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**PUBLIC VERSION**

**WORKING LANGUAGE**

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**Subject: State Aid N 466/2009 – Italy  
Prolongation of the recapitalization scheme**

Sir,

## **I. PROCEDURE**

1. On 31 July 2009 Italy notified a request to prolong its recapitalisation scheme for banks. The original measure, notified on 18 December 2008, was approved on 23 December 2008 in State aid case N 648/2008<sup>1</sup>.
2. In addition on 16 February 2009 Italy notified an amendment to the recapitalisation scheme. The amendment was registered as State aid case N 97/2009<sup>2</sup>. The purpose of this amendment was to offer a second option for remuneration of the financial instruments issued by the banks. This amendment was approved on 22 February 2009.
3. The legal basis for the Italian recapitalisation scheme is Article 12 of Decree Law No 185 of 28 November 2008 as implemented by the Law of 28 January of 2009 No 2. By means of the Ministerial Decree of 25 February 2009 the Ministry of Economy and Finance (hereafter "MEF") has defined the implementing rules of the scheme.

## **II. DESCRIPTION**

### **1. Description of the measures**

4. In response to the exceptional turbulence in global financial markets, Italy put in place a recapitalisation scheme designed to restore stability of the financial system and to remedy a serious disturbance in the economy of Italy.

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<sup>1</sup> Commission decision, C(2008) 8998 in OJ C88, 17.4.2009, p. 3.

<sup>2</sup> Commission decision, in C(2009) 1288 in OJ C88, 17.04.2009, p.4.

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5. Institutions eligible to participate in the recapitalisation are credit institutions i.e. all banks incorporated under Italian law (subsidiaries of foreign banks included), provided that their shares or the shares of their financial parent undertakings be listed on regulatory market.
6. The notes issued by the banks and subscribed by the MEF are "special bonds" classified, from a regulatory point of view, as "Core Tier 1 instruments". The Scheme establishes for each beneficiary a limit to the capital injection at 2% of the bank's risk weighted assets.
7. In addition for each bank requesting the MEF to participate in specific operations, the Bank of Italy will assess the solvency and the current and prospective capital adequacy of the issuing bank.

## **2. Operation of the scheme**

8. Italy committed to submit a report on the implementation of the measures taken six months after the introduction of the Scheme. Such report was provided to the Commission on 17 September 2009.
9. During the first six months of operations, the Scheme has been used once<sup>3</sup>. On 31 July 2009 the MEF subscribed the notes issued by Banco Popolare Società Cooperativa for an overall amount of € 1,450,000,000. The terms and the conditions established by the Scheme were respected.
10. In accordance with the Scheme's rules, the Bank of Italy assessed the current and prospective capital adequacy of Banco Popolare and informed the MEF of the results by letter dated 12 March 2009. In that same letter, the Bank of Italy authorised the classification of these financial instruments in Core Tier 1 without limitations.

## **3. Prolongation of the scheme and additional commitments**

11. Italy intends to prolong the scheme until 31 December 2009.
12. With regard to the prolongation, Italy has additionally made the following express commitments:
  - (a) To inform the Commission, at the moment of the capital injection, of the risk profile of the beneficiary bank in order to enable the Commission to evaluate the bank's risk profile and viability and assess whether it can be considered fundamentally sound or whether it requires some restructuring. The material will include a review from the supervisory authority (Banca d'Italia) on the issue of the soundness and the viability of the institution. The Commission will be provided with any additional information necessary for its assessment of the bank's viability. In relation to each bank recapitalised under the scheme, Italy committed to submit within six months and in accordance with articles 40-42 of the Commission's Communication of 5 December 2008, the relevant

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<sup>3</sup> Four other banks have submitted an application to obtain a capital injection under the Scheme. However, these transactions have not yet been finalised.

information in order to enable the Commission to review the bank's risk profile and viability so that the Commission can assess whether it still can be considered fundamentally sound.

- (b) Where a bank applies for a second recapitalisation, an individual notification will be submitted so that it can assess whether the bank can still be considered fundamentally sound or whether it requires restructuring.

### **III. POSITION OF ITALY**

- 13. The Italian authorities accept that the prolonged recapitalisation scheme contains State aid elements.
- 14. The Italian authorities note that the banks' access to market funding is improving. At the same time financial market conditions are still affected by the international financial crisis. For this reason, increasing confidence among intermediaries is crucial. Banks continue to be vulnerable, especially when considering that data and economic forecasts show possible macro-scenario deterioration. Thus, it is necessary to prolong the scheme until the end of December 2009.

### **IV. ASSESSMENT**

#### **1. State aid character of the prolonged scheme**

- 15. As set out in Article 87(1) EC, 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 common market, save as otherwise provided.
- 16. The Commission agrees with the position of Italy that the prolonged scheme for eligible institutions constitutes aid to the institutions concerned pursuant to Article 87(1) EC.
- 17. The prolongation of the recapitalisation scheme will enable beneficiaries to secure the necessary capital on more favourable terms than otherwise be possible in light of the prevailing conditions in the financial markets; This gives an economic advantage to the beneficiaries and strengthens the position of these beneficiaries compared to that of their competitors in Italy and in other Member States and must therefore be regarded as distorting competition and affecting trade between Member States . The advantage is selective since it only benefits the beneficiaries of the scheme and is provided through State resources.
- 18. The Commission is convinced that in the current circumstances the capital injection would not have been provided by a market economy investor on a comparable scale and on similar terms in favour of participating banks .

## 2 Compatibility of the Scheme

19. The Commission acknowledges that the economic outlook is improving in a context of persistently weak growth of the world economy. For this reason the stabilization of financial markets is not yet achieved.
20. Consequently the Commission accepts that it is necessary to further strengthen confidence in financial markets in order to stimulate the real economy and to avoid disturbances in lending to the real economy.
21. For the reasons indicated in the original decision<sup>4</sup>, the Commission found the Scheme to be compatible with the common market under Article 87(3)(b) of the Treaty, as the Scheme met the relevant criteria of appropriateness, necessity and proportionality.
22. The notified commitments - to submit 6 months after recapitalisation a viability review for each bank that receives capital under the Scheme, to provide the Commission in advance with an assessment of the soundness of banks that are being considered for a capital injection and to individually notify a second capital injection to a bank under the scheme - provide additional safeguards that the Scheme will be limited to fundamentally sound banks.
23. The Commission consequently finds that the Scheme with the additional commitments is compatible with the common market under Article 87(3)(b) of the Treaty.

## CONCLUSION

24. The Commission finds that the Scheme constitutes State aid within the meaning of Article 87(1) of the EC Treaty.
25. Since the Scheme satisfies the conditions for aid under Article 87(3)(b) of the EC Treaty, it is compatible with the common market. The Commission has accordingly decided not to raise any objections to the prolongation of the Scheme until 31 December 2009 included. The Commission recalls that the measure is limited to the end of this year and may be prolonged upon notification.
26. If this letter contains confidential information which should not be published, 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/community\\_law/state\\_aids/state\\_aids\\_texts\\_en.htm](http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm).

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<sup>4</sup> Commission decision, C(2008) 8998 in OJ C88, 17.4.2009, p. 3.

27. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
State Aid Greffe  
B-1049 Brussels  
Fax No: +32-2-296 12 42

Yours faithfully,  
For the Commission

Neelie Kroes  
Member of the Commission