Subject: State Aid SA.57305 (2020/N) – Grand Duchy of Luxembourg
COVID-19: Investment aid for certain sectors

Excellency,

1. Procedure


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

(3) Luxembourg 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, and to have this Decision adopted and notified in English.


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

(4) Luxembourg considers that the COVID-19 outbreak has started to affect the real economy. The Luxemburgish authorities have noticed that undertakings of all sizes are refraining from investing in projects that they intended to execute due to insufficient liquidity to carry out these investments. To prevent the disruptive effect of the outbreak on planned investments because of this sudden shortage of liquidity, Luxembourg aims to put in place an aid scheme to help undertakings that have been hit by the COVID-19 outbreak implement their planned investments.

(5) The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.

(6) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, as interpreted by Section 2 and Section 3.1 of the Temporary Framework.

2.1. The nature and form of aid

(7) The measure provides aid in the form of direct grants.

2.2. Legal basis

(8) The legal basis for the measure is a draft text ‘Avant-projet de loi visant à stimuler les investissements des entreprises dans l’ère du COVID-19’, to be adopted by Luxembourg after the Commission’s approval of the measure.

2.3. Administration of the measure

(9) The Ministry of the Economy of the government of the Grand Duchy of Luxembourg is responsible for administering the measure.

2.4. Budget and duration of the measure

(10) The budget of the measure is EUR 30 million and its source is the budget of Grand Duchy of Luxembourg.

(11) Aid may be granted under the measure as from its approval until no later than 31 December 2020.

2.5. Beneficiaries

(12) The final beneficiaries of the measure are SMEs and large enterprises that:

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As defined in paragraphs (2) and (24) of Article 2 of and 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. This definitions also apply to recitals (22)(a) to (c), (26)(a) to (c) and (28)(a) to (c) below.
(a) hold an establishment permit issued before 18 March 2020 under Law of 2 September 2011 regulating access to the professions of craftsman, tradesman, industrialist and certain independent professions⁴; and

(b) have suffered as a result of the COVID-19 outbreak a loss of turnover of at least 15% in April and May 2020 when compared with the same period of 2019.⁵

(13) Financial institutions are excluded as eligible final beneficiaries.

(14) 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”)⁶ on 31 December 2019.

2.6. Sectoral and regional scope of the measure

(15) The measure is open to all sectors except (i) the financial sector, (ii) the fishery and aquaculture⁷ sectors and (iii) undertakings active in the primary production of agricultural products⁸.

(16) Aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

(17) The measure applies to the whole territory of Luxembourg.

2.7. Basic elements of the measure

(18) The measure seeks to mitigate the adverse effects of the COVID-19 outbreak on the Luxembourgish economy. In particular, it aims to provide additional liquidity to enable undertakings affected by the outbreak to carry out planned investments. The Luxembourgish authorities explained that, absent this measure, undertakings of all sizes would refrain from carrying out planned investments due to the lack or unavailability of liquidity, tougher loan conditions and uncertain prospects.

(19) The aid takes the form of direct grants for different purposes, eligible costs and aid intensities indicated below in recitals (20) to (28). The maximum amount of

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⁵ For undertakings established in 2019 or 2020, the loss of turnover is determined against the monthly average of the total turnover of the undertaking since its establishment.


⁸ All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector.
aid under the measure cannot exceed EUR 800 000 per undertaking in gross terms, that is, before any deduction of tax or other charge.

2.7.1. Investment aid for development projects

(20) Eligible costs of this aid are limited to the acquisition of tangible and/or intangible assets relating to:

(a) the extension of an existing establishment;

(b) the diversification of the output of an establishment into new additional products;

(c) a fundamental change in the overall production process of an existing establishment.

(21) The following investments are not considered eligible for funding: investments for the establishment of a new undertaking, investments related to operating costs such as the replacement of machinery and equipment, as well as investments to comply with existing laws, regulations or administrative provisions.

(22) The maximum aid intensity depends on the investment amount and the size of the undertaking and is calculated as follows:

(a) for small enterprises, 30 % of the eligible costs for investments exceeding EUR 20 000 excluding taxes;

(b) for medium-sized enterprises, 25 % of the eligible costs for investments exceeding EUR 50 000 excluding taxes; and

(c) for large enterprises, 20 % of the eligible costs for investments over EUR 250 000 excluding taxes.

(23) Aid intensities may be increased by 20 percentage points if the investment contributes to the circular economy.

2.7.2. Investment aid for process and organisational innovation projects

(24) The eligible costs of this aid are:

(a) personnel costs;

(b) costs related to the acquisition of tangible and intangible assets;

(c) costs of contractual research, knowledge and patents bought or licensed from outside sources at arm’s length; and

(d) additional overheads and other operating costs, including costs of materials, supplies and similar products, incurred directly as a result of the process and organisational innovation project.
Projects limited to the acquisition of tangible and intangible assets without incurring additional eligible costs related to process and organisational innovation are not considered eligible for funding.

The maximum aid intensity shall not exceed 50% of the eligible costs, provided that they amount (excluding taxes) to at least:

(a) EUR 20 000 for small enterprises;
(b) EUR 50 000 for medium-sized enterprises; and
(c) EUR 250 000 for large enterprises.

2.7.3. Investment aid for energy efficiency projects or projects to go beyond environmental standards

The eligible costs of this aid are limited to the acquisition of tangible assets relating to:

(a) investments in energy efficiency; or
(b) investments enabling undertakings to go beyond national standards for environmental protection or to increase the level of environmental protection in the absence of such standards.

The maximum aid intensity shall not exceed 50% of the eligible costs, provided that they amount (excluding taxes) to at least:

(a) EUR 20 000 for small enterprises;
(b) EUR 50 000 for medium-sized enterprises; and
(c) EUR 250 000 for large enterprises.

2.8. Cumulation

The Luxemburgish authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations provided the provisions and cumulation rules of those Regulations are respected.

The Luxemburgish authorities declare that aid granted under the measure cannot be cumulated with aid under the GBER.

The Luxemburgish 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.

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The Luxembourgish authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under Section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 22(a) of that framework, shall be respected.

2.9. Monitoring and reporting

The Luxembourgish 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 granting).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

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.

The measure is imputable to the State, since it is administered by the Ministry of the Economy of the government of the Grand Duchy of Luxembourg (recital 9) and it is based on the legislation referred to in recital (8). It is financed through State resources, since it is financed by public funds of the Grand Duchy of Luxembourg (recital 10).

The measure confers an advantage on its beneficiaries in the form of direct grants. The measure thus relieves those beneficiaries of costs, which they would have to bear under normal market conditions.

The advantage granted by the measure is selective, since it is awarded only to undertakings that fulfil the conditions described in recital (12) and are not active in the sectors specified in recital (15).

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.

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In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Luxembourgish authorities do not contest that conclusion.

3.3. Compatibility

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.

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”.

By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in 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”.

The measure aims at facilitating planned investments and ensuring liquidity at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

The measure is one of a series of measures conceived at national level by the Luxembourgish authorities to remedy a serious disturbance in their economy. The importance of the measure to provide missing liquidity by means of direct grants is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Luxembourgish economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Limited amounts of aid”) described in Section 3.1 of the Temporary Framework.

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:

- The aid takes the form of direct grants (recital (7)).

  The overall nominal value of the direct grants shall not exceed EUR 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges; as indicated in recital (19). The measure therefore complies with point 22(a) of the Temporary Framework;

- Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (10). The measure therefore complies with point 22(b) of the Temporary Framework;
• Aid will not be granted to undertakings under the measure that were already in difficulty on 31 December 2019 as indicated in recital (14). The measure therefore complies with point 22(c) of the Temporary Framework;

• Aid will be granted under the measure no later than 31 December 2020 as indicated in recital (11). The measure therefore complies with point 22(d) of the Temporary Framework;

• Undertakings active in the processing and marketing of agricultural products are excluded when the aid is partly or totally passed on to primary producers, fixed on the basis of the price or quantity of products purchased from primary producers, or put on the market by such producers; as indicated in recital (16). The measure therefore complies with point 22(e) of the Temporary Framework.

(47) The Luxembourgish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (33)). The Luxembourgish 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) to (32)).

(48) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

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) TFEU.

The decision is based on non-confidential information and is therefore published in full on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION