EUROPEAN COMMISSION

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PUBLIC VERSION

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Subject: **State aid SA.58202 (2020/N) – Hungary**
**COVID-19: COVID-19 related research, development and production support scheme**

Excellency,

## 1. PROCEDURE

(1) By electronic notification of 31 July 2020, Hungary notified an aid scheme supporting COVID-19 related research and development ("R&D") and investments into production capacities for relevant products ("the measure") under sections 3.6 and 3.8 of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended ("the Temporary Framework")[1]. By emails of 3 August 2020 and 5 August 2020, Hungary submitted complementary information.

(2) Hungary 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, OJ C 91I, 20.3.2020, p. 1, 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,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 and by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of 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.

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

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## 2. DESCRIPTION OF THE MEASURE

(3) The measure is composed of two sub-measures and aims at supporting (1) COVID-19 relevant R&D activities, as well as (2) investments to create capacities for the production of products needed to respond to the COVID-19 outbreak. According to Hungary, 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 production of certain products which are crucial to address that crisis. Hungary considers that the measure contributes to address the public health crisis.

(4) Hungary confirmed that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the European Economic Area ("EEA") to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(5) The compatibility assessment of the measure is based on Article 107(3)(c) of the TFEU, as interpreted by Sections 3.6 and 3.8 of the Temporary Framework.

### 2.1. Nature and form of aid

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

### 2.2. National legal basis

(7) The legal basis for the measure is the Decree of Ministry of Finance 8/2020 of 31 July 2020 on the amendment to the Decree of Ministry of Finance 9/2018 of 19 October 2018 on the utilisation and management of the appropriations under the budget heading of the Ministry of Finance[3].

### 2.3. Administration of the measure

(8) The Ministry of Finance is responsible for administering the measure.

### 2.4. Budget and duration of the measure

(9) The estimated budget of the measure is HUF 50 billion (around EUR 143 million).

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

[3] "*A pénzügyminiszter 8/2020. (VII. 31.) PM rendelete a fejezeti kezelésű előirányzatok kezeléséről és felhasználásáról szóló 9/2018. (X. 19.) PM rendeletnek az egészségügyi ellátásbiztonság javítását célzó támogatási program szabályaival összefüggő módosításáról*".

### 2.5. Beneficiaries

(11) The measure is open to all sectors, for undertakings that are able to engage in COVID-19 relevant research and development or production of COVID-19 relevant products, irrespective of their sector of activity. The measure is not open to undertakings that are active in the primary agriculture, fishery or aquaculture sectors or credit and financial institutions. The scheme is available for enterprises whose annual average statistical headcount, including their linked enterprises, is between 10 and 4999 employees, and have at least three closed financial years. The number estimated of beneficiaries will be between 25 and 125.

(12) Aid may not be granted under the measure to medium[4] and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[5] on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid[6] or restructuring aid[7].

### 2.6. Sectoral and regional scope of the measure

(13) The measure is open to all sectors except the primary agriculture, fishery and aquaculture sectors and the financial sector. The measure applies to the whole territory of Hungary.

### 2.7. Basic elements of the measure

#### *2.7.1. Sub-measure "Aid for COVID-19 relevant research and development"*

(14) This aid is granted to any R&D project relating to the fight against the COVID-19 virus, which includes but is not limited to 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. Furthermore, the aid may support clinical trials, efforts for obtaining, validating and defending patents and other intangible assets, and for obtaining the conformity assessments and/or authorisations necessary for the marketing of the above-mentioned products. Hungary specified that R&D projects having received a COVID-19-specific "Seal of Excellence" quality label under the Horizon 2020 SME instrument are eligible also for the aid.

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4 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, 26.6.2014, p. 1.

5 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, 26.6.2014, p. 1.

6 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.

7 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.

(15) The aid is granted in the form of direct grants by 31 December 2020.

(16) For projects started as of 1 February 2020, the aid is deemed to have an incentive effect. For projects started before 1 February 2020, the aid is deemed to have an incentive effect, if the aid is necessary to accelerate their implementation or to extend their scope. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid.

(17) Only costs directly related to and necessary for the R&D project during its duration and the subsequent intellectual property protection, clinical trial and regulatory procedures are eligible for aid.

(18) The aid intensity for each beneficiary may cover 100% of eligible costs for fundamental research[8] and shall not exceed 80% of eligible costs for industrial research and experimental development[9].

(19) If the aided projects 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.

(20) The aid intensity for industrial research and experimental development may be increased by 15 percentage points, if more than one Member State supports the research project, or it is carried out in cross-border collaboration with research organisations or other undertakings.

(21) The aid granted under the sub-measure cannot be granted to undertakings solely carrying out contract research on behalf of other undertakings.

(22) The following costs are eligible under the sub-measure:

a) personnel costs;

b) costs of instruments and equipment, including costs for digital and computing equipment;

c) costs of buildings for the duration of the R&D project;

d) cost of contractual research and other relevant research services, including costs for digital and computing services;

e) costs of knowledge and patents bought or licensed from outside sources in arm's length transactions;

f) other operating expenses, e.g. the costs of materials;

g) additional overheads incurred directly as a result of the R&D project;

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8 The term “fundamental research” is defined in paragraph (84) of Article 2 of the GBER

9 The terms “industrial research” and “experimental development” are defined in paragraphs (85) and (86) of Article 2 of the GBER.

h) costs for obtaining, validating and defending patents and other intangible assets;

i) costs incurred to obtain conformity assessments and/or authorizations necessary for the marketing of new and improved vaccines and drugs, medical devices, hospital and medical equipment, disinfectants and personal protective equipment;

j) costs of preclinical and clinical trials (Trial Phases I to IV).

(23) The costs related to Phase IV trials are eligible provided they allow for scientific and technological advance.

(24) The assets (instruments, equipment, etc.) which are not used for the entire duration of the R&D project and/or are used for purposes other than the R&D projects covered by the measure are only taken into account on a *pro rata* basis (depreciation over period of duration of R&D project or *pro rata* of the capacity used for the R&D project).

(25) Beneficiaries of the aid undertake to grant non-exclusive licenses, under non-discriminatory market conditions, to third parties in the EEA.

#### *2.7.2. Sub-measure "Investment aid for the production of COVID-19 relevant products"*

(26) The sub-measure supports investments for the production of COVID-19 relevant products. COVID 19 relevant products are defined as medications necessary for the treatment of coronavirus patients, medical devices and equipment, and also vaccines for the prevention of coronavirus infections, including active ingredients, raw materials and intermediary products; medical, hospital and diagnostic tools required for the treatment of those infected with the coronavirus, including raw materials for the production of such tools; disinfectants necessary to prevent the spread of the coronavirus, including the raw chemical materials for their production; data collection/processing tools designed to prevent the spread of the coronavirus.

(27) The aid is granted in the form of direct grants, by 31 December 2020.

(28) For projects started as of 1 February 2020, the aid is deemed to have an incentive effect. For projects started before 1 February 2020, the aid is deemed to have an incentive effect, if the aid is necessary to accelerate or widen the scope of the project. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid.

(29) The beneficiaries will be required to complete the investment project within six months from the date of granting the aid. An investment project is considered completed when it is accepted by the national authorities as completed. Where the six-month deadline is not met, per month of delay, 25% of the amount of aid is to be reimbursed, unless the delay is due to factors outside the control of the beneficiary.

(30) Eligible costs are the investment costs (cost of tangible and intangible assets, except the cost of purchase of land) necessary to create or modernise production

capacities for the production of the COVID-19 relevant products, and the costs of trial runs of the new production facilities.

(31) The aid intensity shall not exceed 80% of the eligible costs.

(32) The maximum allowable aid intensity of the direct grant 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 if the support comes from more than one Member State.

### 2.8. Cumulation

(33) The Hungarian authorities confirmed that, if aid under this measure is cumulated with *de minimis* aid[10] and/or with aid under the GBER, respectively the provisions of the relevant Regulations will be respected.

(34) The Hungarian authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.

(35) For aid for COVID-19 relevant R&D (first sub-measure), the Hungarian authorities confirm that aid granted under the measure 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.

(36) For investment aid for the production of COVID-19 relevant products (second sub-measure), the Hungarian authorities confirm that it will not be combined with other investment aid for the same eligible costs.

### 2.9. Monitoring and reporting

(37) The Hungarian authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure on the comprehensive State aid website or Commission's IT tool within 12 months from the moment of granting[11]).

## 3. ASSESSMENT

### 3.1. Lawfulness of the measure

(38) By committing not to grant aid under the notified measure before its approval, the Hungarian authorities have respected their obligations under Article 108(3) TFEU.

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[10] 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).

[11] 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.

### 3.2. Existence of State aid

(39) 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.

(40) The measure is imputable to the State, since it is administered by the Ministry of Finance and it is based on the Decree of Ministry of Finance 8/2020 of 31 July 2020 on the amendment to the Decree of Ministry of Finance 9/2018 of 19 October 2018 on the utilisation and management of the appropriations under the budget heading of the Ministry of Finance. It is financed through State resources, since it is financed by public funds.

(41) 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.

(42) The advantage granted by the measure is selective, since it will be awarded only to certain undertakings, in particular for undertakings that are able to engage in COVID-19 relevant research and development or in the production of COVID-19 relevant products, irrespective of their sector of activity, excluding the primary agriculture, fishery and aquaculture sectors, and the financial sector.

(43) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

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

### 3.3. Compatibility

(45) 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.

(46) 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*".

(47) 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 R&D 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" and "Investment aid for the production of COVID-19 relevant products") described in Sections 3.6 and 3.8 of the Temporary Framework.

(48) The Commission, accordingly, considers that the notified measure contributes to the achievement of a common objective of crucial importance, is appropriate and necessary to address the health crisis. In particular:

(49) The first sub-measure meets all the conditions provided for by Section 3.6 of the Temporary Framework for COVID-19 relevant R&D:

- Aid granted under this sub-measure is limited to the eligible research areas listed in point 35 of the Temporary Framework, as shown in recital (14) of this decision.

- Aid is granted under it in the form of direct grants and will not be granted after 31 December 2020, as shown in recital (15). The sub-measure therefore complies with point 35(a) of the Temporary Framework.

- For R&D projects started as of 1 February 2020, aid granted under the sub-measure is deemed to have an incentive effect; for R&D projects started before 1 February 2020, aid granted under the sub-measure is deemed to have an incentive effect provided the aid is necessary to accelerate or widen the scope of the project, as shown in recital (16). The sub-measure therefore complies with point 35(b) of the Temporary Framework.

- Eligible costs are defined under the sub-measure in accordance with point 35(c) of the Temporary Framework, as shown in recital (22). All costs necessary for the duration of the R&D aided project are eligible for aid under the sub-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 sub-measure, in line with point 35(b) of the Temporary Framework, as shown in recital (16).

- The aid intensity for each beneficiary may cover 100% of eligible costs for fundamental research and shall not exceed 80% of eligible costs for industrial research and experimental development. The sub-measure therefore complies with point 35(d) of the Temporary Framework, as shown in recital (18). 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, as shown in recital (20).

- Aid granted under the sub-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, as shown in recitals (33) and (35). The sub-measure therefore complies with point 35(f) of the Temporary Framework.

- Beneficiaries of aid under the sub-measure shall commit to grant non-exclusive licences under non-discriminatory market conditions to third parties in other EEA states, as shown in recital (25). The sub-measure therefore complies with point 35(g) of the Temporary Framework.

(50) The second sub-measure meets all the conditions provided for by Section 3.8 of the Temporary Framework for aid for the production of COVID-19 relevant products:

- Investment aid granted under this sub-measure is limited to the production of the COVID-19 relevant products listed in point 39(a) of the Temporary Framework, as shown in recital (26) of this decision.

- Aid is granted under this sub-measure by 31 December 2020 in the form of a direct grant, as shown in recital (27). The sub-measure thus complies with point 39(b) of the Temporary Framework.

- For investment projects started as of 1 February 2020, the aid granted under the sub-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, as shown in recital (28). The sub-measure therefore complies with point 39(c) of the Temporary Framework.

- Costs eligible for aid under the sub-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, as shown in recital (30). The sub-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, as shown in recital (28).

- The aid intensity shall not exceed 80% of the eligible costs. The sub-measure therefore complies with point 39(e) of the Temporary Framework, as shown in recital (31). 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 States), as shown in recital (32).

- The cumulation of the aid granted under the sub-measure with other investment aid for the same costs shall not be permitted, as shown in recital (36). The sub-measure therefore complies with point 39(g) of the Temporary Framework.

- Eligible investment projects must be completed within six months after the grant of the investment aid. If that 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, as shown in recital (29).

(51) The Commission notes that also the generally applicable requirements of the Temporary Framework are met, in particular:

(52) In accordance with point 20bis of the Temporary Framework, credit and financial institutions are excluded from the benefit of the measure, as shown in recital (11).

(53) The Hungarian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected, as shown in recital (37).

(54) The Hungarian authorities further confirm, as shown in recitals (35) and (36), that the aid under the measure may only be cumulated with other aid, provided, where applicable, that the specific provisions in the other sections of the Temporary Framework, respectively the cumulation rules of the relevant Regulations are respected.

(55) Aid may not be granted under the measure to medium and large undertakings that were already in difficulty on 31 December 2019, as shown in recital (12). The measure therefore complies with points 35(h) and 39(i) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to a collective insolvency procedure under national law, and they have not received rescue aid or restructuring aid (unless the rescue aid was reimbursed or the restructuring plan completed) as shown in recital (12). The measure, therefore, complies with points 35(h)bis and 39(i)bis of the Temporary Framework.

(56) Moreover, Hungary confirmed that, as shown in recital (4), in accordance with point 16ter of the Temporary Framework, the aid under the measure 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. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(57) In the light of the above elements, the Commission considers that the measure 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. 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.

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