EUROPEAN COMMISSION

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PUBLIC VERSION
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Subject: State Aid SA.57304 (2020/N) and SA.57338 (2020/N) – Luxembourg COVID-19: Solidarity Fund for undertakings affected by the COVID-19 outbreak and Aid for commercial shops affected by the COVID-19 outbreak

Excellency,

1. **PROCEDURE**

(1) By electronic notification of 24 May 2020, Luxembourg notified two measures providing support in the form of grants to undertakings affected by the COVID-19 outbreak under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)\(^1\). These notifications concern (i) a scheme providing support for undertakings operating businesses particularly affected by the COVID-19 outbreak (e.g., restaurants, bars, clubs, fitness studios, movie theatres), which was registered under SA.57304 (2020/N) (“Solidarity Fund scheme”); and (ii) a scheme providing aid to undertakings operating retail shops or other services (e.g., hairdressers, aestheticians, dry-cleaning and laundering) affected by the COVID-19 outbreak, which was registered under SA.573338 (2020/N) (“Retail Shop scheme”; altogether, “the measures”).

(2) Luxembourg exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction

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with Article 3 of Regulation 1/1958\(^2\) and to have this Decision adopted and notified in English.

2. **DESCRIPTION OF THE MEASURES**

(3) Luxembourg considers that the COVID-19 outbreak has started to affect the real economy. The COVID-19 outbreak led to a general shutdown of most economic activities in Luxembourg, allowing only essential activities to continue. Where companies were not obliged to suspend completely their operations, they had to adapt to new working conditions, such as telework. According to the Luxembourgish national statistical office\(^3\) and the European Commission\(^4\), national GDP will fall by 5-7% in 2020. While a negative economic impact will be registered throughout most sectors of the economy, some sectors are negatively affected more than others.

(4) As of mid-May 2020, certain undertakings, including those operating retail shops, are allowed to resume their activities in compliance with the requirements adopted by the Luxembourgish government\(^5\). These include social distancing among employees and clients, reopening at limited capacity, compulsory use of masks and hand sanitizer for all employees.

(5) Other activities, such as the operation of restaurants, bars, clubs, fitness studios and cinemas may only resume gradually from 29 May 2020 under certain conditions. Undertakings operating in these sectors should respect the requirements provided under national law referred to in recital (4), as well as the recommendations issued by the Luxembourgish government to the hospitality sector\(^6\). Gatherings of 20 people maximum are allowed in an open-space, whilst respecting the social distancing measures.

(6) Therefore, the Luxembourgish authorities intend to introduce two measures addressing the negative economic effects of the COVID-19 outbreak. It is the view of the Luxembourgish authorities that, in the absence of an aid scheme addressing the liquidity constraints faced by undertakings in Luxembourg, numerous companies would risk insolvency and unemployment rates may rise.

(7) The measures form part of an overall package of measures and aim 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.

\(^2\) Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.
\(^5\) http://legilux.lu/eli/etat/leg/rgd/2020/03/18/a165/consolide/20200529.
The compatibility assessment of the measures 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

The measures provide aid in the form of direct grants.

2.2. Legal bases

The Solidarity Fund scheme is based on the draft law “Avant-projet de loi visant à mettre en place un fonds de relance et de solidarité en faveur des entreprises”, to be adopted by Luxembourg with the content explained in more detail in Section 2.7.1 of the present Decision.

The Retail Shop scheme is based on the draft law “Projet de loi ayant pour objet la mise en place d’un régime d’aide temporaire en faveur des magasins de détail dans le commerce”, to be adopted by Luxembourg with the content explained in more detail in Section 2.7.2 of the present Decision.

2.3. Administration of the measures

The Ministry of the Economy (Direction Générale des Classes moyennes) and Ministry of Finance of the government of Luxembourg are responsible for administering the Solidarity Fund scheme.

The Ministry of the Economy (Direction Générale des Classes moyennes) of the government of Luxembourg is responsible for administering the Retail Shop scheme.

2.4. Budget and duration of the measures

The Solidarity Fund scheme is financed by a fund established by law (Fonds de relance et de solidarité, “Solidarity Fund”). The Solidarity Fund is subject to the authority of the Ministry of the Economy and of the Ministry of Finance of the Luxembourgish government, which are competent to administer the measure (recital (12)). It is partly financed by the general budget of Luxembourg, and partly through private voluntary contributions.

The estimated budget of the Retail Shop scheme is EUR 60 million. It is financed by the general budget of Luxembourg.

Aid may be granted under the measures as from its approval until no later than 31 December 2020.
2.5. **Beneficiaries**

(17) The final beneficiaries of the Solidarity Fund scheme are SMEs and large enterprises\(^7\) active in Luxembourg in the sectors listed in the Annex to the respective legal basis that fulfil the criteria referred to in recital (28) below.

(18) The final beneficiaries of the Retail Shop scheme are SMEs\(^8\) operating commercial shops in Luxembourg or carrying out the activities listed in the Annex to the respective legal basis that fulfil the criteria referred to in recital (32) below.

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

(20) Aid may not be granted under the measures to undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)\(^9\) on 31 December 2019. The Commission takes note of the intention of the Luxembourgish authorities to provide aid to undertakings that were already in difficulty on 31 December 2019 in compliance with the de minimis Regulation\(^10\).

2.6. **Sectoral and regional scope of the measures**

(21) The Solidarity Fund scheme is open to the sectors listed in the Annex to the legal basis\(^11\).

(22) The Retail Shop scheme is open to undertakings operating in the retail trade sector\(^12\) or providing the services listed in the Annex to the legal basis\(^13\).

(23) The measures are not available to undertakings operating in the financial sector, the fishery and aquaculture sectors\(^14\), or the primary production of agricultural products\(^15\).


\(^11\) These include, among others, hotel and camping, restaurant and catering services, sale of drinks, travel and event organisation agency services, rental of conferences and exposition venues, photography, advertising.

\(^12\) Retail trade is defined under the legal basis as any activity consisting in the purchase of goods to be resold to final consumers.

\(^13\) These include, inter alia, hairdressers, aestheticians, orthopaedists, opticians, stylists, dry-cleaning and laundring.
(24) 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.

(25) The measures apply to the whole territory of Luxembourg.

2.7. Basic elements of the measures

2.7.1. Solidarity Fund scheme

(26) The Solidarity Fund scheme aims to provide liquidity to undertakings that have experienced in the first half of 2020 and are expected to continue experiencing in the second half of 2020 a significant decrease in turnover. Once they will be allowed to reopen, the eligible undertakings will need to comply with sanitary requirements and recommendations of the Luxembourgish government (including social distancing, and the use of masks and hand sanitizers) (recital (5)), which will contribute to raising their costs in a time where liquidity is particularly scarce.

(27) With the Solidarity Fund scheme, therefore, the Luxembourgish authorities intend to provide support in the form of monthly grants between June and November 2020.

(28) To be eligible to receive aid under the Solidarity Fund scheme, an undertaking needs to fulfil the following conditions:

(a) It operates in one of the sectors listed in the Annex to the legal basis (see recital (21)\textsuperscript{16});

(b) It was already carrying out economic activities before 15 March 2020 and has carried out economic activities in the period in relation to which it applies for aid;

(c) It is registered at the social security centre (\textit{Centre commun de la Sécurité sociale});

(d) Its turnover in 2019 amounted to at least EUR 15 000\textsuperscript{17};

(e) In the month in relation to which it applies for aid, it has not laid off more than 25\% of its full-time employees for reasons not related to the individual workers;


\textsuperscript{15} All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector.

\textsuperscript{16} An indicative list of sectors covered by the Solidarity Fund scheme is provided in footnote 11.

\textsuperscript{17} In case of companies established in the course of 2019, the amount of EUR 15 000 is calculated pro-rata taking into account the date of start of the activities.
In the months from June to November 2020, it faced a decrease in turnover of at least 25% compared to the same months of 2019, or to the average monthly turnover of 2019\(^\text{18}\).

(29) The aid is calculated by multiplying the number of full time employees and self-employed persons working for the eligible undertaking by the following amounts:

(a) EUR 1 250 per full time employee or self-employed person active in the month for which the undertaking applies for aid;

(b) EUR 250 per full time employee or self-employed persons on short time in the months preceding the application for aid.

In case of part-time employees, the amounts indicated under letters (a) and (b) of this recital are quantified pro-rata.

(30) The amount of aid granted to each beneficiary is capped at 85% of the loss in its monthly turnover, calculated as explained in recital (28)(f) above. In addition, the individual aid cannot exceed the following thresholds:

(a) EUR 10 000 per month for micro-enterprises;

(b) EUR 50 000 per month for small enterprises;

(c) EUR 100 000 per month for medium or large enterprises\(^\text{19}\).

2.7.2. Retail Shop scheme

(31) The Retail Shop scheme aims to provide liquidity to small and medium sized companies operating retail shops or providing the services listed in the Annex to the legal basis, which have experienced a significant decrease in turnover between March and May 2020, and which therefore lack sufficient liquidity to be able to restart their activities. The Retail Shop scheme also intends to support the additional costs that shops have to bear to comply with the sanitary recommendations made by the Luxembourgish government (including ensuring social distancing, using masks and hand sanitizer).

(32) To be eligible to receive aid under the Retail Shop scheme, an undertaking needs to fulfil the following conditions:

(a) It qualifies as micro-enterprise, small enterprise or medium enterprise\(^\text{20}\);

(b) It was already carrying out economic activities before 15 March 2020;

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\(^{18}\) In case of companies established in the course of 2019 or 2020, the average monthly turnover is calculated in relation to the turnover generated between the date of start of activities and March 2020.


(c) It holds an establishment permit for the exercise of a commercial or craft activity within those listed in the Annex to the legal basis, issued pursuant to the Law of 2 September 2011 regulating access to the professions of craftsman, tradesman, industrialist and certain independent professions;

(d) It is registered at the social security centre (Centre commun de la Sécurité sociale);

(e) Its annual turnover is equal to or above EUR 15 000;

(f) It was obliged to suspend its activities in compliance with the national legislation introducing containment measures to limit the spread of the COVID-19 outbreak, or registered a decrease in its average or monthly turnover of at least 50% in the period between 15 March 2020 and 15 May 2020, compared to the average monthly turnover in 2019 or of the turnover generated in the respective periods of 2019;

(g) It has resumed its activities in all its shops on 1 June 2020 at the latest and has not stopped those activities thereafter;

(h) It does not receive subsidies to cover benefits for workers on short time;

(i) In the month in relation to which it applies for aid, or in the previous months for which it has applied for aid under the Retail Shop scheme, it has not laid off employees for reasons not related to the individual workers.

(33) The aid is calculated by multiplying the number of full time employees and self-employed persons working for the eligible undertaking by the following amounts:

(a) EUR 1 000 for the month of July 2020;

(b) EUR 750 for the month of August 2020;

(c) EUR 500 for the month of September 2020.

In case of part-time employees, the amounts indicated under letters (a) to (c) of this recital are quantified pro-rata.

(34) The aid cannot exceed EUR 50 000 per month per single undertaking.

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22 In case of companies established in the course of fiscal years 2019 or 2020, the amount of EUR 15 000 is calculated pro-rata taking into account the date of start of the activities.

23 Règlement grand-ducal du 18 mars 2020 portant introduction d’une série de mesures dans le cadre de la lutte contre le Covid-19.

24 In case of companies established after 15 April 2019, the average monthly turnover is calculated in relation to the turnover generated between the date of start of establishment and 14 April 2020.
2.8. Cumulation

(35) The Luxembourgish authorities confirm that aid granted under the measures may be cumulated with aid under de minimis Regulations\(^{25}\) provided the provisions and cumulation rules of those Regulations are respected.

(36) The Luxembourgish authorities confirm that if the beneficiary receives aid on several occasions under the measures 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 points 22(a) of that framework (EUR 800 000 per single undertaking), shall be respected. Luxembourg also confirms that all figures used are gross, that is, before any deduction of tax or other charge.

(37) The benefits of the measures cannot be cumulated: undertakings having benefitted from the Solidarity Fund scheme are excluded from the Retail Shop scheme, and vice versa.

2.9. Monitoring and reporting

(38) 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 measures on the comprehensive national State aid website or Commission’s IT tool within 12 months from the moment of granting\(^{26}\)).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

(40) 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.

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The measures are imputable to the State, since they are administered by the Ministries of the government of Luxembourg indicated in recitals (12) and (13) and based on the national legislative acts indicated in recitals (10) and (11). The measures are financed through State resources: the Retail Shop scheme is financed by the general budget of Luxembourg; the Solidarity Fund scheme is financed by the Solidarity Fund, which is partly financed by the general budget of Luxembourg and partly funded by private voluntary contributions but administered and controlled by public authorities (see recital (14)).

The measures confer an advantage on their beneficiaries in the form of direct grants. The measures thus relieve those beneficiaries of costs, which they would have had to bear under normal market conditions.

The advantage granted by the measures is selective, since it is awarded only to certain undertakings, in particular to those operating in sectors particularly affected by the COVID-19 outbreak, and which fulfil the eligibility conditions listed in recitals (28)(a) to (28)(f) and (32)(a) to (32)(i).

The measures are also liable to distort competition, since they strengthen the competitive position of their beneficiaries. They also affect trade between Member States, since at least part of those beneficiaries are active in sectors in which intra-Union trade exists and the aid may make it more difficult for operators in other Member States to enter the market by maintaining local supply of the services concerned.

In view of the above, the Commission concludes that the measures constitute State aid within the meaning of Article 107(1) TFEU.

### 3.3. Compatibility

Since the measures involve State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether they are compatible with the internal market.

Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market State 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 measures aim at providing liquidity to undertakings that have experienced a significant reduction in turnover, 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 measures form part of a series of measures conceived at national level by the authorities of Luxembourg to remedy a serious disturbance in their economy. Furthermore, the measures have 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 measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meet all the conditions of the Temporary Framework. In particular:

- The aid provided under the measures takes the form of direct grants (recital (9)). The overall nominal value of direct grants under the measures does not exceed EUR 800,000 per undertaking (recital (36)); all figures used are gross, that is, before any deduction of tax or other charges (recital (36)). The measures therefore comply with point 22(a) of the Temporary Framework;

- Aid is granted on the basis of schemes with estimated budgets as indicated in recitals (14) and (15). The measures therefore comply with point 22(b) of the Temporary Framework;

- Aid will not be granted under the measures to undertakings that were already in difficulty on 31 December 2019 (recital (20)). The measures therefore comply with point 22(c) of the Temporary Framework;

- Aid will be granted no later than 31 December 2020 (recital (16)). The measures therefore comply 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 (recital (24)). The measures therefore comply with point 22(e) of the Temporary Framework.

The Luxembourgish authorities confirm that the monitoring and reporting rules laid down in Section 4 of the Temporary Framework will be respected (recital (38)). The Luxembourgish authorities further confirm that the aid granted under the measures may only be cumulated with other aid, provided the specific provisions in Section 3.1 of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recital (35) and (36)).

The Commission therefore considers that the measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since they meet all the relevant conditions of the Temporary Framework.
4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified aid schemes on the grounds that they are compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

This 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