EUROPEAN COMMISSION

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PUBLIC VERSION
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Subject: State Aid SA.58061 (2020/N), SA.58062 (2020/N) and SA.58063 (2020/N) – Luxembourg
Modification of SA.57338, SA.57304, SA.57305 and SA.56742; Amendment to SA.57305 COVID-19: Luxembourg Investment aid for certain sectors; and Amendments to SA.56742 Scheme for enterprises in temporary financial difficulties due to COVID-19

Excellency,

1. PROCEDURE

(1) By separate electronic notifications of 16 July 2020, Luxembourg notified amendments to four schemes (“existing schemes”) approved by the Commission under Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”), as interpreted by the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)1:


Son Excellence Monsieur Jean ASSELBORN
Ministre des Affaires Etrangères
Rue Notre-Dame 5
L - 2911 Luxembourg
(a) SA.57338 – Aid for commercial shops affected by the COVID-19 outbreak;

(b) SA.57304 – Luxembourgish solidarity fund for undertakings affected by the COVID-19 outbreak;

(c) SA.57305 – COVID-19: Luxembourg Investment aid for certain sectors;

(d) SA.56742 – Scheme for enterprises in temporary financial difficulties due to COVID-19.

(2) By notification registered under SA.58061 (2020/N), Luxembourg notified two identical modifications of the above-mentioned existing schemes (Section 2.1 of this decision).

(3) By notification registered under SA.58062 (2020/N), Luxembourg notified a further amendment to the existing aid scheme SA.57305 – COVID-19: Luxembourg Investment aid for certain sectors (Section 2.2 of this decision).

(4) Finally, by notification registered under SA.58063 (2020/N), Luxembourg notified three further amendments to the existing aid scheme SA.56742 – Scheme for enterprises in temporary financial difficulties due to COVID-19 (Section 2.3 of this decision).

(5) Additional information in relation to the above-mentioned notifications was provided on 24 and 28 July 2020.

(6) By the present decision, the Commission intends to assess the compatibility of the above-mentioned notified amendments, as further described in Sections 2.1, 2.2 and 2.3 of this decision.

(7) Luxembourg exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958 and to have this decision adopted and notified in English.

2. DESCRIPTION OF THE PROPOSED AMENDMENTS

2.1. Amendments to SA.57338, SA.57304, SA.57305 and SA.56742

(8) The Temporary Framework provides that aid may be granted to micro or small enterprises that were already in difficulty on 31 December 2019, provided that at

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2 Commission decision C(2020) 3629 final, SA.57338, 29.05.2020.
3 Commission decision C(2020) 3629 final, SA.57304, 29.05.2020.
6 Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.
7 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 moment of the granting, these enterprises are not subject to collective insolvency procedure under national law, and have not received rescue aid⁸ or restructuring aid⁹.

(9) The Temporary Framework, following its latest amendment, mandates that granting authorities publish on the comprehensive State aid website or Commission’s IT tool relevant information on individual aid above EUR 100 000 within 12 months from the moment of granting.

(10) Luxembourg plans to modify the existing aid schemes to take account of the amendments to the Temporary Framework referred to in recitals (6) and (7).

2.2. Amendment to SA.57305 – COVID-19: Investment aid for certain sectors

(11) The Luxembourgish authorities also notified, as indicated in recital (3), their intention to further modify the existing aid scheme SA.57305 – COVID-19: Investment aid for certain sectors. In particular, this existing aid scheme required for an undertaking to be eligible to receive State aid under that measure that it demonstrated to have suffered, as a result of the COVID-19 outbreak, a loss of turnover of at least 15% in April and May 2020 when compared to the same period of 2019¹⁰. Following the notified amendment, to qualify as beneficiaries under the scheme, undertakings will need to demonstrate a loss of turnover of at least 15% in the months of April, May and June 2020, compared to the same period of 2019.

2.3. Amendments to SA.56742 – Scheme for enterprises in temporary financial difficulties due to COVID-19

(12) As explained in recital (4), Luxembourg notified its plans to introduce three amendments to the existing aid scheme SA.56742 – Scheme for enterprises in temporary financial difficulties due to COVID-19, in addition to those already described in Section 2.1. These concern:

(a) The prolongation of the duration of the scheme until 31 December 2020 (instead of 30 September 2020, as approved in the initial decision¹¹). The last date until which individual aid may be granted under the notified measure will therefore be 31 December 2020;

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⁸ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

⁹ Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.


(b) The extension of the deadline to apply for aid until 1 December 2020 (instead of 15 August 2020, as provided in the initial decision\(^\text{12}\)); and

(c) The increase in the overall maximum amount of aid per single undertaking from EUR 500 000\(^\text{13}\) to EUR 800 000.

(13) The Luxembourgish authorities confirmed that the granting of aid under the existing aid schemes is not conditioned on the relocation of a production (or other) activity of the beneficiary from another country within the European Economic Area (“EEA”) to the territory of Luxembourg, and this irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(14) The Luxembourgish authorities also confirmed that the modifications described in Sections 2.1, 2.2 and 2.3 will only be put into effect after the Commission’s approval.

3. ASSESSMENT

3.1. Lawfulness of the measures

(15) By notifying the modifications to the existing aid schemes before putting them into effect, the Luxembourgish authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(16) 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.

(17) The measures concerned constitute State aid within the meaning of Article 107(1) TFEU for the reasons explained in the initial decisions concerning the schemes referred to in letters (a) to (d) of recital (1)\(^\text{14}\). The notified amendments do not affect the Commission’s assessment of the existence of State aid contained in those decisions. Therefore, the Commission refers to the respective assessments in the aforementioned decisions\(^\text{15}\) and concludes that the schemes, as modified, constitute State aid within the meaning of Article 107(1) TFEU.

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\(^{13}\) See recital (13) of Commission decision C(2020) 1913 final, SA.56742, 24.3.2020.

\(^{14}\) See recitals (40) to (45) of Commission decision of 29.05.2020 in cases SA.57338 and SA.57304, recitals (35) to (40) of Commission decision of 20.05.2020 in case SA.57305, recitals (19) to (22) of Commission decision of 24.3.2020 in case SA.56742.

\(^{15}\) See recitals (40) to (45) of Commission decision of 29.05.2020 in cases SA.57338 and SA.57304, recitals (35) to (40) of Commission decision of 20.05.2020 in case SA.57305, recitals (19) to (22) of Commission decision of 24.3.2020 in case SA.56742.
3.3. Compatibility

(18) The Commission assessed the compatibility with the internal market of the schemes listed under letters (a) to (d) of recital (1) on the basis of Article 107(3)(b) TFEU, as interpreted by Sections 2 and 3.1 of the Temporary Framework, and concluded that they were necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, since they met all the relevant conditions of the Temporary Framework.

(19) The Commission refers to its compatibility assessment contained in the initial decisions concerning the existing aid schemes.

(20) In addition, with regard to the modifications described in Section 2.1, the Commission considers, as explained in the Third Amendment to the Temporary Framework, that micro and small undertakings have been particularly affected during the current crisis by the liquidity shortage caused by the economic impact of the COVID-19 outbreak. The unprecedented supply and demand shock due to the crisis has also exacerbated the difficulties such undertakings face to access financing on the market in general, as compared to medium-sized and large enterprises. Given their limited size and limited involvement in cross-border transactions, it is therefore less likely that State aid granted to these enterprises would distort competition in the internal market and affect intra-EU trade than State aid granted to medium-sized and large companies. This holds true even if these enterprises were to fall under the category of an undertaking in financial difficulty already on 31 December 2019, as long as they are not subject to a collective insolvency procedure under national law and have not received rescue aid (which has not been repaid) or restructuring aid (and are still subject to a restructuring plan).

(21) The Commission also notes that following the introduction of the Third Amendment, the Temporary Framework requires Member States to publish relevant information on each individual aid exceeding EUR 100 000 granted under that Framework on the comprehensive State aid website or Commission’s IT tool within 12 months from the moment of granting.

(22) In light of points 22(c)bis and 86 of the Temporary Framework, the Commission considers that the notified modifications described in Section 2.1 to each of the existing aid schemes listed in recital (1) meet the conditions of the Temporary Framework and do not affect the compatibility analysis as set out in the initial decisions.

(23) As concerns the proposed amendment to the existing aid scheme SA.57305 – COVID-19: Luxembourg Investment aid for certain sectors, described in recital

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16 See recitals (46) to (53) of Commission decision of 29.05.2020 in cases SA.57338 and SA.57304, recitals (41) to (48) of Commission decision of 20.05.2020 in case SA.57305, recitals (23) to (30) of Commission decision of 24.3.2020 in case SA.56742.

17 Third Amendment of the Temporary Framework, OJ C 218, 2.7.2020, p. 3, points 5 and 6.

18 Third Amendment of the Temporary Framework, OJ C 218, 2.7.2020, p. 3, point 22.

19 The Temporary Framework provides a different threshold for the agriculture and fisheries sectors (EUR 10 000), which, however, are not concerned by the schemes covered by the present decision.
(11) of this decision, the Commission considers that it constitutes a tightening of
the eligibility conditions set out in the initial scheme, as approved by the
Commission in its initial decision of 20 May 2020. Therefore, the Commission
takes the view that the compatibility assessment contained in that decision is not
affected by the notified amendment.

(24) With regard to the proposed amendments to the existing aid scheme SA.56742 –
Scheme for enterprises in temporary financial difficulties due to COVID-19
referred to in recital (12), the Commission considers that the envisaged changes
are in line with the requirements of section 3.1 of the Temporary Framework. In
particular:

• The prolongation of the duration of the scheme is in line with paragraph
22(d) of the Temporary Framework, which provides that aid shall be
granted no later than 31 December 2020 (recital (12)(a) and (b)); and

• The proposed increase in the maximum aid amount does not exceed the
maximum nominal amount of EUR 800 000 per undertaking (all figures
used being gross, i.e. before any deduction of tax or other charge) as laid
down in point 22(a) of the Temporary Framework (recital (12)(c)).

(25) The Commission therefore considers that the amendments do not alter the
compatibility assessment of the scheme made in the initial decision of 24 March
2020.

(26) Finally, the Commission notes that the schemes, as amended, comply with point
16ter of the Temporary Framework, as the granting of aid under those measures is
not conditioned on the relocation of a production activity or of another activity of
the beneficiary from another country within the EEA to the territory of the
Member State granting the aid (recital (13)).

4. CONCLUSION

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

The decision is based on non-confidential information and is therefore published in full
Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION