to ongoing bankruptcy procedures.
 - (b) They are in compliance with the protection obligations in the event of insolvency or bankruptcy (Legislative Decree No. 79/2011 of 23 May 2011 ⁽¹⁴⁾)
 - (c) They have their registered office in Italy.
 - (d) They are not the recipients of disqualifying sanctions on the activity ⁽¹⁵⁾ as defined in article 9, paragraph 2, of Legislative Decree No. 231/2001 of 8 June 2001 ⁽¹⁶⁾.
 - (e) They are in compliance with social security, tax and insurance obligations.
 - (f) They suffered a decrease in total turnover in the year 2021 of at least 30 % ⁽¹⁷⁾ compared to the year 2019.
- (24) The Italian authorities estimated the number of beneficiaries to be approximately 8 000.

2.10. Basic elements of the measure

- (25) The measure is intended to contribute to compensating damages directly caused by the restrictions due to the COVID-19 pandemic, which precluded the beneficiaries, *de jure* or *de facto*, from operating their full economic activity or a specific and severable part of their activity between 1 January 2021 and 31 December 2021. The Italian authorities have committed to granting aid only to compensate beneficiaries for damages related to destinations ⁽¹⁸⁾ affected by the prohibitions which were in place in the context of the COVID-19 pandemic. The notion of a prohibition extends in this context to cover activities *de facto* prohibited ⁽¹⁹⁾.

⁽¹⁴⁾ Code of State legislation on tourism regulation and market, pursuant to Article 14 of Law No 246 of 28 November 2005 and implementation of Directive 2008/122/EC on timeshare contracts, long-term holiday product contracts, resale and exchange contracts.

⁽¹⁵⁾ The sanctions can be a) disqualification from exercising the activity; b) suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; c) a ban on contracting with the public administration, except to obtain the performance of a public service; d) exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; e) a prohibition on advertising goods or services.

⁽¹⁶⁾ Rules on the administrative liability of legal persons, companies and associations, whether or not having legal personality, pursuant to Article 11 of Law No 300 of 29 September 2000.

⁽¹⁷⁾ The Italian authorities used the same percentage as set out in paragraph 87 of the Temporary Framework (Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak 2020/C 91 I/01, as amended on 18 November 2021, C/2020/1863 OJ C 473, 24.11.2021, p. 1–15).

⁽¹⁸⁾ The Italian authorities will ensure the destination-based assessment by means of a self-declaration by the beneficiaries, who assume criminal liability for the declarations made.

⁽¹⁹⁾ Italy considers for the purposes of the measure that a *de facto* prohibited activity is an activity which is significantly affected by a *de jure* prohibition directly affecting a sector/activity relevant for that activity (for example a travel agency not prohibited to be open but impacted by the restrictions concerning other hospitality services).

- (26) The amount of the compensation is determined as follows ⁽²⁰⁾. First, the following elements are calculated ⁽²¹⁾:
- (a) The difference between the total turnover from 1 January 2021 to 31 December 2021 and the total turnover from the corresponding period of 2019 (the ‘difference in total turnover’).
 - (b) The difference between the turnover related to intermediation activities dated from 1 January 2021 to 31 December 2021 and the turnover related to intermediation activities from the corresponding period of 2019. For this purpose, the turnover related to intermediation activities, which represents a part of the total turnover as described in recital (26) (a) above, is determined as follows:
 - i. all monthly summary invoices for commissions paid to each intermediary, net of VAT, for the sale of travel packages and services by tour operators, pursuant to Article 74-ter, Section 8, of Presidential Decree No.633/1972 of 26 October 1972 establishing and laying down rules on value added tax, or in the appropriate register kept in accordance with Article 39 of the same decree, with reference to the tax year to which the commissions relate, no later than the deadline for submitting the annual return.
 - ii. all invoices, net of VAT, for commissions relating to the intermediation in the sale of cruises, air, rail, sea and car tickets, hotel and non-hotel stays, hire of means of transport and for any other intermediation activity recorded in the register referred to in Article 23 of Presidential Decree No. 633/1972 of 26 October 1972.
 - iii. the total amount of fees, net of VAT, deriving from brokering transactions carried out pursuant to Article 22 of Presidential Decree No. 633/1972 of 26 October 1972, recorded in the register referred to in Article 24 of the same decree.

⁽²⁰⁾ The compensation mechanisms are different for intermediation activities (generally associated with travel agencies) and non-intermediation activities (generally associated with tour operators) as they operate with different business models with subsequently different accounting procedures. For intermediation activities, the invoices for the commissions included in the accounts directly represent the entire direct margin. On the other hand, for non-intermediation activities (i.e. organisers of travel packages), the value of the invoices included in the accounts include not only the commissions charged to customers but also the cost of third-party services (accommodation, transport, and other services) acquired to organise travel packages. Therefore, for the same margin, the turnover for non-intermediation activities will be higher than those of intermediation activities. For this reason, the percentages used in the measure to calculate the compensation rate are lower for non-intermediation activities than for intermediation activities. Nevertheless, the same undertaking can simultaneously carry out both types of activities. For this reason, the calculation mechanism will be applied to all beneficiaries based on the proportion of turnover attributable to each of the two activities.

⁽²¹⁾ The transactions referred to in recital (26) must be considered net of the variation notes referred to in Article 26 of Presidential Decree No. 633/1972 of 26 October 1972, with an issue date between 1 January and 31 December 2021 and in the same period of 2019. Variation notes are the tool provided for by national law, in accordance with the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax OJ L 347, 11.12.2006, p. 1–118, with which an undertaking takes into account changes to the VAT tax base or to the tax, relating to a given operation, which have occurred after issuing the invoice or recording the consideration.

- (27) Subsequently, the amount of compensation is calculated according to the calculation mechanism detailed respectively in recital (28) for non-intermediation activities and in recital (29) for intermediation activities.
- (28) The amount of compensation for non-intermediation activities must be determined by multiplying the difference referred to in (26)(a) ('total turnover'), minus the difference referred to in (26)(b) (the 'difference in turnover related to intermediation activities') by the following percentages ⁽²²⁾:
- (a) 5 % for beneficiaries with overall revenues up to EUR 400 000 euro in 2019.
 - (b) 3 % for beneficiaries with overall revenues exceeding EUR 400 000 and up to EUR 1 million in 2019.
 - (c) 1 % for beneficiaries with overall revenues exceeding EUR 1 million and up to EUR 50 million in 2019.
 - (d) 0.5 % for beneficiaries with overall revenues exceeding EUR 50 million in 2019.
- (29) The amount of compensation for intermediation activities shall be determined by multiplying the difference in turnover related to intermediation activities by the following percentages ⁽²³⁾:
- (a) 50 % for beneficiaries with overall revenues up to EUR 400 000 in 2019.
 - (b) 30 % for beneficiaries with overall revenues exceeding EUR 400 000 and up to EUR 1 million in 2019.
 - (c) 10 % for beneficiaries with overall revenues exceeding EUR 1 million and up to EUR 50 million in 2019.
 - (d) 5 % for beneficiaries with overall revenues exceeding EUR 50 million in 2019.
- (30) Italy will ensure that the compensation due to each beneficiary, determined on the basis of the compensation mechanism described above, is less than or at most equal to the difference between the Earnings before interest, taxes, depreciation, and amortization ("EBITDA") of the period to be compensated from 1 January 2021 to 31 December 2021 and the EBITDA of the reference period from 1 January 2019 to 31 December 2019, increased by incremental costs ⁽²⁴⁾.
- (31) The compensation does not contribute to the formation of the taxable base for income taxes, nor does it contribute to the formation of the ratio referred to in Articles 61 and 109, section 5 of the Consolidated Law on Income Taxes, referred to in Presidential Decree No. 917/1986 of 22 December 1986, nor the formation of the value of net production, referred to in Legislative Decree No. 446/1997 of 15 December 1997.

⁽²²⁾ The methodology follows the formula: [difference in total turnover – difference in turnover related to intermediation activities]*[relevant percentage based on the 2019 overall revenues (listed in recital 28(28)(a)(28)(d))].

⁽²³⁾ The methodology follows the formula: [difference in turnover related to intermediation activities]*[relevant percentage based on the 2019 overall revenues (listed in recital (29)(a)(29)(d))].

⁽²⁴⁾ Incremental costs can be costs specifically incurred due to the pandemic, such as unrefunded deposits, building sanitation, adoption of health prevention procedures, etc.

- (32) If the total amount of compensations to be paid out exceeds the amount of resources, they shall be allocated proportionally among all beneficiaries.
- (33) The grant applications, the determination of any amounts to be granted to each beneficiary, as well as the automated checks on the formal correctness of the applications received, will be managed through a dedicated IT platform.
- (34) The Ministry of Tourism will carry out sample checks on the regularity of the self-declarations certifying the possession of the requirements attached to the applications and the data needed to determine the compensation, as well as on the consistency of the data communicated. To this end, the Ministry may also request the support of the Revenue Agency ('Agenzia delle entrate') to obtain information of a declarative nature aimed at checking the requirement referred to in (23)(f). False declarations will be subject to the recovery of the compensation.
- (35) In addition, the Italian authorities have confirmed that:
- a) Any payment exceeding the damage suffered as a direct consequence of the COVID-19 pandemic will be recovered.
 - b) Payment made to beneficiaries will be net of any amount obtained from insurance, litigation, arbitration or any other source for the same damage.
 - c) No payment under the scheme is possible for any applicant that was responsible for the damage suffered, that did not conduct its activities with due diligence or in compliance with applicable legislation or did not take measures to mitigate the damage.

2.11. Cumulation

- (36) The Italian authorities have confirmed that aid under the scheme cannot be cumulated with other aid for the same damages.

2.12. Monitoring and reporting

- (37) The Italian authorities have committed to provide a report no later than one year after the date of the Commission decision. The report will include the amount of aid granted as well as recoverable advances granted.

3. ASSESSMENT OF THE MEASURE/AID, INCLUDING:

3.1. Existence of State aid

- (38) Article 107(1) TFEU defines State aid as *“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”*.
- (39) The qualification of a measure as aid within the meaning of that provision therefore requires that the following cumulative conditions 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.
- (40) The measure is imputable to the State as it is based on the acts mentioned in recital (14), which are Decree-Law No. 4/2022 of 27 January 2022 and Decree of the Ministry of

Tourism No. 12331 of 28 June 2023, and it is administered by State authorities, more specifically the Ministry of Tourism (see recital (22)). The aids under the measure will be paid by Italy from the State budget and is therefore provided through State resources within the meaning of Article 107(1) TFEU.

- (41) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (21)). The measure thus relieves those beneficiaries of damage that they would have to bear under normal market conditions. The advantage corresponds to the amount of compensation paid under the scheme.
- (42) The advantage granted by the measure is selective, since it is awarded only to certain undertakings (i.e. travel agencies and tour operators fulfilling the requirements mentioned in recital (23)).
- (43) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. As the scheme covers sectors and undertakings involved in trade between Member States, there is a risk that the aid could affect such trade.
- (44) In view of the above, therefore, the notified measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the measure

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

3.3. Compatibility of the measure

- (46) 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.
- (47) The Commission has examined the compatibility of the notified scheme pursuant to Article 107(2)(b) TFEU.
- (48) Article 107(2)(b) TFEU provides that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. ⁽²⁵⁾ In accordance with settled case-law, only economic damage caused by natural disasters or exceptional occurrences may be compensated for under that provision, and there must be a direct link between the damage caused by the exceptional occurrence and the State aid and as precise an assessment as possible must be made of the damage suffered. ⁽²⁶⁾

⁽²⁵⁾ As recalled in the judgment of the General Court of 17 February 2022 in case T-259/20, *Ryanair DA versus European Commission* (ECLI:EU:T:2021:92), “[i]t is clear in that regard from the case-law that that provision covers aid which is, in law, compatible with the internal market, provided that it satisfies certain objective criteria. It follows that the Commission is bound, where those criteria are satisfied, to declare such aid compatible with the internal market, and that it has no discretion in that regard” (paragraph 23).

⁽²⁶⁾ See, for instance, judgment of 23 February 2006, *Atzeni and Others*, C-346/03 and C-529/03, EU:C:2006:130, paragraph 79.

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

- (49) Neither the TFEU nor other Union legislation contains a precise definition of the notion of ‘exceptional occurrence’. As aid based on Article 107(2)(b) TFEU constitutes an exception to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the consolidated Union case-law⁽²⁷⁾, has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (50) The characterisation of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field⁽²⁸⁾. In that regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee⁽²⁹⁾; (ii) significant scale/economic impact⁽³⁰⁾, and (iii) extraordinary⁽³¹⁾.

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

- (51) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, affecting not only other parts of China but has also spread to the majority of countries worldwide, including all Member States. Outbreaks of novel virus infections among people are always of public health concern and can have a significant economic impact. Specific sectors and areas were particularly affected by the outbreak and by governmental

⁽²⁷⁾ Judgment of the Court of Justice of 11 November 2004, *Spain v Commission*, C-73/03, EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, *Atzeni and others*, in Joined Cases C-346/03 and C-529/03, EU:C:2006:130, paragraph 79.

⁽²⁸⁾ Exceptional occurrences that have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, paragraph 330 (OJ C 204, 1.07.2014, p. 53). The Covid-19 pandemic has been accepted by the Commission as an exceptional occurrence (see, e.g., Commission Decision of 10 August 2023 on case SA.108173 (2023/NN) – COVID-19: Damage Compensation Scheme under Article 107(2)(b) TFEU, OJ C 301, 25.8.2023, p. 5–5).

⁽²⁹⁾ Commission Decision of 1 August 2008, case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, recital 31.

⁽³⁰⁾ Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 on case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire –France), or because of the number of dead or injured people (Commission Decision of 11 April 2012 on case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, recital 35; Commission Decision of 2 May 2002 on case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 on case SA.33487, recital 36), the amount of material damage despite the local character of the industrial accident (Commission Decision of 2 May 2002 on case N 241/2002, recital 19).

⁽³¹⁾ In its Decision of 19 May 2004 in case C-59/2001 (OJ L 62, 2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination, did not constitute in itself an exceptional occurrence. It was yet an unforeseeable event, but formed part of the normal commercial risks to which an undertaking is exposed.

restrictions and recommendations, be it directly or indirectly, because of national outbreak control measures, travel restrictions or supply chain disruptions.

- (52) The declaration of the World Health Organization of a pandemic associated with the public health risk deriving from the absence of therapeutics or vaccines for COVID-19 determined the exceptional nature of the circumstances. The rapidity of the spread caused enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stemmed from that acknowledgement. Such measures resulted in far-reaching disruption of various economic sectors, which were clearly outside the normal functioning of the market.
- (53) From March 2020, Member States adopted various measures that aim to limit the spread of the coronavirus, e.g. restricting movements and prohibiting public gatherings. When the sanitary situation in Europe recovered, Member States started progressively lifting these restrictive measures in the course of 2022.
- (54) In view of the above, this event qualifies as an exceptional occurrence because: (i) it was not foreseeable; (ii) it was clearly distinguishable from ordinary events by its character and effects on both the undertakings directly affected and the economy as a whole; and (iii) it lied outside of the normal functioning of the market. The Commission notes in this regard that the General Court held that it was “*indisputable that the Covid-19 pandemic constitutes an exceptional occurrence within the meaning of Article 107(2)(b) TFEU*”⁽³²⁾.
- (55) In that context, the COVID-19 pandemic can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

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

- (56) As an immediate consequence of the COVID-19 pandemic in Italy, the Italian authorities adopted several legislative acts (see recitals (3) to (7)) introducing restrictions of various kinds, including restrictions on mobility, travel bans to and from Italy, limitations on public places, limitations to gatherings, restrictions on museums, cultural sites and events, time-limited validity of COVID-19 certificates, the need for vaccination to carry out many activities. These restrictions varied greatly during the pandemic, including in 2021, both in terms of duration and geographical extension (i.e. which Italian regions or foreign countries they applied to), creating an environment of uncertainty and volatility.
- (57) As a result of the legal restrictions, a large number of economic activities were prohibited in Italy due to the COVID-19 pandemic. Those measures, which reacted to the exceptional occurrence of the COVID-19 pandemic, resulted in a loss of profit for travel agencies and tour operators incurred in the periods covered by the restrictions.
- (58) Travel agencies and tour operators carry out activities related to the tourism sector which significantly depend on the ability to plan. In fact, both types of entities provide travel planning services to customers, with travel agencies acting as intermediaries and tour operators directly organising trips. As noted in recital (8), the measures implemented by the Italian authorities to introduce restrictions to prevent the spread of COVID-19 were reviewed and renewed approximately every 3 weeks with regional risk areas updated every week by the Ministry of Health). The instability and unpredictability of the pandemic and the connected restrictions made it almost impossible for travel agencies

⁽³²⁾ See judgment of 17 February 2021, *Ryanair v Commission*, T-259/20, EU:T:2021:92, paragraph 26.

and tour operators to operate as they would have in the absence of this exceptional occurrence. The impossibility to predict the business conditions related to tourist activities significantly affected the economic activities of the beneficiaries of the present measure in a negative way, since the potential tourist (their clients) could not travel or, even during the short periods when limited travel was allowed, they could not plan appropriately due to the unpredictability of the evolution of the restrictions.

- (59) Only damages stemming from the prohibition of activities imposed by the restriction decisions which precluded a beneficiary, either *de jure* or *de facto*, from operating its economic activity or a specific and severable part of its activity are eligible for compensation under the measure.
- (60) The notion of a prohibition of activities includes measures *de facto* precluding a beneficiary from operating its economic activity, or parts of its economic activities. In that situation, it will be for the beneficiary to show that it faced a prohibition of its activities, based on a self-declaration of direct dependency between its activities concerned and another, prohibited, activity (destination-based approach).
- (61) The notion of a prohibition of activity does not cover any situations other than those described in recitals (59) and (60).
- (62) Therefore, the restriction decisions and the consequent prohibition of activities by the Italian authorities are sufficient to provide a direct link between the COVID-19 pandemic and the damage suffered.

3.3.4. *Proportionality of the measure*

- (63) In order to be compatible with the internal market based on Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage; it should only make good the damage caused by the exceptional occurrence.
- (64) The aid is proportional to the damage, for the following reasons.
- (65) First, the measure only compensates direct damage caused by the restrictions put in place in Italy due to the COVID-19. The direct nature of the damage arises from the fact that, while travel agencies and tour operators were not *de jure* prohibited from operating, the COVID-19 restrictions *de facto* precluded beneficiaries from operating in their economic activities, or part of their economic activities, because of their direct dependency to different activities prohibited *de jure* (see restriction measures in recitals (3) to (7)). As explained in recital (25), to exclude overcompensation, any loss caused by an activity not directly impacted *de jure* or *de facto* by the restrictions imposed by the Italian authorities is not eligible for aid. This is ensured by the requirement for the beneficiaries to submit a self-certification in this regard which will be checked on a sample basis by the Italian authorities, with criminal and civil liability for beneficiaries in case of false declarations. The Commission considers that Italy has put in place an objective, evidence-based, system for the damage calculation. Beneficiaries will be required to provide all necessary documentation in that regard and evidence of the damage actually incurred must be submitted to the granting authority in writing. The competent authority will verify that all conditions under the measure are fulfilled.
- (66) Second, the Italian authorities have committed to granting aid only to compensate beneficiaries for damages related to destinations affected by the prohibitions which were in place in the context of the COVID-19 pandemic. As noted in recital (34), the Ministry of Tourism will carry out sample checks on the regularity of the declarations certifying the possession of the requirements attached to the applications and the data needed to

determine the compensation, as well as on the consistency of the data communicated. To this end, the Ministry may also request the support of the Revenue Agency to obtain information of a declarative nature aimed at checking the requirement referred to in (23)(f). The Commission considers that this will ensure that any undue compensation will be avoided as false declarations will result in recovery of the compensation.

- (67) Third, the measure ensures that any cost savings from reduced turnover are taken into account in the calculations and not compensated: for non-intermediation activities, the percentages mentioned in recital (28) are assumed to be equal or lower than the margin of the beneficiaries, therefore excluding any costs; for intermediation activities, the related turnover constitutes the entire margin by definition (see footnote 21), therefore also excluding any costs. To further ensure proportionality, the measure includes a comparison with the relevant EBITDA as a sensitivity check (see recital (30)). The Commission considers that these elements of the compensation calculation mechanism are appropriate to ensure no overcompensation.
- (68) Finally, the significant gap between the losses and the compensable amounts can be considered a proxy to capture the general economic downturn during the COVID-19 pandemic, i.e. capturing in factors that would have negatively impacted the potential operating results of undertakings during the period of the coronavirus pandemic without them being directly affected by the restrictive measures. The Commission considers that this ensures that the economic effects of declines in demand due to lower aggregate demand, or to greater customer reluctance, or the generally applicable restrictions on capacity and social distancing measures, are not compensated as part of the measure.
- (69) In addition, the Italian authorities have put in place the following safeguards, so that the compensation under the notified measure does not exceed what is necessary to make good the damage:
- a) Any payment made to beneficiaries is net of any amount recovered by insurance, litigation, arbitration or other source of compensation for the same damage, in addition to which the economic effects of declines in demand when computing the damage must be taken into account (recitals (35) and (36)).
 - b) In addition, there is an exclusion of any applicant responsible for the damage suffered, or that did not conduct its activities with due diligence or in compliance with applicable legislation, or that did not take any measure to mitigate its damage (recital (35)).
- (70) Since the measure ensures that the aid will not exceed the actual damage suffered by the aid beneficiaries and that aid under the scheme cannot be cumulated with other aid for the same eligible costs (see recitals (35) and (36)), the aid is considered to be proportional to the damage caused by the exceptional occurrence. In light of the abovementioned safeguards, the Commission considers that the compensation under the measure will not exceed the damage directly suffered by each beneficiary from the COVID-19 pandemic as a result of the related measures taken by the public authorities.
- (71) In view of the above, the Commission considers that the measure is compatible with the internal market in accordance with Article 107(2)(b) TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) of the Treaty on the Functioning of the European Union.

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: <https://competition-cases.ec.europa.eu/search?caseInstrument=SA>.

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

