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Subject: **State aid SA.56954 (2020/N) - Luxembourg – Scheme for COVID-19 related R&D aid and investment aid for the production of COVID-19 relevant products**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 6 April 2020, Luxembourg notified an umbrella scheme covering an R&D aid scheme for COVID-19 relevant research and a COVID-19 related investment aid scheme, under article 107(3)(c) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted respectively by section 3.6 and 3.8 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 health crisis (“the Temporary Framework”).¹
- (2) The Luxembourg authorities confirmed that the notification does not contain confidential information.
- (3) Luxembourg exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,² and to have this Decision notified and adopted in English.

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9., as amended on 3 April 2020

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

- (4) The measure aims at supporting projects carried out by undertakings that can help in the context of fighting the COVID-19 outbreak. According to Luxembourg, given the sanitary crisis and the shortage of certain related products, it is crucial that the State can provide incentives to companies to direct their activities to research and/or production of certain products, which are crucial in the current circumstances. Luxembourg considers that the measure contributes to address the public health crisis.

2.1. The nature and form of aid

- (5) The measure provides aid in the form of direct grants for Covid-19 relevant R&D and investment projects. Where investment aid is granted for the production of COVID-19 relevant products, loss cover guarantees can be granted in addition to a direct grant.

2.2. National legal basis

- (6) The legal basis for the measure is a draft decree - *Avant-projet de règlement grand-ducal visant à mettre en place un régime d'aides en faveur des projets liés à la lutte contre la pandémie du covid-19* - that will be adopted by the Government. A law with the same text will also be passed in the coming weeks by Parliament as the decree will only have legal effect during the "state of emergency" declared by the Government on 18 March 2020.

2.3. Administration of the measure

- (7) The Ministry of the Economy of Luxembourg is responsible for administering the measure.

2.4. Budget and duration of the measure

- (8) The budget of the measure amounts to EUR 30 million, of which EUR 20 million for R&D projects and EUR 10 million for investment projects.
- (9) Aid may be granted under the measure until 31 December 2020.

2.5. Beneficiaries

- (10) The final beneficiaries of the measure are all undertakings (small and medium-sized enterprises, large undertakings) active in trade, craft or industry³ with an establishment permit as well as some independent professionals that carry out a project to fight the current COVID-19 pandemic through COVID-19 relevant research or production in Luxembourg.

³ 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>

- (11) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)⁴ before 1 January 2020.

2.6. Sectoral and regional scope of the measure

- (12) The measure is open to all sectors referred to in recital (10) and related footnote. It applies to the whole territory of Luxembourg.

2.7. Basic elements of the measure

2.7.1 Aid for Covid-19 relevant R&D projects

- (13) Pursuant to Article 3 of the draft decree, the aid measure supports COVID-19 relevant research into vaccines, medicinal products and treatments, medical devices and hospital and medical equipment, disinfectants, and protective clothing and equipment, and into relevant process innovations for an efficient production of the required products, including projects which were awarded a COVID-19 Seal of Excellence quality label under the Horizon 2020 SME instrument.
- (14) The following R&D stages are supported: fundamental research, industrial research, and experimental development⁵. Furthermore, the aid measure supports clinical trials, including trial phases I and II and efforts for obtaining, validating and defending patents and other intangible assets, and for obtaining the conformity assessments and/or authorisations necessary for the marketing of new and improved vaccines and medicinal products, medical devices, hospital and medical equipment, disinfectants, and personal protective equipment is supported under the notified measure.
- (15) All undertakings carrying out relevant independent research are eligible for the aid. Contract research on behalf of other undertakings is excluded from the measure.
- (16) Under the aid measure, the following cost components are eligible for the duration of the project (Article 4 of the draft decree):
- Personnel costs,

⁴ As defined in Article 2(18) of the 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[, Article 2(14) of the 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 of 1.7.2014, p.1, and Article 3(5) of the 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 of 24 December 2014, p. 37.]

⁵ As defined in paragraph (84), (85) and (86) of Article 2 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.

- costs of instruments and equipment, including costs of digital and computing equipment,
 - costs of buildings and land, for the duration of the project
 - costs of contractual research and other relevant research services, including costs for digital and computing services,
 - knowledge and patents bought or licensed from outside sources in arm's length transactions,
 - other operating expenses, e.g. materials
 - additional overhead costs incurred directly as a result of the R&D project,
 - costs for pre-clinical and clinical trials (trial phases I-II),
 - costs for obtaining, validating and defending patents and other intangible assets
 - costs incurred for obtaining the conformity assessments and/or authorisations necessary for the marketing of new and improved vaccines and medicinal products, medical devices, hospital and medical equipment, disinfectants, and personal protective equipment.
- (17) Only costs directly related to, and necessary for the R&D project, and the subsequent IPR protection, clinical trial (phases I-II) and regulatory procedures, are eligible. Assets (equipment, buildings, land, etc.) that are not used for the full duration of the R&D project and/or are used for other purposes than the R&D projects covered by the present scheme, are taken into account only *pro rata* (i.e. depreciation over the period of duration of the R&D project if applicable or *pro rata* of the capacity used for the R&D project). Where the aid is necessary to accelerate works or to widen the scope of a project started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope are eligible (see recital 28).
- (18) Under the aid scheme, the maximum allowable aid intensity (in the absence of bonuses), by category of research, is 100 % for fundamental research, and 80 % for industrial research and experimental development. The aid intensity for industrial research and experimental development will be applied where the majority of costs incurred do not arise from work packages that fall under the category of fundamental research.
- (19) Article 3 paragraph 2 of the draft decree provides for a collaboration bonus for R&D projects that are supported by more than one Member State, or that are carried out in cross-border collaboration with research organisations or other undertakings. The total collaboration bonus amounts to a maximum of 15 percentage points.
- (20) Pursuant to Article 3 paragraph 4 of the draft decree, aids are granted subject to the condition that the aid beneficiary shall commit to grant non-exclusive licences under non-discriminatory market conditions to third parties in the EEA.

2.7.2 Investment aid for the production of Covid-19 relevant products

- (21) The aid measure also supports investments to manufacture COVID-19 relevant products, such as medicinal products (including vaccines) and treatments, their

intermediates, active pharmaceutical ingredients and raw materials; medical devices, hospital and medical equipment (including ventilators, protective clothing and equipment as well as diagnostic tools) and necessary raw materials; disinfectants and their intermediary products and raw chemical materials necessary for their production; data collection/processing tools.

- (22) The eligible costs are the investment costs (land, buildings, and plant/equipment, immaterial assets) necessary to create the eligible production capacities, and the costs of trial runs of the new production facilities. Assets (equipment, buildings, land, etc.) that are not used for the full duration of the production project are taken into account only *pro rata* (i.e depreciation over period of duration of investment project, if applicable or *pro rata* of the capacity used for the project). Where the purpose of the aid application is to accelerate works or to widen the scope of a project started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope are eligible (see recital 27).
- (23) Investment for the production of COVID-19 relevant products as listed in recital (22) can benefit of a grant under the aid scheme, with a maximum allowable aid intensity (in the absence of bonuses) of 80 % of the eligible costs. The aid scheme provides for a bonus for investment projects that are supported by more than one Member State, or that are completed within two months after the investment aid was granted. The bonus amounts to a maximum of 15 percentage points.
- (24) Upon request, a 30% loss cover guarantee can be granted in addition to the grant, and is issued within one month after the beneficiary has applied for it.
- (25) The amount of loss to be compensated is established five years after completion of the investment. The compensation amount is calculated as the difference between the sum of investment costs, reasonable profit of 10% p.a. on the investment cost over five years, and operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project. Subject to this methodology, the amount of compensation cannot exceed EUR 500 000 if production has been maintained for five years. In case the production is stopped before the end of the five years period, the maximum compensation amount is calculated *pro rata*.
- (26) The investment projects have to be completed within six months after the date of the granting of aid. If that deadline is not met, 25% of the amount of aid is to be repaid per month of delay in case of direct grants, unless the delay is due to factors outside the control of the aid beneficiary.

2.7.3 Common modalities for support

- (27) For both types of aid (R&D and investment), the aid beneficiary is required to submit an application for aid in writing. The aid application can be submitted for projects that were started after 31 January 2020, and for projects on which works were started before 1 February 2020. The projects started before 1 February 2020 are eligible only if the aid is needed to accelerate their implementation/to extend their scope, and only those costs are eligible that are incurred after the date of the aid application.

- (28) The aid application should be submitted before 15 December 2020 and should include the company data, the description and calendar of the R&D or investment projects, including costs of the project, location, a description of the potential economic valuation of the results for the R&D project, a justification of the need of a loss cover guarantee for investment project. Additional information may be requested by the Minister of Economy, including business plans and expert advice.
- (29) Aid in the form of a grant will normally be disbursed after the completion of the projects, however can also be paid in several instalments during the project if needed.

2.8. Cumulation

- (30) The aid ceilings and cumulation maxima specified under the measure shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.
- (31) Individual aid under the notified aid measure for research projects can be combined with support from other sources for the same costs, except with aid under 3.8 of the Temporary Framework. The combined aid intensity may not exceed 80%, if no cooperation bonus applies; and 95% if the cooperation bonus applies. For fundamental research projects, the combined aid intensity may not exceed 100%.
- (32) Individual aid under the notified aid measure for investment aid will not be combined with other investment aid or other sources of support for the same eligible costs.

2.9. Transparency, monitoring and reporting

- (33) The Luxembourg 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 granted under this Communication on the comprehensive State aid website or Commission's IT tool within 12 months from the moment of granting.

3. ASSESSMENT

3.1. Existence of State aid

- (34) 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.
- (35) The notified measure is imputable to the State, since it is administered by the Ministry of the Economy and it is based on the legislative act *Régime d'aides en faveur des projets liés à la lutte contre la pandémie du COVID-19* in the form of a decree, to be substituted at a later stage by a law with the same text (recitals (6)-(7)).

- (36) It is financed through State resources, since it is financed by the State budget (recitals (7)-(8)).
- (37) The notified measure confers an advantage on its beneficiaries in the form of direct grants and loss cover guarantees (recital (5)). The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (38) The advantage granted by the measure is selective, since it is awarded, upon application, and based on a discretionary decision of the aid granting authority only to certain undertakings, active in Luxembourg, carrying out COVID-19 relevant research or producing COVID-19 relevant products. Also, the final beneficiaries of the measure are limited to those indicated in recital (10).
- (39) 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.
- (40) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Luxembourg authorities do not contest that conclusion.

3.2. Lawfulness of the measure

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

3.3. Compatibility

- (42) 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.
- (43) Pursuant to Article 107(3)(c) TFEU the Commission may declare compatible with the internal market “aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”.
- (44) By adopting the Temporary Framework on 19 March 2020, as amended on 3 April 2020, the Commission acknowledged the need to take specific temporary measures enabling Member States to combat the health crisis caused by the COVID-19 outbreak. The measure aims at enhancing and accelerating COVID-19 relevant research and the production of COVID-19 relevant products to address the current emergency health crisis. It has been designed to meet the requirements of the specific categories of aid (“Aid for COVID-19 relevant research and development” and “Investment aid for the production of COVID-19 relevant products”) described in sections 3.6 and 3.8 of the Temporary Framework
- (45) The Commission accordingly considers that the notified measure contributes to the achievement of a common objective of crucial importance, is appropriate and necessary to fight the health crisis.

3.3.1 R&D projects

- (46) When it comes to R&D projects, the scheme meets all the conditions of the Temporary Framework, and in particular its section 3.6:
- R&D aid under this aid measure is limited to the eligible research areas that are listed in paragraph 35 of the Temporary Framework (recital (14)).
 - In accordance with paragraph 35 lit.a) of the Temporary Framework, aid is granted in the form of direct grants.
 - In accordance with paragraph 35 lit.b) of the Temporary Framework, eligible R&D projects under the aid measure are projects started as from 1 February 2020, and projects on which works were started before that date, provided the aid serves to accelerate their implementation, or to extend their scope (recital (27)).
 - As required by paragraph 35 lit.g) of the Temporary Framework, the aid beneficiaries have to commit to grant non-exclusive licences under market conditions to third parties in other EEA states (recital (20)).
 - Eligible costs under the aid measure are defined in accordance with the provisions laid down in paragraphs 35 lit.c) of the Temporary Framework (recital (16)). Eligible are all the costs necessary for the R&D project for its duration. For projects started before 1 February 2020, only the costs incurred after the date of the aid application, in relation to the acceleration efforts or the widened scope of the project are eligible as required by paragraph 35 lit.b) of the Temporary Framework (recital (27)).
 - The overall aid intensities under this aid measure are defined in conformity with the provisions laid down in paragraphs 35 lit.d) of the Temporary Framework (recital (18)). The cooperation/collaboration bonus does not exceed 15 percentage points, and is granted under the conditions outlined in paragraph 35 lit.e) of the Temporary Framework (recital (19)).
 - In case of cumulation with other aids for the same costs, the cumulation ceilings laid down in paragraph 35 lit.f) of the Temporary Framework are not exceeded. Moreover, aid cannot be cumulated with aid for the same costs under section 3.8 as outlined in paragraph 20 of the Temporary Framework (recital (31)).

3.3.2 Investment aid

- (47) When it comes to COVID-19 related investment projects, the scheme meets all the conditions of the Temporary Framework, and in particular its section 3.8:
- Investment aid under this aid measure is limited to creating production capacities for COVID-19 relevant products that are listed in paragraph 39 lit.a) of the Temporary Framework (recital (21)).
 - In conformity with paragraph 39 lit.b) and h) of the Temporary Framework, the aid is granted in the form of a direct grant and loss cover guarantee (recital (5)).
 - In accordance with paragraph 39 lit.c) of the Temporary Framework, eligible investment projects under the aid measure are projects started as from 1 February 2020, as well as investment projects on which works were started

before that date, provided the aid serves to accelerate their implementation, or to extend their scope (recital (27)).

- Eligible investment costs under the aid measure are defined in accordance with the provisions laid down in paragraph 39 lit.e) of the Temporary Framework (recital (22)). For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope are eligible, as required by paragraph 39 lit.c) of the Temporary Framework (see recital (27)).
- The overall aid intensities under this aid measure are defined in conformity with the provisions laid down in paragraph 39 lit.e) of the Temporary Framework (recital (23)). A bonus does not exceed 15 percentage points, and is granted under the conditions outlined in paragraph 39 lit.f) of the Temporary Framework (idem).
- In accordance with paragraph 39 lit.g) of the Temporary Framework cumulation of the investment aid with other aid for the same costs is not allowed (recital (32)).
- In conformity with paragraph 39 lit.d) of the Temporary Framework, eligible investment projects have to be completed within six month after the investment aid was granted. If this deadline is not respected, the aid amount is reduced by 25% per month of delay for aid in the form of direct grants (recital (26)).
- Pursuant to paragraph 39 lit.h) of the Temporary Framework, loss cover guarantees have to be issued within one month after they were applied for. The amount of loss to be compensated is established five years after the completion of the investment. The compensation amount is calculated as the difference between sum of investment costs, reasonable profit of 10% p.a. on the investment cost over five years, and operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project (recitals (26) and (25)).

3.3.3. Generally applicable requirements

- (48) As required by paragraph 49 of the Temporary Framework, individual aid under the notified measure shall not be granted after 31 December 2020 (recital (9)).
- (49) The Luxembourg authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework including the obligation to publish relevant information on each individual aid granted under the present measure on the comprehensive State aid website or Commission's IT tool within 12 months from the moment of granting (paragraph 44 of the Temporary Framework).
- (50) Pursuant to paragraphs 35 lit.h) and 39 lit.i) of the Temporary Framework, undertakings that were already in difficulties on 31 December 2019, are not eligible (recital (11)).
- (51) In the light of the above elements, the Commission considers that the measure is compliant with the compatibility conditions set out by the Temporary Framework, through which the Commission took due consideration of the common objective pursued by such aid measures and their positive effects on tackling the health

emergency crisis provoked by the COVID-19 outbreak when balancing them against the potential negative effects of such measures on the internal market.

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)(c) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President