EUROPEAN COMMISSION

Brussels, 8.12.2021
C(2021) 9334 final

PUBLIC VERSION

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Subject: State Aid SA.100542 (2021/N) – Italy
COVID-19 – "Esonero dal versamento dei contributi previdenziali per aziende che non richiedono trattamenti di integrazione salariali" (exemption from social security contributions for private employers not applying for wage support measures) and amendments to SA.59255, as amended by SA.59655, and to SA.61939

Excellency,

1. PROCEDURE

(1) By electronic notification of 27 October 2021, Italy jointly notified:

(a) A measure in the form of limited amounts of aid ("exemption from social security contributions for private employers not applying for wage support measures, "the measure", as described under section 2) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended ("the Temporary Framework");[1] and

[1] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6) and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

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(b) Amendments ("the notified amendments", as described in section 3) to State aid measure SA.59255[2], as already amended by SA.59655[3], and to SA.61939[4] ("the existing aid schemes").

(2) Italy provided additional information on 19 and 29 November 2021.

(3) Italy exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU"), in conjunction with Article 3 of Regulation 1/1958[5] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

(4) Italy considers that the COVID-19 outbreak has continued to affect the real economy. The measure aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.

(5) The objective of the measure is to reduce the labour costs borne by private employers, which are experiencing serious socio-economic disturbances leading to liquidity shortage, with a view to ultimately preserve employment levels. The measure complements two other measures approved by the Commission in case SA.59255, as amended by SA.59655, and SA.61939.

(6) Italy confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(7) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

(8) The measure provides aid in the form of an exemption applicable to private employers from the payment of their share of social security contributions.

2.2. Legal basis

(9) The legal basis for the measure is Article 1, paragraph 306, of Law 30 December 2020, No 178 on the "*Budget of the State for the financial year 2021 and multi-*

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2 Commission Decision C (2020) 7926 final of 10 November 2020 (OJ C 50, 12.2.2021, p. 13).

3 Commission Decision C (2020) 9121 final of 10 December 2020 (OJ C 50, 12.2.2021, p. 16).

4 Commission Decision C (2021) 1376 final of 23 February 2021 (OJ C 240, 18.6.2021, p. 1).

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

year budget for the three-year period 2021-2023"[6]. According to Article 1, paragraph 308, of this law, aid can be granted after the approval of the measure by the Commission.

2.3. Administration of the measure

(10) The Ministry of Labour and Social Policies is responsible for administering the measure. The granting authority is the National Institute for Social Security ("INPS").

2.4. Budget and duration of the measure

(11) The estimated budget of the measure is EUR 155.6 million.

(12) The Italian authorities indicated that the scheme is financed exclusively from the State budget.

(13) Aid may be granted under the measure as from the date of the notification of its approval by the Commission until no later than 30 June 2022.

2.5. Beneficiaries

(14) The beneficiaries of the measure are all private employers[7] irrespective of their size, except private employers active in the primary production of agricultural products and private employers active in the financial sector.

(15) The measure is addressed to private employers who do not apply for new wage support measures, as provided by Article 1, paragraph 300, of the legal basis referred in recital (9), or for other wage subsidies referring to the same contribution period that the measure applies to, and who already benefited from wage support measures[8] during May and June 2020.

(16) Aid may not be granted under the measure to medium and large enterprises[9] that were already in difficulty within the meaning of the Block Exemption Regulations[10] on 31 December 2019. Aid may be granted to micro and small

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6 OJ General Series no. 322 of December 30, 2020 - Ordinary Supplement no. 46.

7 The private employers are defined in section 2 of the INPS Circular 133/2020: https://www.inps.it/CircolariZIP/Circolare%20numero%20133%20del%2024-11-2020.pdf

8 Italy refers here to "concessione del trattamento ordinario di integrazione salariale, dell'assegno ordinario e del trattamento di integrazione salariale in deroga" as provided by Article 19 to 22-quinquies of Law Decree no. 18/2020, as converted, with modifications, into Law no. 27/2020.

9 As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187, 26.6.2014, p. 1, Annex I to Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193, 1.7.2014, p. 1 and Annex I to Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369, 24.12.2014, p. 37.

10 As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014, Article 2(14) of Commission Regulation (EU) No 702/2014 of 25 June 2014 and Article 3(5) of Commission Regulation (EU) No 1388/2014 of 16 December 2014.

enterprises that were in difficulty within the meaning of the Block Exemption Regulations on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid[11] or restructuring aid.[12]

2.6. Sectoral and regional scope of the measure

(17) The measure is open to all sectors except the financial sector and the primary production of agricultural products. It applies to the whole territory of Italy.

2.7. Basic elements of the measure

(18) The measure has as its main purpose to reduce the labour costs borne by private employers facing serious economic difficulties and thereby to ultimately preserve employment levels, which are at serious risk because of the Covid-19 outbreak.

(19) The measure provides for an exemption from the payment of employers' compulsory social security contributions (premiums and contributions due to INAIL[13] for insurance against accidents at work are excluded from the calculation of the total social security contribution), for a maximum period of eight weeks, applicable to contribution periods between 1 January 2021 and 31 March 2021. The exemption amount can be up to the value of the hours for which wage support applied in May and June 2020.

(20) The contribution exemption may be combined with other contribution exemptions or reductions.

(21) Italy confirmed that the aid may be granted provided its nominal value does not exceed EUR 2.3 million per undertaking. The amount of the aid will not exceed EUR 345 000 per undertaking active in fishery and aquaculture sectors (all figures used being expressed in gross, that is before any deduction of tax or other charges).

(22) The Italian authorities confirm that for beneficiaries active in the processing and marketing of agricultural products, the aid is not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.

(23) Italy confirmed that the aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1, paragraph (1)(a) to (k) of Commission Regulation (EU) No 717/2014.

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[11] Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

[12] Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

[13] Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro - National Institute for Insurance against Accidents at Work.

(24) The Italian authorities confirm that where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, the Italian authorities will ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2.3 million is not exceeded per undertaking. Where an undertaking is active in the fishery and aquaculture sector, the overall maximum amount of EUR 345 000 should not be exceeded per undertaking.

2.8. Cumulation

(25) The Italian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations[14] or the Block Exemption Regulations[15] provided the provisions and cumulation rules of those Regulations are respected.

(26) The Italian authorities confirm that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.

(27) The Italian authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.

(28) The Italian authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 22(a) and 23(a) of that framework, will be respected.

2.9. Monitoring and reporting

(29) The Italian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 and EUR 10 000 in the fisheries sector granted under the measure

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[14] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

[15] Commission Regulation (EU) No 651/2014 of 17 June 2014, Commission Regulation (EU) No 702/2014 of 25 June 2014 and Commission Regulation (EU) No 1388/2014 of 16 December 2014.

on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[16]).

3. DESCRIPTION OF THE NOTIFIED AMENDMENTS

(30) Italy also notified amendments to SA.59255, as amended by SA.59655 (the "initial decision") and to SA.61939 (the "second decision"). These measures provided for an exemption from the payment of employers' compulsory social security contributions for a maximum period of four months, until 31 December 2020 (recital (18) of the initial decision) and for a maximum period of four weeks, until 31 January 2021 (recital (19) of the second decision). They applied to private employers registered in the Italian Business Registry (Registro delle Imprese) [17].

(31) With the notified amendments, Italy wishes to amend the existing aid schemes by extending their eligibility scope to private employers that are not registered in the Italian Business Registry, except private employers active in the primary production of agricultural products and private employers active in the financial sector. Italy explains that, in implementing the existing aid schemes, it has already granted aid to these private employers.

(32) Italy confirms that while the existing aid schemes have applied to such ineligible private employers, all other conditions and elements under the initial decision and the second decision have remained unaltered and have applied to grant such aid. Italy also confirms that all the commitments it provided for the purposes of the prior approved schemes are valid in their entirety also for this aid.

(33) The compatibility assessment of the notified amendments is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

4. ASSESSMENT

4.1. Lawfulness of the measure and the notified amendments

(34) By notifying the measure before putting it into effect (recital (9)), the Italian authorities have respected their obligations under Article 108(3) TFEU. Conversely, the Commission observes that the notified amendments entered into force before the Commission's approval. The Commission regrets that Italy implemented the notified amendments (section 3) before the Commission has adopted its decision, in breach of Article 108(3) TFEU. The notified amendments, in that they extend the scope of the beneficiaries, constitute unlawful aid in the meaning of Article 108(3) TFEU.

4.2. Existence of State aid

(35) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the

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16 Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014.

17 https://italianbusinessregister.it/italian-business-register

measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(36) The measure is imputable to the State, since it is administered by the authorities indicated in recital (9) and it is based on Article 12, paragraphs 14 and 15, of the law decree 28 October 2020, No 137 (see recital (8)). It is financed through State resources, since it is financed by public funds (see recital (11)).

(37) The measure confers an advantage on its beneficiaries in the form of an exemption from the payment of social security contributions (see recital (7)). The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(38) The advantage granted by the measure is selective, since it is awarded only to certain undertakings who do not apply for new wage support measures and who already benefited from wage support measures during June 2020 (see recitals (13) and (14)), excluding the financial sector and the primary production of agricultural products (see recital (17)).

(39) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(40) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Italian authorities do not contest that conclusion.

(41) As for the notified amendments under section 3 (recital (34)), the existing aid schemes constitute State aid within the meaning of Article 107(1) TFEU for the reasons set out in the initial decision and in the second decision. The notified amendments do not affect those conclusions; in particular, the schemes remain selective, since they remain open only to beneficiaries active in certain specified sectors (recital (31)). The Commission therefore refers to the respective assessments of the initial decisions and of the second decision and concludes that the existing aid schemes, as amended constitute State aid within the meaning of Article 107(1) TFEU.

4.3. Compatibility

(42) Since the measure and the notified amendments involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure and the notified amendments are compatible with the internal market.

(43) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid "*to remedy a serious disturbance in the economy of a Member State*".

(44) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that "*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*". The Commission concluded that "*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*".

(45) The measure aims at reducing the labour costs borne by private employers thereby preserving employment levels (see recital (4)) at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(46) The measure is one of a series of measures conceived at national level by the Italian authorities to remedy a serious disturbance in their economy. The importance of the measure to preserve employment and economic continuity is widely accepted by economic commentators and the measure is of a scale that can be reasonably anticipated to produce effects to the economy across the entire Italian economy (see recital (19)). Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Limited amounts of aid*") described in section 3.1 of the Temporary Framework.

(47) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:

- The aid consists in the exemption from the payment of social security contributions due by private employers (recital (19)).

  The overall nominal value of the exemption shall not exceed EUR 2.3 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (see recital (21)). The measure therefore complies with point 22(a) of the Temporary Framework.

- Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (10). The measure therefore complies with point 22(b) of the Temporary Framework.

- Aid may not be granted under the measure to medium[18] and large enterprises that were already in difficulty on 31 December 2019 (recital (16)). The measure therefore complies with point 22(c) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under

[18] As defined in Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014.

national law and they have not received rescue aid[19] or restructuring aid[20] (recital (16)). The measure therefore complies with point 22(c)bis of the Temporary Framework.

- Aid will be granted under the measure no later than 30 June 2022 (see recital (13)). The measure therefore complies with point 22(d) of the Temporary Framework.

- Aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned (recital (22)). The measure therefore complies with point 22(e) of the Temporary Framework.

- The overall nominal value of the exemption from social security contributions does not exceed EUR 345 000 per undertaking active in the fishery and aquaculture sector (recital (21)) The measure therefore complies with point 23(a) of the Temporary Framework.

- Aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in Article 1(1)(a) to (k) of Commission Regulation (EU) No 717/2014 (recital (23)). The measure therefore complies with point 23(c) of the Temporary Framework.

- Where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 22(a) and 23(a) of the Temporary Framework, Italy will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2.3 million is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23 (a) of the Temporary Framework, the overall maximum amount of EUR 345 000 is not exceeded per undertaking (recital (24)). The measure therefore complies with point 23bis of the Temporary Framework.

(48) The Italian authorities confirm that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (5)).

[19] Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

[20] Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

(49) The Italian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (29)). The Italian authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework and the cumulation rules of the relevant Regulations are respected (recitals (25) to (28)).

(50) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

(51) With regard to the notified amendments (section 3), the existing aid schemes are compatible with the internal market pursuant to Article 107(3)(b) TFEU, since they meet the conditions of section 2 and section 3.1 of the Temporary Framework in force at the time of their approval by the Commission for the reasons set out in recitals (37) to (44) of the initial decision and (37) to (45) of the second decision. The Commission therefore refers to the respective assessments of these decisions.

(52) The application of the existing aid schemes to the additional category of beneficiaries referred to in recital (31) does not alter those conclusions. In particular, (i) the overall nominal value of the exemptions under the initial decision remains within the limit of EUR 800 000 per undertaking active in sectors other than agriculture and EUR 120 000 per undertaking active in the fishery and aquaculture sectors; and (ii) the overall nominal value of the exemptions under the second decision remains within 1.8 million for companies active in sectors other than agriculture and 270 000 per undertaking active in the fishery and aquaculture sectors.

(53) With respect to the unlawful aid granted to the undertakings referred to in recital (31), Italy confirms that, beside the extension of the eligibility scope of the existing aid schemes, all other conditions and elements under the initial decision and the second decision have remained unaltered and have applied to grant the aid. Italy also confirms that all the commitments it provided for the existing aid scheme within the initial decision and the second decision are valid in their entirety also for this aid.

(54) The Commission therefore considers that the notified amendments (section 3) are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU, since they meet all the relevant conditions of the Temporary Framework. The Commission therefore considers that the notified amendments do not alter the Commission’s conclusion on the compatibility of the existing aid scheme in the initial decision.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified aid and to the scheme as amended on the grounds that they are compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

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