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**Subject: State Aid SA.57617 (2020/N) – United Kingdom
COVID-19: Temporary Framework for Gibraltar authorities**

Dear Foreign Secretary,

1. PROCEDURE

- (1) By electronic notification of 22 May 2020, the United Kingdom (“UK”)¹ notified an umbrella scheme (the COVID-19 Temporary Framework for Gibraltar authorities, “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”).² The UK authorities provided additional information on 26, 29 June, 1 and 3 July 2020.

¹ Pursuant to Article 131 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, during the transition period the Commission continues having the powers conferred upon it by Article 108 TFEU and by Council Regulation (EU) 2015/1589 of 13 July 2015, laying down detailed rules for the application of Article 108 TFEU, in relation to the United Kingdom.

² 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, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3–15, and by Communication from the Commission

The Rt Hon Dominic Raab
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2. DESCRIPTION OF THE MEASURE

- (2) The UK considers that the COVID-19 outbreak has started to affect the real economy. 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.
- (3) The measure also aims at supporting COVID-19 relevant research and development (“R&D”) activities, testing and upscaling infrastructures that contribute to develop COVID-19 relevant products, as well as the production of products needed to respond to the COVID-19 outbreak. According to the UK, given the public health crisis and the shortage of certain related products, it is crucial that the State can provide incentives to companies to direct their activities to research and/or production of certain products, which are crucial to address that crisis. The UK considers that the measure contributes to address the public health crisis.
- (4) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, as interpreted by Section 2 and Sections 3.1, 3.2, and 3.3 of the Temporary Framework with regard to limited amounts of aid, guarantees on loans and subsidised interest rates for loans. With regard to aid for R&D projects, the construction or upgrade of testing infrastructures and the production of COVID-19 relevant products, the compatibility assessment is based on Article 107(3)(c) TFEU, as interpreted by Sections 3.6, 3.7 and 3.8 of the Temporary Framework.

2.1. The nature and form of aid

- (5) The measure provides aid in the form of:
 - (a) direct grants, repayable advances and tax advantages (Section 2.7.1 of this decision);
 - (b) guarantees on loans (Section 2.7.2 of this decision);
 - (c) subsidised interest rates for loans (Section 2.7.3 of this decision);
 - (d) guarantees and loans channelled through credit institutions or other financial institutions (Sections 2.7.2 and 2.7.3 of this decision);
 - (e) direct grants, repayable advances or tax advantages for COVID-19 relevant R&D (Section 2.7.4 of this decision); and
 - (f) direct grants, tax advantages, repayable advances, and/or loss cover guarantees to support investment into testing and upscaling infrastructures (Section 2.7.5 of this decision) and the production of COVID-19 relevant products (Section 2.7.6 of this decision).

C(2020) 4509 final of 29 June 2020 on the 3rd Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3–8.

2.2. Legal basis

- (6) The legal bases for the measure are (i) the Gibraltar Constitution order 2006³, (ii) the Appropriation Act 2019⁴, and (iii) the Public Finance (Control and Audit) Act⁵.

2.3. Administration of the measure

- (7) The measure is a Gibraltar-wide scheme, allowing aid to be granted by all relevant aid awarding authorities. These include public bodies or other bodies administering schemes imputable to the State which provide financial assistance from their budgets within the limits of their spending powers⁶ (“Gibraltar granting authorities”).

2.4. Budget and duration of the measure

- (8) The estimated overall budget of the measure is GBP 100 million⁷. The UK authorities estimated that approximately GBP 25 million⁸ will be granted in the form of limited amounts of aid (Section 2.7.1) and no more than GBP 24 million⁹ in nominal amounts will be guaranteed under the measure (Section 2.7.2). The aid will be financed through public resources from the Gibraltar granting authorities’ budgets.
- (9) Aid may be granted under the measure as from its approval until no later than 31 December 2020¹⁰.

2.5. Beneficiaries

- (10) The final beneficiaries of the measure are SMEs and large enterprises¹¹ in Gibraltar. However, financial institutions are excluded as eligible final beneficiaries. As the measure is mainly aimed at benefitting Gibraltar’s real economy and in particular businesses that have been mostly affected by the COVID-19 outbreak, the UK authorities confirmed that only undertakings having their operations in Gibraltar¹²,

³ <https://www.gibraltarlaws.gov.gi/papers/gibraltar-constitution-order-2006-6>.

⁴ <https://www.gibraltarlaws.gov.gi/legislations/appropriation-act-2019-4634>.

⁵ <https://www.gibraltarlaws.gov.gi/legislations/public-finance-control-and-audit-act-1065>.

⁶ As set out in the acts recalled in recital (6).

⁷ Approx. EUR 110.71 million. Exchange rate 22.06.2020 GBP 1 = EUR 1.1071.

⁸ Approx. EUR 27.67 million. Exchange rate 22.06.2020 GBP 1 = EUR 1.1071.

⁹ Approx. EUR 26.57 million. Exchange rate 22.06.2020 GBP 1 = EUR 1.1071.

¹⁰ The tax liability in relation to which the aid is granted must have arisen no later than 31.12.2020, in line with footnote 17 of the Temporary Framework.

¹¹ 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.

¹² As far as aid under Sections 2.7.1, 2.7.2 and 2.7.3 of this decision is concerned, this includes for instance undertakings operating in the tourism and leisure, restaurant, and retail sectors.

with the exclusion of off shore companies, holding companies and personal investment companies with no operations in Gibraltar, will be eligible to receive aid.

- (11) 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”)¹³ on 31 December 2019. Aid under Sections 2.7.1 and 2.7.2 of this decision may also be granted, in derogation to this rule, to micro and small enterprises¹⁴ that were already in difficulty on 31 December 2019 provided that they are not subject to collective insolvency procedure under national law, and that they have not received rescue aid (or if they did, have reimbursed the loan or terminated the guarantee at the moment of granting of the aid) or restructuring aid (or if they did, they are no longer subject to a restructuring plan at the moment of granting of the aid).
- (12) Aid is granted under the measure either directly or, as concerns aid in form of guarantees and subsidised interest rates for loans, through credit institutions and other financial institutions as financial intermediaries.

2.6. Sectoral and regional scope of the measure

- (13) The measure is open to all sectors except the financial, agriculture and fishery and aquaculture sectors. It applies to the territory of Gibraltar only.

2.7. Basic elements of the measure

2.7.1. Limited amounts of aid

- (14) As a part of the measure, the Gibraltar granting authorities will be able to grant limited amounts of aid in the form of direct grants or tax or payments advantages to undertakings that find themselves facing a sudden shortage or unavailability of liquidity.
- (15) The aid shall not exceed EUR 800 000 per undertaking. All figures used must be gross, that is, before any deduction of tax or other charge.
- (16) The aid granted to undertakings active in the processing and marketing of agricultural products¹⁵ 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) Aid under this section of the measure will not be granted to undertakings that were already in difficulty within the meaning of the GBER on 31 December 2019. In

¹³ As defined in Article 2(18) of 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.

¹⁴ 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.

¹⁵ As defined in Article 2(6) and Article 2(7) of Commission Regulation (EC) 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 on the Functioning of the European Union, OJ L 193, 1.7.2014, p. 1.

derogation to this rule, micro and small enterprises¹⁶ that were already in difficulty on 31 December 2019 may be eligible, provided that they are not subject to collective insolvency procedure under national law, and that they have not received rescue aid (or if they did, have reimbursed the loan or terminated the guarantee at the moment of granting of the aid) or restructuring aid (or if they did, they are no longer subject to a restructuring plan at the moment of granting of the aid).

2.7.2. Aid in the form of guarantees on loans

- (18) The UK authorities will set a guarantee premium in accordance with point 25(a) of the Temporary Framework. The amount of the guarantee premium will be determined by the total duration of the loan and the category of borrower (SME or Large Enterprise). Guarantee premiums under the existing aid scheme will be set at a minimum level as follows:

| Type of recipient | Credit risk margin for the 1 st year | Credit risk margin for the 2 nd and 3 rd years | Credit risk margin for the 4 th to 6 th years |
|-------------------|---|--|---|
| SMEs | 25bps | 50bps | 100bps |
| Large enterprises | 50bps | 100bps | 200bps |

- (19) All loans to which the guarantees may apply will be new loans agreed by 31 December 2020 at the latest. Borrowers will have the benefit of any such guarantees, and therefore aid will be granted, by 31 December 2020 at the latest.
- (20) For loans with a maturity beyond 31 December 2020, the amount of the individual loan principal per beneficiary will not exceed the limits set out in point 25(d) of the Temporary Framework. The UK authorities confirm that the option 25(d)iii, related to the beneficiary's liquidity needs based on self-certification and assessed on a case-by-case basis, is intended to apply in situations where an eligible undertaking can justify why the limits provided under the other ceilings are not appropriate proxies to forecast their liquidity needs in the next months. In this light, the UK authorities submit that they will resort to this alternative especially in relation to undertakings which are new or in the early stage of their development, in high cash burn stage of its business development, etc. Borrowers will be required to self-certify and provide appropriate justification for their liquidity needs in accordance with point 25(d)(iii), which will be assessed by the lenders.
- (21) The duration of the guarantee will be limited to maximum six years, and the public guarantee will not exceed 90% of the loan principal where losses are sustained proportionally and under the same conditions by the credit institution and the State. When the size of the loan decreases over time, for instance because the loan starts to be reimbursed, the guaranteed amount must decrease proportionally.

¹⁶ 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.

- (22) The guarantee shall relate to investment and/or working capital loans.
- (23) The guarantee will not be granted to undertakings that were in difficulty (within the meaning of the GBER) on 31 December 2019; it may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak. In accordance with point 25(h)bis of the Temporary Framework, the guarantee may be granted, in derogation to this rule, to micro and small enterprises¹⁷ that were already in difficulty on 31 December 2019 provided that they are not subject to collective insolvency procedure under national law, and that they have not received rescue aid (or if they did, have reimbursed the loan or terminated the guarantee at the moment of granting of the aid) or restructuring aid (or if they did, they are no longer subject to a restructuring plan at the moment of granting of the aid).
- (24) The mobilisation of the guarantee is contractually linked to specific conditions, which will be agreed between the parties when the guarantee is initially granted.
- (25) Safeguards for banks to channel State aid in the form of guarantee on loans to the real economy¹⁸, will be a combination of the following measures:
- i. Competition – Borrowers will be able to choose which of the eligible lenders they borrow from and are free to approach different lenders to find the lowest borrowing costs. In the local Gibraltar market there are only three “High Street Bank” lenders all with the same level of guarantee. Lenders will be strongly incentivised to compete to offer borrowers the most attractive terms to win borrowers’ business and all banks will be eligible as potential lenders;
 - ii. Business terms - The relevant financial intermediary will be required to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates;
 - iii. Legal agreements - The agreement between the public authorities in Gibraltar and the lenders will be explicit that lenders are expected to reflect the lower risk profile of lending under the guarantees in the costs charged to borrowers. In particular, the guarantee legal agreements will legally oblige lenders to demonstrate to the aid grantor that the costs they charge take into account the guarantee;
 - iv. Audit, verification and remediation – The aid grantor will audit the lenders’ pricing models to ensure that the benefit of the guarantee has been factored into the lenders’ pricing models. They will also test a sample of loans during the audit to ensure that the benefit of the guarantee has been passed through to the pricing of the loan. If, following an audit, the aid grantor considers that a

¹⁷ 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.

¹⁸ Reference is made to undertakings having their operations in Gibraltar, with the exclusion of off shore companies, holding companies and personal investment companies with no operations in Gibraltar. Please see recital 10.

lender has not been adequately reflecting the benefit of the guarantee in the costs charged to borrowers, the aid grantor will require the lender to pay funds over to the disadvantaged borrowers;

- v. Reporting – the granting authorities will require that the financial intermediaries provide the reporting of all transactions with the final beneficiaries, with indication of the interest rate that the institution would have applied without the guarantee and the interest rate applied.

2.7.3. *Aid in the form of subsidised interest rates for loans*

- (26) Loans may be granted at reduced interest rates which are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission¹⁹) applicable on 1 January 2020 plus the credit risk margins set out in the table in point 27(a) of the Temporary Framework. For loans to SMEs, the minimum all-in interest rate (base rate plus the credit risk margins) will be at least 10bps per year.
- (27) Loan contracts under the measure will be signed by 31 December 2020 at the latest and are limited to maximum six years.
- (28) For loans with a maturity beyond 31 December 2020, the overall amount of the loan per beneficiary shall not exceed the limits set out in point 27(d) of the Temporary Framework. The UK authorities confirm that the option 27(d)iii, related to the beneficiary's liquidity needs based on self-certification and assessed on a case-by-case basis, is intended to apply in situations where an eligible undertaking can justify why the limits provided under the other ceilings are not appropriate proxies to forecast their liquidity needs in the next months. In this light, the UK authorities submit that they will resort to this alternative especially in relation to undertakings which are new or in the early stage of their development, in high cash burn stage of its business development, etc. For loans with a maturity until 31 December 2020, the amount of the loan principal will also respect the limits set out in point 27(d) of the Temporary Framework.
- (29) Loans under the measure may relate to both investment and working capital needs.
- (30) The loan may be granted to undertakings that were not in difficulty (within the meaning of the GBER) on 31 December 2019; it may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak.
- (31) Safeguards for banks to channel State aid in the form of guarantee on loans to the real economy²⁰, will be a combination of the following measures:
 - i. Competition – Borrowers will be able to choose which of the eligible lenders they borrow from and to approach different lenders to find the lowest

¹⁹ Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.01.2008, p.6.) and published on the website of DG Competition at https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html.

²⁰ Reference is made to undertakings having their operations in Gibraltar, with the exclusion of off shore companies, holding companies and personal investment companies with no operations in Gibraltar. Please see recital 10.

borrowing costs. As explained in recital (25), lenders would be strongly incentivised to compete to offer borrowers the most attractive terms;

- ii. Business terms - The relevant financial intermediary will be required to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, or lower interest rates than without such loans. In particular, the relevant financial intermediary will be required to demonstrate that it operates a mechanism that ensures lower interest rates;
- iii. Legal agreements - The terms of the agreement between the Gibraltar granting authorities and the lenders will legally oblige lenders to demonstrate to the aid grantor that the costs they charge take into account the subsidised interest rates applied;
- iv. Audit, verification and remediation – The aid grantor will audit lenders’ pricing models to ensure that the benefit of subsidised interest rates has been factored into lenders’ models. They would also test a sample of loans during the audit to ensure that the benefit of the subsidised interest rates has been passed through to the pricing of the loan made available to the borrower. If, following an audit, the aid grantor considers that a lender has not been adequately reflecting the benefit of the subsidised interest rates in the costs charged to borrowers or overcharged, the aid grantor will require the lender to pay;
- v. Reporting – the Gibraltar granting authorities will require that the financial intermediaries provide the reporting of all transactions with the final beneficiaries, with indication of the interest rate that the institution would have applied without the subsidised interest rate.

2.7.4. Aid for COVID-19 relevant R&D

- (32) As a part of the measure, the UK authorities plan to provide aid to undertakings operating in Gibraltar to support COVID-19 and other antiviral relevant R&D, although they expect this section of the measure to be of limited application given Gibraltar’s size and technical expertise.
- (33) This section of the measure covers COVID-19 and other antiviral relevant R&D, including research into vaccines, medicinal products and treatments, medical devices and hospital and medical equipment, disinfectants, and protective clothing and equipment, and into relevant process innovations for an efficient production of the required products.
- (34) The UK authorities confirmed that projects having received a COVID-19-specific Seal of Excellence quality label under the Horizon 2020 SME-instrument would be eligible for aid. Aid for these projects will be deemed to have an incentive effect.

- (35) The following R&D stages are eligible for support under the measure: fundamental research, industrial research, and experimental development²¹. Furthermore, the measure supports clinical trials (phases I-IV) and the efforts for obtaining patents and conformity assessments or necessary authorisations.
- (36) Projects will be eligible if a written application for the aid has been submitted before the start of the activity or works or if they started after 1 February 2020. Projects started before 1 February 2020 will also be eligible where the purpose of the aid is to accelerate already on-going works or to widen the scope of an on-going R&D project. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope will be eligible.
- (37) Aid for R&D projects under this section of the measure can be granted in the form of direct grants, repayable advances or tax advantages.
- (38) Only costs directly related to and necessary for the R&D project during its duration and the subsequent IPR protection, clinical trial (phases I-IV), and regulatory procedures, are eligible. These may include, for instance:
- (a) costs for digital and computing equipment and services;
 - (b) costs for obtaining, validating and defending patents and other intangible assets;
 - (c) costs incurred for obtaining the conformity assessments and/or authorisations necessary for the marketing of new and improved vaccines and medicinal products, medical devices, hospital and medical equipment, disinfectants, and personal protective equipment; and
 - (d) costs for pre-clinical and clinical trials (trial phases I-IV). Costs for phase-IV trials are eligible as long as they allow further scientific or technological advance.
- (39) Costs of assets (instruments, equipment, etc.) that are not used for the full duration of the R&D project and/or are used for other purposes than the R&D projects covered by this section of the measure, will be taken into account only *pro rata* (i.e., depreciation over the period of duration of the R&D project if applicable or *pro rata* of the capacity used for the R&D project).
- (40) The maximum allowable aid intensity by category of research is 100% of eligible costs for fundamental research and 80% of eligible costs for industrial research and experimental development. In the case of projects that consist of different work packages falling under fundamental research and industrial research/experimental development, the aid intensity for industrial research and experimental development will be applied, if the majority of costs incurred do not arise from work packages that fall under the category of fundamental research.
- (41) The aid intensity for industrial research and experimental development can be increased by 15 percentage points, if besides the UK, at least one Member State

²¹ As defined in Article 2(84), (85) and (86) of 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.

supports the research project, or it is carried out in cross-border collaboration with research organisations or other undertakings.

- (42) Aid for COVID-19 relevant R&D can be combined with support from other sources for the same costs, provided the combined aid intensity does not exceed the ceilings for the different R&D categories set out in recitals (40) and (41) above.
- (43) Under the measure, aid for R&D projects is granted subject to the condition that the beneficiary commits to grant non-exclusive licences under non-discriminatory market conditions to third parties in the EEA and in Gibraltar.
- (44) No aid will be granted under the measure to undertakings carrying out contract research on behalf of other undertakings.

2.7.5. *Investment aid for testing and upscaling infrastructures*

- (45) Although the UK authorities consider its application to be limited given Gibraltar's size and technical expertise, the measure provides for the possibility to grant investment aid for the construction or upgrade of testing and upscaling infrastructures required to develop, test and upscale, up to first industrial deployment prior to mass production, COVID-19 relevant products. These include medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials; medical devices and hospital and medical equipment (including ventilators and 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; as well as data collection/processing tools.
- (46) The eligible infrastructure will be operated by the aid beneficiary.
- (47) Aid may be granted under this section of the measure in the form of direct grants, tax advantages or repayable advances, and/or loss cover guarantees.
- (48) Projects will be eligible if a written application for the aid has been submitted before works on the construction or upgrade of the infrastructure start or if they started after 1 February 2020. Projects started before 1 February 2020 will also be eligible where the purpose of the aid is to accelerate already on-going works or to widen the scope of an on-going project. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope will be eligible.
- (49) The investment project shall be completed within four months after introduction of the aid application. An investment project will be considered completed when it is accepted by the aid granting authorities as completed. Where the four-month deadline is not met, per month of delay, 25% of the amount of aid awarded in form of direct grants and tax advantages will need to be reimbursed, unless the delay is due to factors outside the control of the aid beneficiary. Where the deadline is respected, aid in the form of repayable advances is transformed into grants; if not, the repayable advance is reimbursed in equal annual instalments within five years after the date of the aid application.
- (50) Eligible costs will be the investment costs necessary to set up or upgrade the testing and upscaling infrastructures. Assets (equipment, buildings, land, etc.) that are not used for the full lifetime of the infrastructure are taken into account only *pro rata* (i.e.

depreciation over the lifetime, if applicable or pro rata of the capacity used for the infrastructure).

- (51) The aid intensity under this section of the measure will not exceed 60% of the eligible costs.
- (52) The maximum allowable aid intensity of the direct grant or tax advantage may be increased by an additional 15 percentage points, either if the investment is concluded within two months after the date of aid granting or date of application of the tax advantage, or if the support comes from at least one Member State in addition to the UK. If the aid is granted in form of a repayable advance, and the investment is completed within two months, or if the support comes from at least one Member State besides the UK, an additional 15 percentage points can be granted.
- (53) The Gibraltar granting authorities may grant a loss cover guarantee in addition to a direct grant, tax advantage or repayable advance, or as an independent aid measure. The loss cover guarantee will be issued within one month after the undertaking has applied for it.
- (54) The amount of loss to be compensated is established five years after completion of the investment. The compensation amount is calculated as the difference between the sum of investment costs, reasonable profit of 10% p.a. on the investment cost over five years, and operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project, on the other.
- (55) Aid under this section of the measure cannot be combined with other investment aid for the same eligible costs.
- (56) The testing and upscaling infrastructures will be open to, and serve, several users based on transparent and non-discriminatory conditions. Preferential access under more favourable conditions can exceptionally be granted to undertakings, which have financed at least 10% of the investment costs.
- (57) The price charged for the services provided by the testing and upscaling infrastructure will correspond to the market price.

2.7.6. Investment aid for the production of COVID-19 relevant products

- (58) Although the application is considered to be limited given Gibraltar's size and technical expertise, under the measure the UK authorities may grant investment aid for the production of COVID-19 relevant products. These include COVID-19 relevant vaccines, medical products and treatments, medical devices and hospital and medical equipment, disinfectants and protective clothing and equipment, active pharmaceutical ingredients and active substances used for disinfectants, intermediary products, and raw chemical materials necessary for their production, diagnostic tools, as well as data collection/processing tools.
- (59) The aid can be granted under this section of the measure in the form of direct grants, tax advantages or repayable advances, and in addition a loss cover guarantee.
- (60) Projects will be eligible provided that a written application for the aid has been submitted before the start of works on the project or if they started after 1 February 2020. Projects started before 1 February 2020 will be eligible where the purpose of the application is to accelerate already on-going works or to widen the scope of an on-

going project. In such cases, only the additional costs in relation to the accelerating efforts or the widened scope will be eligible.

- (61) The investment project will need to be completed within four months after the aid application. An investment project is considered completed when it is accepted by the aid granting authorities as completed. Where the four-month deadline is not met, per month of delay, 25% of the amount of aid awarded in form of direct grants and tax advantages will be reimbursed, unless the delay is due to factors outside the control of the aid beneficiary. Where the deadline is respected, aid in the form of repayable advances is transformed into grants; if not, the repayable advance is reimbursed in equal annual instalments within five years after the date of the aid application.
- (62) Eligible costs under this section of the measure are all investment costs necessary for the production of COVID-19 relevant products, including those listed in recital (58) above, and costs of trial runs of the new production facilities.
- (63) The aid intensity of the direct investment grant, tax advantage or the amount of the repayable advance does not exceed 75% of the eligible costs.
- (64) The maximum allowable aid intensity of the direct grant or tax advantage may be increased by an additional 15 percentage points, either if the investment is concluded within two months after the date of the aid granting or the date of application of the tax advantage, or if the support comes from at least one Member State in addition to the UK. If the aid is granted in the form of a repayable advance, and the investment is completed within two months or if the support comes from at least one Member State besides the UK, an additional 15 percentage points may be granted.
- (65) Aid under this section of the measure cannot be combined with other investment aid for the same eligible costs.
- (66) The Gibraltar granting authorities may grant a loss cover guarantee in addition to a direct grant, tax advantage or repayable advance, or as an independent aid measure. The loss cover guarantee will be issued within one month after the undertaking has applied for it.
- (67) The amount of loss to be compensated is established five years after completion of the investment. The compensation amount is calculated as the difference between sum of investment costs, reasonable profit of 10% p.a. on the investment cost over five years, and operating cost on the one hand, and the sum of the direct grant received, revenues over the five year period, and the terminal value of the project, on the other.

2.8. Cumulation

- (68) The UK authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulation²² or the GBER²³ provided the provisions and cumulation rules of those Regulations are respected.
- (69) The UK authorities confirm that aid granted under the measure in accordance with a specific section of the Temporary Framework may be cumulated with aid granted under the same or other measures approved by the Commission in accordance with other sections of the Temporary Framework, provided the provisions in those specific sections are respected.
- (70) With regard to aid granted in accordance with section 2.7.1 of this decision, the UK 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 points 22(a) of that framework, shall be respected.
- (71) With regard to aid granted in accordance with section 2.7.2 and 2.7.3 of this decision, the UK authorities confirm that aid granted under Section 3.2 of the Temporary Framework shall not be cumulated with aid granted for the same underlying loan principal under Section 3.3 of that framework and vice versa. Aid granted under Section 3.2 and Section 3.3 may be cumulated for different loans provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) or in point 27(d) of the Temporary Framework.
- (72) A beneficiary may benefit in parallel from multiple schemes under Section 3.2 and Section 3.3 of the Temporary Framework provided the overall amount of loans per beneficiary does not exceed the ceilings set out in point 25(d) and 27(d) and (e) of the Temporary Framework.
- (73) The UK authorities also confirm that aid granted in accordance with Section 2.7.4 of this decision may be combined with support from other sources for the same eligible costs, provided the total amount of combined aid does not exceed the aid ceilings approved in this Decision.
- (74) The UK authorities confirm that aid granted in accordance with Sections 2.7.5 and 2.7.6 of this decision shall not be combined with other investment aid for the same eligible costs.

2.9. Monitoring and reporting

- (75) The UK authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (including the

²² 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) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114 of 26.4.2012, p. 8).

²³ 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.

obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting²⁴).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (77) 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.
- (78) The measure is imputable to the State, since it is administered by the Gibraltar granting authorities, as defined in recital (7), and it is based on the legislative acts listed in recital (6). It is financed through State resources, since it is financed by funds of the Gibraltar granting authorities' budgets (recital (8)).
- (79) The measure confers an advantage on its beneficiaries in the forms of direct grants, repayable advances or tax advantages (recitals (14), (37), (47) and (59)), non-market conform guarantees on loans (recital (18)), and subsidised interest rates (recital (26)). The measure thus relieves those beneficiaries of costs, which they would have had to bear under normal market conditions.
- (80) The advantage granted by the measure is selective, since it is awarded only to certain undertakings and excludes the financial, agriculture, fishery and aquaculture sectors.
- (81) 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 may be active in sectors in which intra-Union trade exists.
- (82) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The UK authorities do not contest that conclusion.

3.3. Compatibility

- (83) 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.

²⁴ 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, subordinated debt 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.

3.3.1. *Compatibility assessment under Article 107(3)(b) TFEU of aid in the form of limited amounts of aid, guarantees and interest rate subsidies*

- (84) 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”*.
- (85) 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”*.
- (86) The measure aims at providing liquidity to affected undertakings and facilitating their access to external finance 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.
- (87) The measure is one of a series of measures conceived by the UK authorities to remedy a serious disturbance in their economy. The importance of the measure to stimulate lending by private banks to enterprises during the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid described in Sections 3.1, 3.2, and 3.3 of the Temporary Framework and the requirements for aid in the form of guarantees and loans channelled through credit institutions or other financial institutions described in Section 3.4 of the Temporary Framework.
- (88) The Commission accordingly considers that aid granted in accordance with Sections 2.7.1, 2.7.2 and 2.7.3 of this decision 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:

3.3.1.1. Limited amounts of aid

- The aid can take the form of direct grants or tax or payments advantages (recital (14)).
- The overall nominal value of the aid cannot exceed EUR 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (15)). 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 (8). 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, with the exception indicated in the next

bullet point (recital (11)). The measure therefore complies with point 22(c) of the Temporary Framework.

- Micro and small enterprises²⁵ that were already in difficulty on 31 December 2019 are eligible as beneficiaries, provided that they are not subject to collective insolvency procedure under national law, and that they have not received rescue aid (or if they did, have reimbursed the loan or terminated the guarantee at the moment of granting of the aid) or restructuring aid (or if they did, they are no longer subject to a restructuring plan at the moment of granting of the aid) (recital (17)). The measure therefore complies with point 22(c)bis of the Temporary Framework.
- Aid will be granted under the measure no later than 31 December 2020. For aid in form of tax advantages, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2020 (recital (9)). The measure therefore complies with point 22(d) of the Temporary Framework.
- Aid granted to undertakings active in the processing and marketing of agricultural products are excluded when the aid is conditional on being 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 (16)). The measure therefore complies with point 22(e) of the Temporary Framework.

3.3.1.2. Aid in the form of guarantees on loans

- The amount of the guarantee premium will be determined by the total duration of the loan and the category of borrower (SME or large enterprise) as stipulated in point 25(a) of the Temporary Framework (recital (18)). The measure therefore complies with point 25(a) of the Temporary Framework.
- Guarantees may be granted under the measure by 31 December 2020 at the latest (recital (19)). The measure therefore complies with point 25(c) of the Temporary Framework.
- For loans with a maturity beyond 31 December 2020, the maximum loan amount per beneficiary covered by guarantees granted under the measure is limited in line with point 25(d) of the Temporary Framework (recital (20)). More specifically, the Commission considers that the reference to the liquidity needs under point 25(d)(iii) of the Temporary Framework is justified in the present case, since it is intended to apply where an eligible undertaking, given its specific situation, can certify why the limits provided under the ceilings of points 25(d)(i) and 25(d)(ii) of the Temporary Framework are not appropriate (recital (20)). The scheme includes a maximum ceiling that is linked to the beneficiary's declared liquidity needs, which will be verified during the application. Moreover, such ceiling provides administrative simplification in the current urgent circumstances, in order to disburse effectively the aid and is

²⁵ 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.

linked to specific categories of beneficiaries. The UK authorities have therefore appropriately justified the use of this alternative option to define the maximum loan amounts. The measure therefore complies with point 25(d) of the Temporary Framework.

- The measure limits the duration of the guarantees to a maximum of six years (recital (21)). Those guarantees cover 90% of the loan principal and losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the State (recital (21)). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital (21)). The measure therefore complies with point 25(f) of the Temporary Framework.
- Guarantees granted under the measure relate to investment and working capital loans (recital (22)). The measure therefore complies with point 25(g) of the Temporary Framework.
- Undertakings already in difficulty on 31 December 2019) are excluded from benefitting from the measure, with the exception indicated in the next bullet point (recital (23)). The measure therefore complies with point 25(h) of the Temporary Framework.
- In derogation from the above, micro and small enterprises²⁶ that were already in difficulty on 31 December 2019 are eligible as beneficiaries, provided that they are not subject to collective insolvency procedure under national law, and that they have not received rescue aid (or if they did, have reimbursed the loan or terminated the guarantee at the moment of granting of the aid) or restructuring aid (or if they did, they are no longer subject to a restructuring plan at the moment of granting of the aid) (recital (23)). The measure therefore complies with point 25(h)bis of the Temporary Framework.
- The measure notified by the UK meets all the conditions provided for by Section 3.4 of the Temporary Framework for aid in the form of guarantees channelled through credit institutions or other financial institutions. In particular, the measure complies with point 31 of the Temporary Framework, which requires that the financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on, to the largest extent possible, to the final beneficiaries. As explained by the UK authorities, the pass through will be achieved through:
 - a) lower interest rates and fees charged to borrowers. In particular competition between the eligible lenders for originating loans guaranteed under the measure will incentivise the banks to offer attractive terms to the borrowers (recital (25));
 - b) a contractual obligation on lenders to demonstrate that the costs they charge take into account the guarantee, subject to audits by the public authority to ensure that lenders' pricing models achieve this aim. If an audit

²⁶ 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.

shows that a lender has not been adequately reflected the benefit of the guarantee in the costs it charged to borrowers, the lender will be required to pay a compensation to the disadvantaged borrowers (recital (25)).

- The cumulation rules set out in point 24bis of the Temporary Framework are respected (recitals (71) and (72)).
- The mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (24)).

3.3.1.3. Aid in the form of subsidised interest rates for loans

- The applicable interest rates for loans granted under the measure are equal to the base rate (1 year IBOR or equivalent as published by the Commission)²⁷ applicable on 1 January 2020 plus a credit margin as set out in the table in point 27(a) of the Temporary Framework, differentiating SMEs and for large enterprises (recital (26)). The measure therefore complies with point 27(a) of the Temporary Framework.
- The loan contracts will be signed by 31 December 2020 at the latest and are limited to a maximum of six years (recital (27)). The measure therefore complies with point 27(c) of the Temporary Framework.
- For loans with a maturity beyond 31 December 2020, the maximum loan amount per beneficiary is limited in line with point 27(d) of the Temporary Framework (recital (28)). More specifically, the Commission considers that the reference to the liquidity needs under point 27(d)(iii) of the Temporary Framework is justified in the present case, since it is intended to apply in situations where an eligible undertaking, given its specific situation, can certify why the limits provided under the ceilings of points 27(d)(i) and 27(d)(ii) of the Temporary Framework are not appropriate (recital (28)). The scheme includes a maximum ceiling that is linked to the beneficiary's declared liquidity needs, which will be verified during the application. Moreover, such ceiling provides administrative simplification in the current urgent circumstances, in order to disburse effectively the aid and is linked to specific categories of beneficiaries. The UK authorities have therefore appropriately justified the use of this alternative option to define the maximum loan amounts. The measure therefore complies with point 27(d) of the Temporary Framework. For loans with a maturity until 31 December 2020, the maximum amount as described in point 27(d) of the Temporary Framework will also be applied (recital (28)).
- Loans granted under the measure relate to investment and working capital needs (recital (29)). The measure therefore complies with point 27(f) of the Temporary Framework.

²⁷ Base rates calculated in accordance with Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6).

- Undertakings already in difficulty on 31 December 2019 are excluded from benefitting from the measure (recital (30)). The measure therefore complies with point 27(g) of the Temporary Framework.
- The cumulation rules set out in point 26bis of the Temporary Framework are respected (see recitals (71) and (72)).
- The measure notified by the UK meets all the conditions provided for by Section 3.4 of the Temporary Framework for aid in the form of subsidised loans channelled through credit institutions or other financial institutions. In particular, the measure complies with point 31 of the Temporary Framework, which requires that the financial intermediary must be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on, to the largest extent possible, to the final beneficiaries. As explained by the UK authorities, the pass through will be achieved through:
 - a) lower interest rates and fees charged to borrowers. In particular, competition between the eligible lenders for originating subsidised loans under the measure will incentivise the banks to offer attractive terms to the borrowers (recital (31));
 - b) a contractual obligation on lenders to demonstrate that the costs they charge take into account the subsidised interest rates, subject to audits by the public authority to ensure that lenders' pricing models achieve this aim. If an audit shows that a lender has not adequately reflected the benefit of the guarantee in the costs it charged to borrowers, the lender will be required to pay a compensation to the disadvantaged borrowers (recital (31)).

3.3.1.4. Cumulation, monitoring and reporting obligations

- (89) The UK authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (75)). The UK 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 (68) to (72)).

3.3.1.5. Conclusion on compatibility under Article 107(3)(b) TFEU

- (90) The Commission therefore considers that aid granted in accordance with Sections 2.7.1, 2.7.2 and 2.7.3 of this decision 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.

3.3.2. *Compatibility assessment under Article 107(3)(c) TFEU of aid for COVID-19 relevant R&D, testing and upscaling infrastructures and the production of COVID-19 relevant products*

- (91) 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*”.
- (92) 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 enhancing and accelerating COVID-19 relevant research, testing and upscaling, and 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 (“Aid for COVID-19 relevant research and development”, “Investment aid for testing and upscaling of infrastructure” and “Investment aid for the production of COVID-19 relevant products”) described in Sections 3.6, 3.7 and 3.8 of the Temporary Framework.
- (93) The Commission accordingly considers that aid granted in accordance with Sections 2.7.4, 2.7.5 and 2.7.6 of this decision contributes to the achievement of a common objective of crucial importance, is appropriate and necessary to address the health crisis. In particular:

3.3.2.1. Aid for COVID-19 relevant R&D

- Aid granted under the measure is limited to the eligible research areas listed in point 35 of the Temporary Framework (recitals (33) and (35)).
- Aid can be granted under the measure in the form of direct grants, tax advantages or repayable advances (recital (37)). The measure therefore complies with point 35(a) of the Temporary Framework.
- For R&D projects started as of 1 February 2020 and for projects having received a COVID-19-specific Seal of Excellence, aid granted under the measure is deemed to have an incentive effect; for R&D projects started before 1 February 2020, 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 (recitals (34) and (36)). The measure therefore complies with point 35(b) of the Temporary Framework.
- Eligible costs are defined under the measure in accordance with point 35(c) of the Temporary Framework (recital (38)). All costs necessary for the duration of the R&D aided project are eligible for aid under the measure. For projects started before 1 February 2020, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid under the measure, in line with point 35(b) of the Temporary Framework (recital (36)).

- The aid intensity for each beneficiary may cover 100% of eligible costs for fundamental research²⁸ and shall not exceed 80% of eligible costs for industrial research²⁹ and experimental development³⁰. The measure therefore complies with point 35(d) of the Temporary Framework (recital (40)). The cooperation/collaboration bonus shall not exceed 15 percentage points and its grant is limited in accordance with the conditions laid down by point 35(e) of the Temporary Framework (recital (41)).
- Aid granted under the measure may be combined with support from other sources for the same eligible costs, provided the total combined amount of aid does not exceed the aid ceilings laid down in points 35(d) and (e) of the Temporary Framework (recital (73)).
- Beneficiaries of aid under the measure shall commit to grant non-exclusive licences under market conditions to third parties in other EEA states (recital (43)). The measure therefore complies with point 35(g) of the Temporary Framework.
- Aid may not be granted under the measure to undertakings that were already in difficulty on 31 December 2019 (recital (11)). The measure therefore complies with point 35(h) of the Temporary Framework.

3.3.2.2. Investment aid for testing and upscaling infrastructures

- Aid granted under the measure is limited to the construction or upgrade of testing and upscaling infrastructures required to develop, test and upscale, up to the first industrial deployment prior to mass production, COVID-19 relevant products listed in point 37(a) of the Temporary Framework (recital (45)).
- Aid can be granted under the measure in the form of direct grants, tax advantages, repayable advances and/or loss cover guarantees (recital (47)). The measure therefore complies with point 37(b) and (h) of the Temporary Framework; if the investment is finalised within four months after introduction of the aid application, aid in the form of repayable advances will be transformed into grants in accordance with point 39(d) of the Temporary Framework (recital (49)).
- For investment projects started as of 1 February 2020, aid granted under the measure is deemed to have an incentive effect; for projects started before 1 February 2020, 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

²⁸ As defined in paragraph (84) of Article 2 of 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.

²⁹ As defined in paragraph (85) of Article 2 of 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.

³⁰ As defined in paragraph (86) of Article 2 of 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.

project (recital (48)). The measure therefore complies with point 37(c) of the Temporary Framework.

- The costs eligible for aid under the measure are the investment costs necessary for setting up the testing and upscaling infrastructures required to develop the products listed in point 37(a) of the framework (recitals (45) and (50)). The measure therefore complies with point 37(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 37(c) of the Temporary Framework (recital (48)).
- The aid intensity does not exceed 75% of the eligible costs and is indeed limited to maximum 60% of the eligible costs (recital (61)). The measure therefore complies with point 37(e) of the Temporary Framework. A bonus of up to 15 percentage points may be granted under the conditions laid down in point 37(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 (52)).
- The cumulation of the aid granted under the measure with other investment aid for the same costs is not permitted (recital (74)). The measure therefore complies with point 37(g) of the Temporary Framework.
- Investment projects must be completed within four months after the introduction of the application for the investment aid. If this deadline is not respected, the beneficiary of the measure 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 (49)); if 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 (49)). The measure therefore complies with point 37(d) of the Temporary Framework, as the four-month deadline (to be counted from the aid application) under the measure is shorter than the six-month deadline (to be counted from the granting of the aid) established under the mentioned point.
- Loss cover guarantees will be issued under the measure within one month after they were applied for. The amount of loss to be compensated is established five years after the completion of the investment. The compensation amount is calculated as the difference between the sum of the investment costs, a reasonable profit of 10% p.a. on the investment costs over five years, and operating costs, on the one hand, and the sum of the direct grant received, the revenues recorded over the five year period, and the terminal value of the project, on the other (recitals (53) and (54)). The measure therefore complies with point 37(h) of the Temporary Framework.
- The prices charged for the services provided by the testing and upscaling infrastructure will correspond to the market price (recital (57)). The measure therefore complies with point 37(i) of the Temporary Framework;
- The testing and upscaling infrastructures will be open, and access will be granted to several users on a transparent and non-discriminatory basis (recital (56)). Undertakings that have financed at least 10% of the investment costs may

be granted preferential access under more favourable conditions (recital (56)). The measure therefore complies with point 37(j) of the Temporary Framework.

- Aid may not be granted under the measure to undertakings that were already in difficulty on 31 December 2019 (recital (11)). The measure therefore complies with point 37(k) of the Temporary Framework.

3.3.2.3. Investment aid for the production of COVID-19 relevant products

- 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 (recital (58)).
- Aid is granted under the measure in the form of direct grant, tax advantages, repayable advance and/or loss coverage guarantees (recital (59)). The measure complies with point 39(b) and (h) of the Temporary Framework. If the investment is finalised within four months after introduction of the aid application, aid in the form of repayable advances will be transformed into grants in accordance with point 39(d) of the Temporary Framework (recital (61)).
- 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 (60)). The measure therefore complies with point 39(d) 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 (62)). 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 (recital (60)).
- The aid intensity does not exceed 80% of the eligible costs and is indeed limited to 75% of the eligible costs (recital (63)). 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 (64)).
- The cumulation of the aid granted under the measure with other investment aid for the same costs is not permitted (recital (74)). The measure therefore complies with point 39(g) of the Temporary Framework.
- Eligible investment projects must be completed within four months after the introduction of the aid application for 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 (61)); if 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 (61)). The measure therefore complies with point 39(d) of the Temporary Framework, as this four-month deadline under the measure (to be counted from the aid application) is shorter than the six-month deadline (to be counted from the granting of the aid) established under the mentioned point.

- Loss cover guarantees shall be issued within one month after they were applied for. The amount of loss to be compensated is established five years after the completion of the investment. The compensation amount shall be calculated as the difference between the sum of the investment costs, a reasonable profit of 10% p.a. on the investment costs over five years, and the operating costs, on the one hand, and the sum of the direct grant received, the revenues recorded over the five year period, and the terminal value of the project, on the other (recitals (66) and (67)). The measure therefore complies with point 39(h) of the Temporary Framework.
- Aid may not be granted under the measure to undertakings that were already in difficulty on 31 December 2019 (recital (11)). The measure therefore complies with point 35(i) of the Temporary Framework

3.3.2.4. Cumulation, monitoring and reporting obligations

- (94) The UK authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (75)). The UK 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 (68), (69), (73) and (74)).

3.3.2.5. Conclusion on compatibility under Article 107(3)(c) TFEU

- (95) In the light of the elements above, the Commission considers that aid granted in accordance with Sections 2.7.4, 2.7.5 and 2.7.6 of this decision 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. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU

- (96) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (“BRRD”)³¹ in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of the BRRD.

³¹ OJ L 173, 12.6.2014, p. 190-348.

- (97) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.³² Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Article 2(1) No 28 BRRD.
- (98) Moreover, as indicated in recitals (25) and (31) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.
- (99) The Commission therefore concludes that the measure does not violate any intrinsically linked provisions of the BRRD.

5. CONCLUSION

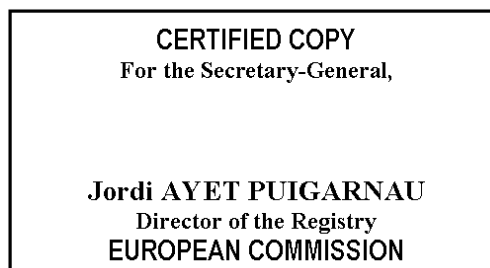
The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) and Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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



³² Points 6 and 29 of the Temporary Framework.