



EUROPEAN COMMISSION

Brussels, 31.08.2020
C(2020) 5771 final

PUBLIC VERSION

This document is made available for
information purposes only.

Subject: **State aid / Malta
SA.57778 (2020/N)
Financial compensation to undertakings active in primary
agricultural production in connection with the loss of income as a
cause of the adverse climatic event that hit the Maltese Islands
between the 23rd and the 24th of February 2019.**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 23 June 2020, registered by the Commission on the same day, Malta notified the above-mentioned aid scheme in compliance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU). By email of 14 July 2020, Malta submitted supplementary information on the scheme.

2. DESCRIPTION

2.1. Objective

- (2) The notified scheme will offer financial compensation to farmers who have suffered loss of income from the full or partial destruction of the agricultural production and the means of production as caused by the adverse climatic event, which hit the Maltese Islands between 23 and 24 February 2019 and can be assimilated to a natural disaster.

* Handling instructions for SENSITIVE information are given at <https://europa.eu/ldb43PX>

Hon. Evarist Bartolo
Minister for Foreign and European Affairs
Palazzo Parisio
Merchants Street
Valletta, VLT 1171
Malta

2.2. The nature and form of aid

- (3) The scheme provides aid in the form of direct grants.

2.3. Legal basis

- (4) The legal basis is the “*Agriculture and Fishing Industries (Financial Assistance) Act (CAP 146 of the Laws of Malta) – Annex G*” and its implementing provisions can be found in the “*Guidance Notes – Financial Compensation to Undertakings active in Primary Agricultural Production in Connection with the Loss of Income as a cause of the Adverse Climatic Event that hit the Maltese Islands between the 23rd and 24th of February 2019 – Annex E*”.

2.4. Duration

- (5) Aid may be granted under the scheme as from its approval until no later than 31 October 2021.

2.5. Budget

- (6) The overall estimated budget for the aid scheme is EUR 1.5 million, which is financed by the general budget of Malta.

2.6. Beneficiaries

- (7) The eligible beneficiaries are limited to small and medium-sized enterprises ('SMEs') active in the primary agricultural production. The number of beneficiaries is estimated at about 501 to 1000 undertakings.
- (8) Aid will not be granted to undertakings in difficulty within the meaning of point (35).15 of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020¹ ("the Guidelines"), unless the financial difficulty of an undertaking has been caused by the adverse climatic event which can be assimilated to a natural disaster.
- (9) The Maltese authorities committed to suspend the payment of the aid, if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission Decision (either concerning an individual aid or an aid scheme), until the beneficiary has reimbursed or paid into a blocked account the total amount of the unlawful and incompatible aid including the corresponding recovery interest.

2.7. Description of the scheme

2.7.1. Background

- (10) An adverse climatic event hit the Maltese Islands between 23 and 24 February 2019. Strong gale winds, heavy periods of rain, as well as hail caused damage

¹ OJ C 204 of 1.7.2014, p. 1. Amended by the Notices published in OJ C 390, 24.11.2015, p. 4; OJ C 139, 20.4.2018, p. 3 and OJ C 403, 9.11.2018, p. 10 and by the Corrigendum published in OJ C 265, 21.7.2016, p. 5.

to crops and structures as winds reaching speeds of 133km/h battered the Maltese Islands, resulting in significant losses to the agricultural sector.

- (11) The Maltese authorities established, through a Methodological Report, the extent of the production loss to the agricultural sector in Malta on account of the storm which occurred in February 2019, and determined that the event could be considered as an adverse climatic event which can be assimilated to a natural disaster.
- (12) The Maltese authorities have provided a report conducted by the Malta Meteorological Office, which gives a detailed description of the weather conditions in Malta during the weekend of 23 and 24 February 2019, highlighting wind speed in various localities and other features that prove the adverse climatic event which can be assimilated to a natural disaster. These were caused by a depression over the Ionian sea that moved towards the Maltese Islands on 23 February 2019, and by a depression over Northern Libya extending towards the Maltese Islands on 24 February 2019, while having a wide spread anticyclone over West and Central Europe extending over Algeria.
- (13) Malta has formally recognised, through the competent authority (the Meteorological Office of Malta), that there is a direct causal link between the adverse climatic event which can be assimilated to a natural disaster and the damage suffered by the undertakings which will be supported. The Maltese authorities confirmed that the potential beneficiary has to provide that the storm has destroyed more than 30% of his average production.
- (14) The aid, which may be granted until 31 October 2021 as explained in recital (5), can be paid out until 31 December 2021.
- (15) The eligible costs are the damage incurred as a direct consequence of the storms, as assessed by public officers from the Rural Affairs Department within the Ministry for Agriculture, Fisheries and Animal Rights (the 'Rural Affairs Department'). This equates to the loss of income due to the full or partial destruction of the agricultural product and the means of production resulting from the occurrence of an adverse climatic event, which can be assimilated to a natural disaster as referred to in point (354)(b) of the Guidelines.
- (16) The damage and the eligible costs are assessed by the granting authority, the Rural Affairs Department, based on the documentary evidence, which is clear and specific. Damage of crops and means of production will only be considered eligible if verified during an onsite inspection by a public officer of the Rural Affairs Department and directly linked to the adverse climatic event.
- (17) The calculation of the damage is made at the level of the individual beneficiary. The compensation will be based on the individual actual damage of crop and means of production as determined by an authorized public officer from the Rural Affairs Department following an in situ assessment of damage. Only the material damage related to the crop will be considered.
- (18) The loss of income will be calculated by subtracting the result of multiplying the quantity of the agricultural products produced in the year of the adverse climatic event which can be assimilated to a natural disaster, or each following

year affected by the full or partial destruction of the means of production, by the average selling price obtained during that year; from the result of multiplying the average annual quantity of agricultural products produced in the preceding three-year period or a three year average based on the preceding five-year period (excluding the highest and lowest entry) by the average selling price obtained.

- (19) No other costs incurred by the beneficiary due to the adverse climatic event that can be assimilated to a natural disaster will be added to the amount resulting of the calculation of the loss of income. Payments received under insurance policies and other payments, including those under other national or Union measures, received as a compensation for the damage will be deducted from the amount of the aid.
- (20) With regard to insurance coverage, Malta has shown that, despite all reasonable efforts, affordable insurance covering the statistically most frequent climatic risks in the region concerned was not available at the time the damage occurred.
- (21) Malta has provided a report² that makes reference to the risks present in the local agricultural sector whereby, as indicated in the National Agricultural Policy for the Maltese Islands 2018-2020, extreme weather events in Malta have become a regular feature of the farming year, resulting in a significant impact on crop and animal yields. Nevertheless, at present, there are no government policies or programmes in place to manage agricultural risks and the private insurance sector does not provide any conventional insurance coverage.
- (22) In the Maltese context, all of the pillars in the provision of insurance by the market (market depth, availability of data, the provision of reliable information) are limited. In particular, achieving an adequate market depth may face a number of special considerations within the context of small populations and a small market which prevails in Malta. Furthermore, the agricultural sector in Malta appears to be still lagging behind in terms of sound data records, thereby giving way to a higher degree of uncertainty for insurance providers.
- (23) The report details that various unsuccessful attempts have been undertaken to facilitate the provision of insurance to the agricultural sector in Malta. The Directorate of Agriculture, within the Ministry for Agriculture, Fisheries and Animal Rights, has in the past engaged in discussions on the provision of the insurance and the Rural Development Programme (2014-2020) has selected Measure 17.1 derived from Article 37 of Regulation (EU) No 1305/2013 which provides support to holdings opting for insurance. Despite the selection of this Measure in the Rural Development Programme, the market still exhibits a failure in the provision of insurance to the sector such that the measure has been reassessed and is for the time being removed from the Programme.

² “Agricultural Insurance in Malta: An Assessment of Market Failures”, E-Cubed Consultants Limited, June 2020.

- (24) Grants under the scheme will be paid directly to the undertaking active in primary agricultural production.
- (25) The Maltese authorities confirm that the aid relates closely to the Common Agricultural Policy (CAP), and is consistent with the rural development objectives referred to in point (10) of the Guidelines.

2.8. Aid and aid intensity

- (26) The minimum amount to be claimed by each individual beneficiary is set at €100 and the maximum value of grant support for an individual beneficiary provided under this scheme is set at €55,000, excluding VAT.
- (27) The aid intensity is 90% of the eligible costs, which are a direct result of the damage incurred as a direct consequence of the adverse climatic event, based on the assessment made by a public authority. In Malta, 100% of the utilised agricultural area is classified as an 'area affected by specific constraints', according to Articles 32 (1c) and 32 (4) of Regulation (EU) No 1305/2013³ and the Rural Development Programme for Malta 2014-2020.

2.9. Cumulation

- (28) Aid under the scheme cannot be cumulated with other aid for the same eligible costs.
- (29) According to the Maltese authorities, the cumulation of the present grant with aid received from other public resources, including regional aid schemes (national or EU) to cover the same eligible costs is excluded. The aid authorised under the scheme will not be cumulated with any de minimis aid in respect of the same eligible costs.
- (30) The aid is entirely financed by the State budget. In Malta, there is no other aid scheme that pays for this type of damage. The Maltese authorities have confirmed that the scheme is not co-financed by the European Regional Development Fund (ERDF), European Social Fund (ESF), Cohesion Fund (CF), European Agricultural Fund for Rural Development (EAFRD), European Maritime and Fisheries Fund (EMFF) or European Union Solidarity Fund (EUSF).

2.10. Other provisions

- (31) Malta has informed the Commission that in order to comply with the transparency requirements the publication of the aid scheme will be done through the following web page:
<https://eufunds.gov.mt/en/SAMB/Pages/SAMBHome.aspx>

³ 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. 487–548.

3. ASSESSMENT

3.1. Lawfulness of the aid

- (32) The aid scheme was notified to the Commission on 23 June 2020. It has not been implemented yet. Therefore, Malta has complied with its obligation under Article 108(3) TFEU.

3.2. Existence of aid

- (33) 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".
- (34) 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.
- (35) The scheme in question is imputable to the State, since it is based on the legal acts described in recital (4). It is financed through State resources since it is financed from the general budget (recital (6)).
- (36) The measure confers an advantage on its beneficiaries in the form of direct grants. The measure thus relieves those beneficiaries of costs, which they would have to bear under normal market conditions.
- (37) The notified scheme is selective because other undertakings in a comparable legal and factual situation, in the light of the objective pursued by the scheme, are not eligible for aid and thus will not receive the same advantage. The notified scheme therefore gives only certain undertakings (recital (7)) 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 competition⁴.
- (38) 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 trade⁵. The beneficiaries of aid operate on a market of agricultural 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 present

⁴ Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209.

⁵ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities*, ECLI:EU:C:1988:391.

scheme is liable to distort competition and to affect trade between Member States.

- (39) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. 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.

3.3. Compatibility of the aid

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

- (40) 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.
- (41) For this derogation to be applicable, the aid must comply with the relevant Union State aid rules.

3.3.2. Application of the Guidelines

- (42) As regards the notified aid scheme, Part II, Chapter 1, Section 1.2.1.2 "Aid to compensate for damage caused by adverse climatic event which can be assimilated to a natural disaster" of the Guidelines is applicable.
- (43) According to point (346) of the Guidelines, the Commission will consider the aid to compensate for the damage caused by an adverse climatic event which can be assimilated to a natural disaster compatible with the internal market under Article 107(3)(c) TFEU if it complies with the common assessment principles of these Guidelines and with the specific conditions set out in Section 1.2.1.2 of Part II of the Guidelines.

3.3.2.1. Common Assessment Principles

Contribution to a common objective

- (44) According to point (44) the aid should be related closely to the Common Agricultural Policy (CAP), and be consistent with the rural development objectives referred to in point (10) of the Guidelines. The current aid scheme fulfils these requirements as stated in recital (25), therefore point (44) of Guidelines is complied with.
- (45) According to point (48) of the Guidelines, the Commission considers that the principle of contribution to the objectives of rural development is met regarding the aid measures in Sections 1.1.10.3, 1.2, 1.3, 2.8 and 2.9 of Part II of these Guidelines, which are outside the scope of rural development, since the Commission has gained sufficient experience as to the contribution of those measures to the rural development objectives. The current scheme falls within Section 1.2 and is outside the scope of rural development. Therefore, the requirements under (48) of the Guidelines are complied with.

Need for State intervention

- (46) According to point (55) of the Guidelines, 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 of these Guidelines. Therefore, such aid should be considered necessary to achieve the objectives of common interest specified under Section 3.1. of Part I of these Guidelines. The current aid scheme fulfils the specific conditions laid down in Chapter 1.2.1.2 of Part II of the Guidelines, as shown in recitals (55) to (73), and therefore the requirements under point (55) of the Guidelines are complied with.

Appropriateness of aid

- (47) According to point (57) of the Guidelines, the Commission considers that aid granted in the agricultural and forestry sectors and in rural areas, which fulfils the specific conditions laid down in the relevant Sections of Part II of these Guidelines, is an appropriate policy instrument. The current aid scheme fulfils the specific conditions laid down in Chapter 1.2.1.2 of Part II of the Guidelines, as shown in recitals (55) to (73), and therefore the requirements under point (57) of the Guidelines are complied with.
- (48) The aid is granted in the form of a direct grant to compensate for the damage caused by an adverse climatic event, which can be assimilated to a natural disaster. The direct grant is the appropriate aid instrument as other forms of aid e.g. guarantee or aid in form of reduced taxes would not achieve desired effect to the extent as the direct grant. As the aid amount is limited to the minimum necessary (recitals (50) to (52)) and the specific requirements as described in recitals (55) to (72) are fulfilled, the possible negative effect on competition and trade is low. Therefore, the requirements under point (59) and point (60) of the Guidelines are complied with.

Incentive effect and need for aid

- (49) According point (75)(e) of the Guidelines the incentive effect is not required or it is deemed to be present in case of an aid to compensate for damage caused by adverse climatic event which can be assimilated to a natural disaster.

Proportionality of the aid

- (50) Points (82) to (84) of the Guidelines stipulate that if the aid amount does not exceed the eligible costs and the aid intensity stays within the ceilings set out in Part II of the Guidelines, the aid is deemed to be proportionate. The current aid scheme fulfils the specific conditions regarding eligible costs and aid intensity laid down in Part II, Chapter 1.2.1.2 of the Guidelines, as shown in recitals (63) to (76), and therefore points (82) and (84) of the Guidelines are complied with.
- (51) According to point (85) of the Guidelines the aid amount has to be calculated by the granting authority when granting the aid and the eligible costs will be supported by clear, contemporary documentary evidence. Pursuant to recital (16) of the present decision, point (85) of the Guidelines is complied with.
- (52) As described in recital (29) above, the Maltese authorities assured that the aid under the notified scheme will not be cumulated with aid received from other local, regional, national or European Union sources, nor with any de minimis aid

in respect of the same eligible costs. Consequently, the requirements under point (104) of the Guidelines are complied with.

Avoidance of undue negative effects on competition and trade

- (53) According to point (113) of the Guidelines, the Commission considers that where an aid fulfils the conditions and does not exceed the relevant maximum aid intensities laid down in the applicable Sections of Part II of these Guidelines, the negative effect on competition and trade is limited to the minimum. The current aid scheme fulfils the conditions laid down in Chapter 1.2.1.2 of Part II of the Guidelines, as shown in recitals (55) to (73), and therefore point (113) of the Guidelines is complied with.

Transparency

- (54) Regarding the transparency requirements stipulated in points (128) to (132) of the Guidelines, the Maltese authorities have committed to comply with these requirements as stated in recital (31).

3.3.2.2. Specific assessment according to the category of aid

- (55) According to point (347), first sentence of the Guidelines the rules apply only for adverse climatic event which can be assimilated to a natural disaster as defined in point (35).34 of the Guidelines. As explained in recitals (11) and (13) above the severe climatic event in 2019 has destroyed more than 30 % of the average of the production calculated on the basis of the preceding three-year period. Therefore, the definition of point (35).34 of the Guidelines is met.
- (56) According to point (347), second sentence of the Guidelines the rules apply only to undertakings active in the primary agricultural production. As described in recital (7) above, the requirement of point (347), second sentence of the Guidelines is fulfilled.
- (57) According to point 348(a) of the Guidelines the competent authority of the Member State concerned has to recognize formally the character of the event as an adverse climatic event, which can be assimilated to a natural disaster. As explained in recital (12) above the adverse climatic events, which can be assimilated to natural disasters are formally recognised by the Meteorological Office of Malta. Therefore, the requirement of point 348(a) of the Guidelines is fulfilled.
- (58) According to point 348(b) of the Guidelines there has to be a direct causal link between the adverse climatic event, which can be assimilated to a natural disaster and the damage suffered by the undertaking. As explained in recitals (12) and (13), the requirement of point 348(b) of the Guidelines is fulfilled.
- (59) According to point (351) of the Guidelines the aid must be paid directly to the undertaking concerned. As explained in recital (24) the aid is paid out directly to the undertaking concerned. Therefore, the requirement of point (351) of the Guidelines is fulfilled.
- (60) According to point (352), first sentence of the Guidelines, the aid scheme must be established within three years from the date of the occurrence of the adverse

climatic event which can be assimilated to a natural disaster. As the Maltese authorities notified the scheme on 23 June 2020 (recital (1)), the deadline set in point (352) of the Guidelines is fulfilled.

- (61) According to point (352), second sentence of the Guidelines the aid must be paid out within four years from the date of the occurrence of the adverse climatic event, which can be assimilated to a natural disaster. As explained in recital (14) above this requirement is fulfilled.
- (62) According to point (353) of the Guidelines there are two requirements: first, that the eligible costs are the damage incurred as a direct consequence of the adverse climatic event, which can be assimilated to a natural disaster, and second, that they are assessed either by a public authority, by an independent expert recognised by the granting authority or by an insurance undertaking. As regards the first requirement it is explained in recital (15) above that the eligible costs are the damage incurred as a direct consequence of the storms. As regards the second requirement it is explained in recital (16) that the damage is assessed by the granting authority. Therefore, the two requirements of point (353) of the Guidelines are fulfilled.
- (63) According to recital (15) the damage includes the loss of income due to the full or partial destruction of the agricultural production. This is in line with point (354) b of the Guidelines.
- (64) According to point (355) of the Guidelines the calculation of the damage must be made at the level of the individual beneficiary. As explained in recital (17) above, this requirement is fulfilled.
- (65) Point (356) of the Guidelines is not applicable to the notified scheme, as the damage will not refer to the material damage to assets.
- (66) According to point (357) of the Guidelines, where the reduction of the beneficiary's income referred to in point (354) (b) is calculated on the basis of crop or livestock level, only the material damage related to that crop or livestock should be taken into account. As explained in recital (17) above, this requirement is fulfilled.
- (67) According to point (358) of the Guidelines, the loss of income must be calculated either at annual farm production level or at crop or livestock level by subtracting:
(a) the result of multiplying the quantity of the agricultural products produced in the year of the adverse climatic event which can be assimilated to a natural disaster, or each following year affected by the full or partial destruction of the means of production, by the average selling price obtained during that year from
(b) the result of multiplying the average annual quantity of agricultural products produced in the three-year period preceding the adverse climatic event which can be assimilated to a natural disaster, or a three year average based on the five-year period preceding the adverse climatic event which can be assimilated to a natural disaster, excluding the highest and lowest entry by the average selling price obtained. As explained in recital (18) above, this requirement is fulfilled.
- (68) According to point (359) of the Guidelines, the amount obtained following the calculation method of point (358) may be increased by other costs incurred by the beneficiary due to the adverse climatic event which can be assimilated to a natural

disaster. As explained in recital (19), this amount will not be increased. That amount must also be reduced by any costs not incurred because of the adverse climatic event which can be assimilated to a natural disaster which would otherwise have been incurred by the beneficiary. As explained in recital (19), this requirement is fulfilled.

- (69) Point (360) of the Guidelines is not applicable to the notified scheme, as indexes will not be used in order to calculate the annual agricultural production of the beneficiary.
- (70) Point (361) of the Guidelines is not applicable to the notified scheme, as the Maltese authorities have not proposed other methods for the calculation of damage, different from the ones stipulated in points (356) to (360) of the Guidelines.
- (71) According to point (362) of the Guidelines the aid and any other payments received to compensate for the damage, including payments under other national or Union measures or insurance policies for the damage receiving aid, must be limited to 80 % of the eligible costs. The aid intensity may be increased to 90% in areas facing natural constraints. As explained in recital (27) above, this requirement is fulfilled.
- (72) According to point (363) of the Guidelines aid must be reduced by 50 % unless it is given to beneficiaries who have taken out insurance covering at least 50 % of their average annual production or production-related income and the statistically most frequent climatic risks in the Member State or region concerned, for which insurance coverage is provided. Taking into account the information provided by the Maltese authorities, which has been summarised in recitals (20) to (23) above, the Commission considers that no affordable insurance covering the statistically most frequent climatic risks in the region concerned was available at the time the damage occurred, therefore the derogation mentioned in point (363) of the Guidelines is applicable and the aid does not have to be reduced by 50 %.
- (73) It can therefore be concluded that the requirements of Section 1.2.1.2 of Part II of the Guidelines are met.

Duration of the aid scheme

- (74) As to the duration of the scheme, pursuant to point (719) of the Guidelines the Commission shall only authorize schemes of limited duration. As shown in recital (5), this condition is met.

Undertakings in difficulty and outstanding recovery orders

- (75) The notified scheme excludes from the scope of the beneficiaries undertakings in difficulty, unless the financial difficulty is caused by the adverse climatic event which can be assimilated to a natural disaster (recital (8)) as well undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market (recital (9)). Therefore the conditions of points (26) and (27) of the Guidelines are fulfilled.

- (76) In view of the above considerations, the Commission considers that the notified aid scheme is compatible with the internal market on the basis of Article 107(3)(c) TFEU given that it complies with the Guidelines

4. CONCLUSION

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

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

