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Subject: State Aid SA.57007 (2020/N) – Hungary – COVID-19- Employment scheme for supporting the employment of researchers and developers in all sectors affected by coronavirus outbreak

Excellency,

1. PROCEDURE

- (1) By electronic notification of 14 April 2020, Hungary notified aid in the form of wage subsidies to finance the wage costs of undertakings that, due to the coronavirus outbreak, would otherwise lay off researchers and developers (“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 Hungarian authorities confirm that the notification does not contain confidential information.
- (3) Hungary exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (TFEU), in conjunction with Article 3 of Regulation 1/1958,² and to have this Decision adopted and notified 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) Hungary considers that the COVID-19 outbreak has started to affect the real economy and puts at risk the jobs of researchers and developers in undertakings in all sectors due to the state of emergency and containment measures enforced by the State authorities.
- (5) On 11 March 2020, following the rapid spread of the COVID-19 outbreak, the Hungarian state declared a state of emergency, which has been extended indefinitely³. Many undertakings have been obliged to suspend entirely or partially their activities due to the declared state of emergency with unemployment rates increasing.
- (6) Research and development activities are particularly put at risk due to the economic impact of the coronavirus outbreak. The Hungarian authorities' objective with this measure is to protect the jobs of those who work as researchers and developers as they might be laid off as a result of the COVID-19 crisis. Employees in these positions are known to be generally paid well (i.e. higher than the national average and higher than the average of the non-researcher and non-developer staff of the company), but their work usually does not generate immediate revenue; for this reason, employers will quite likely lay them off because of short-term thinking, while the Hungarian authorities believe that the retention of these employees will be key from the perspective of the recovery of the Hungarian economy after the crisis. The Hungarian measure thus aims to help researchers to keep their jobs and undertakings to be able to immediately resume their research and development activities as soon as the circumstances allow it.
- (7) The measure is expressly based on Article 107(3)(b) TFEU, as interpreted by Section 3.10 of the Temporary Framework.

2.1. The nature and form of aid

- (8) The measure provides aid in the form of direct grants as a contribution to wages for researchers and developers.

2.2. National legal basis

- (9) On 11 March 2020, the Hungarian state declared a state of emergency on the whole territory of Hungary.
- (10) The legal basis of the notified measure is laid down under Government Decree No. 103/2020. (IV.10.)⁴ on providing aid for employees in research and development during the state emergency (hereafter "the state of emergency employment Decree" or "the Decree"), effective as of 15 April 2020.

³ Act declaring the state emergency, Government Decree 40/2020 (III. 11.) on declaring a state of emergency, 11 March 2020, Official Gazette publication: Year 2020 Volume 39.

⁴ Government Decree 103/2020 (IV. 10.) on providing aid for the employment of researchers and developers during the state of emergency under the Action Plan for the Protection of the Economy, 10 April 2020, Official Gazette publication: Year 2020 Volume 71.

2.3. Administration of the measure

- (11) The aid granting authority of the measure is the Ministry for Innovation and Technology.
- (12) The District Offices of the Capital or County Government Offices are responsible for administering the measure. Aid applications must be submitted to the district office where the undertaking's registered office or place of business is located and are to be examined within eight working days.

2.4. Budget and duration of the measure

- (13) The estimated budget is HUF 31,5 billion (EUR 88 million). According to the Hungarian authorities, the scheme may be co-financed by resources from the European Regional Development Fund ("ERDF") or the European Social Fund ("ESF").
- (14) Aid may be granted under the measure as from its approval by the Commission until 31 December 2020.

2.5. Beneficiaries

- (15) The final beneficiaries of the measure are undertakings of every size, regardless of the sector.
- (16) The measure is open to undertakings who employ researchers and developers. The notion of researchers and developers is defined in the Act on Innovation (Act LXXVI of 2014)⁵. According to the statutory definition, a researcher and developer is a natural person who is engaged in the creation or development of new knowledge, intellectual work, product, service, procedure, method, system or the management of the implementation of projects for that purpose.
- (17) The Hungarian authorities state that these employees are particularly prone to lay-offs when undertakings face suspension and reduction of business activities as a direct effect of the current crisis (see recital (6)).
- (18) Section 4 para 1 of the Decree specifies that wage subsidies can be granted to undertakings which:
 - (a) fulfil the conditions of orderly labour relations (as defined in Government Decree on the Implementation of the Act on Public Finances⁶). The fulfilment of this criteria is demonstrated in the way prescribed in the applicable national statutes,
 - (b) that are not under liquidation, bankruptcy or other statutory winding-up proceedings, and

⁵ Act LXXVI of 2014 on scientific research, development and innovation, 5 December 2014, Official Gazette publication: Year 2014 Volume 168.

⁶ Government Decree 368/2011 (XII. 31.) on the Implementation of the Act on Public Finances, 31 December 2011, Official Gazette publication: Year 2011 Volume 166.

- (c) that do not qualify as an undertaking in difficulty as defined in Government Decree 37/2011. (III. 22.)⁷ on procedures relating to State aid measures under Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) and the regional aid map (hereinafter referred to as: Government Decree 37/2011. (III. 22.)).
- (19) Pursuant to Section 4 para 2 of the Decree, aid may not be granted for employment pursuant to Sections 53, 214 (1)(a) and 146 (1) and (2) of Act I of 2012 on the Labour Code. According to Hungarian authorities, Section 53 of the Labour Code concerns cases when the employee temporarily works outside his/her job description/core position, Section 214(1)(a) of the Labour Code covers cases when the employee is "borrowed" temporarily from an agency and Section 146 (1) and (2) of the Labour Code covers periods when the employee does not have to work but are entitled to receive their salary (either due to downtime at the employer or upon the instruction of the employer).
- (20) Pursuant to section 3 of the Decree, the employer has to:
- (a) maintain its average statistical headcount at the level in the month preceding the submission of the application to the district office,
 - (b) maintain the benefitting employees in continuous employment for an additional period of at least the entire period for which the aid is granted⁸,
 - (c) not reduce the employees' salary – as at the date of the declaration of emergency – during the period of granting the aid and continued employment,
 - (d) notify the district office within two working days of any change in the terms on which the aid was granted, as part of its cooperation and reporting obligations.
- (21) Pursuant to Section 1 of the Decree, aid is granted only for employees:
- (a) who do not receive any other employment-related allowance in respect of the same employment,
 - (b) who have been employed by the employer as a researcher and developer at least from the date of the declaration of the emergency, and
 - (c) who do not serve a period of notice.

2.6. Regional scope of the measure

- (22) The measure applies to the whole territory of Hungary.

⁷ Government Decree 37/2011. (III. 22.) on the national procedures related to State aid and on the regional aid map, 22 March 2011, Official Gazette publication: Year 2011 Volume 30.

⁸ That is if the aid is granted for three months, the employer must keep the benefitting employees during this period plus three additional months.

2.7. Basic elements of the measure

- (23) The wage subsidies are granted on the basis of an aid scheme that is intended to contribute to the wage costs of undertakings which, due to the COVID-19 outbreak, suspended or reduced their business activities and consequently lay off researchers and developers.

2.7.1. Maximum aid intensity and absolute aid amount

- (24) Pursuant to Section 2 of the Decree, the monthly aid amount (i.e. wage subsidy) is calculated as follows:
- (a) If the gross salary of the employee on the day of the declaration of the state emergency – 11 March 2020 – was HUF 670 000⁹ (approx. EUR 1840) or more, then the monthly aid amount is HUF 318 920 (approx. EUR 880).
 - (b) For salaries below the HUF 670 000 cap on the day of the declaration of the emergency, the monthly aid amount is reduced on a pro-rata basis.
- (25) The wage subsidy that an employer can get for an individual employee is, hence, limited to maximum HUF 318 920 (approx. EUR 880) per month.

2.7.2. Cumulation

- (26) Pursuant to Section 6 para 5 of the Decree, aid under this measure may be combined with 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, provided the combined support does not lead to overcompensation of the wage costs of the employee concerned. The Hungarian authorities have confirmed that if aid is cumulated with *de minimis* aid¹⁰ and/or with aid under the General Block Exemption Regulation¹¹, the provisions of the relevant Regulations will be respected; they have also confirmed that if aid is cumulated with aid under different sections of the Temporary Framework, as amended, the relevant provisions of the Temporary Framework, as amended, are respected (i.e. the provisions under section 3.2, section 3.3, section 3.6, section 3.7, section 3.8 and section 3.10 of the Temporary Framework, as amended).

⁹ This is the average salary of research and development personnel according to the Hungarian Central Statistical Office.

¹⁰ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p.1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

¹¹ 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.

- (27) Pursuant to Section 6 para 4 of the Decree, if aid under the measure is combined with other aid granted under Section 3.10 of the Temporary Framework, the aid in total may not exceed 80% of the monthly gross salary (including the employer's social security contributions) of the individual benefitting employees.

2.7.3. Aid application, payment conditions and modalities.

- (28) Under the measure, the individual wage subsidies will be paid out on a monthly basis. The aid period will be defined in months. Pursuant to Section 2 of the Decree, the duration of the aid will not exceed three months from the submission of the aid application.
- (29) Undertakings can submit individual aid applications until 31 December 2020. Aid will not be granted for a period prior to the aid application.
- (30) Under the Decree, in their applications for aid, the employers shall provide the following information:
- (a) an account of the economic circumstances justifying its application, proving their direct and close link with the emergency, describing the suspension or reduction of business activities due to the COVID-19 outbreak as well as measures taken and those expected to be taken to overcome the economic difficulties;
 - (b) the names of the employees for which the wage subsidy is sought, and confirming that those employees do not receive a reduced working time allowance for the same employment at the time of the application;
 - (c) a confirmation that the employer does not receive job creation or job maintenance support at the time of application, and
 - (d) a confirmation that they have been in operation for at least six months at the time of application,

2.8. Monitoring and reporting

- (31) The Hungarian authorities confirm that they will apply the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework. The Hungarian authorities also intend to publish each individual grant on a comprehensive State aid website.
- (32) Pursuant to Section 6 para 6 of the Decree, detailed records regarding the granting of aid must be maintained for ten years upon granting of the aid.

3. ASSESSMENT

3.1. Legality of the measure

- (33) By notifying the measure before granting individual aid, the Hungarian authorities have respected their obligations under Article 108(3) TFEU.

3.2. 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 measure is imputable to the State; it is laid down under Government Decree No. 103/2020. (IV.10). which is administered by the Ministry for Innovation and Technology. It is financed from the State budget; ERDF and ESF might be used as well. Hence, the measure is financed through State resources.
- (36) The measure confers an advantage on its beneficiaries by relieving them of wage costs which they would have had to bear under normal market conditions.
- (37) The aid scheme is selective as the wage subsidies are only available to undertakings that employ researchers and developers in the meaning of Hungarian national law.
- (38) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It is also liable to affect trade between Member States, since at least some of those beneficiaries are likely to be active in sectors in which intra-Union trade exists.
- (39) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Hungarian authorities do not contest that conclusion.

3.3. Compatibility

- (40) 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.
- (41) 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*”.
- (42) 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*”.
- (43) The measure aims at preserving employment of researchers and developers, avoiding their lay-offs as a consequence of the suspension or reduction of business activities due to the COVID-19 outbreak, which is affecting the wider economy and leading to severe disturbances of the real economy of Member States (see recitals (6) and (17)).

- (44) 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.
- (45) 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 (6), (18) and (30)).
 - As required by paragraph 43 b) of the Temporary Framework, the aid is granted in the form of a scheme to undertakings that are particularly affected by the COVID-19 outbreak (see recitals (6), (17), (23) and (30)).
 - 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 (28)), for researches and developers 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 (6), (17) and (30)), 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 (20)).
 - 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 this measure, the monthly wage subsidy is less than 50 % of the monthly gross salary (including employer’s social security contributions), up to a maximum of HUF 318,920 (about EUR 880) per individual employee, per month (see recitals (24), (25)) for salaries of/above HUF 670,000.
 - For salaries below this cap – which is the average salary of research and development personnel according to the Hungarian Central Statistical Office – on the day of the declaration of the emergency, the Hungarian authorities intend to use an alternative method to calculate the aid intensity. In these cases, the monthly aid amount is a fraction of HUF 318,920 calculated as the ratio of the gross salary of the employee to HUF 670,000, thus the specific salary is reduced on a pro-rata basis. If the gross salary is HUF 500,000 then the monthly aid equals to $500,000 * 318,920/670,000 = 238,000$. The Commission considers this approach to define the aid amount for lower wage categories amongst researchers and developers to be proportionate.
 - The Hungarian authorities have confirmed that wage subsidies granted under the measure may be combined with other generally available or selective employment support measures (see recitals (26), (27)), and that overcompensation of the wage costs of the personnel concerned is excluded in line with the requirement of paragraph 43 e) of the Temporary Framework. More specifically, Hungarian authorities have confirmed that if aid under the measure is combined with other aid granted under Section 3.10 of the Temporary Framework, aid in total shall not exceed 80% of the monthly gross salary

(including the employer's social security contributions) of the benefitting employee (see recital 27. The Hungarian authorities have also confirmed that if aid is cumulated with *de minimis* aid¹² and/or with aid under the General Block Exemption Regulation¹³, the provisions of the relevant Regulations will be respected; they have confirmed that if aid is cumulated with aid under different sections of the Temporary Framework as amended, the relevant provisions of the Temporary Framework as amended are respected (i.e. the provisions under section 3.2, section 3.3, section 3.6, section 3.7, section 3.8 and section 3.10 of the Temporary Framework as amended) (see recital 26).

- The Hungarian authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (see recital (31) and (32)).

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
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¹² Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p.1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

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