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PUBLIC VERSION

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**Subject: State Aid SA.57199 (2020/N) – Denmark – Amendment to State Aid SA.56791 (2020/N) on temporary wage-compensation scheme for self-employed financially affected by the COVID-19, as amended by State aid SA.56892 (2020/N)**

Excellency,

## 1. PROCEDURE

- (1) By electronic notification of 29 April 2020, according to Article 108(3) Treaty on the Functioning of the European Union (“TFEU”), registered by the Commission on the same date, Denmark notified amendments to the State aid scheme SA.56791 on temporary wage-compensation scheme for self-employed financially affected by the COVID-19 approved by the Commission by Decision of 25 March 2020<sup>1</sup> on the basis of Article 107(2)(b) of the Treaty on the Functioning of the European Union (“the initial Decision” and “the initial scheme”). That scheme had already been amended once, as approved by Commission Decision of 3 April 2020 on State aid SA.56892<sup>2</sup> (“the Decision approving the amended scheme” and “the amended scheme”).
- (2) Denmark confirmed that the notification does not contain confidential information.

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<sup>1</sup> Commission Decision C(2020) 1982 final.

<sup>2</sup> Commission Decision C(2020) 2219 final.

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- (3) Denmark exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958<sup>3</sup>, and to have this Decision adopted and notified in English.

## **2. DETAILED DESCRIPTION OF THE MEASURE**

### **Objective of the scheme**

- (4) Denmark intends to modify the initial scheme, as modified by the amended scheme.
- (5) The amendments concerns:
- (a) The eligibility criteria, namely the maximum number of employees a beneficiary can have;
  - (b) the aid intensity, namely the percentage of loss of turnover compensated by the scheme;
  - (c) the duration;
  - (d) the budget.
- (6) The overall objective of the initial scheme, as modified by the amended scheme, is to partially compensate self-employed undertakings, for losses of revenues caused by temporary prohibitions and recommendations from the Danish Government due to the COVID 19. The notified scheme pursues the same objective.
- (7) Denmark motivates the need to introduce the amendments listed in recital (5) with the further developments of COVID-19 and their economic consequences which have affected businesses to a larger extent than first anticipated, the prolongation of measures as mentioned in recital (4) of the initial Decision and their impact on self-employed and the need to accommodate self-employed forced to close completely by the Government's order mentioned in recital (5) of the initial Decision.

### **Legal basis**

- (8) The notified amendment will be issued through a direct act on the Danish Budget Law, and amendments will be made correspondingly in the executive order.

### **Description of the notified scheme**

- *Beneficiaries*

- (9) The beneficiaries of the scheme are self-employed which fulfilled the conditions described in Section 2 (“Detailed description of the measure”), recitals (15) to (20), of the initial Decision, as modified by recital (8) of the Decision approving the amended scheme.
- (10) The notified scheme extends the eligible criteria as mentioned in recital 17(d) of the initial Decision to self-employed with up to a maximum of 25 employees. This

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<sup>3</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385

amendment will allow larger businesses of self-employed to benefit from the scheme. The largest of these businesses would still fall into the category of small undertakings<sup>4</sup>.

- *Aid intensity*

- (11) In the notified scheme, Denmark raises the aid intensity as reported in recital (23) of the initial Decision from 75 % to 90 % of the loss of turnover/B-income, while maintaining the cap of DKK 23 000 (EUR 3 059<sup>5</sup>) or DKK 46 000 (EUR 6 118) in case of self-employed having an assisting spouse)<sup>6 7</sup>.
- (12) Denmark further increases the aid intensity to up to 100 % of the loss of turnover/B-income for the self-employed forced to close by Government's order, during the period in which the order was in effect, while maintaining the cap of DKK 23 000 (or DKK 46 000 in case of self-employed having an assisting spouse). Hence, when the order to close is lifted, the aid intensity of 90 % will apply for the rest of the compensation period.
- (13) Denmark informed that the amendments described in recitals (11) and (12) above will support self-employed with a relatively low turnover and those, for example cafes, pubs, hairdressers and beauty salons which were forced to close by Government's order.

- *Duration*

- (14) The notified scheme prolongs the duration of the amended aid scheme providing compensation for loss of turnover or B-income in the period from 9 March 2020 up to and including 8 July 2020 (rather than 8 June as set out in recital (9) of the Decision approving the amended scheme). The amendments will be applied retroactively, thus covering the entire period from 9 March 2020 up to and including 8 July 2020.

- *Budget*

- (15) The estimated budget as mentioned in recital (12) of the initial Decision is increased up to DKK 14,1 billion (around EUR 1,875 billion).

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<sup>4</sup> According to Article 2 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L124, 20.5.2003, p. 36), a small enterprise is defined as an enterprise which employs fewer than 50 persons.

<sup>5</sup> Exchange rate DKK 1= EUR 0.133, 20 March 2020, used as reference in the initial Decision [https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/eur\\_ofxref-graph-dkk.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eur_ofxref-graph-dkk.en.html)

<sup>6</sup> See recital (24) and (25) of the initial Decision.

<sup>7</sup> As reported in footnote 8 of the initial Decision, the Danish average monthly wage is approximately DKK 28 000 (EUR 3 724) and the usual unemployment benefit is DKK 19 100 (EUR 2 540).

### **3. ASSESSMENT OF THE AID MEASURE**

#### **3.1 Lawfulness of the aid measure**

- (16) 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 aid within the meaning of Article 107(1) TFEU**

- (17) 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’.
- (18) The qualification of the measure as State aid was established in the initial Decision. The Commission therefore refers, for this analysis, to recitals (37) to (43) of the initial Decision which remain applicable.

#### **3.3 Compatibility assessment**

- (19) The Commission has examined the notified scheme pursuant to Article 107(2)(b) TFEU.
- (20) The Commission refers to its analysis of compatibility as set out in recitals (45) to (65) of the initial Decision.
- (21) The Commission needs to assess whether the modifications of the eligibility criteria for beneficiaries (see recital (10) above), the increased aid intensity as reported in recitals (11) and (12), the prolongation of one month (up to 8 July 2020), as mentioned in recital (14), as well as the increment in the budget allocated for the measure, as mentioned in recital (15) have an impact on the compliance of the entire scheme, as adjusted, with Article 107(2)(b) TFEU.
- (22) The Commission notes that the established causal link between damage and the notified aid scheme (recitals (53) to (56) of the initial Decision) as well as the proportionality of the aid measure (recitals (57) to (62) of the initial Decision) are not affected by the amendments proposed in the notified scheme, considering that:
- (a) The compensation scheme is eligible for self-employed whose business expected a turnover loss or B-income of minimum 30 % compared to the average turnover or B-income in the last financial year due to the COVID-19 outbreak (see recital (15) of the initial Decision).
  - (b) In order to receive compensation, the self-employed are required to fill out a solemn declaration where they declare the estimated turnover/B-income loss they expect, and provide a justification concerning how the temporary prohibitions and recommendations from the Danish Government due to the COVID-19 is the cause of their revenue loss (see recital (26) of the initial Decision).
  - (c) Denmark confirmed that the Danish Business Authorities will assess the solemn declaration before awarding the aid (see recital (27) of the initial Decision).

- (d) the measure concerns exclusively self-employed who have at least 25 % ownership and carry out a substantial amount of labour in the daily operation of an undertaking (see recital (16) of the initial Decision),
- (e) the aid is capped at a maximum of DKK 23 000, or DKK 46 000 if the self-employed has an assisting spouse per month and per CPR-number (see recitals (24) and (25) of the initial Decision).
- (f) Denmark confirmed that, while some recommendations to avoid dissemination are progressively lifted, the recommendations and prohibitions made by the Danish Government to suspend all activities that are not essential are still and will remain in force, e.g. prohibition against gatherings of more than ten people and closing of the Danish borders, in order to accompany a slow and controlled exit of confinement measures. 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 the control of the pandemic and the continuation of the administrative measures to limit its dissemination.
- (g) Self-employed forced to close by Government's order will benefit of the aid intensity of 100 % only during the period in which the order is in effect. Hence, when the order to close is lifted, the aid intensity of 90 % will apply for the rest of the compensation period (see recital (12) of this Decision).
- (h) If the annual income of the self-employed in 2020 turns out to exceed DKK 800 000 (EUR 106 400) the compensation will be recovered (see recital (32) of the initial Decision).
- (i) the compensation has to be recovered ('claw-back mechanism'), either partially (where the turnover losses or B-income exceed 30% but had been overestimated) or in full (in case the turnover losses or B-income turn out to be less than 30 %) (see recital (30) of the initial Decision).
- (j) As reported in recital (33) of the initial Decision,
  - i. The compensation is subject to taxation (see recital (33(a)) of the initial Decision);
  - ii. The compensation under the notified scheme cannot be cumulated with other aid covering the same eligible costs (see recital (33(b)) of the initial Decision);
  - iii. Payments made to beneficiaries will be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid before the insurance, Denmark will recover the insurance amount from the beneficiary (recital (33(c)) of the initial Decision).
  - iv. The benefit of the aid is excluded for any applicant who is responsible for the damage suffered and/or did not conduct his activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damage (see recital (33(d)) of the initial Decision);

- (k) The Danish Business Authority will calculate the actual turnover or B-income loss in relation to the expected loss stated in the application, based on data from the tax authorities. In case of any discrepancy, the Danish Business Authority can impose auditor assistance from a certified auditor (see recital (10) of the Decision approving the amended scheme).
- (23) Apart from the modifications referred to in recitals (10) to (12), (14) (11)and (15) above, the Commission notes that there are no other alterations to the initial scheme, as modified by the amended aid scheme.
- (24) The Commission therefore considers that the notified amendments do not affect the compatibility analysis of the aid scheme as set out in the initial Decision and modified by the Decision approving the amended scheme.

#### **4. CONCLUSION**

The Commission has accordingly decided not to raise objections to the notified scheme on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President