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Subject: State Aid SA.56774 (2020/N) – DK – Compensation for companies particularly exposed to COVID-19 outbreak

Excellency,

1. PROCEDURE

- (1) By electronic notification of 20 March 2020, registered by the Commission on the same day, Denmark notified the above-mentioned scheme (“the measure”), in compliance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU). By e-mails of 27 March, 2, 3, 4, 5, 6 and 7 April 2020, the Danish authorities provided further information on the notified measure.
- (2) Denmark exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) In the context of the COVID-19 outbreak and developments, since 6 March 2020 the Danish Government has made numerous recommendations and prohibitions, to citizens and undertakings, suspending all activities that are not essential and imposing restrictions of movement to avoid the spreading of the virus² (see also footnote 20 below).
- (4) Many businesses have been impacted by these containment measures some of which, more immediately and directly exposed, faced a massive decline in

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

² <https://politi.dk/en/coronavirus-in-denmark/latest-news-and-hotlines/new-measures-against-covid-19>;
<https://politi.dk/en/coronavirus-in-denmark/17-march-2020-new-initiatives-to-prevent-the-spread-of-coronavirus-covid19>

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demand leading to a partial or full non-utilisation of their facilities or services. In the absence of any support, this might lead to many bankruptcies.

2.1. Objective of the measure

- (5) The objective of the measure is to compensate companies for damage caused by the COVID-19 outbreak and the respective containment and lock down measures adopted to face the health crisis³. In such a situation, the damage consists in the difference between the profit/loss incurred in the new circumstances (after the COVID-19 outbreak and governmental measures) and the profit/loss incurred before these events (net losses). The current losses suffered by the companies put them temporarily in economic lack of liquidity resulting in difficulties of paying their fixed costs. Therefore, the damage compensation will be granted in the form of a temporary partial or full coverage of the fixed costs, which the companies still have to bear (details see below recitals (14) et seq.).

2.2. The nature and form of aid

- (6) The aid will take the form of direct grants. It will be financed through the national budget.

2.3. National legal basis

- (7) The legal basis for the measures is the Danish budget law and its implementing provisions⁴.

2.4. Administration of the measure

- (8) The measure will be managed by the Danish Business Authority.

2.5. Budget and duration of the measure

- (9) The Danish authorities confirm the estimated budget is, at this stage, of DKK 40 billion (around EUR 5.36 billion⁵). They estimate that the cost of the measure will be approximately DKK 13 billion per month (around EUR 1.74 billion).
- (10) The Danish Business Authority grants compensation solely based on an auditor's statement, as described in recital (19). Companies can apply for compensation under the measure until 8 June 2020 and aid may be granted under the measure from its approval until 8 June 2020.

2.6. Beneficiaries

- (11) The beneficiaries are private legal entities in Denmark, registered in the Danish Central Business Register (CVR). The scheme is directed at different types of

³ See footnote 20.

⁴ Aktstykke §08.32.21 Kompensations ordinger som følge af COVID-19 and Executive Order on a Temporary Compensation scheme for Fixed costs Incurred by Undertakings, on the basis of § 3 (1), § 7 (4), and § 23 (3) in Act no. 1518 of the 18th of December 2018 on Business Promotion, and on the basis of Act no. 124 of the 26th of March 2020.

⁵ Exchange rate DKK 1= EUR 0.134, on 3 April 2020.

entities and situations compared to the two previously approved compensation schemes set up by Denmark⁶. According to the scheme, the same eligible costs cannot be compensated twice.⁷

- (12) Beneficiaries do not include public entities whose ordinary operating expenses are covered for more than half by national, regional or municipal grants. Associations, foundations and self-governing institutions are covered by the measure if less than half of their ordinary operating expenses are covered by public grants.
- (13) Companies under an outstanding State aid recovery order, are excluded from the scheme.

2.7. Basic elements of the measure

- (14) As described above (see recital (5)), the objective of the measure is to compensate companies for damage resulting from the COVID-19 outbreak and the respective governmental measures. For the purposes of this scheme, Denmark set up a two-step approach for calculating the compensation for such damage as described in the following.
- (15) First, companies are only eligible if they suffer a decline of turnover resulting from these governmental measures that reaches or exceeds 40% from 9 March to 8 June 2020 or part of this period (compensation period), compared to a reference period (as a general rule⁸ from 1 April to 30 June 2019).
- (16) The Danish authorities acknowledge that the turnover decline is in general not a sufficient reference for the damage suffered (as opposed to net losses). However, in their view, under the current exceptional circumstances and considering the wide-ranging activities of the aid recipients, turnover decline is one of the available elements for calculating the amount of the compensation.
- (17) Second, the eligible costs for companies that have suffered damage are their fixed costs, including rent, interest expenses and non-negotiable contract-related expenses (e.g. leasing) during the period from 9 March to 8 June 2020.
- (18) Consequently, rather than a precise calculation of the net losses suffered by each company as a result of COVID-19 outbreak and containment measures, the measure at stake provides for a method to determine the amount to be compensated, based on the available elements and along a progressive scale:

⁶ See Commission Decision of 12 March 2020 in case SA.56685 (2020/N) and Commission Decision of 25 March 2020 in case SA.56791 (2020/N).

⁷ Both schemes approved in the two decisions referred in footnote 6 included a similar prohibition.

⁸ Different rules for companies that had no turnover in this period, §2(7) of Executive Order on a Temporary Compensation scheme for Fixed costs Incurred by Undertakings. For companies, without turnover in the period from 1 April to 30 June 2019, the period from 1 December 2019 to 29 February 2020 forms the basis for the calculation. For companies that have not had turnover for these entire periods, the period from the time of establishment until and including 9 March 2020 forms the basis for the inventory. However, the inventory must cover at least a full month.

Decline in turnover (vs turnover in same period 2019)	Level of compensation (in percentage of fixed costs)
40-60%	25 %
60-80 %	50 %
80-100 %	80 %
100% ⁹	100%

- (19) The aid application to the Danish Business Authority must include an auditor's statement of the eligible costs for which the company applies for compensation.¹⁰ Only companies that have a minimum of fixed costs of DKK 25,000 (around EUR 3,350), can benefit from the measure. The aid application also includes a solemn declaration of the company stating the decline in turnover compared to turnover in the same period last year¹¹ and justifying the link between the decline and the COVID-19 outbreak and consequences.
- (20) A maximum compensation of DKK 60 million (approx. EUR 8 million) can be granted per company.
- (21) The level of turnover decline will be established on the basis of VAT reports. Ex post control of the turnover decline will be carried out by comparing the decrease in VAT paid as a proxy. Thus, VAT reporting from 2019 will be compared with VAT reporting during the compensation period. For companies that are not subject to VAT, the payroll tax is used as a proxy.
- (22) The compensation paid will therefore be adjusted downwards (claw-back mechanism) or upwards if the company that has been granted compensation has later experienced a lower or higher turnover decline than stated in the company's application. It cannot exceed the nominal decline in turnover that the company has experienced from 9 March to 8 June 2020, compared to the reference period.
- (23) The Danish authorities confirmed that:
- The Danish Business Authority will carry out ex post control of the audits on a random basis.
 - The Danish authorities will control and make sure that compensation will only be granted to cover an approximated damage that is a direct and documented consequence of the COVID-19 outbreak and the containment measures taken to prevent the dispersion of the virus.

⁹ This concerns only companies which had to close down under temporary government ban.

¹⁰ The company's costs for auditor's assistance with preparing the mandatory audit statements for the application can be covered up to 80 % with a maximum of DKK 24,000 (around EUR 3,200).

¹¹ Special provisions for start-ups will be laid down in the administrative order.

- In particular, companies that were already loss making before the COVID-19 outbreak will not be overcompensated. To avoid any overcompensation, potential positive effects on companies' operating losses compared to the documented losses in the reference period before COVID-19 will be deducted from the amount of compensation.
- Payment made to beneficiaries shall be net of any amount obtained from insurance, litigation, arbitration or any other source for the same damage. If the aid is paid out before the insurance, the authorities will recover the insurance amount from the beneficiary.
- The benefit of the aid is excluded for any applicant who is responsible for the damage suffered and/or did not conduct his activities with due diligence or in compliance with applicable legislation or did not take any measure within its responsibility to mitigate its damage.

2.8. Cumulation

- (24) The Danish authorities confirmed that the aid provided for under this measure cannot be cumulated with other State aid granted for the same eligible costs.

2.9. Monitoring and reporting

- (25) The Danish authorities committed to provide a report no later than one year after the date of the Commission decision, specifying the amount of compensation granted per company and overcompensation recovered, as the case may be.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (26) By notifying the measure before putting it into effect, the Danish authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (27) 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.
- (28) The measure is imputable to the State, since it is administered by State authorities (the Danish Business Authority) and it is based on the legislative acts listed in recital (7). The compensation envisaged by the Danish authorities will be paid from the State budget and is therefore provided through State resources within the meaning of Article 107(1) TFEU.
- (29) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (6)). The advantage corresponds to the amount of compensation paid under the measure. The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.

- (30) The advantage granted by the measure is selective, since it is awarded only to certain companies, registered in the Danish Central Business Register (CVR) that meet the conditions described in recitals (11) et seq.).
- (31) 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.
- (32) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Danish authorities do not contest that conclusion.

3.3. Compatibility

- (33) 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. The Commission has examined the notified measure pursuant to Article 107(2)(b) TFEU. This assessment has led to the following observations:

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

- (34) 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-law¹² has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (35) 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 field¹³. In this regard, the following indicators relating to the event concerned must be cumulatively met: (i) unforeseeable or difficult to foresee¹⁴; (ii) significant scale/economic impact¹⁵, and (iii) extraordinary¹⁶.

¹² 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.

¹³ 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)

¹⁴ 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*, recital 31.

¹⁵ 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 –France*), or because of the number of dead or injured people (Commission Decision of 11 April 2012

COVID-19 as an exceptional occurrence

- (36) 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. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (37) The WHO declaration of a pandemic¹⁷, associated with the public health risk deriving from the absence of therapeutics or vaccines for the novel COVID-19 determine the exceptional nature 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 disruption¹⁸. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement. Such measures can result in far-reaching disruption of various economic sectors. This disruption is thus clearly outside the normal functioning of the market.
- (38) 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 lies outside of the normal functioning of the market.¹⁹
- (39) In this context, the COVID-19 can be considered as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

on case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, recital 35; Commission Decision of 2 May 2002 on case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19), the immense ecological and economic damage (Commission Decision of 11 April 2012 on case SA.33487, recital 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, recital 19).

¹⁶ 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.

¹⁷ WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

¹⁸ ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

¹⁹ See also Commission Decision of 12.03.2020, SA.56685 - DK - Compensation scheme for cancellation of events related to COVID-19. https://ec.europa.eu/competition/state_aid/cases1/202011/285054_2139535_70_2.pdf

Causal link between COVID-19 outbreak and damage compensated by the measure

- (40) As an immediate consequence of the COVID-19 outbreak in Denmark, the Danish authorities have adopted various containment measures²⁰ to limit the spread of the virus. These containment measures have an immediate impact on both demand and supply, and especially for those companies particularly exposed to the containment measures, result in a drastic reduction of their turnover (compared to a reference period as described in recital (14)). The subsequent actual damage of those companies is the difference between the profit/loss incurred in the new circumstances (after the COVID-19 outbreak and governmental measures) and the profit/loss incurred before these events (net losses).
- (41) As a consequence of the economic implications of COVID-19 for the businesses concerned and to compensate their damages, Denmark has notified the measure at stake.
- (42) As described in recital (19) of this Decision, only beneficiaries establishing a direct link between the damage suffered and the COVID-19 related mitigation measures, shall be entitled to compensation.

Proportionality of the aid measure

- (43) 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.
- (44) As described in recital (40), the actual damage of those companies concerned is the difference between the profit/loss incurred in the new circumstances (after the COVID-19 outbreak and governmental measures) and the profit/loss incurred before these events (net losses). In the light of the exceptional circumstances, such as the large amount of beneficiaries and the urgent need for a support measure simple to implement, the Commission can accept that the precise calculation of the amount of the damage to be compensated is calculated based on available elements. In the present case, the decline of turnover and the inability to cover the fixed costs, bearing in mind that the compensation is also limited by ceilings and claw-back mechanisms ensure that there is no overcompensation.
- (45) The Danish authorities have put in place the following safeguards, so that the compensation under the notified measure does not exceed what is necessary to make good the damage and thus meets the above-mentioned criteria.
- (46) First, the amount of compensation cannot exceed the nominal decline in turnover experienced by the company in the reference period (see recital (22)).

²⁰ Amongst others: As of 14 March 2020, the Danish borders were closed. As of 16 March 2020, all schools, educational institutions and day care services were closed. As of 17 March 2020, a temporary prohibition was issued, including e.g. the closure of nightclubs, pubs, restaurants, cafes, malls, sports and leisure activities, special demands for retail.

- (47) Second, as described in recital (23) of this Decision, payments made to beneficiaries are net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid before the insurance, Denmark will recover the insurance amount from the beneficiary. Additionally, as described in recital (23), the benefit of the aid is excluded for any applicant who is responsible for the damage suffered and/or did not conduct its activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damage.
- (48) Third, as described in recital (19) of this Decision, the aid application to the Danish Business Authority must include an ex ante auditor's statement of the eligible costs for which the company applies for compensation. Applications need to be accompanied by the relevant evidence, verified by the Danish Business Authority:
- all fixed costs presented have to be audited, and shall not be covered by an insurance policy;
 - the link between the turnover decline and the COVID-19 outbreak has to be justified;
 - the turnover decline is verified on the basis of VAT reports used as proxy for turnover²¹, allowing an ex post control of the turnover decline during compensation period in comparison to VAT report 2019.
- (49) Fourth, in case of lower turnover decline than stated in the company's application, leading to a lower estimate of damage as a percentage of fixed costs (see the scale in recital (18) above), the compensation paid will be adjusted downwards (claw-back mechanism, recital (22)), avoiding therefore overcompensation. In addition, for companies that were loss making before the COVID-19 outbreak, any potential positive effects on companies' operating losses compared to the documented losses in the reference period before COVID-19 will be deducted from the amount of compensation (see recital (23)). Therefore, any company which was loss making before COVID-19 will only receive a reduced compensation.
- (50) Fifth, the Danish Business Authority will make some sample ex post verifications of the audit performed.
- (51) 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) TFEU.

²¹ For companies that are not subject to VAT, the payroll tax is used as a proxy.

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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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President