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PUBLIC VERSION

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Subject: State Aid SA.56685 (2020/N) – DK – Compensation scheme for cancellation of events related to COVID-19

Excellency,

1. PROCEDURE

- (1) By letter of 11 March 2020, registered by the Commission on the same day, the Denmark has notified the above mentioned scheme, in compliance with Article 108, paragraph 3, of the TFEU. Following a Commission request, Denmark provided additional information on the same day.
- (2) By additional letter of the same day, Denmark has agreed to a language waiver, allowing the decision to be adopted and notified in the English language.

2. DETAILED DESCRIPTION OF THE MEASURE

Objective of the scheme

- (3) In the context of the COVID-19 latest developments in Denmark, the Danish authorities have made an official recommendation on 6 March 2020 that all public events with more than 1000 participants as well as events targeted at designated COVID-19 related risk groups, such as the elderly and vulnerable, irrespective of the number of participants, be cancelled, postponed, or substantially modified. The objective of the notified scheme is to compensate for the subsequent losses and additional costs suffered by the organisers of such events as a result of the cancellation, postponement or substantial modification of the event deriving from the implementation of the Recommendation.
- (4) According to Denmark, the Recommendation is not binding by nature. However, Denmark assumes that it will be followed and perceived by companies as a binding measure.

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If companies – against expectation – were to disregard the Recommendation, the Danish Epidemic Act provides for the Government to order a prohibition.

Duration

- (5) The notified measure provides compensation to organisers of major events planned in the period 6-31 March 2020. Claims for compensation will have to be introduced no later than three months after the date of the cancellation of the event.

Budget

- (6) The estimated budget is, at this stage, of DKK 91 million (around EUR 12 million¹).

Beneficiaries

- (7) The beneficiaries of the notified aid scheme are all private legal entities organizing events held in Denmark either with more than 1000 participants or targeted at designated COVID-19 related risk groups, such as the elderly and vulnerable, irrespective of the number of participants². According to Denmark these beneficiaries must be registered in the Danish Central Business Register (“CVR” register)³, which is open for all undertakings. The events must have been opened to registration from the public (i.e. not closed events), and could be with or without an official participation fee or ticket price.
- (8) Public sector organisers, including State institutions and municipalities cannot benefit from the scheme, with the exception of municipal venues with a capacity of more than 1000 participants⁴. Non-governmental organisations (NGOs) having official permission as national fundraisers are not covered by the scheme.
- (9) Denmark confirms that undertakings in difficulty cannot benefit from the notified aid scheme.

Legal base

- (10) COVID-19 related Recommendation of 6 March 2020 to cancel all events gathering above 1000 persons; Danish Budget Law and Danish Business promotion Act.

Eligible costs and modalities for compensation

- (11) Costs eligible for compensation are income loss and additional costs due to cancellation, deferral or change in the conditions of the event organization.
- (12) The organiser must submit evidence that the event has been cancelled, substantially changed or postponed solely as a consequence of COVID-19 precautions to avoid mass gathering provided for in the recommendation.
- (13) Compensation may be granted:

¹ Exchange rate DKK 1= EUR 0.133, 11/03/2020

² Denmark however reserve the right to administratively set a minimum number of participants, letter from Denmark of 11 March 2020, p. 2.

³ <https://datacvr.virk.dk/data/index.php?q=forside&language=en-gb>

⁴ This concerns only the Music House Aarhus and the Works in Randers

- In relation to the budget and the total account of the event, verified by an authorised accountant, covering all direct expenditure relating to the event as well as a reasonable and documented share of the organiser’s current operating expenses; compensation for the fee of the artist of the event could be covered, on condition that the organiser submits documentation for the payment of the fee and the agreed obligation to pay in the event of cancellation; for deferred events, compensation may be granted for documented additional costs associated with the deferral.
 - alternatively on the basis of losses incurred by the reimbursement of tickets purchased in pre-sales, excluding reserved tickets without payment; this option can be triggered on condition that the organiser submits an inventory to the Danish Business Authority documenting the number of tickets sold in advance for the event in question. For events with more than 1000 participants, the inventory must be completed with an auditor’s declaration.
- (14) For all applications for compensation of more than DKK 0.5 million (EUR 67 000), an auditor approved budget and accounts must be submitted. Expenditure to cover the auditor’s costs in the preparation of such documentation can also be covered by the compensation scheme, up to DKK 30 000 (EUR 4 000).
- (15) Compensation can cover up to 100% of the eligible costs, provided they are not covered by the organiser’s insurance. Compensation cannot result in a net profit of the organisers. The Danish Business authority can request a report by an authorised accountant to ensure the absence of overcompensation.
- (16) The legal basis excludes from the scheme any undertaking that has benefited from earlier unlawful aid declared incompatible by a Commission Decision, until that undertaking has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid and the corresponding recovery interest.

3. ASSESSMENT OF THE AID MEASURE

3.1 Legality of the aid measure

- (17) The Danish authorities have fulfilled their obligation according to Article 108(3) TFEU by notifying the aid measure before putting it into effect. The Commission takes note of the fact that the scheme will enter into force only after approval by the Commission.

3.2 Existence of aid within the meaning of Article 107(1) TFEU

- (18) Article 107(1) TFEU defines State aid as ‘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’.
- (19) The qualification of a measure as aid within the meaning of this provision therefore requires that the following cumulative conditions 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.

- (20) The compensation envisaged by Denmark will be paid from the State budget and is therefore provided through State resources within the meaning of Article 107(1) TFEU. As the decision for compensation is taken after an analysis of the application by State authorities, the measure is imputable to the State.
- (21) Since the compensation will relieve the beneficiaries from costs they would otherwise have had to bear as a result of their business and will not be granted to all operators in a comparable legal and factual situation but only to those organising specific events (either large events or events targeted at specific audience), the measure is selective and confer an advantage, which may distort or threaten to distort competition. The advantage corresponds to the amount of compensation paid under the scheme.
- (22) As the scheme covers a competitive sector and undertakings involved in trade between Member States, there is a risk that the aid could distort or threaten to distort competition and affect such trade.
- (23) The proposed aid measure therefore constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility assessment

The notion of exceptional occurrences with the meaning of Article 107(2)(b) TFEU

- (24) Article 107(2)(b) TFEU stipulates that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU, nor other Union legislation contains a precise definition of the notion of exceptional occurrence. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the consolidated Union case-law⁵ has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (25) The characterization of an event as being an exceptional occurrence is made by the Commission on a case-by-case basis, having regard to its previous practice in the field⁶. In this regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee⁷; (ii) significant scale/economic impact⁸, and (iii) extraordinary⁹.

⁵ Judgement of the Court of Justice of 11 November 2004, Spain v. Commission, C-73/03, ECLI:EU:C:2004:711, paragraph 37 and judgment of the Court of Justice of 23 February 2006, Giuseppe Atzeni and others, in joined cases C-346/03 and C-529/03, ECLI:EU:C:2006:130 paragraph 79.

⁶ Exceptional occurrences which have been accepted in the past by the Commission include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss, see Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, paragraph 330 (OJ C 204, 1.07.2014, p. 53)

⁷ Commission Decision of 1 August 2008, case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, paragraph 31

⁸ Elements taken into account by the Commission to consider that the occurrence reached a significant scale: negative consequences cannot be contained (Commission Decision of 4 October 2000 on case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire

COVID - 19 as an exceptional occurrence

- (26) Following the first reports of cases of acute respiratory syndrome (COVID-19) in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved affecting not only other parts of China but has also spread to the majority of countries worldwide, including almost all EU Member States. Outbreaks of novel virus infections among people are always of public health concern and can have a significant economic impact. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (27) The World Health Organization ('WHO') has declared the risk that COVID-19 will spread and have a global impact to be very high. According to WHO reports and derived from the observation of the current situation, the spread of COVID-19 can result in far-reaching disruption of various economic sectors. This disruption is thus clearly outside the normal functioning of the market. In order to avoid an exponential increase in the number of cases, accompanied by social alarm and severe economic consequences, containment measures need to be adopted.
- (28) The tangible threat of a pandemic¹⁰, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 determine the exceptionality of the circumstances. The rapidity of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption¹¹. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement.
- (29) In view of the above, this event qualifies as an exceptional occurrence as it was not foreseeable, as it clearly distinguishes itself from ordinary events by its character and by its effects on the affected undertakings and the economy in general and therefore lays outside of the normal functioning of the market.
- (30) In this context, the COVID-19 can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

–France), or because of the number of dead or injured people (Commission Decision of 11 April 2012 on case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, paragraph 35; Commission Decision of 2 May 2002 on case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, paragraph 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 on case SA.33487, paragraph 36), the amount of material damage despite the local character of the industrial accident (Commission Decision of 2 May 2002 on case N 241/2002, paragraph 19).

⁹ In its Decision of 19 May 2004 in case C-59/2001 (OJ L 62, 2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin contamination, did not constitute in itself an exceptional occurrence. It was yet an unforeseeable event, but formed part of the normal commercial risks to which an undertaking is exposed.

¹⁰ WHO, Coronavirus disease 2019 (COVID-19) – Situation Report 50, 10 March 2020. On 11 March 2020, the WHO actually characterised the COVID-19 disease as a pandemic.

¹¹ ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020

Causal link between the notified scheme and COVID-19

- (31) The Commission has examined the notified scheme pursuant to Article 107(2)(b) TFEU. This assessment has led to the following observations:
- (32) As a result of the latest developments of COVID-19, Denmark has, as of 6th March, made an official recommendation that all public events with more than 1000 participants as well as events targeted at designated COVID-19 related risk groups, such as the elderly and vulnerable, irrespective of the number of participants, are cancelled, postponed or carried out without the gathering of more than 1000 people. This recommendation aims at avoiding the dissemination of the virus.
- (33) As a consequence of the economic implications for business of Covid-19 outbreak and the recommendation by the Danish authorities to cancel events in the public health interest, Denmark has considered the possibilities available to help mitigate the negative economic consequences that COVID-19 already has and will have for Danish business. Therefore, the notified measure is directly linked to the COVID-19 which qualifies as an exceptional occurrence.
- (34) As described in paragraph 10 of this Decision, only beneficiaries establishing a direct link between the damages suffered from the cancellation, postponement or modification of event as a direct result of the COVID-19 recommendation of 6 March 2020 to prevent the spread of the virus on the national territory shall be entitled to compensation.
- (35) The direct link between the damage caused by the exceptional occurrence and the aid is therefore ensured.

Proportionality of the aid measure

- (36) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage; it should only make good the damage caused by the exceptional occurrence.
- (37) The notified measure foresees compensation that does not exceed what is necessary to make good the damage. It also states that no profit is allowed as a consequence of the aid. Losses incurred that are fully or partially covered by the organisers insurance cannot be compensated. For deferred events, only the additional costs would be covered, limiting therefore the compensation.
- (38) Applications need to be accompanied by the relevant evidence, verified by the Danish Business Authority. For all applications for compensation of more than DKK 0.5 million (EUR 67 000), the approval of budget and accounts by an auditor must be submitted to the Authority.
- (39) Moreover, as described in paragraph 13 of this Decision, the Danish Business authority can request a report by an authorised accountant to ensure the absence of overcompensation.

- (40) The Danish authorities have therefore ensured that the compensation under the scheme will not exceed the damage directly suffered by each beneficiary from the cancellation, postponement or modification of the event as a result of the implementation of the Recommendation of 6 March 2020. Overcompensation is therefore ruled out.

Cumulation

- (41) In reply to a question from the Commission, the Danish authorities confirmed that the aid provided for under this scheme cannot be cumulated with other State aid granted for the same costs.
- (42) In view of the above, the Commission considers that the notified aid scheme is compatible with the internal market in accordance with Article 107(2)(b) TFEU.

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(2)(b) of the Treaty on the Functioning of the European Union.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

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Directorate-General Competition
State Aid Greffe
B-1049 Brussels
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President