



EUROPEAN COMMISSION

Brussels, 14.4.2020
C(2020) 2395 final

PUBLIC VERSION

This document is made available for
information purposes only.

Subject: State Aid SA.56905 (2020/N) – Bulgaria – COVID-19- Employment scheme for preserving jobs in most affected sectors

Excellency,

1. PROCEDURE

- (1) By electronic notification of 9 April 2020, Bulgaria notified aid in the form of wage subsidies contributing to the wage costs of undertakings, which, due to the COVID-19 outbreak, would otherwise lay off personnel (“the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak as amended on 3 April 2020 (“the Temporary Framework”).¹
- (2) The Bulgarian authorities confirm that the notification does not contain confidential information.
- (3) Bulgaria 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 adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (4) Bulgaria considers that the COVID-19 outbreak has started to affect the real economy and puts at risk the jobs of the workers and employees of undertakings

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.

Екатерина ЗАХАРИЕВА
Министър на външните работи
ул. „Ал. Жендов“ № 2
1113 СОФИЯ/Sofia
БЪЛГАРИЯ/BULGARIE

that have suspended their activities due to the state of emergency and containment measures enforced by the State authorities.

- (5) On 13 March 2020, following the rapid spreading of the COVID-19 outbreak, the Bulgarian National Assembly declared a state of emergency, which has been extended until 13 May 2020. Certain undertakings have been obliged to suspend entirely or partially their activities due to the declared state of emergency and others have suspended their activities or introduced part-time work arrangements on own initiative, in reply to the confinement measures in force.
- (6) As a result, employees of certain economic sectors are severely affected by the crisis outbreak³ and face risks of massive lay-offs, such as employees working in hotels and restaurants, cultural, sports and entertainment activities, certain retail sectors, the passenger transport sector, etc.
- (7) The measure thus aims to preserve employment and allow undertakings to resume their activities immediately after the confinement period.
- (8) The measure is expressly based on Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted by the Temporary Framework.

2.1. The nature and form of aid

- (9) The measure provides aid in the form of wage subsidies.

2.2. National legal basis

- (10) On 13 March 2020, the Bulgarian National Assembly declared the state of emergency on the whole territory of Bulgaria. The measures applicable during the state of emergency are laid down under Act on the Measures and Actions during the State of emergency Declared by a Resolution of the National Assembly of 13 March 2020⁴, effective as of 13 March 2020 (hereafter “the state of emergency measures Act”), as subsequently amended⁵.

³ On 13 of March 2020, when the state of emergency was declared, 201 021 persons were registered as unemployed. In the period from 13 March to 7 April 2020, their number increased by 50 289 persons, a growth of 25%. According to the data of the Employment Agency, on 7 April 2020, the registered unemployed were 251 310. During the same period the inflow of registered unemployed at the Labour Offices counted 61 644 persons, with an average daily number of registered unemployed of 3 626 persons, compared to 1 334 average daily number before 13 March 2020. Most of the newly registered unemployed have been employed in the following economic sectors: Accommodation and food service activities; Tourism – 46.4%, Wholesale and retail trade – 18.8%, Manufacturing (food, textile, clothing, wood, paper, plastics) – 11.3%.

⁴ Act on the Measures and Actions during the State of emergency Declared by a Resolution of the National Assembly of 13 March 2020, promulgated in OJ No. 28/24.03.2020

⁵ Act for amendments of the Act on the Measures and Actions during the State of emergency Declared by a Resolution of the National Assembly of 13 March 2020, promulgated in OJ No. 34/09.04.2020

- (11) The legal basis of the measure is laid down under § 6 of the Transitional and Final provisions of the state of emergency measures Act, as subsequently amended⁶, and under Decree n°55 of 30 March 2020⁷, as subsequently amended⁸ (hereafter “the state of emergency employment Decree”), effective as of 13 March 2020.

2.3. Administration of the measure

- (12) The aid granting authority of the measure is the National Employment Agency, which is an executive agency of the Ministry of Labour and Social Policy.
- (13) The Bulgarian National Employment Agency and its Labour Offices⁹, and the National Social Security Institute are responsible for administering the measure. The Labour Offices receive the aid applications, examine their compliance with the criteria of the measure within seven working days and draw a list of selected employers who meet the applicable criteria. The Labour Offices send the list of benefitting employers to the National Employment Agency and notify the selected employers within two working days after deciding upon their application. The National Employment Agency provides electronic summary information to the National Social Security Institute. The National Social Security Institute transfers the monthly wage subsidy to the benefitting employers within five working days from the reception of the summary information.

2.4. Budget and duration of the measure

- (14) The estimated budget under this wage subsidy scheme is BGN 1,5 billion (approximately EUR 767 million). The measure will be financed by the national Unemployment Fund of public social insurance.
- (15) Aid may be granted under the measure as from its approval until 31 July 2020.

2.5. Beneficiaries

- (16) The final beneficiaries of the measure are undertakings active in the sectors most affected by the economic consequences of the health crisis, and which belong to one of the two following categories defined by the state of emergency employment Decree :
- (a) undertakings active in the sectors of economic activities listed in Annex to the state of emergency employment Decree (see section 2.6. below) that

⁶ § 11 of the Act amending the state of emergency measures Act (see footnote 5) extended the scope of the wage subsidy measure by adding the employer’s social security contributions to the basis of the wage subsidy calculation.

⁷ Decree No 55 from 30 March 2020 for determining the terms and conditions for the payment of wage subsidies to employers in order to maintain the employment of employees in the State of Emergency announced by a Resolution of the National Assembly of 13 March 2020, SG No. 31/01.04.2020.

⁸ Decree No 55 from 30 March 2020 is expected to be amended by a Decree of the Council of Ministers to be adopted on 15 April 2020. A copy of the draft amending Decree was submitted to the Commission on 13 April 2020.

⁹ The Labour Offices are territorial structures of the National Employment Agency.

have suspended the business operations of the entire enterprise or parts thereof, in pursuance of an order of a State body banning the continuation of their activities during the state of emergency;

- (b) undertakings that have, on their own initiative, suspended work or have introduced part-time work due to difficulties arising from the spread of the COVID-19 outbreak. This possibility does not apply to employers of certain sectors (see section 2.6. below).

(17) In addition, Art. 2(1) of the state of emergency employment Decree provides that applications for wage subsidies are only open to undertakings that:

1. are resident natural or legal persons, as well as foreign legal entities, which carry out economic activities in the Republic of Bulgaria;
2. have no pending taxes and compulsory social security contributions obligations to the State or municipality within the meaning of Art. 162, para. 2, item 1 of the Tax and Social Security Procedure Code, established by an effective act of a competent authority, and for which the employer has not taken action for rescheduling, deferring or securing the obligations;
3. are not bankrupt or are not in bankruptcy or liquidation proceedings;
4. maintain the employment of the employees for whom wage subsidy has been granted for a period not shorter than the period for which wage subsidy has been paid;
5. do not terminate the employment contracts of employees pursuant to Art. 328, para. 1, items 2, 3 and 4 of the Labour Code during the period for which they are paid wage subsidy;
6. are not in violation of the labour legislation established by a criminal decree or court decision during the period of six months before the issuance of the order for cessation of work.

2.6. Sectoral and regional scope of the measure

(18) The measure applies to the whole territory of Republic of Bulgaria, to undertakings falling in one of the two categories described under sections 2.6.1 and 2.6.2.

2.6.1. Undertakings active in the economic sectors listed in Annex to the state of emergency employment Decree

(19) Pursuant to Art. 1(1) of the state of emergency employment Decree, the measure is open to undertakings engaged in certain economic activities, which have suspended the activity of the entire enterprise or parts thereof, in pursuance of an order of a State body banning the continuation of their activities during the state of emergency. These sectors are listed in the Annex to the Decree as replicated under table 1 below.

Table 1. Eligible sectors (by reference to codes of the “Classification of economic activities 2008” (NACE.BG-2008) grid)

Code under the NACE.BG-2008:	Description
47	Retail trade, except of motor vehicles and motorcycles, other than: 47.11 Retail sale in non-specialised stores with food, beverages or tobacco predominating 47.2 Retail sale of food, beverages and tobacco in specialised stores; 47.73 Dispensing chemist in specialised stores: 47.74 Retail sale of medical and orthopaedic goods in specialised stores; 47.8 Retail sale via stalls and markets; 47.9 Retail trade not in stores, stalls or markets
49.3	Other passenger land transport
51.1	Passenger air transport
55	Accommodation
56.1	Restaurants and mobile food service activities
56.3	Beverage serving activities
59.14	Motion picture projection activities
79	Travel agency, tour operator and other reservation service and related activities
82.30	Organisation of conventions and trade shows
85.10	Pre-school education (private sector)
85.53	Driving school activities
88.91	Day-care activities for young children (Private Sector)
90	Creative, arts and entertainment activities
91	Libraries, archives, museums and other cultural activities
93	Sports activities and amusement and recreational activities
96.04	Physical well-being activities
	Other economic activities - for employers who have ceased activities carried out on the territory of individual settlements, where, by order of a State authority, anti-epidemic measures were introduced ¹⁰ on the grounds of Art. 63 of the Health Act ¹¹

¹⁰ This category covers, for example, the ski resort of Bansko.

- (20) This list of eligible sectors was established by the Bulgarian authorities in consultation with social partners and business sectors representatives. Following concertation, the list was limited to the sectors most affected by the state of emergency in order to avoid massive layoffs.

2.6.2. *Undertakings that have interrupted or reduced activity on their own initiative*

- (21) Pursuant to Art. 1(2) and (3) of the state of emergency employment Decree, the measure is also open to undertakings that have, by means of an order of the employer issued on the basis of Article 120c (1) of the Labour Code, suspended the activity of the entire enterprise or parts thereof, or of individual employees, or have established part-time working arrangements under Article 138a (2) of the Labour Code.
- (22) These undertakings are entitled to wage subsidies only if they can demonstrate a decrease in sales revenue of at least 20 % compared to the relevant period specified in the Decree.
- (23) This provision does not apply to undertakings active in the following sectors, defined by reference to the NACE Rev. 2008 grid:
- sector A “Agriculture, forestry and fishing”,
 - sector K “Financial and insurance activities”,
 - sector O “Public administration and defence; compulsory social security”,
 - sector P “Education”,
 - sector Q “Human health and social work activities”,
 - sector T “Activities of households as employers, undifferentiated goods and services producing activities of households for own use”,
 - sector U “Activities of extraterritorial organisations and bodies”.
- (24) This exception is due to the fact that, according to the Bulgarian authorities, the above mentioned sectors are less exposed to the economic impact of the COVID-19 outbreak (for example, certain sectors have seen their activities increase as result of the health crisis) or will receive aid from other sources or of a different nature (bank loans, State guaranties etc.).
- (25) The condition requiring a revenue reduction of at least 20% for eligible undertakings under this provision was defined on the basis of proposals submitted by the social partners, which were discussed by the Bulgarian National Council for Tripartite Cooperation.

¹¹ Health Act, promulgated in OJ 70/10.08.2004 as subsequently amended.

2.7. Basic elements of the measure

- (26) The wage subsidies are granted on the basis of an aid scheme called *Employment scheme for preserving jobs in most affected sectors* that intends to contribute to the wage costs of undertakings which, due to the COVID-19 outbreak, would otherwise lay off personnel.

2.7.1. Maximum aid intensity and absolute aid amount

- (27) Under the aid scheme, the monthly wage subsidy paid to eligible undertakings amounts to 60 % of the monthly gross salary (including employer's social security contributions) of the benefitting personnel, based on reference amounts of salaries and employer's social security contributions paid in January 2020.
- (28) Aid is granted upon submission of individual aid application by each eligible undertaking to the competent Labour Office. Undertakings identified as meeting the legal criteria of the measure under the procedure explained in recital (13) must continue to pay the full remuneration to the benefitting personnel, as well as full employer's social security contributions to the State authorities. These undertakings receive, on a monthly basis, a wage subsidy equivalent to 60% of the gross monthly salary and 60% of the employer's social security contributions paid on the account of benefitting employees and workers covered by the aid application. The 60% compensation amount is calculated by reference to the amount of insurable income paid in January 2020. For employees in established part-time work, the compensation is paid in proportion to the time worked but not for more than four hours per day.
- (29) The wage subsidy that an employer can get for an individual employee is, in addition, limited to maximum BGN 2 153 (approximately EUR 1 100) per month.
- (30) Moreover, the Bulgarian authorities confirmed that wage subsidies granted under this measure must not be combined with other generally available or selective employment support measures regardless of whether the support to the aided undertakings is financed entirely from State resources or is partly financed by the Union.

2.7.2. Restriction of the measure to sectors most affected by the COVID-19 outbreak

- (31) The measure is only available to undertakings that have introduced part-time work, suspended partially or entirely their activity due to the COVID-19 outbreak, and which employ staff in certain economic sectors, explicitly listed under the state of emergency employment Decree, as detailed under section 2.6 above. Moreover, the measure does not cover contributions to wage costs or equivalent payments to the benefit of self-employed individuals.
- (32) The measure does not include any restrictions related to the size of eligible undertakings.

2.7.3. Aid application and payment conditions

- (33) Under the aid scheme, the individual wage subsidies will be paid out on a monthly basis.

- (34) Undertakings can submit individual aid applications between 31 March 2020 and 30 June 2020. Aid will be paid to the eligible undertakings upon the approval of the measure by the Commission until 31 July 2020. Under the measure, the wages subsidies will cover gross salaries and employer's social contributions paid from the date of declaration of the state of emergency (13 March 2020). The first instalment of the aid will thus encompass wage costs effectively incurred by the undertakings for the period between 13 March 2020 and the submission of the first aid application to the competent authority.
- (35) The wage subsidies are granted subject to the condition that the applying undertakings commit to maintain the benefitting personnel in continuous employment for the period during which they receive aid. In addition, under the state of emergency employment Decree, applying undertakings must commit to maintain the employment of the employees for whom compensation has been granted, after the end of the aided period, for a period not shorter than the period for which compensation has been paid.
- (36) Monitoring of the implementation of this condition will be ensured by the National Revenue Agency where, according to the national legislation, employers are obliged to register all concluded and terminated labour contracts.
- (37) Aid applications must be submitted to the Labour Office serving the territory of the place of employment. The aid applications must be accompanied by:
- 1) a certified copy of the employer's order for suspension of work under Art. 120c of the Labour Code or of the order for establishment of part-time work under Art. 138a, para. 2 of the Labour Code;
 - 2) a commitment to maintain the benefitting personnel in continuous employment during the aided period and after, for a period not shorter than the period during which wage subsidies are granted;
 - 3) a declaration by the employer with evidence certifying a decrease in sales revenue for employers under Art. 1, para. 2 and 3 of the state of emergency employment Decree;
 - 4) a list of the employees for whom compensation is applied for under the Decree, containing details such as full names and identity card numbers, the duration of the established part-time work for those concerned;
 - 5) a declaration containing details of the bank account of the employer kept by a payment service provider licensed by the Bulgarian National Bank or by a branch of a payment service provider operating in the country, to be used for the transfer of the monthly wage subsidies.
- (38) These supporting documents certify that the applicant undertakings have suspended all or part of their business activities due to the COVID-19 outbreak, as result of which they have reduced their income and cannot guarantee the remuneration of their staff. Hence, without the wage subsidy, these employees would have been laid off.

2.7.4. *Monitoring and control of compliance under national law*

- (39) Under Art. 11 of the state of emergency employment Decree, the National Social Security Institute must establish and maintain a database of employers compensated under this measure. This database must contain information on the employer, the total amount of compensation paid for the month concerned and the total number of employees for whom it was paid. The database is public, with the exception of data constituting personal data.
- (40) The General Labour Inspectorate Executive Agency is responsible for monitoring the compliance of undertakings with the conditions set under the state of emergency employment Decree.

2.8. Cumulation

- (41) The aid ceilings and cumulation maxima fixed under the measure shall apply regardless of whether the support to the aided undertakings is financed entirely from State resources or is partly financed by the Union.
- (42) The Bulgarian authorities confirmed (see recital (30)) that the specific cumulation rules laid down for measures in section 3.10 of the Temporary Framework will be respected.

2.9. Monitoring and reporting

- (43) The Bulgarian authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework.

3. ASSESSMENT

3.1. Legality of the measure

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

3.2. Existence of State aid

- (45) 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.
- (46) The measure is imputable to the State, since it is administered by the National Employment Agency and its Labour Offices, and by the National Social Security Institute (see recitals (12) and (13)), and it is based on the state of emergency measures Act, as amended, and on the state of emergency employment Decree, as amended. It is financed through State resources covered by the national Unemployment Fund of public social insurance (see recital (14)).

- (47) The measure confers an advantage on its beneficiaries in the form of wage subsidies. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (48) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in specific sectors listed under recitals (16) to (25) and recital (31).
- (49) 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.
- (50) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Bulgarian authorities do not contest that conclusion.

3.3. Compatibility

- (51) 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.
- (52) 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*”.
- (53) By adopting the Temporary Framework on 19 March 2020, as amended on 3 April 2020, the Commission acknowledged 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*” and that “*under the current circumstances it is also crucial to preserve employment*”.
- (54) The measure aims at preserving employment and avoiding lay-offs during the COVID-19 outbreak, which is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (55) The measure is one of a series of measures conceived at national level by the Bulgarian authorities to remedy a serious disturbance in the 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 Bulgarian economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Aid in the form of wage subsidies”) described in Section 3.10 of the Temporary Framework.

- (56) 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:
- As required by paragraph 43 a) of the Temporary Framework, the aid is aimed at avoiding lay-offs during the COVID-19 outbreak (see recitals (26), (37), (38)).
 - As required by paragraph 43 b) of the Temporary Framework, the aid is granted in the form of schemes to undertakings in specific sectors that are particularly affected by the COVID-19 outbreak (see recitals (18) to (25) and (31)).
 - As required by paragraph 43 c) of the Temporary Framework, the wage subsidies are granted over a period of not more than twelve months after the application for aid (see recital (34)), for employees that would otherwise have been laid off as a consequence of the suspension or reduction of business activities due to the COVID-19 outbreak (see recitals (26), (37), (38)), and subject to the condition that the benefitting personnel is maintained in continuous employment for the entire period for which the aid is granted (see recital (35)).
 - As required by paragraph 43 d) of the Temporary Framework, the monthly wage subsidy shall not exceed 80% of the monthly gross salary (including employer's social security contributions) of the benefitting personnel. Under the measure, the monthly wage subsidy is fixed at 60% of the monthly gross salary (including employer's social security contributions), up to a maximum of BGN 2 153 (approximately EUR 1 100) per individual employee, per month (see recitals (27), (28) and (29)). In addition, the first month during which a wage subsidy can be paid out, is the month in which the application for the wage subsidy was introduced or the month following that in which the application for the wage subsidy was introduced (see recital (34)).
 - As the Bulgarian authorities have confirmed that wage subsidies granted under the measure will not be combined with other generally available or selective employment support measures (see recitals (30), (41) and (42)), overcompensation of the wage costs of the personnel concerned is excluded in line with the requirement of paragraph 43 e) of the Temporary Framework.
 - The Bulgarian authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (see recital (43)).

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.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION