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**Subject: State Aid SA.57075 (2020/N) – Malta
R&D Fund under the Temporary Framework for State aid measures
to support the economy in the current COVID-19 outbreak**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 20 April 2020, Malta notified aid in the form of direct grants to be paid out under the COVID-19 R&D Fund - National Rules for Participation (“the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).¹
- (2) The Maltese authorities confirm that the notification does not contain confidential information.
- (3) Malta exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958,² and to have this Decision adopted and notified in English.

¹ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9, as amended on 3 April 2020 (C(2020) 2215), OJ C 112I, 4.4.2020, p. 1-9.

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

Hon. Evarist BARTOLO
Minister for Foreign Affairs and Trade Promotion
Palazzo Parisio
Merchants Street
Valletta, VLT 1171
Malta

2. DESCRIPTION OF THE MEASURE

- (4) Malta considers that the COVID-19 outbreak, apart from having an impact on human health, is also having a significant economic impact on its economy. To gain a better understanding of the newly identified virus, as well as to ensure innovative and improved approaches to possible future outbreaks and pandemics, the Malta Council for Science and Technology (“MCST”) in collaboration with Malta Enterprise has set up a national scheme to:
- (a) target innovative solutions to the current COVID-19 outbreak;
 - (b) draw on lessons learnt from the COVID-19 outbreak;
 - (c) develop foresight tools and methodologies.
- (5) The measure is expressly based on Article 107(3)(c) TFEU, as interpreted by Section 3.6 of the Temporary Framework.

2.1. The nature and form of aid

- (6) The measure provides aid in the form of direct grants for COVID-19 and other antiviral relevant research and development (“R&D”) projects.

2.2. National legal basis

- (7) The legal basis for the measure is the Charter of the Foundation for Science and Technology³ and the COVID-19 R&D Fund – National Rules for Participation – State Aid (the “Rules for Participation”).

2.3. Administration of the measure

- (8) The MCST, for and on behalf of the Foundation for Science and Technology and in collaboration with Malta Enterprise Corporation, is responsible for administering the measure.
- (9) The MCST is a public body established by the central government in 1988 with the mandate of advising the government on science and technology policy, whose Members are appointed by the Prime Minister. It presently falls under the remit of the Parliamentary Secretariat for Financial Services and Digital Economy within the Ministry for Finance and Financial Services. Malta Enterprise is the national development agency responsible for promoting and facilitating international investment and supporting enterprise in Malta.

2.4. Budget and duration of the measure

- (10) According to the Maltese authorities, no more than EUR 5 300 000 in aid will be granted under the measure. The scheme will be funded through the general budget.

³ <https://mcst.gov.mt/>

- (11) Aid may be granted under the measure as from its approval by the Commission until 31 December 2020.

2.5. Beneficiaries

- (12) The final beneficiaries of the measure are all undertakings, including public entities⁴ and irrespective of their size, that have an operating base in Malta and intend to carry out R&D projects on COVID-19 and other antiviral relevant research. According to the Rules for Participants, an entity having an operating base in Malta is any legal entity that owns, leases, or has been given the right of use by a third party, adequate premises from which to conduct an eligible economic activity in the region of Malta, employs at least one person that is based in Malta and is liable to pay income tax in Malta.
- (13) Aid may be granted under the measure only to undertakings that were not already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”), the Agricultural Block Exemption Regulation (“ABER”) or the Fisheries Block Exemption Regulation (“FBER”), as applicable,⁵ on 31 December 2019.

2.6. Sectoral and regional scope of the measure

- (14) The measure is open to all sectors. It applies to the whole territory of Malta.

2.7. Basic elements of the measure

- (15) Pursuant to the Rules for Participation, the measure supports COVID-19 relevant research into:
- (a) relevant medicinal products (including vaccines) and treatments, their intermediates, active pharmaceutical ingredients and raw materials; medical devices, 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;
 - (b) data collection and processing tools related to innovative and/or improved approaches with regard to current and/or future infectious disease prevention;
 - (c) trajectory of the epidemic/pandemic disease;

⁴ According to the Rules for Participation, public entity partners are to follow Public Procurement Regulations in their entirety.

⁵ As defined in Article 2(18) of the 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, Article 2(14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1, and Article 3(5) of the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

- (d) applications aimed at better dissemination of recommendations by national (Public Health) and/or international health authorities (World Health Organisation);
 - (e) any other research related to infectious diseases that can lead to human epidemics.
- (16) To be eligible for aid under the measure, projects must have a direct link to the COVID-19 outbreak. The outcome of the project should not only address the challenges surrounding the current COVID-19 outbreak, but also any future waves of COVID-19. In addition, projects may concern other antiviral relevant research, since lessons learnt from COVID-19 research may be applied to propose solutions to overcome future challenges. To ensure that projects funded under the measure have a solid link to research on COVID-19, the managing authority will include appropriate measures and criteria in the evaluation process for the selection of the successful proposals, which will be conducted by a technical committee to be set up by the MCST.
- (17) The following R&D stages are supported under the measure: fundamental research, industrial research, and experimental development⁶. Furthermore, the measure supports clinical trials (phases I-IV) and the efforts for obtaining patents and conformity assessments or necessary authorisations.
- (18) The following cost components are eligible for aid under the measure (Section 4 of the Rules for Participation):
- a) personnel costs;
 - b) costs of instruments and specialised equipment, including costs of digital and computing equipment;
 - c) costs of contractual research and other relevant research services, including costs for digital and computing services;
 - d) knowledge and patents bought or licensed from outside sources in arm's length transactions;
 - e) other operating expenses, e.g. R&D materials and supplies/consumables;
 - f) additional overhead costs incurred directly as a result of the R&D project;
 - g) costs for pre-clinical and clinical trials (trial phases I-IV);
 - h) costs for obtaining, validating and defending patents and other intangible assets;
 - i) 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.
- (19) Only costs directly related to and necessary for the R&D project and the subsequent IPR protection, clinical trial (phases I-IV), and regulatory procedures,

⁶ As defined in paragraph (84), (85) and (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.

are eligible for aid under the measure. The Maltese authorities confirmed that 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 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).

- (20) The Maltese authorities confirmed that costs related to phase-IV trials are eligible as long as they allow further scientific or technological advance.
- (21) The measure covers projects started after 1 February 2020. Projects started before 1 February 2020 are also eligible for aid under the measure, provided the aid is needed to accelerate the project's implementation or to extend its scope. In these cases, only the additional costs in relation to the acceleration efforts or the widened scope are eligible for aid under the measure.
- (22) All undertakings carrying out relevant independent research are eligible for the aid. Undertakings carrying out contractual research on behalf of other undertakings are not eligible for aid under the measure.
- (23) The maximum allowable aid intensity by category of research, is 100% for fundamental research and 80% for industrial research and experimental development. In the case of aided projects that consist of different work packages which fall 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.
- (24) Pursuant to Section 4 of the Rules for Participation, the aid intensity for industrial research and experimental development may be increased by 15 percentage points, if it is carried out in cross-border collaboration with research organisations or other undertakings.
- (25) Pursuant to Section 4 of the Rules for Participation, aid is granted subject to the condition that the aid beneficiary commits to grant non-exclusive licences under non-discriminatory market conditions to third parties in the EEA.
- (26) Eligible applicants will be granted aid for their R&D project subject to an open call. Support will be granted following an assessment of the eligibility of the applicant and R&D project, until exhaustion of funds.
- (27) The Maltese authorities confirm that individual grants of aid under the measure will be granted by 31 December 2020 for projects started between 1 February 2020 (or before, if the aid is needed to accelerate their implementation or extend their scope) and 31 December 2020.

2.8. Cumulation

- (28) The aid ceilings and cumulation maxima fixed under the measure shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.

- (29) Aid granted under the measure may be cumulated with *de minimis* aid and/or with aid under the GBER provided that the provisions of the relevant Regulations will be respected.
- (30) Furthermore, aid granted under different Sections of the Temporary Framework may be cumulated with each other, with the exception of aid granted for the same eligible costs under Sections 3.6, 3.7 and 3.8 of the Temporary Framework.
- (31) The Maltese authorities confirmed that aid for COVID-19 relevant R&D projects may be cumulated with support from other sources for the same eligible costs provided the combined aid does not exceed the ceilings laid down in points 35 (d) and (e) of the Temporary Framework.

2.9. Monitoring and reporting

- (32) The Maltese authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework and in the Transparency Communication, including the obligation to publish relevant information on each individual aid granted under Temporary Framework on the comprehensive State aid website within 12 months from the moment of granting.⁷

3. ASSESSMENT

3.1. Existence of State aid

- (33) 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.
- (34) The measure is imputable to the State, since it is administered by the MCST, for and on behalf of the Foundation for Science and Technology and in collaboration with Malta Enterprise Corporation, and it is based on the Charter of the Foundation for Science and Technology (adopted by the Maltese government) and the Rules for Participation (set out by the MCST in collaboration with Malta Enterprise). It is financed through State resources, since it is financed by public funds of the State general budget.
- (35) The measure confers an advantage on its beneficiaries in the form of direct grants. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (36) The advantage granted by the measure is selective, since it is awarded only to certain undertakings selected within those research-intensive undertakings eligible for support under the scheme.

⁷ The information will be available at the following link:
<https://eufunds.gov.mt/en/SAMB/Pages/SAMBHome.aspx>.

- (37) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-EU trade exists.
- (38) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Maltese authorities do not contest that conclusion.

3.1. Legality of the measure

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

3.2. Compatibility

- (40) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (41) Pursuant to Article 107(3)(c) TFEU the Commission may declare compatible with the internal market *“aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”*.
- (42) By adopting the Temporary Framework on 19 March 2020, as amended on 3 April 2020, the Commission acknowledged the need to take specific temporary measures enabling Member States to combat the health crisis caused by the COVID-19 outbreak. The measure aims at enhancing and accelerating COVID-19 relevant R&D. It has been designed to meet the requirements of the specific category of aid described in section 3.6 of the Temporary Framework (“Aid for COVID-19 relevant research and development”).
- (43) The Commission accordingly considers that the measure contributes to the achievement of a common objective, is appropriate and necessary to fight the current health crisis.
- (44) In particular, the scheme meets all the conditions of Section 3.6 of the Temporary Framework, namely:
- R&D aid under the measure is limited to the eligible research areas that are listed in point 35 of the Temporary Framework (recitals (15) and (16)).
 - In accordance with point 35(a) of the Temporary Framework, aid is granted under the measure in the form of direct grants by 31 December 2020 (recital (6)).
 - Projects started as from 1 February 2020 are eligible for aid under the measure, as are projects started before 1 February 2020 provided the aid is necessary to accelerate or widen the scope of the project (recital (21)). The measure therefore complies with point 35(b) of the Temporary Framework.
 - Eligible costs under the measure are defined in accordance with point 35 (c) of the Temporary Framework (recitals (18) to (20)). Costs necessary for the duration of the R&D project are eligible for aid under the measure. For projects started before 1 February 2020, only the costs incurred after the date

of the aid application in relation to the acceleration efforts or the widened scope of the project are eligible for aid under the measure, as required by point 35 (b) of the Temporary Framework (recital (21)).

- The overall aid intensities under the measure are defined in accordance with point 35 (d) of the Temporary Framework (recital (23)). The cooperation/collaboration bonus shall not exceed 15 percentage points, and its grant is limited in accordance with point 35(e) of the Temporary Framework (recital (24)).
- In the case of cumulation with other aid for the same costs, the cumulation ceilings laid down in point 35(d), (e) and (f) of the Temporary Framework will not be exceeded. Moreover, aid cannot be cumulated with aid for the same costs under Sections 3.7 and 3.8 of the Temporary Framework as outlined in point 20 of the Temporary Framework (recitals (28) to (31)).
- In accordance with point 35 (g) of the Temporary Framework, beneficiaries of the aid under the measure must commit to grant non-exclusive licences under market conditions to third parties in other EEA states (recital (25)).
- Aid will not be granted to undertakings that were already in difficulty on 31 December 2019 (recital (13)). The measure therefore complies with point 35(h) of the Temporary Framework.

4. CONCLUSION

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

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President