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Subject: State Aid SA.59091 (2020/N) – Denmark
COVID-19: Limited amount of aid for suppliers of undertakings prohibited from being open and suppliers of cancelled private events

Excellency,

1. PROCEDURE

- (1) By electronic notification of 3 November 2020, Denmark notified limited amounts of aid for suppliers of undertakings prohibited from being open and suppliers of cancelled private events (“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”).¹
- (2) Denmark exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with

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, 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 and by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

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Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Denmark considers that the COVID-19 outbreak has started to affect the real economy. Following a period of strict prohibitions and containment measures adopted since March 2020, the Danish authorities have taken steps to gradually reopen the Danish society. In the context of this progressive reopening, Denmark has started, from 8 June 2020, a partial softening of the total ban prohibition in place for certain sectors to limit the effect of the Covid-19 outbreak. However, as the Covid-19 pandemic is still present, some restrictive measures have been upheld in order to continue efforts to limit the spread of the virus. The remaining Covid-19 restrictions have direct consequences on the companies affected by them, as strict Covid-19 health and safety restrictions have significant negative impact on their ability to run profitably.
- (4) Denmark had notified and amended an aid scheme³, under Article 107(2)(b) TFEU, to compensate undertakings for damages caused by temporary prohibitions and recommendations adopted by the Danish Government to contain the spread of the COVID-19, especially the total prohibition of opening for some activities and cancellation of large events.
- (5) The notified measure is presented by Denmark in reference to the initial scheme mentioned in recital (4). However, considering the changing situation, the main purpose of the notified measure differs from the initial scheme and aims to ensure that sufficient liquidity remains available for these companies facing the remaining Covid-19 restrictions. Thus, the aim is to ensure that the disruptions caused by the outbreak and the restrictive health measures do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (6) Denmark 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 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.
- (7) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

2.1. The nature and form of aid

- (8) The measure provides aid in the form of direct grants financed by the Danish State budget.

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

³ State Aid SA.57930 (2020/N) – Denmark Temporary targeted compensation scheme for companies affected by COVID-19 related prohibitions (hereafter, “the initial scheme”). Decision C(2020) 4883 final of 13 July 2020.

2.2. Legal basis

- (9) The legal basis for the measure is the Danish budget law and its implementing acts⁴.

2.3. Administration of the measure

- (10) The Danish Business Authority is responsible for administering the measure.

2.4. Duration and budget of the measure

- (11) Aid may be granted under the measure as from its approval until no later than 30 June 2021. Companies can submit an application for aid until no later than 30 April 2021. The compensation period will be from 1 September up until 31 January 2021.
- (12) The estimated budget of the measure is DKK 120 million per month (approx. EUR 16 million⁵) thus an estimated total for the period effectively covered by the scheme, i.e. from 1 September 2020 until 31 January 2021, of DKK 600 (approx. EUR 80 million).

2.5. Beneficiaries

- (13) The final beneficiaries of the measure are undertakings active in Denmark in the sectors described in recital (15), registered in the Central Business Register (CVR) as of 9 March 2020, and public entities having an economic activity, fulfilling the eligibility conditions described in recital (16) and suffering a decline in turnover⁶. There is no restriction on size of the company. The number of beneficiaries is currently estimated to be up to 1500. Financial institutions are excluded as eligible final beneficiaries.
- (14) Aid may not be granted under the measure to medium⁷ and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)⁸ on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the General Block Exemption Regulation (“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 aid⁹ or restructuring aid.¹⁰

⁴ Akstykke n°300 of 17 September 2020.

⁵ Exchange rate 02/11/2020 - DKK 1= EUR 0.134

⁶ Resulting from the relevant governmental measures during the period covered by the scheme by comparison to the same period in 2019, in line with the eligibility criterion of the initial scheme.

⁷ 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.

⁸ As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014

⁹ 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.

2.6. Sectoral and regional scope of the measure

- (15) The measure is open to all sectors. Denmark confirms however that undertakings active in the financial sector, in sectors of agriculture, fisheries and aquaculture and undertakings active in the processing and marketing of agricultural products will not be covered by the scheme. It applies to the whole territory of Denmark.

2.7. Basic elements of the measure

- (16) The notified measure targets undertakings that are indirectly affected by strict Covid-19 health and safety restrictions and need support to face the consequences of these during the period from 1 September 2020 until 31 January 2021. This concerns:
- Suppliers/contractors to companies prohibited to open, provided they can provide documentation showing their commercial link to the said companies.
 - Suppliers to private events held outside private homes: Following the announcements of a general ban on gatherings of more than 50 people made on 25 September 2020 with effect from 26 September 2020 at noon, private parties and events such as weddings had to be cancelled at very short notice: Suppliers and contractors providing e.g. food/drinks, locations, and entertainment to larger private parties and celebrations like weddings, birthdays, anniversaries etc. held outside private homes, are eligible to the scheme provided they provide documentation (contracts and/or invoices) directly related to cancelled deliveries / services to private events.
 - Companies that have discarded goods due to cancellation at short notice of private events during the weekend of 26 - 27 September 2020: As the general ban on gatherings mentioned above has been announced with effect at short notice, companies affected by the cancellation are eligible provided the goods having been discarded or donated without profit. Aid for this subcategory of beneficiaries will be limited to a maximum of DKK 250 000 in total (approx. EUR 33 000).
- (17) The aid amount is calculated as a percentage of the fixed costs borne by these undertakings during the period 1 September 2020 until 31 January 2021 (limited to 26-27 September for the third type of beneficiaries), the percentage being determined depending on the level of the turnover decline¹¹, all figures being checked by the Danish Business Authority.
- (18) The overall aid does not exceed the equivalent in DKK of EUR 800 000 under the scheme for the period of September 2020 until 31 January 2021.

¹⁰ 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.

¹¹ Along the scale provided for in recital (23) of Decision C(2020) 4883 final of 13 July 2020 in SA 57930, mentioned in footnote 6.

2.8. Cumulation

- (19) The Danish authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹² or the General Block Exemption Regulation provided the provisions and cumulation rules of those Regulations are respected.
- (20) The Danish 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.
- (21) The Danish 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, will be respected.

2.9. Monitoring and reporting

- (22) The Danish 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 national State aid website or Commission's IT tool within 12 months from the moment of granting¹³).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (24) 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.

¹² 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), 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, 26.4.2012, p. 8)

¹³ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014.

- (25) The measure is imputable to the State, since it is administered by the Danish Business Authority (recital (10)) and it is based on the budget law and its implementing orders (recital (9)). It is financed through State resources, since it is financed by public funds (recital (8)).
- (26) The measure confers an advantage on its beneficiaries in the form of grants. The measure thus relieves those beneficiaries of costs that they would have had to bear under normal market conditions.
- (27) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, the scheme excluding the agricultural, fisheries, aquaculture and financial sectors, as well as undertakings active in the processing and marketing of agricultural products (recital (15)).
- (28) 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.
- (29) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Danish authorities do not contest that conclusion.

3.3. Compatibility

- (30) 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.
- (31) 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*”.
- (32) 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*”.
- (33) The measure aims at preserving the viability of the undertakings at a time when the normal functioning of the 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.
- (34) The measure is one of a series of measures conceived at national level by the Danish authorities to remedy a serious disturbance in their economy. It has been designed to meet the requirements of a specific category of aid (“Limited amounts of aid”) described in section 3.1 of the Temporary Framework.

(35) The Commission notes in particular:

- The aid takes the form of grants (recital (8)).
The overall nominal value of the grants shall not exceed the DKK equivalent of EUR 800 000 per undertaking (recital (18)); all figures used must be gross, that is, before any deduction of tax or other charges. 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 (11). The measure therefore complies with point 22(b) of the Temporary Framework;
- Aid may not be granted under the measure to medium and large enterprises that were already in difficulty on 31 December 2019 (recital (14)). The measure therefore complies with point 22(c) 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 collective insolvency procedure under national law and they have not received rescue aid¹⁴ or restructuring aid¹⁵ (recital (14)). The measure therefore complies with point 22(c) bis of the Temporary Framework;
- Aid will be granted under the measure no later than 30 June 2021 (recital (12)). The measure therefore complies with point 22(d) of the Temporary Framework;

(36) The Danish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (22)). The Danish 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 (19) to (21)).

(37) The Commission therefore considers that the measure 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.

¹⁴ 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.

¹⁵ 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.

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)(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 on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President