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Subject: State Aid SA.103122 (2022/NN) – Italy
COVID-19: Exemption from the contribution paid by employers

Excellency,

1. PROCEDURE

(1) By electronic notification of 24 May 2022, Italy notified aid in the form of limited amounts of aid (‘*Esonero dal contributo aziendale*’, the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).[1] Italy submitted additional information on 9 June 2022.

(2) 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[2] and to have this Decision adopted and notified in English.

[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).

[2] 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

(3) The Italian authorities consider that the COVID-19 pandemic affects the real economy. The measure formed part of an overall package of measures and aimed to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the pandemic, to ensure that the disruptions caused by the pandemic do not undermine the viability of undertakings and thereby to preserve the continuity of economic activity during and after the pandemic[3].

(4) Italy confirms that the aid under the measure was 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.

(5) 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

(6) The measure provided aid in the form of payment exemptions.

2.2. Legal basis

(7) The legal basis for the measure is Article 7 of Decree-Law No 4 of 27 January 2022 on "Urgent measures to support undertakings and economic, labor, health and territorial services operators, linked to the COVID-19 emergency, as well as for the control of the effects of rising prices in the electricity market" ('*Misure urgenti in materia di sostegno alle imprese e agli operatori economici, di lavoro, salute e servizi territoriali, connesse all'emergenza da COVID-19, nonché per il contenimento degli effetti degli aumenti dei prezzi nel settore elettrico*')[4].

2.3. Administration of the measure

(8) The Ministry of Labour and Social Policies was responsible for administering the measure. The granting authority was the National Institute for Social Security ('INPS').

2.4. Budget and duration of the measure

(9) The estimated budget of the measure was EUR 104.7 million. The measure was entirely financed from the State budget.

(10) Aid was granted under the measure from 1 January 2022 until 31 March 2022.

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[3] According to the Italian National Institute of Statistics (ISTAT) the job market, in particular in the sectors covered by the notified measure, was severely impacted by the COVID-19 outbreak. In 2021 the national job market of Italy reported a sharp decrease in the number of employed people and, as a consequence, an increase in the number of both unemployed and inactive (workers who are not employed and do not actively look for a new job) people. The rate of job losses remained high throughout 2021 and started to remain more stable only as of December 2021.

[4] Published in the *Gazzetta Ufficiale* No 21 of 27 January 2022.

2.5. Beneficiaries

(11) The final beneficiaries of the measure were employers active in the economic sectors listed in the legal basis[5] who, as a consequence of the restrictions related to the COVID-19 outbreak, suspended or reduced their activities from 1 January 2022 to 31 March 2022.

(12) Financial institutions were excluded as eligible final beneficiaries.

(13) Aid could not be granted under the measure to medium[6] and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[7], the Agriculture Block Exemption Regulation ("ABER")[8] and the Fisheries Block Exemption Regulation ("FIBER")[9] on 31 December 2019. Aid could be granted to micro and small enterprises that were in difficulty within the meaning of the GBER, ABER or FIBER on 31 December 2019, if those enterprises, at the moment of granting the aid, were not subject to collective insolvency procedure under national law and they had not received rescue aid[10] or restructuring aid[11].

2.6. Sectoral and regional scope of the measure

(14) The measure was limited to employers active in the sectors referred to in recital (11), irrespective of their size. The Italian authorities estimate the number of beneficiaries to be approximately 464 100.

(15) The measure applied to the whole territory of Italy.

2.7. Basic elements of the measure

(16) The measure sought to support employers facing temporary difficulty due to the restrictions connected to the COVID-19 outbreak, who were forced to suspend or reduce their activities from 1 January 2022 to 31 March 2022 (see recital (11)).

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[5] Annex I to Article 7 of Decree-Law No. 4 of 27 January 2022 refers more specifically of a series of activities within the categories 10, 11, 13, 14, 15, 16, 17, 18, 23, 25, 28, 30, 31, 32, 33, 41, 45, 46, 49, 52, 55, 56, 59, 74, 77, 79, 82, 90, 91, 93, 94, 95 and 96 of ATECO codes (the Italian version of NACE codes: *Classificazione delle attività economiche ATECO 2007* (istat.it)).

[6] 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 or 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.

[7] As defined in Article 2(18) of Commission Regulation (EU) No 651/2014.

[8] As defined in Article 2(14) of Commission Regulation (EU) No 702/2014.

[9] As defined in Article 3(5) of Commission Regulation (EU) No 1388/2014.

[10] 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.

[11] 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.

(17) It relieved eligible beneficiaries from the payment of 100% of the additional contributions that they would have made to their employees' salaries under Article 5[12] of Legislative-Decree No 148 of 14 September 2015[13] if admitted to the salary integration treatment, or under Article 29(8)[14] of the same Decree if admitted to the salary supplement fund, for each month of retribution paid in the period concerned.

(18) The Italian authorities confirm that the overall maximum aid amount per undertaking (gross, i.e. before any deduction of tax or other charge), as indicated in point 22(a) and 23(a) of the Temporary Framework, was complied with.

(19) The Italian authorities confirmed that aid granted to undertakings active in the primary production of agricultural products was not fixed on the basis of the price or quantity of products put on the market and that aid granted to undertakings active in the processing and marketing of agricultural products was excluded when the aid was conditional on being partly or entirely passed on to primary producers, or was 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.

(20) 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, Italy ensured, 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 covered by point 23(a), the overall maximum amount of EUR 345 000 could not be exceeded per undertaking.

(21) Finally, the Italian authorities confirm that aid granted to undertakings active in the fishery and aquaculture sector did 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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12 Under Article 5 of Legislative-Decree No 148 of 14 September 2015, employers that apply for salary integration treatment shall contribute to their employees' salaries with: (i) 9% of the total remuneration that would have been paid to the employee for the hours of work not performed, related to the periods of ordinary or extraordinary salary integration treatment enjoyed within one or more interventions granted up to a limit of 52 weeks during a five-year period; (ii) 12% on top of the limit under (i) and up to a limit of 104 weeks during a five-year period, and (iii) 15% on top the limit under (ii) during a five-year period.

13 "Provisions for the reorganisation of legislation on social safety nets during the employment relationship" ('*Disposizioni per il riordino della normativa in materia di ammortizzatori sociali in costanza di rapporto di lavoro*').

14 Under Article 29(8) of Legislative-Decree No 148 of 14 September 2015, employers that apply for the salary supplement fund shall contribute to their employees' salaries with 4% of the salary that would have been paid to the employee for the hours of work not performed.

2.8. Cumulation

(22) The Italian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations[15], the GBER, ABER and FIBER, provided the provisions and cumulation rules of those Regulations are respected.

(23) The Italian authorities confirm that aid under the 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.

(24) 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.

(25) 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 points 22(a) and 23(a) of that framework, was and will be respected.

2.9. Monitoring and reporting

(26) 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 granted under the measure and EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting[16]).

3. ASSESSMENT

3.1. Lawfulness of the measure

(27) The Commission regrets that Italy has unlawfully granted aid under the measure from 1 January 2022 until 31 March 2022, contrary to Article 108(3) TFEU.

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15 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 1408/2013 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 in the agriculture sector (OJ L 352, 24.12.2013 p. 9), 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).

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

3.2. Existence of State aid

(28) 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 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.

(29) The measure is imputable to the State, since it was administered by the Ministry of Labour and Social Policies and granted by INPS (see recital (8)) and it is based on Article 7 of Decree-Law No. 4 of 27 January 2022 (see recital (7)). It was financed through State resources, since it was financed by public funds (see recital (9)).

(30) The measure conferred an advantage on its beneficiaries in the form of payment exemptions. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(31) The advantage granted by the measure was selective, since it was awarded only to employers active in the economic sectors as referred to in recital (11).

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

(33) 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.

3.3. Compatibility

(34) Since the measure involved aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(35) 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*".

(36) 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*".

(37) The measure aimed at supporting employers who, as a consequence of the restrictions related to the COVID-19 outbreak, suspended or reduced their activities between 1 January and 31 March 2022, at a time when the normal

functioning of markets was severely disturbed by the COVID-19 pandemic and that pandemic is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(38) 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 measure was designed to meet the requirements of a specific category of aid ("Aid in the form of limited amounts of aid") described in Section 3.1 of the Temporary Framework.

(39) 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 took the form of payment exemptions (see recital (6)).

  The overall nominal value of the payment exemptions could not exceed EUR 2.3 million per undertaking; all figures used were gross, that is, before any deduction of tax or other charges. The measure therefore complies with point 22(a) of the Temporary Framework.

- Aid was granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (9). The measure therefore complies with point 22(b) of the Temporary Framework.

- Aid could not be granted under the measure to medium and large enterprises that were already in difficulty on 31 December 2019 (see recital (13)). The measure therefore complies with point 22(c) of the Temporary Framework. Aid could 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, were not subject to collective insolvency procedure under national law and they had not received rescue aid or restructuring aid (see recital (13)). The measure therefore complies with point 22(c)bis of the Temporary Framework.

- Aid was granted under the measure for the period from 1 January 2022 until 31 March 2022, and therefore no later than 30 June 2022. 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 was excluded when the aid was 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 (see recital (19)). The measure therefore complies with point 22(e) of the Temporary Framework.

- The overall nominal value of aid under the measure could not exceed EUR 345 000 per undertaking active in the fishery and aquaculture sector (see recital (18)) or EUR 290 000 per undertaking active in the primary production of agricultural products (see recital (18)). The measure therefore complies with point 23(a) of the Temporary Framework.

- Aid granted to undertakings active in the primary production of agricultural products could not be fixed on the basis of the price or quantity of products put on the market (see recital (19)). The measure therefore complies with point 23(b) of the Temporary Framework.

- Aid granted to undertakings active in the fishery and aquaculture sector could 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 (see recital (21)). 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 ensured, 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 could not be exceeded per undertaking (see recital (20)). The measure therefore complies with point 23bis of the Temporary Framework.

(40) The Italian authorities confirm that the aid under the measure was 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 (see recital (4)).

(41) The Italian authorities confirm that the monitoring and reporting rules laid down in Section 4 of the Temporary Framework will be respected (see recital (26)). 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 (see from recital (22) to (25)).

(42) 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.

4. CONCLUSION

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