



EUROPEAN COMMISSION

Brussels, 24.11.2020
C(2020) 8370 final

PUBLIC VERSION

This document is made available for
information purposes only.

**Subject: State Aid SA.59322 – Luxembourg
Aid scheme for uncovered costs 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 12 November 2020, Luxembourg notified aid in the form of support for uncovered fixed costs (*Loi ayant pour objet la mise en place d'une contribution temporaire de l'État aux coûts non couverts de certaines entreprises*, the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“the Temporary Framework”).¹

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.

Jean Asselborn
Minister of Foreign and European Affairs
9, rue du Palais de Justice
L-1841 Luxembourg

- (2) Luxembourg exceptionally agrees to waive its rights deriving from Article 342 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.

2. DETAILED DESCRIPTION OF THE MEASURE:

- (3) Luxembourg considers that the COVID-19 outbreak is affecting the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (4) Luxembourg 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.
- (5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.12 of the Temporary Framework.
- (6) The objective of the measure is to provide liquidity to certain businesses, e.g. restaurants, bars, clubs, hotels, fitness studios, event organisers, etc., that continuously experience a significant loss in turnover due to the Covid-19 situation during the months from November 2020 until March 2021 (“eligible period”).

2.1. The nature and form of aid

- (7) The measure provides for aid to certain undertakings in the form of direct grants, monthly paid, to cover for the corresponding uncovered costs in view of the continuous disruption of their business operations caused by the COVID-19 outbreak.

2.2. National legal basis

- (8) The legal basis for the measure is: *Loi ayant pour objet la mise en place d’une contribution temporaire de l’État aux coûts non-couverts de certaines entreprises.*³

2.3. Administration of the measure

- (9) The Luxembourgish Ministry of Economy⁴ is responsible for implementing the measure.

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

³ “Law on the introduction of a temporary State contribution to the uncovered costs of certain undertakings”; draft law to be adopted by Luxembourgish authorities.

2.4. Budget and duration of the measure

- (10) The estimated maximum budget of the measure is EUR 120 million.
- (11) Aid may be granted under the measure as from 1 November 2020 until 31 May 2021. The aid application would have to be made by 31 May 2021 at the latest.

2.5. Beneficiaries

- (12) The beneficiaries of the measure are undertakings active in Luxembourg. Financial institutions are excluded as eligible beneficiaries.
- (13) Furthermore, any beneficiary of the measure must:
- have an authorisation of establishment in Luxembourg in line with the law of 2 September 2011 as amended⁵ regulating access to the professions of craftsmen, traders, industrialists and certain liberal professions;
 - have carried out the activity already before 15 March 2020 and pursued it during the month(s) for which the aid was requested. The latter condition does not apply in the event that the undertaking is unable to carry on business under the provisions of the amended Law of 17 July 2020 on measures to combat the pandemic;
 - employ staff and provides proof of the undertaking's membership of the Joint Social Security Centre;
 - have turnover for the tax year 2019 of at least EUR 15 000;
 - when established only in the tax years 2019, the amount of EUR 15 000 shall be adjusted *pro rata* according to the actual period of time during which the enterprise was in operation before 15 March 2020;
 - have suffered a loss of turnover of at least 40% in relation to the same month of the 2019 tax year.
- (14) Aid may not be granted under the measure to medium⁶ and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER")⁷ or Agricultural Block Exemption Regulation ("ABER")⁸ on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER or ABER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to

⁴ Direction Générale des Classes moyennes.

⁵ *Loi modifiée du 2 septembre 2011 réglementant l'accès aux professions d'artisan, de commerçant, d'industriel ainsi qu'à certaines professions libérales.*

⁶ 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.

⁷ As defined in Article 2(18) of Commission Regulation (EU) No 651/2014.

⁸ As defined in Article 2(14) of 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, 1.7.2014, p. 1.

collective insolvency procedure under national law and they have not received rescue aid⁹ or restructuring aid.¹⁰

2.6. Sectoral and regional scope of the measure

- (15) The measure covers sectors that are particularly affected by restrictions on private gatherings and public gatherings and social distancing measures imposed by national legislation, as well as by restrictions on international travel and containment measures applicable in other countries. It applies to the whole territory of Luxembourg.

2.7. Basic elements of the measure

2.7.1. Nature of the eligible aid instrument

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

2.7.2. Period during which the eligible instrument can be granted and months of uncovered costs

- (17) Aid under the measure covers uncovered fixed costs incurred in the months from November 2020 until March 2021.

2.7.3. Method by which to calculate the uncovered costs

- (18) The measure provides that aid may be granted where the fixed costs of the beneficiary are not covered by the profit contribution, *i.e.*, revenues minus variable costs, and which are not covered by any other contributions such as insurance or aid granted through other aid measures under the Temporary Framework or through other support measures.
- (19) For the purpose of the calculation, all figures used must be gross, that is, before any deduction of tax or other charges.

2.7.4. Threshold of the turnover loss

- (20) Eligible undertakings must have suffered a decline in turnover during the eligible period of at least 40% compared to the same month of the fiscal year 2019.

2.7.5. Aid intensity

- (21) The measure provides for the aid intensity of 70% of uncovered costs with respect to large and medium-size undertakings and 90% for small and micro enterprises.

2.7.6. Maximum amount of the eligible instrument

- (22) The maximum aid amount for the entire eligible period is determined depending on the size of the undertaking:

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.

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.

- EUR 20 000 per month for a micro-enterprise;
- EUR 100 000 per month for a small enterprise;
- EUR 200 000 per month for a medium and a large enterprise¹¹.

2.7.7. *Overcompensation*

- (23) The measure provides that beneficiaries receiving aid have to send to the Luxembourgish authorities, as soon as available, the actual and audited profit and loss accounts for the tax years 2020 and 2021, respectively. Where the Luxembourgish authorities establish that aid was granted in excess of the actual losses during the eligible period established on the basis of audited or tax accounts, they will recover any payment exceeding that aid amount.

2.8. **Cumulation**

- (24) Luxembourg confirms that aid granted under the measure may be cumulated with aid under the *de minimis* Regulations¹² or the GBER or ABER provided that the provisions and cumulation rules of those Regulations are respected.
- (25) Luxembourg confirms 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.
- (26) Luxembourg confirms 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 3.12 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 87(d) of that framework, will be respected.
- (27) Luxembourg confirms that aid granted under the measure shall not be cumulated with other aid for the same eligible costs.

2.9. **Monitoring and reporting**

- (28) The Luxembourgish authorities confirm that they will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (e.g., by 30 June 2021, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.).

¹¹ The total maximum aid that may be granted during the entire eligible period amounts to EUR 100 000 for micro-enterprises, EUR 500 000 for small enterprises and EUR 1 million for medium-size and large enterprises, respectively.

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 1408/2013 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 in the agriculture sector (OJ L 352, 24.12.2013 p. 9) and 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).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

3.2. Existence of State aid

- (30) 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.
- (31) The measure is imputable to the State, since it is administered by the Luxembourgish Ministry of Economy based on the *loi ayant pour objet la mise en place d'une contribution temporaire de l'Etat aux coûts non couverts de certaines entreprises* (recitals (8) - (9)). It is financed through State resources, since it is financed by public funds.
- (32) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (7)). The measure thus confers on those beneficiaries an advantage which they would not have had under normal market conditions.
- (33) The advantage granted by the measure is selective since it is awarded only to certain undertakings (recitals (12) - (15)). In particular, the measure applies only to undertakings based in Luxembourg that fulfil the conditions detailed in section 2.5 above acting in specific sectors, excluding the financial sector.
- (34) 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.
- (35) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Luxembourgish authorities do not contest that conclusion.

3.3. Compatibility

- (36) 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.
- (37) 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*”.
- (38) By adopting the Temporary Framework on 19 March 2020, as subsequently amended, the Commission acknowledged (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”.

- (39) The measure aims at certain undertakings to compensate their uncovered costs in case of substantial turnover loss resulting from the disturbance caused 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.
- (40) The measure is one of a series of measures conceived at national level by the Luxembourgish authorities to remedy a serious disturbance in their economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“*Aid in the form of support for uncovered fixed costs*”) described in Section 3.12 of the Temporary Framework.
- (41) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:
- Aid is granted under the measure no later than 30 June 2021 (recital (11)) and covers uncovered fixed costs incurred during the period between November 2020 and March 2021 (recital (17)). The measure therefore complies with point 87(a) of the Temporary Framework;
 - Aid is granted under the measure on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 40% compared to the same period in 2019 (recital (20)), which is a higher threshold than the Temporary Framework provides. The measure therefore complies with point 87(b) of the Temporary Framework;
 - Uncovered fixed costs are defined under the measure in accordance with point 87(c) of the Temporary Framework (recital (18)) and the aid intensity will not exceed 70% of the uncovered fixed costs, except for micro and small companies, where the aid intensity will not exceed 90% of the uncovered fixed costs (recital (21)). The losses of undertakings from their profit and loss statements during the eligible period are considered to constitute uncovered fixed costs. The final amount of aid under the measure will be determined on the basis of audited or tax accounts (recital (23)). Any payment exceeding the final amount of the aid must be recovered (recital (23)). The measure therefore complies with point 87(c) of the Temporary Framework;
 - The aid takes the form of direct grants (recital (16)). The overall nominal value of the direct grants will not exceed EUR 3 million per undertaking, as provided for under the Temporary Framework. The measure allows a maximum amount of aid per undertaking of EUR 1 million in case where the beneficiary is a large or a medium-size undertaking, of EUR 500,000 for a small undertaking and EUR 100 000 for a micro enterprise (recital (22)). All figures used must be gross, that is, before any deduction of tax or other charges (recital (19)). The measure therefore complies with point 87(d) of the Temporary Framework;

- Aid may not be granted under the measure to medium¹³ and large enterprises that were already in difficulty on 31 December 2019 (recital (14)). 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 87(f) of the Temporary Framework;
- The Luxembourgish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (28)). The Luxembourgish 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 (24) to (27)).

(42) 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.

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

¹³ 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.

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.