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Subject: State Aid SA.57151 (2020/N) – Denmark – Amendment and prolongation of compensation scheme SA.56774 for companies particularly exposed to COVID-19 outbreak

Excellency,

1. PROCEDURE

- (1) By electronic notification of 25 April 2020, registered by the Commission on the same day, Denmark notified the amendment and prolongation of an existing compensation scheme for companies particularly exposed to COVID-19 outbreak (“the measure”) in compliance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU).
- (2) Denmark confirmed that the notification does not contain confidential information.
- (3) Denmark exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,¹ and to have this decision adopted and notified in English.

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

Mr. Jeppe KOFOD
Ministry of Foreign Affairs
Asiatik Plads 2 DK-1448 Copenhagen

2. DESCRIPTION OF THE MEASURE

2.1. Objective of the measure

- (4) By this notification, the Danish authorities intend to amend and prolong the existing compensation scheme SA.56774 for companies particularly exposed to COVID-19 outbreak, (“the existing scheme”), approved by a Commission decision of 8 April 2020 on the basis of Article 107(2)(b) TFEU (“the initial decision”)².
- (5) The modifications concern some of the eligibility criteria to the scheme and scope of beneficiaries, the maximum amount per beneficiary, the reference period used to assess the potential overcompensation of damage for companies which were already loss making and the prolongation of the scheme until 8 July 2020, as well as the subsequent impact on the budget of these changes.
- (6) The general objective of the existing scheme is to compensate companies for damage caused by the COVID-19 outbreak and the respective containment and lockdown measures adopted in Denmark to face the health crisis³, where the damage consists in the difference between the profit/loss incurred in the new circumstances (after the COVID-19 outbreak and governmental measures) and the profit/loss incurred before these events (net losses). The notified measure pursues the same objective.

2.2. National legal basis

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

2.3. Description of the measure

- (8) As recalled above (recital (6)), the objective of the measure is to compensate companies for damage resulting from the COVID-19 outbreak and the governmental measures (containment and lockdown measures). For the purposes of this scheme, the Danish authorities set up a two-step approach for calculating the compensation for such damage, and a methodology to manage and control the compensations granted, as described in recitals (14) to (23) of the initial decision.
- (9) The scheme thus described is modified by the notified measure on several points:

On the prolongation of the scheme

- (10) Under the initial decision, compensation can be granted for the companies' fixed costs during the period from 9 March to 8 June 2020 (see recital (10) of the initial decision). The notified measure prolongs the compensation scheme for one

² Decision C(2020) 2294 final of 8 April 2020, see https://ec.europa.eu/competition/state_aid/cases1/202016/285176_2148099_66_2.pdf

³ See recital (3) and footnote 2 of the initial decision.

⁴ § 3, stk. 1, § 7, stk. 4, og § 23, stk. 3, in Act. no. 1518 of 18 December 2018 on business promotion and act. (aktstykke) no. 124 of 27 March 2020 and act (aktstykke) no. 152 of 24 April 2020

month, so the scheme will also cover companies' fixed costs in the period from 9 June until and including 8 July 2020.

- (11) Companies that have already applied for compensation under the existing scheme will have to file a new, separate application in order to receive compensation for the extended period. However, if they apply for the first time they can apply for compensation for the entire period.
- (12) Applications for compensation can be submitted to the Danish Business Authority no later than 31 August 2020 (instead of until 8 June 2020).

On the eligibility criteria

- (13) Companies are now eligible if they suffer a decline of turnover resulting from the governmental measures that reaches or exceeds 35% (instead of 40% in the existing scheme) from 9 March to 8 July 2020 or part of this period (compensation period), compared to a reference period (from 1 April 2019 to 30 June 2019). This change will also be reflected in the progressive table presented in recital (18) of the initial decision, allowing for firms newly eligible a level of compensation expressed in percentage of firm fixed costs up to 25%.

Decline in turnover (vs turnover in same period 2019)	Level of compensation (in percentage of firm fixed expenses)
35-60%	25 %
60-80 %	50 %
80-100 %	80 %
100% ⁵	100%

- (14) Only companies that have a minimum of fixed costs of DKK 12 500 (approx. EUR 1 700)⁶ during the three-month-period from 9 March 2020 to 8 June 2020 can benefit from the measure, instead of DKK 25 000 (approx. EUR 3 350) in the existing scheme (recital (16) of the initial decision). Consequently, taking into account the prolongation of the scheme described above in recitals (10) to (12), if a company applies for compensation in the four-month-period from 9 March 2020 to 8 July 2020 it would have to demonstrate a minimum of fixed costs of DKK 16 666 (approx. EUR 2 235).

On beneficiaries

- (15) All public entities (e.g. companies and self-governing institutions) having economic activities will now be included in the list of eligible beneficiaries of the scheme, irrespective of what share of their ordinary operating expenses is covered by national, regional or municipal grants, deviating therefore from recital (12) of

⁵ This concerns only companies, which had to close down under temporary government ban.

⁶ Exchange rate 29.04.2020 DDK 1= EUR 0.134.

the initial decision. The adjustment will apply retroactively from 9 March 2020 to 8 July 2020. For public entities that receive more than 50 % of their operating costs in public funding, the turnover decline will be assessed in respect to their commercial activities and compensation will only be granted in proportion of their fixed costs in respect to their commercial activities.

On the parameters of the compensation

- (16) A maximum compensation of DKK 110 million (approx. EUR 15 million) can be granted per undertaking, instead of DKK 60 million (approx. EUR 8 million), as mentioned in recital (18) of the initial decision.
- (17) For companies that were already loss making before the COVID-19 outbreak, the existing scheme provides for a control mechanism to avoid an overcompensation of damage: potential positive effects on companies' operating losses compared to the documented losses in a reference period before COVID-19 will be deducted from the amount of compensation (see recital (21) of the initial decision).
- (18) This mechanism is amended under the notified measure: where the reference period to document the losses was defined in the existing scheme as being 2019, an exemption to this rule is introduced for companies that have generally been profitable in recent years but had a loss in 2019 due to special circumstances⁷. The company will be required to make a solemn declaration, stating how and why the company's loss in 2019 was due to special circumstances. This statement will be accompanied by assistance from an approved auditor. It will only be accepted as a special circumstance if the loss in 2019 is at least DKK 500 000 (approx. EUR 67 000) and the company can document one of the following:
- A positive average net result in the years 2017, 2018 and 2019, or
 - A positive net result for each of the years 2016, 2017 and 2018.
- (19) The Danish Business Authority estimates that less than 1% of Danish businesses live up to the requirements presented above about positive net result in certain years or on average, and even fewer will have experienced a loss in 2019 due to special circumstances, making them eligible for compensation under the present scheme.

On the budget

- (20) As a consequence of these modifications, an additional budget of DKK 25 billion (approx. EUR 3 billion) is provided for in the notified measure.
- (21) All other elements of the existing scheme remain unchanged.

2.4. Commitment from the Danish authorities

- (22) The Danish authorities commit to carry out their ex post control by calculating the actual net losses (damage) and comparing these losses to the compensation paid

⁷ These special circumstances are defined as climate investments, energy efficiency improvements, extraordinary growth, strategic or commercial transformation of the company or other exceptional occurrences.

ex-ante. The precise methodology for such an ex post control will be defined later and sent to the Commission for approval before 31 December 2020. The controls will be carried out no later than 31 July 2021.

- (23) The Danish authorities also commit to ensure that beneficiaries repay any over-compensation, should the ex post assessment show that the total aid received by an individual beneficiary to compensate the damage caused by the COVID-19 outbreak exceeds the total amount of the damage suffered by the beneficiary.

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (25) Article 107(1) TFEU defines State aid as ‘any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market’.
- (26) The qualification of the measure as State aid was established in the initial decision. The Commission therefore refers, for this analysis, to recitals (27) to (32) of the initial decision. The same assessment applies to the present changes to the scheme, i.e. scope of beneficiaries and eligibility criteria, amount of advantage, duration and changes in the specific safeguard mechanism for already loss making undertakings.

3.3. Compatibility assessment

- (27) The Commission has examined the notified measure pursuant to Article 107(2)(b) TFEU.
- (28) The Commission refers to its analysis of compatibility as set out in recitals (33) to (51) of the initial decision.
- (29) The amendments provided for by the notified measure relating to the scope of beneficiaries and the eligibility criteria have no impact on the compliance of the entire scheme, as amended, with Article 107(2)(b) TFEU.
- (30) The recommendations and prohibitions made by the Danish Government to citizens and undertakings to suspend all activities that are not essential to avoid dissemination of the virus are progressively lifted. However, many prohibitions or administrative measures are still and will remain in force to accompany a slow and controlled return to normal business conditions. The Commission considers therefore the amendment relating to the one-month prolongation of the scheme until 8 July 2020 reasonable in this context, as there remains a lot of uncertainty with regard to the control of the pandemic and the continuation of the administrative measures to limit its dissemination.

- (31) The amendment relating to the specific safeguard mechanism applicable to companies that were loss making before the COVID-19 outbreak, described in recitals (17) to (19) has to be assessed with regard to the proportionality requirement inherent to Article 107(2)(b)TFEU, i.e. the fact that aid must not result in overcompensation of damage; it should only make good the damage caused by the exceptional occurrence.
- (32) It should be noted first that, as a general rule, the specific safeguard mechanism is still in place and applicable where companies have been loss making in 2019. The documented losses shall be deducted ex post from the amount of the compensation.
- (33) It is only in cases where the 2019 losses, of at least DKK 500 000 (approx. EUR 67 000) can be related to special circumstances for companies which can demonstrate they are usually profitable that not the specific mechanism but only the general control and claw back mechanism described in recitals (19) and (20) of the initial decision would apply. The objective of this derogation is to avoid penalising companies, which are structurally profitable.
- (34) The demonstration, by the companies benefitting of this derogation, of their usual profitability ring-fences the potential compensation of structural losses. In addition, the two levels of requirements (special circumstances and demonstration of usual profitability) limit the scope of the derogation. In this regard, as recalled in recital (19), the Danish Business Authority estimates that less than 1 % of Danish businesses live up to those requirements, and even fewer will have experienced a loss in 2019 due to special circumstances making them eligible for compensation.
- (35) On the basis of these elements, the amendment to the specific safeguard mechanism applicable to companies that were loss making before the COVID-19 outbreak does not modify the analysis of proportionality made in the initial decision.
- (36) The amendment relating to the increased maximum amount per beneficiary meets the proportionality requirement inherent to Article 107(2)(b)TFEU. The Commission recalls the safeguards put in place by the Danish authorities (audits, verification, ex post control) recalled in recitals (45) to (50) of the initial decision, ensuring that proportionality.
- (37) Regarding the proportionality of these amendments, and especially the increase maximum amount per beneficiary, the Commission also notes the additional commitment of the Danish Authorities to design and validate with the Commission a precise methodology for the ex post control, to calculate the actual damage and avoid any overcompensation.
- (38) In view of the above, the Commission considers that the notified measure does not affect the compatibility analysis of the existing scheme as set out in the initial decision.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified aid measure on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) TFEU.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President