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Subject: **State Aid SA.62526 (2021/N) – Hungary**
5th amendment to SA.56926 (2020/N) – COVID-19: Aid measures for increasing competitiveness of undertakings in relation with the COVID-19 outbreak

Excellency,

1. PROCEDURE

(1) By electronic notification of 29 March 2021, Hungary notified an amendment ("the fifth amendment") to the aid scheme SA.56926 ("the initial scheme"), which the Commission approved by decision of 8 April 2020 ("the initial Decision")[1] under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework")[2]. The initial scheme has previously been amended on four occasions ("the amended scheme"), as approved by Commission Decision of 19 May 2020 on SA.57350 ("the first amendment")[3], by Commission Decision of 17 August 2020 on

1 Commission Decision C(2020) 2332 final of 8 April 2020, SA.56926 (2020/N) – Hungary - COVID-19: Aid measures for increasing competitiveness of undertakings in relation with the COVID-19 outbreak.

2 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 Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

3 Commission Decision C(2020) 3426 final of 19 May 2020, SA.57350 (2020/N) – Hungary – Amendment of the scheme SA.56926 (2020/N) – COVID-19: Aid measures for increasing competitiveness of undertakings in relation with the COVID-19 outbreak (budget increase).

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SA.58276 ("the second amendment")[4], by Commission Decision of 7 October 2020 on SA.58833 ("the third amendment")[5] and by Commission Decision of 10 November 2020 on SA.59306 ("the fourth amendment")[6].

(2) Hungary complemented the notification on 14 and 23 April 2021 with additional clarifications.

(3) 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[7] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE AMENDMENT

(4) Hungary intends to introduce a fifth amendment to the amended scheme.

(5) First, the Hungarian authorities intend to prolong the duration of the amended scheme until 31 December 2021.[8] They also intend to extend the current deadline for submitting applications until 30 September 2021.[9]

(6) Second, the Hungarian authorities intend to increase the estimated total budget of the amended scheme from HUF 219.33 billion (approximately EUR 604 million)[10] to HUF 262.33 billion (approximately EUR 723 million).[11]

(7) Third, the Hungarian authorities intend to increase the maximum aid amount per undertaking to EUR 1.8 million per undertaking (all figures used must be gross,

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4 Commission Decision C(2020) 5721 final of 17 August 2020, SA.58276 (2020/N) – Hungary – Amendment of the scheme SA.56926 (2020/N) as modified in SA.57350 (2020/N) concerning aid measures for increasing competitiveness of undertakings in relation with the COVID-19 outbreak.

5 Commission Decision C(2020) 7020 final of 7 October 2020, SA.58833 (2020/N) – Hungary – Amendment of the scheme SA.56926 (2020/N) – COVID-19: Aid measures for increasing competitiveness of undertakings in relation with the COVID-19 outbreak.

6 Commission Decision C(2020) 7908 final of 10 November 2020, SA.59306 (2020/N) – Hungary – COVID-19: Modifications to SA.56926, SA.56994, SA.57121, SA.57064, SA.57198, SA.57329, SA.57269, SA.57285, SA.57468 and SA.58202.

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

8 The duration of the initial scheme was already prolonged from 31 December 2020 (see recital (10) of the initial Decision) until 30 June 2021 (see recital (4) of the Decision approving the fourth amendment).

9 The deadline for submitting applications was already prolonged from 30 November 2020 (see recital (10) of the initial Decision) until 20 May 2021 (see recital (4) of the Decision approving the fourth amendment).

10 Exchange rate on 27 April 2021, EUR 1 = HUF 362.77, Source: European Central Bank available at https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-huf.en.html

11 As amended by the Decisions approving the first, the second and the fourth amendments.

that is before any deduction of tax or other charges), in light of the Fifth Amendment to the Temporary Framework.[12]

(8) Fourth, the Hungarian authorities intend to modify certain conditions of the amended scheme, which the beneficiaries should fulfil in order to benefit from the aid. By this 5th amendment, beneficiaries need to fulfil, in particular (but not exclusively), the following criteria:

(a) The final beneficiaries are medium and large sized enterprises established, or having a place of business or branch in Hungary, with an average headcount of at least 50 employees in the 12 months preceding the submission of the aid application.[13]

(b) Beneficiaries must undertake to:

– Maintain their base headcount, increasing it by at least 25 employees in each year of the mandatory operating period (at least two business years after the completion of the investment[14]); or

– During the mandatory operating period, the combination, i.e., the sum, of the following two increases should reach at least 15%:

- The increase in the annual amount of the salaries compared to the annual amount realised in the financial year preceding the start of the investment, and
- The increase in the annual net sales compared to the annual amount realised in the financial year preceding the start of the investment.

If the beneficiary has already committed to increase the above two parameters for the purposes of benefitting of a measure approved under other aid schemes, then in order to benefit from the measure under assessment, the beneficiary must undertake to increase those parameters at least by an additional 15%.

(c) The investment volume that the beneficiaries must undertake to implement in Hungary is of at least EUR 2 million.[15]

(d) The time limit for the beneficiaries to implement an investment in Hungary in the amount referred to in recital (8)(c) is extended until 31

[12] Under the initial scheme, aid can be granted up to the amount of EUR 800 000 (see recitals (18) and (20) of the initial Decision). The scheme does not apply to primary production of agricultural products, the fishery sector and aquaculture (see recital (13) of the initial Decision).

[13] Under the initial scheme, the final beneficiaries are medium and large sized enterprises established, or having a place of business of branch, in Hungary (see recital (11) of the initial Decision).

[14] See recital (4) of the initial Decision for a short description of the referred investment.

[15] Under the initial scheme, aid can be granted to medium or large sized enterprises that undertake to implement an investment in Hungary of a volume of at least EUR 150 000 (see recital (12) (6) of the initial Decision).

December 2022 if the beneficiary provides a guarantee.[16] If the beneficiary cannot provide a guarantee for the implementation of the investment, the investment should be implemented no later than 31 August 2022.

(e) Aid may be granted to undertakings operating in the sectors of the economy defined in Annex 3 of the legal basis mentioned in recital (12) below (mainly, manufacturing sectors of different nature). Other sectors may be included, provided no sector referred to in recital (13) of the initial Decision is included.[17]

(f) The maximum aid intensities[18] may not exceed:

– 33% of the value of the investment to be implemented by the undertaking if the location of the investment is in the following counties: Szabolcs-Szatmár-Bereg, Borsod-Abaúj-Zemplén, Nógrád, Somogy, Békés, Jász-Nagykun-Szolnok or Baranya.

– 20% of the value of the investment to be implemented by the undertaking if at least one of the locations of the investment is not in one of the counties listed above.

(9) The other conditions of the amended scheme not referred to above in recital (8) are not affected by the present fifth amendment and thus remain applicable as established under the initial scheme and the subsequent amendments.

(10) There are no further modifications proposed to the amended scheme. The Hungarian authorities confirm that they will maintain all the commitments made in the notifications concerning the initial Decision and the Decisions approving the first, the second, the third and the fourth amendments.

(11) The modifications described in recitals (5) to (8) will only be put into effect after the notification of the Commission's approval. Indeed, the Hungarian authorities clarify that the national legislative procedure to introduce the modifications will only be launched following the approval of the present amendment by the Commission.

[16] The time limit for the beneficiaries to implement an investment in Hungary was extended from 30 June 2021 (see recital 12 bullet point (6) of the initial Decision) to 31 December 2021 (see recital (5) point (ii) of the Decision approving the third amendment).

[17] Under the initial scheme, the aid is open to all sectors of the economy, with the exception of: the steel sector; the shipbuilding sector; the coal sector; the synthetic sector; the transport of passengers by aircraft, maritime transport, road, rail, or by inland waterway, or freight transport services for hire or reward; investments in the fisheries and aquaculture sector falling within the scope of Regulation 1379/2013/EU; projects in energy production, energy supply projects; commercial activity projects; projects involving activities which are subject to a concession; tourism activity projects; export-related activities, namely aid directly linked to the establishment and operation of a distribution network, or to other current expenditure linked to the export activity (see recital (13) of the initial Decision).

[18] The maximum aid intensities defined as progressive rates on the basis of investment were replaced by a flat rate intensity of 33% (see recital (19) of the initial Decision and recital (5) point (iii) of the Decision approving the third amendment).

2.1. Legal basis

(12) The national legal basis will be the *Decree of the Minister of Foreign Affairs and Trade No. 7/2020. (IV. 16.) on aid measures for increasing competitiveness of undertakings concerning the COVID-19 outbreak*, which will be amended after the notification of the Commission's approval. The rules of Section 3.1 of the Temporary Framework and the modifications referred to in recital (8) will be incorporated in that ministerial decree.

3. ASSESSMENT

3.1. Lawfulness of the measure

(13) By notifying the amendment before putting it into effect, the Hungarian authorities have respected their obligations under Article 108(3) TFEU (see recitals (11) and (12)).

3.2. Existence of State aid

(14) 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.

(15) The qualification of the amended scheme as State aid within the meaning of Article 107(1) TFEU was established in recitals (23) to (28) of the initial Decision, in recitals (10) and (11) of the Decision approving the first amendment, in recitals (13) to (15) of the Decision approving the second amendment, in recitals (9) and (10) of the Decision approving the third amendment and in recitals (9) and (10) of the Decision approving the fourth amendment. The modifications to the amended scheme described in recitals (5) to (8) above do not affect the conclusions set out in the aforementioned recitals of those decisions.

(16) In particular, the modifications of the eligibility criteria described in recital (8) do not alter the conclusion that the measure is selective.

3.3. Compatibility

(17) The Commission already assessed the initial scheme and the first, second, third and fourth amendments on the basis of Article 107(3)(b) of the TFEU in light of the Temporary Framework and concluded that they were compliant with the compatibility conditions set out in that Framework. The Commission refers to its compatibility analysis as set out in recitals (29) to (34) of the initial Decision, in recitals (12) to (14) of the Decision approving the first amendment, in recitals (16) to (22) of the Decision approving the second amendment, in recitals (11) to (13) of the Decision approving the third amendment, and in recitals (11) to (15) of the Decision approving the fourth amendment.

(18) The Commission considers that its conclusions on the compatibility assessment of the measure with the Temporary Framework are not altered by the notified amendment as described in recitals (5) to (8). In particular:

(a) The prolongation of the duration of the amended scheme until 31 December 2021 (see recital (5)) complies with point 22(d) of the Temporary Framework.

(b) The increase in the total estimated budget of the amended scheme (see recital (6)) complies with point 22(b) of the Temporary Framework, which requires that the scheme has an estimated budget.

(c) The increase of the aid ceiling per undertaking, namely EUR 1.8 million per undertaking (see recital (7)) complies with point 22(a) of the Temporary Framework (all figures used must be gross, that is before any deduction of tax or other charges).

(19) Apart from the amendments referred to in recitals (5) to (8), the Commission notes that there are no other alterations to the amended scheme (see recital (9)).

(20) In light of the above, the Commission considers that the notified amendment does not alter the conclusions on the compatibility of the scheme as amended.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified amendment 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