EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: State Aid SA. 56792 (2020/N) – United Kingdom – Guarantees under the Coronavirus Business Interruption Loan Scheme (CBILS) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak

Dear Foreign Secretary,

1. PROCEDURE

(1) On 23 March 2020, the United Kingdom (the "UK") notified aid in the form of a scheme for State guarantees on loans (the *Coronavirus Business Interruption Loan Scheme*, or "CBILS", or the "measure") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework").[1] On the same day, the UK authorities provided additional information on the measure[2].

(2) The UK authorities confirm that the notification does not contain confidential information.

[1] Communication from the Commission - Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, C(2020) 1863 final.

[2] Pursuant to Article 131 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, during the transition period the Commission continues having the powers conferred upon it by Article 108 TFEU and by Council Regulation (EU) 2015/1589 of 13 July 2015, laying down detailed rules for the application of Article 108 TFEU, in relation to the United Kingdom.

The Rt Hon Dominic Raab
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2. DESCRIPTION OF THE MEASURE

(3) The UK considers that the COVID-19 outbreak will have a significant short-term impact on the UK's economy. Disruptions caused by temporary absences from work and interruptions to global supply chains will constrain the UK's productive capacity for a period. In addition, the economy is likely to be affected by demand-side impacts, such as through a reduction in consumer spending, and lower business investment and exports. Those temporary, but significant, disruptions to supply chains and weaker economic activity could challenge companies' cash flows and increase their demand for working capital. In this regard, small-to-medium sized enterprises ("SMEs") are particularly vulnerable. Existing market failures in the finance market such as information asymmetries will be exacerbated, as lenders will be unable to adequately assess the capacity an SME has to recover from the crisis. Access to adequate finance will be vital for supporting SMEs to survive the economic harm caused by the COVID-19 outbreak and to save jobs. The notified measure forms part of a broad package of support for firms facing difficulties caused by the impact of COVID-19 outbreak.

(4) The measure is expressly based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU")[3], as interpreted by Section 2 of the Temporary Framework.

2.1. The nature and form of aid

(5) The measure is a State guarantee to support financing to SMEs[4]. The supported financing includes a wide range of business finance products, such as revolving credit facilities (such as overdrafts), term loans, invoice finance and asset finance facilities.

2.2. National legal basis

(6) The legal basis for the measure is Section 8 of the Industrial Development Act 1982.

2.3. Administration of the measure

(7) The British Business Bank plc ("BBB") will administer the measure on behalf of the UK government (Department for Business, Energy and Industrial Strategy), the latter being the sole shareholder of BBB, the national promotional bank.

(8) The UK Government will implement the measure by way of a temporary replacement and modification of the UK Government's pre-existing Enterprise Finance Guarantee ("EFG"). The EFG is an existing loan guarantee scheme for SMEs that operates, for State aid purposes, within the limits specified in Commission Regulation 1407/2013 on *de minimis* aid.[5] However, the present

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[3] In conjunction with Article 131 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

[4] Companies with turnover not exceeding GBP 45 million per year.

[5] 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.

measure is subject to a notification requirement, since it is based on Article 107(3)(b) TFEU.

2.4. **Duration of the measure**

(9) Aid may be granted under the measure as from its approval until 31 December 2020, at the latest. In its notification, the UK indicated an end date of 30 September 2020, but with the possibility to revise that date in due course. In any event, the UK commits that guarantee contracts will be signed before 31 December 2020.

2.5. **Beneficiaries**

(10) To be eligible to obtain a CBILS guarantee, a borrower must:

(a) be engaged in trading activity in the UK,

(b) have turnover not exceeding GBP 45 million per year;

(c) not have been in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[6] prior to 31 December 2019 and must face difficulties linked to the COVID-19 outbreak;

(d) have a viable business proposition according to the lenders' normal commercial lending criteria. However, a proposition may be considered eligible also if a lender has concerns over the short-to-medium term business performance of the borrower due to the impact of the COVID-19 outbreak, provided that the lender reasonably believes that:

– the finance will help the borrower address any short-to-medium term cash flow difficulty, and

– if the guarantee is granted, the borrower should not become insolvent in the short-to-medium term.

(11) The UK has clarified that the eligibility criterion set out in recital (10)(b), which concerns a potential borrowers' maximum turnover, is without prejudice to the question whether a company is to be regarded a SME within the meaning of the Commission Recommendation on the definition of SMEs (the "SME Definition")[7] for the purposes of compliance with the Temporary Framework. The UK has also clarified that the provisions of the Temporary Framework will

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[6] 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.

[7] Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, C(2003) 1422 (OJ L 124, 20.5.2003, p. 36).

be respected where the SME Definition is relevant for the relevant provisions of the Temporary Framework.

(12) Lenders that currently act as lenders under the EFG scheme can also participate in the CBILS guarantee scheme. Any lending originated under the existing EFG scheme from 23 March 2020 onwards will be automatically deemed to be originated under the terms of the CBILS. Borrowers will be able to refinance their existing EFG facilities with CBILS facilities, as long as such refinancing does not exceed 20% of a lender's total annual allocation (as is currently the rule for refinancing into EFG).

2.6. Sectoral and regional scope of the measure

(13) The measure is open to all sectors. It applies to the whole territory of the UK.

2.7. Basic elements of the measure

(14) The measure is a State guarantee that will cover up to 80% of the amount of the facility, where losses will be sustained proportionally and under the same conditions by the lender and the State.[8] Additional limits will apply to the annual claim for the guarantee in function of the total annual lending of each lender.

(15) The CBILS guarantee applies to facilities that have been originated based on lenders' own commercial lending criteria that establish whether a borrower has, absent the CBILS guarantee, a viable business proposition to be offered a commercial debt facility. If following such assessment the lender has concerns over the applicant's short-to-medium business performance due to the impact of the COVID-19 outbreak, the lender can propose the borrower to use a CBILS guarantee.

(16) For facilities over GBP 250 000, a CBILS guarantee may be granted only when the lender has established a lack or absence of collateral prior to using CBILS. For facilities up to GBP 250 000, it is within the lender's discretion to use CBILS for unsecured lending if the lender confirms that in the absence of CBILS it would not have been able to provide a facility to the applicant.

(17) The guarantee premium will be a fixed premium for the duration of the facility. The applicable premium as provided for in the table in point 25(a) of the Temporary Framework applies, depending on whether the beneficiary company is an SME as defined in the SME Definition or not. The applicable premium is based on the overall maturity of the facility and applies throughout the lifetime of the facility (e.g. the guarantee premium for a six-year loan to an SME is equal to 100 basis points ("bps") per annum during those six years).

(18) The aid is expected to be passed through to borrowers indirectly, through the overall interest rate and fees charged to borrowers. Those costs are expected to be lower as the risk profile of lending to CBILS-supported borrowers will be lower than in the absence of the guarantee. The UK authorities also expect that many lenders will not charge arrangement or early pre-payment fees. Borrowers will also be able to choose which of the eligible lenders they borrow from and are free

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8 The measure is therefore not a first-loss guarantee as described in point 25(f)(ii) of the Temporary Framework.

to approach different lenders to find the lowest borrowing costs. The CBILS guarantee will be available to all lenders that currently act as lenders under the EFG. Those lenders will be strongly incentivised to compete to offer borrowers the most attractive terms on the loans offered by banks under the CBILS.

(19) The UK authorities have explained that the terms of their legal agreements with the lenders will oblige the latter to demonstrate that the favourable CBILS guarantee conditions and the rating of the guarantor are reflected in the lending conditions of the underlying loans. The BBB will audit lenders' pricing models in this regard. The BBB will also test a sample of loans during the audit to ensure that the benefit of the CBILS guarantee has been passed through to the pricing of the facility made available to the borrower. If, following an audit, the BBB considers that a lender has not adequately reflected the benefit of the CBILS guarantee in the costs charged to borrowers, the BBB will require the lender to pay a compensation to the disadvantaged borrowers.

(20) The duration of any facility supported under the measure will not exceed six years.

(21) The maximum amount of any facility guaranteed under the measure will not exceed:

(a) GBP 5 million,

(b) and in any event, it will not exceed the limits on the amounts set out in the Temporary Framework, notably in its point 25(d)(iii) thereof, where the scheme will respect the definitions of the SME Definition.

(22) When the size of the facility decreases over time, the guaranteed amount decreases proportionally, such that the proportion of the facility guaranteed will not exceed 80%.

(23) The UK authorities have also confirmed that the mobilisation of the guarantees is contractually linked to specific conditions which are agreed between the parties when the guarantee is initially granted.

2.8. Cumulation

(24) The aid ceilings and cumulation maxima fixed under the measure will apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.

(25) The UK authorities confirmed that aid granted under section 3.2 of the Temporary Framework will not be cumulated with other aid granted for the same underlying loan principal under section 3.2 and section 3.3 of the Temporary Framework, and vice versa.[9]

2.9. Monitoring and reporting

(26) The UK authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (*e.g.*, by 31

[9] Notwithstanding point (20) of the Temporary Framework is applicable.

December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.). In particular, those authorities will provide information demonstrating that none of the beneficiaries were companies in difficulty on 31 December 2019.

3. ASSESSMENT

3.1. Legality of the measure

(27) By notifying the measure before putting it into effect, the UK authorities have respected their obligations under Article 108(3) TFEU.[10]

3.2. Existence of State aid

(28) For a measure to be categorised as State 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, which must be undertakings. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(29) The measure is imputable to the State, since it is administered by the State-owned BBB. It is financed through State resources, since it is financed by public funds.

(30) The measure confers an advantage to its beneficiaries by enabling the eligible borrowers to access guarantees that would not be available to them on the same terms in the market, and therefore, by enabling them to secure financing that would unlikely be available to them or at a lower cost that would otherwise be available to them.

(31) The advantage granted by the measure is selective since it is awarded only to certain undertakings, namely, the categories of beneficiaries who meet the eligibility criteria described in recital (10) above.

(32) The measure affects trade between Member States and is liable to distort competition since it strengthens the competitive position of beneficiaries which are active in sectors where an effect on intra-EU trade may exist or cannot be excluded.

(33) In view of the above, the Commission considers that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU. The UK authorities do not contest that conclusion.

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[10] As applicable under Article 131 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

3.3. Compatibility

(34) Since the measure involves State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(35) 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*".

(36) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (Section 2) 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, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*".

(37) The measure aims at allowing the eligible companies to have access to finance at a time when they would not have been able to obtain such access in the context of the COVID-19 outbreak, which is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(38) The measure is one of several measures conceived by the UK authorities to remedy a serious disturbance in their economy. The importance of the measure to stimulate lending to companies affected by the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire UK economy.

(39) Furthermore, the measure has been designed to meet the requirements of the specific category of aid ("*Aid in the form of guarantees on loans*") described in Section 3.2 of the Temporary Framework and the requirements for aid in the form of guarantees and loans channelled through credit institutions or other financial institutions described in Section 3.4 of the Temporary Framework. The Commission notes that the measure applies to loans as well as to other business finance facilities such as asset finance and invoice finance. Since those other facilities produce the same economic effects as taking a loan from a bank, the State guarantees on such facilities will be assessed under section 3.2 of the Temporary Framework.

(40) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, since it meets all the conditions of the Temporary Framework. In particular:

(a) The measure sets minimum levels for guarantee premiums equivalent to those provided for in the table in point 25(a) of the Temporary Framework. The applicable premium is based on the overall maturity of the facility and applies throughout the lifetime of the facility, e.g. the guarantee premium for a six-year loan to an SME is equal to 100 basis points ("bps") per annum during those six years (see recital (17)).

(b) The UK has set the initial deadline to grant a guarantee under the measure to 30 September 2020, but reserves the right to revise it in due course. In any case, UK submits that guarantee contracts will be signed before 31 December 2020 (see recital (9)). The measure therefore complies with point 25(c) of the Temporary Framework.

(c) For facilities with a maturity beyond 31 December 2020, the maximum amount per beneficiary covered by guarantees under the measure is limited in line with point 25(d) of the Temporary Framework (see recital (21)). The same conditions apply to facilities with a maturity until 31 December 2020. The measure therefore complies with point 25(e) of the Temporary Framework.

(d) The duration of the guarantees granted under the measure is limited to maximum six years. The guarantees cover only 80% of the amount of the facility and the losses stemming from the facility are sustained proportionally and under same conditions by the credit institutions and the State. Furthermore, when the size of the facility decreases over time, the guaranteed amount decreases proportionally (see recitals (14) and (20)). The measure therefore complies with point 25(f) of the Temporary Framework.

(e) Guarantees granted under the measure relate both to investment and working capital facilities. The measure therefore complies with point 25(g) of the Temporary Framework.

(f) Guarantees may only be granted under the measure to undertakings that are not in difficulty within the meaning of the GBER and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered into difficulty thereafter as a result of the COVID-19 outbreak (recital (10)(c)).

(41) The Commission also considers that the measure fulfils the conditions listed in Section 3.4 of the Temporary Framework regarding aid in the form of guarantees and loans channelled through credit institutions or other financial institutions. In particular, the measure complies with point 31 of the Temporary Framework, which requires that the financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on, to the largest extent possible, to the final beneficiaries. As explained by the UK authorities, the pass through will be achieved through:

(a) lower interest rates and fees charged to borrowers (by allowing competition between the eligible lenders for originating loans guaranteed under the measure, thus incentivising the banks to offer attractive terms to the borrowers)(recital (18));

(b) a contractual obligation on lenders to demonstrate that the costs they charge take into account the CBILS guarantee, subject to audits by the BBB to ensure that lenders' pricing models achieve this aim. If an audit shows that a lender has not been adequately reflected the benefit of the CBILS guarantee in the costs it charged to borrowers, the lender will be required to pay a compensation to the disadvantaged borrowers (recital (19)).

(42) The UK authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (recital (26)).

(43) Furthermore, the mobilisation of the guarantees is contractually linked to specific conditions which have to be agreed between the parties when the guarantee is initially granted (recital (23)).

4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU

(44) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (**"**BRRD**"**)[11] in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the measures do not appear to violate intrinsically linked provisions of BRRD.

(45) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[12] Nevertheless, any such indirect aid granted under the measure does not have the objective to preserve or restore the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, such aid granted under the measure does not qualify as extraordinary public financial support under Art. 2(1) No 28 BRRD.

(46) Moreover, as indicated in recital (40)(a) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

(47) The Commission therefore concludes that the measure does not violate any intrinsically linked provisions of the BRRD.

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[11] OJ L 173, 12.6.2014, p. 190-348.

[12] Points 6 and 29 of the Temporary Framework.

5. 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.

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

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For the Secretary-General,

Jordi AYET PUIGARNAU
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