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**Subject: State Aid SA.57204 (2020/N) – Malta
COVID-19: Investment Aid for the Production of COVID-19 Relevant
Products**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 29 April 2020, Malta notified COVID-19 related investment aid (“the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”).¹
- (2) The Maltese authorities confirm that the notification does not contain confidential information.
- (3) Malta 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 by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1–9 and by Communication C(2020) 3156 final of 8 May 2020, not yet published.

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) The measure aims at supporting the production of products needed to respond to the COVID-19 outbreak. According to Malta, given the public health crisis and the shortage of certain related products, it is essential that the State can provide incentives to companies to direct their activities to production of certain products which are crucial to tackle that crisis, to address medical and social needs in the current situation and the post confinement phase. Malta considers that the measure contributes to respond to the existing public health crisis.
- (5) The compatibility assessment of the measure is based on Article 107(3)(c) TFEU, as interpreted by Section 3.8 of the Temporary Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of cash grant or repayable advance, with the possibility of an additional bonus in the form of tax credit.

2.2. Legal basis

- (7) The legal basis for the measure is a subsidiary regulation of Malta Enterprise Act, the COVID-19 Temporary Support Measures Regulations, 2020 and related implementing incentive guidelines³.

2.3. Administration of the measure

- (8) Malta Enterprise Corporation, the public entity in charge of granting support to businesses in Malta is responsible for administering the measure.

2.4. Budget and duration of the measure

- (9) The estimated budget of the measure is EUR 10 million for grants and repayable advances and EUR 1.5 million for tax advantages. The overall budget is hence of EUR 11.5 million. Funds will be made available for the measure from the State budget.
- (10) Aid may be granted under the measure as from its approval until no later than 31 December 2020. As for the tax credit, it will be granted in relation to fiscal year 2020 and the aid is considered granted when the 2020 tax declaration is due.

2.5. Beneficiaries

- (11) The final beneficiaries of the measure are registered SMEs and large enterprises⁴, including self-employed persons, currently active or undertakings that are willing to establish new activities in Malta.
- (12) The measure is intended to support around 50 projects.

³ These guidelines will be published on <http://maltaenterprise.com/support>

⁴ As defined in Annex I to 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.

- (13) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)⁵ on 31 December 2019.
- (14) Aid may not be granted under the measure to any undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market nor to any undertaking that has pending income tax, VAT, and social security payment which were due prior to 31 December 2019.

2.6. Sectoral and regional scope of the measure

- (15) The measure is open to all sectors, except the financial sector. However, due to the nature of the scheme, the majority of beneficiaries are expected to be companies active in the below NACE categories following the investment project:
- Section C - Manufacturing
 - Section J - Information and communication
 - Section M - Professional, scientific and technical activities
- (16) It applies to the whole territory of Malta.

2.7. Basic elements of the measure

Targeted projects

- (17) The measure targets investment projects whether to increase or initiate production and manufacturing of COVID-19 relevant products and technologies or to diversify existing production to be able to produce and manufacture COVID-19 relevant products and technologies, including:
- medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials;
 - medical devices, hospital and medical equipment (including ventilators, protective clothing and equipment as well as diagnostic tools) and necessary raw materials;
 - disinfectants and their intermediary products and raw chemical materials necessary for their production;
 - equipment and machinery required to sanitise products and environments;

⁵ As defined in Article 2(18) of Commission Regulation (EU) No 651/2014, Article 2(14) of 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 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.

- data collection/processing tools; and
 - screening and tracking devices / technology and associated supporting infrastructure and technology.
- (18) For the purpose of this measure, Malta Enterprise Corporation will consider as eligible projects that have started on or after 1st February 2020. Projects that started before 1 February 2020 may be deemed eligible if the aid is necessary to accelerate or widen the scope of the project.

Eligible costs

- (19) Eligible costs incurred after 1st February 2020 in relation to the approved projects must fall within the following categories:
- tangible and intangible assets procured to develop, manufacture and provide COVID-19 relevant products/ technologies.
 - wage costs for personnel engaged to design and develop tools, processes and solutions for the production and manufacturing of COVID-19 relevant products. These costs shall only be eligible if fully capitalised and accounted for in terms of the applicable accounting standards as costs incurred for the creation of an asset.
 - wage costs of personnel engaged to develop data collection and processing tools (including AI solutions) supporting the medical profession and the general public in issues related to the COVID-19 pandemic. These costs shall only be eligible if fully capitalised and accounted for in terms of the applicable accounting standards as cost incurred for the creation of an asset.
 - Costs incurred for trial runs of the new (diversified) production facilities such as cost of materials required for trial runs of production facilities and cost of data sets acquired to test data processing and collection solutions.
- (20) Where the project is limited by time or scope, costs of equipment shall be taken into account strictly on a pro rata basis (i.e. depreciation over the lifetime, if applicable or pro rata of the capacity used for the infrastructure).
- (21) In case of projects that commenced before 1st February 2020, only the additional costs in relation to the acceleration efforts or the widened scope of the production shall be eligible for aid.

Modalities of intervention

- (22) A grant not exceeding 80% of the eligible costs can be granted to support undertakings to carry out investment projects, to increase or initiate production of COVID-19 relevant products or to diversify existing production to be able to produce COVID-19 relevant products.
- (23) The support can also be provided as a repayable advance that will be transformed into a grant when the beneficiary provides evidence of having incurred the approved costs, provided that the project is completed within six months.

- (24) The investment project is indeed to be completed within six months from the date when the aid is granted. Malta Enterprise Corporation in collaboration with other national authorities competent in the field related to the investment and/or any third party selected by Malta Enterprise Corporation will determine whether the project has been completed within this timeframe.
- (25) If the project is completed within two months of the aid being awarded or approved or is carried out in collaboration with another undertaking established in another Member State which is also receiving support from that Member State⁶, an additional bonus of 15 percentage points may be awarded to the beneficiary. This additional bonus shall be awarded as a tax credit on the 2020 tax declaration and may be claimed in the beneficiary's tax statement as from year of assessment 2021. If any part of the tax credit is unutilized (as the tax liabilities is lower than the benefit), any tax credits not utilised may be carried forward to subsequent years.
- (26) Where aid is granted in the form of direct grants and the six-month deadline is not met, unless the delay is due to factors beyond the control of the aid beneficiary, 25% of the amount of aid awarded shall be reduced for every month of delay.
- (27) Where aid is granted in the form of repayable advances, and the six-month deadline is not met, beneficiaries shall be required to reimburse funds in equal instalments within five years after the date of granting the aid.
- (28) The beneficiaries applying for support under the notified measure must provide information relating to the project and its deliverables and why they are COVID-19 relevant products; the project start and end dates, location, detailed breakdown of the project costs; documentation related to the financial situation of the undertaking as at 31 December 2019 and fiscal and social compliance certificates.

2.8. Cumulation

- (29) The Maltese authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulation⁷ or the GBER provided the provisions and cumulation rules of those Regulations are respected.
- (30) The Maltese authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected, except for aid granted under section 3.6, section 3.7 and section 3.8 of the Temporary Framework, if the aid concerns the same eligible costs.

⁶ The Maltese authorities confirmed that this condition for an undertaking to benefit from the bonus, applies only to cases where the collaboration between undertakings is on the same project (i.e. where there exists a functional link between the assisted projects).

⁷ 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).

- (31) The Maltese authorities confirm that aid granted under the measure shall not be combined with other investment aid for the same eligible costs.

2.9. Monitoring and reporting

- (32) The Maltese authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid granted under the measure on the comprehensive State aid website or Commission's IT tool within 12 months from the moment of granting⁸).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (33) By notifying the measure before putting it into effect, the Maltese 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, since it is administered by Malta Enterprise Corporation and it is based on a subsidiary regulation of the Malta Enterprise Act (see recitals (7) and (8)). It is financed through State resources, since it is financed by the State budget (see recital (9)).
- (36) The measure confers an advantage on its beneficiaries in the form of direct grants, repayable advances and tax advantages (see recital (6)). The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (37) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in the sectors referred to in recital (15), and excluding the financial sector.
- (38) 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.

⁸ Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 of 17 June 2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014. *(For repayable advances, guarantees, loans, and other forms of aid, the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges).*

- (39) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Maltese 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)(c) TFEU, the Commission may declare compatible with the internal market “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*”.
- (42) By amending the Temporary Framework on 3 April 2020, the Commission acknowledged the need to take specific temporary measures enabling Member States to address the health crisis caused by the COVID-19 outbreak. The measure aims at facilitating the production of COVID-19 relevant products to address the current emergency health crisis. The measure has been designed to meet the requirements of the specific categories of aid “Investment aid for the production of COVID-19 relevant products” described in Section 3.8 of the Temporary Framework.
- (43) The Commission accordingly considers that the measure contributes to the achievement of a common objective of crucial importance, is appropriate and necessary to address the health crisis. In particular:
- Aid granted under the measure is limited to the production of the COVID-19 relevant products listed in point 39(a) of the Temporary Framework, with the express inclusion of screening and tracking devices /technology and associated supporting infrastructure and technology (recital (17)).
 - Aid is granted under the measure in the form of a direct grant/tax advantages/repayable advance (recital (6)) granted before 31 December 2020 or, for the tax advantage, at the time of the 2020 tax declaration. The measure therefore complies with point 39(b) of the Temporary Framework. If the investment is finalised within six months from the moment the aid is granted, aid in the form of repayable advances will be transformed into grants in accordance with point 39(d) of the Temporary Framework (recital (23)).
 - For investment projects started as of 1 February 2020, the aid granted under the measure is deemed to have an incentive effect; for projects started before 1 February 2020, the aid granted under the measure is deemed to have an incentive effect, provided the aid is necessary to accelerate or widen the scope of the project (recital (18)). The measure therefore complies with point 39(c) of the Temporary Framework.
 - Costs eligible for aid under the measure consist of all investment costs necessary for the production of the products listed in point 39(a) of the Temporary Framework as well as the costs of trial runs of the new production facilities (recital (19)). The measure therefore complies with

point 39(e) of the Temporary Framework. For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope of the project are eligible for aid under the measure in line with point 39(c) of the Temporary Framework (see recital (21)).

- The aid intensity shall not exceed 80% of the eligible costs (recital (22)). The measure therefore complies with point 39(e) of the Temporary Framework. A bonus of up to 15 percentage points may be granted under the conditions laid down in point 39(f) of the Temporary Framework (*i.e.* if the investment is finalised within two months or if the aid comes from more than one Member State) (recital (25)).
 - The cumulation of the aid granted under the measure with other investment aid for the same costs shall not be permitted (recital (31)). The measure therefore complies with point 39(g) of the Temporary Framework.
 - Eligible investment projects must be completed within six months after the grant of the investment aid. If this deadline is not respected, the beneficiary shall reimburse 25% of the amount of the aid awarded per month of delay, unless the delay is due to factors outside the control of the beneficiary (recital (26)); if aid is granted in form of repayable advance and this deadline is not respected, the beneficiary shall reimburse the repayable advances in equal annual instalments within five years after the date the aid was granted (recital (27)). The measure therefore complies with point 39(d) of the temporary framework.
 - Aid may not be granted under the measure to undertakings that were already in difficulty on 31 December 2019 (recital (13)). The measure therefore complies with point 39(i) of the Temporary Framework.
- (44) The Maltese authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (32)). The Maltese authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recitals (29) and (30)).
- (45) In the light of the elements above, the Commission considers that the measure complies with the compatibility conditions laid down by the Temporary Framework. The Commission has taken due consideration of the common objective pursued by the measure and its positive effects on tackling the health crisis provoked by the COVID-19 outbreak when balancing those effects against the potential negative effects of the measure on the internal market. The Commission concludes that those positive effects of the measure outweigh its potential negative effects on competition and trade.

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)(c) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President