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Subject: State Aid SA.102926 (2022/N) – Italy
COVID-19: support for cabotage and other maritime services for exceeding social security and welfare contributions costs

Excellency,

1. PROCEDURE

(1) By electronic notification of 10 May 2022, Italy notified aid in the form of an exemption from payment of social security and welfare contributions for undertakings operating in the cabotage and other maritime services. The measure ("*Decontribuzione salariale eccedente per le imprese esercenti attività di cabotaggio e crocieristiche*", hereinafter referred to as "the measure") is the same already authorized in case SA.101428[1] under Section 3.1 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework")[2]. With the notified measure,

[1] See Commission Decision C(2022) 3065 final of 4 May 2022 in case SA.101428 (2022/N) (OJ C 204, 20.5.2022, p. 1).

[2] 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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Italy is asking the Commission to cover cases where a beneficiary undertaking is asking an amount of aid that exceeds the minimum-amount-of-aid threshold provided for under Section 3.1 of the Temporary Framework COVID-19, to the extent the relevant beneficiaries meet the requirements under Section 3.10 of that Framework.

(2) On 19 May, 14 June 2022 and 23 June, the Commission requested further clarifications to the Italian authorities, to which they replied on 7 June, 15 June 2022 and 23 June, respectively.

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

2. DESCRIPTION OF THE MEASURE

2.1. Context and objective of the measure

(4) Italy considers that the COVID-19 pandemic affects the real economy and puts at risk the jobs of workers and employees of undertakings that have partially or entirely reduced or suspended their activities due to the state of emergency and containment measures enforced by the national authorities.

(5) In particular, the Italian authorities submit that Italy was the first country within the European Union to be affected by the COVID-19 pandemic and to declare, with a resolution of the Council of Ministers of 31 January 2020, a state of emergency. Such state lasted until 31 July 2020, then was extended to 15 October 2020, and has also been further extended several other times until 2022.

(6) Since the first declaration of the state of emergency by the Italian authorities, various decrees have been enacted, including decrees of the President of the Council of Ministers, Ordinances of the Minister of Health, and Ordinances of the Department of Civil Protection. All these measures have entailed, among other things, restrictions on mobility in the maritime transport sector, in particular as regards passenger transport and cruise operators, which in turn penalised the economic operators in the sector.

(7) The Italian authorities also submit that maritime traffic during the period of the greatest impact of the pandemic (i.e. between March 2020 and January 2021)[4] recorded a sharp decline in the passenger, tourist and cargo sectors, while the cruise sector suffered a complete halt. To support this claim, the Italian authorities illustrate the evolution in the passenger traffic of large shipping companies, which suffered compared to 2019 a decrease of about 10 million passengers

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

[4] The Italian authorities submitted also that from June 2020 to the end of 2021 the capacity of transportation means (including maritime means) was limited in percentages ranging from 50 to 80 percent of their capacity.

(-3.5 million passengers on long haul routes, equal to a 56% decrease, and -6.5 million passengers on short haul routes, equal to at 53% decrease) corresponding to a loss in turnover of approximately EUR 351 million (a reduction of EUR 266 million for long haul routes and a reduction of EUR 85 million for short haul routes) in the relevant timeframe. As a direct consequence of the above, the Italian authorities add that the pandemic also had a severe impact on companies operating vessels used for the supply of oil products necessary for the propulsion and those for the on-board consumption of ships used for storage and servicing of national oil platforms.

(8) As a result, the measure addresses a risk of significant redundancies. The measure thus aims to preserve employment which, due to the COVID-19 pandemic, would have otherwise been laid off and to allow undertakings to resume their activities immediately after the lockdown period. The Italian authorities underline that the measure, which has the explicit aim to support employment levels in the context of the pandemic[5], was adopted in August 2020 and, even though it has not been put into effect to date absent Commission approval under State aid rules, its beneficiaries could rely on the expectation to have the cost of social and security contributions reimbursed as from 1 August 2020 once the scheme is approved by the European Commission. Italy thus submits that the undertakings eligible to benefit from the measure took that measure into account in their decisions concerning the maintenance or dismissal of staff in the period covered by the measure.

(9) 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.

(10) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of Sections 2 and 3.10 of the Temporary Framework.

2.2. The nature and form of aid

(11) The measure provides aid in the form of an exemption from the payment of social security and welfare contributions due by Italian employers, by law, with the exception of contributions and premiums due to INAIL[6].

2.3. Legal basis

(12) The legal basis for the measure is set out in Article 88 of Law Decree No 104 of 14 August 2020, converted by law No 126 of 13 October 2020, and amended by Law No 178 of 30 December 2020, Law Decree No 73 of 25 May 2021 and Law No 156 of 9 November 2021 (“Article 88 of Law Decree No 104”).

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[5] See Article 88(1) of Law Decree No 104 of 14 August 2020: “*In order to mitigate the negative effects deriving from the spread of the COVID 19 virus and to safeguard the employment levels of companies operating cruising and maritime cabotage, as well as to allow for continuation of essential maritime territorial activities, continuity, safeguarding of employment levels, competitiveness and efficiency of local and insular transport by sea, […]*”.

[6] National Institute for Insurance against Accidents at Work.

(13) Provisions for the implementation of the above-mentioned legal basis are set out by the Interministerial Implementing Decree No 536 of 29 December 2021 ("the Implementing Decree No 1")[7]. Further implementing conditions, with particular reference to the requirements provided for under Section 3.10 of the Temporary Framework, are set out in an explanatory note sent by the authorities to the undertakings applying for aid. Subject to the approval of the measure by the Commission, an Interministerial Decree will also provide a list of the shipping companies fulfilling the eligibility criteria, that can benefit from the aid together with the amount of aid they will have received. In accordance with Article 8 of the Implementing Decree, the measure is conditional upon its approval by the Commission and the Italian authorities confirmed that no aid has been granted to date, including under the scheme as approved in case SA.101428.

2.4. Administration of the measure

(14) The Ministry of Sustainable Infrastructure and Mobility – Directorate General for the Supervision of Port Authorities, Port Infrastructures, Maritime Transport and Inland Waterways, is responsible for administering the measure, assessing the applications for aid and authorising the aid.

2.5. Budget and duration of the measure

(15) The estimated total budget of the measure, encompassing also the scheme already approved in case SA.101428, is EUR 119 million. The Italian Authorities have clarified that about EUR 40 million out of that total budget are estimated to cover aid granted under this measure.

(16) Aid may be granted under the measure as from the notification of the Commission's decision approving the measure until no later than 30 June 2022[8].

2.6. Beneficiaries

(17) The beneficiaries of the measure are shipping companies having a registered office or a permanent establishment in the Italian territory and using vessels registered in the European Union or the European Economic Area carrying out (1) cabotage activities, and/or (2) the supply of oil products necessary for the propulsion and on-board consumption of ships, and/or (3) storage and servicing of national oil platforms, in all these cases with respect to seafarers who meet the requirements of Article 119 of the Italian Navigation Code and work on board such vessels. Financial institutions are excluded as eligible beneficiaries under the measure.

(18) Aid may not be granted under the measure to medium-sized[9] and large enterprises that were already in difficulty within the meaning of the General Block

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7 Interministerial Implementing Decree No 536 of the Ministry of Infrastructure and Sustainable Mobility together with the Ministry of Employment and Social Policies of 29 December 2021.

8 Initially the measure was due to last until 31 December 2020. Law No 178 of 30 December 2020 extended the measure until 30 April 2021, Law Decree No 73 of 25 May 2021, extended further the measure until 31 December 2021.

Exemption Regulation (“GBER”)[10] on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER 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]

2.7. Sectoral and regional scope of the measure

(19) The measure is open to undertakings carrying out, not cumulatively, cabotage activities, the supply of oil products necessary for the propulsion and on-board consumption of ships including, vessels used for storage and servicing of national oil platforms, as identified in recital (17), except the financial sector. It applies to the whole territory of Italy.

2.8. Basic elements of the measure

(20) The measure has as its main purpose the safeguard of employment by reducing the labour costs borne by the beneficiaries facing serious economic difficulties due to the containment measures adopted by the State in the context of the COVID-19 pandemic.

(21) The measure provides for a complete exemption from the payment of employers’ social security and welfare contributions, with the exception of premiums and contributions due to INAIL.

(22) To be eligible for the exemption under the scheme, ship-owning companies must fulfil the following two cumulative conditions:

- (a) they must have a registered office or a permanent establishment in the Italian territory;
- (b) they must use vessels registered in the European Union or the European Economic Area carrying out, not cumulatively, cabotage activities, the supply of oil products necessary for the propulsion and on-board consumption of ships, the storage and servicing of national oil platforms.

(23) The exemption only applies to seafarers meeting the requirements of Article 119 of the Italian Navigation Code and working on board vessels meeting the requirements listed in recital (22)(b).

(24) The scheme is applicable to the contributions described in recital (21) due by the relevant beneficiaries in the period between 1 August 2020 and 31 December 2021.

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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.

10 As defined in Article 2(18) of Commission Regulation (EU) No 651/2014

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.

(25) Applications for the aid at stake, including the one already authorised in case SA.101428, have already been submitted, since they had to be presented within 7 days after the date of publication of the Implementing Decree on the institutional website (29 December 2021).

(26) The Italian Authorities clarified that all applicants that asked for a reimbursement exceeding the amount of EUR 2.3 million will need to establish the impact of COVID-19 related measures on their activity with particular reference to the level of turnover decrease (at least 20% decrease compared to 2019) linked to those measures, demonstrate that they were at risk of laying off the seafarers covered by the measure and that they have maintained, over the period covered by the wage subsidy, the level of employment which, absent the measure, they would have had to reduce by laying off personnel. Absent this demonstration, the aid will not be authorised by the granting authority under this measure, without prejudice to the possibility for the beneficiaries to accept a limited amount of aid under Section 3.1 of the Temporary Framework, based on the scheme approved in case SA.101428.

(27) The monthly wage subsidy will be limited to the employer's social security contributions of the benefitting personnel and therefore will not exceed 80% of the monthly gross salary of the employees concerned.

2.9. Cumulation

(28) The Italian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations[13] or the GBER provided the provisions and cumulation rules of those Regulations are respected.

(29) 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.

(30) The Italian authorities confirm that aid granted under the measure may be combined with support granted under other generally available measures or with aid schemes in the form of employment support measures, provided the total amount of combined support does not lead to overcompensation of the wage costs of the personnel concerned.

2.10. Monitoring and reporting

(31) The Italian authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (*e.g.*, by 30 June 2022, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records

[13] 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), 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).

regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.)

3. ASSESSMENT

3.1. Lawfulness of the measure

(32) By notifying the measure before putting it into effect (recital 13), the Italian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(33) 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.

(34) The measure is imputable to the State, since it is administered by the Italian Ministry of Sustainable Infrastructure and Mobility (recital (14)) and granted pursuant to Article 88 of Law Decree No 104 (recital (12)) and to the Implementing Decree (recital (13)). It is financed through State resources, since it is financed by public funds in the form of social security and welfare contributions foregone by the State (recitals (15)).

(35) The measure confers an advantage on its beneficiaries in the form of an exemption from the payment of social security and welfare contributions (recital (11)). The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.

(36) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, i.e. undertakings carrying out activities identified in recital (17). In addition, the financial sector is excluded.

(37) 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.

(38) 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

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

(40) 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*".

(41) 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*".

(42) The measure aims to assist the beneficiary shipping companies at risk of laying off seafarers as a consequence of the loss of turnover due to the containment measures of COVID-19 at a time when the normal functioning of markets is 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. The measure aims at preserving employment and/or avoiding redundancies during the COVID-19 pandemic.

(43) 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 which can be reasonably anticipated to produce effects across the entire Italian maritime sector and related clusters. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Aid in form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak*") described in Section 3.10 of the Temporary Framework.

(44) 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:

- Aid granted under the measure is aimed at avoiding redundancies during the COVID-19 pandemic (recitals (8), (20) and (26)). Despite the fact that the measure has not been put into effect to date absent Commission approval, its beneficiaries could reasonably rely on the expectation to have the cost of social security and welfare contributions reimbursed as from 1 August 2020 once the scheme is approved by the European Commission in view of the specific circumstances described in this decision (recitals (25) and (26)). The measure therefore complies with point 43(a) of the Temporary Framework.

- Aid is granted in the form of schemes to undertakings in the cabotage and other maritime services that are particularly affected by the COVID-19 pandemic (recitals (7) and (17)). The measure therefore complies with point 43(b) of the Temporary Framework.

- The individual aid awards under the measure are made no later than 30 June 2022 (recital (15)), for employees that would otherwise have been made redundant as a consequence of the suspension or reduction of business activities due to the COVID-19 pandemic, subject to the condition that the benefitting personnel is maintained in continuous employment for the entire period for which the aid is granted (recital (25)). The measure therefore complies with point 43(c) of the Temporary Framework;

- The monthly wage subsidy will not exceed 80% of the monthly gross salary as this is limited to the employer's social security contributions of the benefitting personnel (recital (26)). The measure therefore complies with point 43(d) of the Temporary Framework.

- The Italian authorities confirm that if wage subsidies granted under the measure are combined with other generally available or selective employment support measures, overcompensation of the wage costs of the personnel concerned will be excluded (recital (29)). The measure therefore complies with point 43(e) of the Temporary Framework.

- The financial sector being excluded from the benefit of the measure, the measure does not exclusively target employees from the financial sector (recital (16)). Points 20bis and 43bis of the Temporary Framework are therefore not applicable to the measure.

(45) 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 (8)).

(46) The Italian authorities confirm that the monitoring and reporting rules laid down in Section 4 of the Temporary Framework will be respected (recital (30)). 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 (28) to (30)).

(47) 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