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PUBLIC VERSION

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Subject: State Aid SA.59055 (2020/N) – Denmark – Amendment of Temporary targeted compensation scheme SA.57930 for companies affected by COVID 19 prohibitions (bans and cancelled events)

Excellency,

1. PROCEDURE

- (1) By electronic notification of 28 October 2020, registered by the Commission on the same day, Denmark notified an amendment to the aid scheme SA.57930 (“the initial scheme”), which the Commission approved by decision of 13 July 2020 (“the initial Decision”)¹ on the basis of Article 107(2)(b) TFEU. Denmark submitted additional information on 5 November 2020.
- (2) Denmark exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958², and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

2.1. Objective

- (3) The initial scheme was adopted to compensate undertakings directly affected by COVID-19 related restrictive measures retained during the summer period in spite of the gradual reopening of the Danish society after the containment period. The initial scheme covered the period from 9 July until 31 August 2020 as the retained

¹ Decision C(2020) 4883 final of 13 July 2020 - SA.57930 - Denmark- Temporary targeted compensation scheme for companies affected by COVID 19 prohibitions (bans and cancelled events)

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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restrictive measures prevented undertakings covered by those measures from carrying out their economic activities during that time.

- (4) The Danish authorities intend to prolong the initial scheme to compensate undertakings damage suffered by them from 1 September 2020 until 2 January 2021, since Denmark has prolonged the prohibition measures as described in recital (5) of the initial Decision until that date³. Those measures are a total prohibition of opening for some activities, and a ban on large events⁴. The undertakings concerned are therefore those still subject to a total ban (for example nightclubs, discotheques and venues designed for standing crowds) and companies suppliers for large events, i.e. contractors of organizers of such events. The Danish authorities also intend to marginally modify two elements of the initial scheme.
- (5) The general objective of the scheme remains the same, and the aid will be granted as described in recital (23) of the initial Decision, in the form of a partial coverage of the fixed costs. The scheme will cover the fixed costs related to another period from 1 September 2020 until 2 January 2021, the compensation period set by the amendment.

2.2. Legal basis

- (6) The legal basis for the notified amendment is the Danish budget law and its implementing provisions⁵.

2.3. Description of the measure

- (7) The modifications notified by the Danish authorities are:
- a) a prolongation of the scheme for the period from 1 September 2020 until 2 January 2021 (prolonging the period mentioned in recitals (6) and (9) of the initial Decision), and related adjustments:
- the decline of turnover of at least 35% for the beneficiary to be eligible is calculated for the period 1 September 2020 - 31 October 2020, then for the period 1 November 2020 – 2 January 2021 in comparison to the corresponding reference period, respectively, 1 September 2019 – 31 October 2019, and 1 November 2019 – 2 January 2020 (see recital (19) of the initial Decision);
 - beneficiaries can submit an application for compensation until no later than 30 April 2021 instead of 30 November 2020 (see recital (11) of the initial Decision).

³ The prohibition of certain activities as well as the ban on large events had been initially announced by the Danish authorities on 18 March 2020 until Mid-August for the first and 31 August 2020 for the second. On 14 August 2020 the prohibition of certain activities was prolonged until 31 August 2020. On 28 August 2020, the two measures were prolonged until 31 October 2020. The Danish authorities confirmed the last prolongation until 2 January 2021 in an announcement of 23 October 2020, see <https://coronasmitte.dk/en/events-and-gatherings>.

⁴ The events have been indirectly defined in the initial Decision in reference to events covered by another compensation scheme. See SA.56685, decision C(2020) 1698 final of 12 March 2020, and later amendments.

⁵ Aktstykk nr. 300 of 17 September 2020, Order No 1509 of 25 October 2020.

- b) a clarification applicable as of 9 July 2020, of one of the eligibility criteria for suppliers of goods and services for cancelled or postponed events: they have to document, based on contracts and invoices, that their decline of turnover is linked to the governmental measure, i.e. the ban on large events. The events were defined in the initial Decision in an indirect manner, by reference to events covered by another compensation scheme⁶ (i.e. cancelled large events). The notified adjustment clarifies that contractors or sub-suppliers can get compensation for such cancelled events, irrespective of whether the organizers are private or public entities.
 - c) an adjustment applicable as of 9 July 2020, in the list of eligible costs to be covered for an undertaking under a prohibition from being open (see recital (22) of the initial Decision), in order to include depreciation of expiring goods (e.g. beer kegs). The eligibility of such costs is dependent on the goods having been purchased before 9 March 2020, and the company's justification and documentation that it has not been able to resell them.
 - d) In line with those changes, the budget estimated in the initial Decision (recital (9)) is increased by an additional amount of DKK 530 million (approx. EUR 71 million)⁷ for the period from 1 September to 31 October 2020 and of DKK 530 million for the period from 1 November to 2 January 2021.
- (8) No further changes to the initial scheme are envisaged, including the maximum aid amount of DKK 30 million (approx. EUR 4 million) per undertaking per month⁸.

3. ASSESSMENT OF THE MEASURE

3.1. Lawfulness of the aid measure

- (9) 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 aid within the meaning of Article 107(1) TFEU

- (10) Article 107(1) TFEU defines State aid as ‘any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States’.
- (11) The qualification of the measure as State aid was established in the initial Decision and the notified amendment does not change that assessment. The Commission therefore refers, for this analysis, to recitals (32) to (38) of the initial Decision.

⁶ Benefitting only the organizers of the cancelled events. See footnote 4.

⁷ Exchange rate 27/10/2020 - DKK 1= EUR 0.134

⁸ The maximum amount of DKK 60 million (approx. EUR 8 million) mentioned in recital (34) of the initial Decision applied to the whole period covered by the decision, i.e. two months.

3.3 Compatibility assessment

- (12) The Commission has examined the scheme as modified pursuant to Article 107(2)(b) TFEU.
- (13) The Commission refers to its analysis of compatibility as set out in recitals (39) to (61) of the initial Decision.
- (14) The limited clarification of the eligibility criteria for some of the beneficiaries (see recital (7)(b)), has no impact on the compliance of the scheme with Article 107(2)(b) TFEU. It merely reflects the wish of the Danish authorities to treat suppliers of cancelled events equally, based on such cancellations and not on the private or public nature of the organizer. The amendment does not modify the requirements that for those suppliers the calculation of turnover decline is limited to that directly related to a specific event cancelled in the compensation period, based on contracts and invoices rather than on their total turnover decline during the period, which could result from other causes than the COVID-19 related measures. The assessment made in recital (51) of the initial Decision remains therefore valid.
- (15) The change in eligible costs in the list of fixed costs that can be covered for undertakings subject to a prohibition from opening (recital (7)(c)) is an adjustment without any impact on the compatibility assessment of the scheme. The measure includes safeguards that the costs are only eligible if the company can prove that it was not able to resell the products.
- (16) As for the prolongation of the scheme until 2 January 2021 (recital (7)(a)), the Commission notes that it covers a period where restrictive measures decided by Danish authorities (described in recital (5) of the initial Decision and in recital (4) of this decision) are still in place and have never been lifted, preventing certain undertakings to carry all or the greatest part of their business operations. The analysis made in the initial Decision (recitals (46) to (49)) on the direct link between the governmental measures and the losses of the Danish undertakings in the period covered, as well as the analysis concerning the proportionality of the aid, the existence of safeguards to avoid overcompensation, made in recitals (50) to (59) of the initial Decision, are therefore still valid for this prolongation.
- (17) The budget increase merely reflects the prolongation and the adjustments. Apart from the modifications referred to in recital (7) above, the Commission notes that there are no other alterations to the initial scheme (recital (8)).
- (18) The Commission therefore considers that the modifications do not affect the compatibility analysis of the initial scheme as set out in the initial Decision.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the scheme as modified on the grounds that it is compatible with the internal market pursuant to Article 107(2)(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