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Subject: State Aid SA.56742 (2020/N) – LU – Scheme for enterprises in temporary financial difficulties due to COVID-19

Excellency,

1. PROCEDURE

- (1) By letter of 17 March 2020, registered by the Commission on the same day, Luxembourg has notified the above-mentioned scheme, in compliance with Article 108(3) TFEU. By emails of 20 and 23 March 2020, Luxembourg submitted further information.
- (2) By letter of 18 March 2020, Luxembourg has agreed to a language waiver, allowing the decision to be adopted and notified in the English language.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1. Objective of the scheme

- (3) In the context of the COVID-19 latest developments in Luxembourg, and the declaration on 17 March 2020 of a state of crisis on the national territory, the Luxembourg authorities have adopted a series of measures suspending all activities that are not essential and imposing restrictions of movement to avoid the spread of the virus.¹ Taking into account the immediate economic consequences of such set of measures, the Luxembourg authorities designed the above-mentioned measure, which aims at supporting any undertaking, including liberal professions, affected by the economic repercussions of COVID-19 and having temporary financial difficulties. These difficulties must be linked to the repercussions of the outbreak of COVID-19.

¹ Règlement grand-ducal du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19. <http://www.legilux.lu/eli/etat/leg/rgd/2020/03/18/a165/jo>

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2.2. Duration

- (4) The scheme enters into force on the day of its publication in the Official Journal of the Grand Duchy of Luxembourg. The aid application must be submitted to the granting authority (Minister of Economy), no later than 15 August 2020. The aid may not be granted before the Commission has adopted a decision declaring the above-mentioned aid scheme to be compatible with the internal market. The last date until which individual aid may be granted under the notified measure is 30 September 2020.

2.3. Budget

- (5) The estimated budget is EUR 300 million.

2.4. Beneficiaries

- (6) The beneficiaries of the notified aid scheme are all undertakings (small and medium-sized enterprises, large undertakings) and liberal professionals affected by the economic repercussions of COVID-19 and having temporary financial difficulties. The Luxembourg authorities estimate that there will be over 1000 beneficiaries.
- (7) The beneficiaries are undertakings active in trade, craft or industry² with an establishment permit, as well as natural or legal persons carrying out, on a principal basis and in an independent manner, one of the activities listed in Article 91(1) of the LIR³ (e.g. scientific, artistic, literary, teacher or educational activity, doctors etc.). Only companies that were already active before the outbreak of COVID-19 can benefit from the scheme.
- (8) Undertakings active in the fisheries sector and in the primary production of agricultural products are excluded from the scope of this measure. Firms active in the processing and marketing of agricultural products are excluded, when the aid is conditional on being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers or put on market by such producers.
- (9) Undertakings that were in difficulty⁴ before 1 January 2020 cannot benefit from the notified measure.

2.5. Legal basis

- (10) The legal basis for this measure is a draft text ‘Projet de loi relative à la mise en place d'un régime d'aide en faveur des entreprises en difficulté financière temporaire’, to be adopted by Luxembourg after the Commission’s approval of the measure.

² In the meaning of ‘Loi du 2 septembre 2011 réglementant l'accès aux professions d'artisan, de commerçant, d'industriel ainsi qu'à certaines professions libérales (...)’, <http://legilux.public.lu/eli/etat/leg/loi/2011/09/02/n1/jo>

³ ‘Loi modifiée du 4 décembre 1967 concernant l'impôt sur le revenu’, <https://impotsdirects.public.lu/fr/legislation/LIR.html>

⁴ In accordance with Article 2 (18) of 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 of 26.6.2014, p. 1 (hereinafter: ‘GBER 2014’). Luxembourg recalls that SME in existence for less than three years are not covered by this definition.

2.6. Eligible costs, aid intensity and modalities for support

- (11) Eligible costs are the staff and rent costs of the beneficiary for the months falling within a period determined by the Luxembourg Government (maximum until 30 September 2020). The annual accounts for the last fiscal year for which the accounts have been closed constitute the basis for determining the eligible costs. If the undertaking has no annual accounts for the last financial year for which the accounts have been closed, the eligible costs may be calculated on the basis of the financial data available.
- (12) Rent costs are capped at a maximum of EUR 10,000 per month per single undertaking. As for staff costs, income arising from a professional activity carried out as a self-employed person under the condition that the person concerned is, as such, subject to the provisions of the Luxembourg Social Security legislation, shall be equivalent to staff costs. These costs are capped at an amount equivalent to 2.5 times the minimum wage.
- (13) The support shall take the form of a repayable advance⁵ and will be granted in one or more instalments. The maximum aid intensity is 50 % of the eligible costs and the total amount of aid may not exceed the maximum aid amount of EUR 500,000 per single undertaking.
- (14) If an undertaking manages to recover in the same and/or following years, it has to reimburse the repayable advance, based on a negotiated repayment plan taking into account the result achieved by the undertaking during the tax year during which the aid was granted and the following tax years. The advance shall be repaid at an interest rate at least equal to the discount rate applicable at the time the aid is granted, as published by the European Commission in the Official Journal of the European Union. Repayment shall begin at the earliest 12 months after the first payment of the repayable advance, unless otherwise requested by the undertaking.
- (15) The aid application to the Minister of Economy must contain the necessary information to assess the eligible costs, as mentioned in recitals (11) and (12) and a recovery plan including documentation demonstrating a direct causal link between the unforeseeable event and the temporary financial difficulties.

2.7. Cumulation and transparency

- (16) Luxembourg confirmed that aid under the above-mentioned scheme cannot be cumulated in respect of the same eligible costs with other aid, if the cumulated amount would exceed the most favourable amount of aid provided for by the applicable schemes.
- (17) Luxembourg will publish the information required in Annex III of the GBER 2014 on the comprehensive State aid website for each individual aid within 6 months from the moment of granting.

3. ASSESSMENT OF THE AID MEASURE

3.1. Legality of the aid measure

- (18) The Luxembourg authorities have fulfilled their obligation according to Article 108(3) TFEU by notifying the aid measure before putting it into effect. The

⁵ 'Avance remboursable'.

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

- (19) 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 [...], in so far as it affects trade between Member States’.
- (20) 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.
- (21) The temporary support envisaged by the Luxembourg authorities is provided through State resources within the meaning of Article 107(1) TFEU since it will be paid from the State budget, following individual decisions by the Minister of Economy. The measure is therefore imputable to the State. Since the support will relieve the beneficiaries from operating costs they would otherwise have had to bear as a result of their business and will not be granted to all operators in all sectors, the measure is selective and confer an advantage, which may distort or threaten to distort competition. The advantage corresponds to the amount of support granted under the scheme. As the scheme covers sectors and undertakings involved in trade between Member States, there is a risk that the aid could affect such trade.
- (22) The proposed aid measure therefore constitutes State aid within the meaning of Article 107(1) TFEU.

3.3. Compatibility assessment

- (23) As a result of the latest developments of COVID-19, and following the recommendations of the European Centre for Disease Prevention and Control (ECDC)⁶, Luxembourg has adopted, several measures of social confinement and imposed the lockdown of many activities with the view to avoid mass gathering and the dissemination of the virus⁷.
- (24) As a consequence of the governmental measures to mitigate the propagation of the virus, many undertakings are facing and will face difficulties to continue their activities or pay their employees during the COVID-19 related lockdown period, and become at risk of not being in a position to restart activities later, after the peak of the health crisis.
- (25) The various containment measures adopted by Luxembourg such as social distancing measures, travel restrictions, quarantines and lock down have an immediate impact on both demand and supply, and hit undertakings and

⁶ European Centre for Disease Prevention and Control - Rapid risk assessment: novel coronavirus disease 2019 (COVID-19) pandemic: increased transmission in the EU/EEA and the UK- sixth update, 12 March 2020.

⁷ See footnote 1.

employees, putting at risks employment and business viability. Companies of all kinds may face a severe lack of liquidity during this crisis period, seriously affecting their economic situation and that of their employees in the short and medium term and causing therefore a serious disturbance of the Luxembourg economy.

- (26) By adopting the Temporary Framework⁸ (hereinafter: ‘TF COVID-19’), the Commission has acknowledged the severe public health emergency for citizens and societies and the major shock the pandemic represents to the global and Union’s economies.
- (27) The Commission considers that temporary State aid measures to remedy the serious disturbance in the economy of a Member State can be found compatible with the internal market on the basis of Article 107(3)(b) TFEU. The TF COVID-19 sets out the compatibility conditions under which the necessity, appropriateness and proportionality of these aid measures will be assessed.
- (28) The measure notified by Luxembourg meets all the conditions provided for by the TF COVID-19 for ‘temporary limited amounts of aid’ in the form of repayable advances:
- The maximum aid amount per undertaking in the notified scheme (EUR 500,000) will not exceed the cash equivalent of EUR 800,000 as laid down in paragraph 22(a) TF COVID-19;
 - The measure is granted on the basis of an aid scheme with an estimated budget of EUR 300 million, hence the condition set out in paragraph 22(b) TF COVID-19 is met;
 - In compliance with paragraph 22(c) TF COVID-19, the aid will only be granted to undertakings which were not in difficulty on 31 December 2019;
 - The aid will be granted no later than 31 December 2020, hence the condition set out in paragraph 22(d) TF COVID-19 is met;
 - Firms active in the processing and marketing of agricultural products are excluded when the aid is conditional on being partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers or put on market by such producers, hence the condition set out in paragraph 22(e) TF COVID-19 is met;
 - As firms active in the fisheries sector and active in the primary production of agricultural products are excluded from the scope of this measure, the specific conditions set out in paragraph 23 TF COVID-19 do not apply;
 - The Luxembourg authorities committed to comply with all the monitoring and reporting provisions laid down in section 4 of the TF COVID-19.
- (29) The repayable nature of the support and the provisions on cumulation provided for in the notified scheme (see recital (16)) reinforce the proportionality of the aid measure.
- (30) The Commission considers therefore that by respecting these conditions, the notified measure is necessary, appropriate and proportionate to remedy the serious

⁸ Communication from the Commission C(2020) 1863 final of 19 March 2020 on the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak. https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf

disturbance in the economy of Luxembourg caused by the COVID-19 outbreak and its consequences.

4. CONCLUSION

For these reasons, the Commission considers that the notified measure is in conformity with the TF COVID-19. It 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) TFEU.

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:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President