



NOTAT

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Danish Government response to the urgent consultation on the 5th amendment of Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak

The Danish Government welcomes the Commission proposal to make a 5th amendment to the Temporary Framework clarifying the Covid-19 state aid regime for 2021.

In particular, we welcome the proposal to increase the aid ceilings in section 3.1 and section 3.12. Denmark has, alongside other Member States underlined the urgent need for such an increase.

The Temporary framework has been a very useful tool in order to cope with the negative impact on the economy and undertakings during the Covid-19 out-break.

Please find below our comments to the draft 5th amendment.

1. Prolongation

We support the prolongation of the Temporary Framework until 31 December 2021. As we also pointed out in our response to the 4th amendment it is very difficult to predict the development of the Covid-19. Most of Europe now experience a second and third wave of the pandemic. The presence of new clusters, e.g. cluster B.1.1.7, have shown a continued need for further lockdown and restrictions in many Member States well into 2021. Thus, we are very pleased that the Commission's assessment of the situation has resulted in such a prolongation of the Temporary Framework, which will ensure predictability for undertakings in regards to necessary support in 2021.

2. Section 3.1. – increased ceilings

Denmark has on several occasions urged the Commission to increase the ceiling for liquidity support under Temporary Framework section 3.1 to more than that the current 800.000 EUR. Hence, we welcome the proposal

to increase this ceiling. However, we find that the proposed increase to 1.6 mio. EUR is insufficient. A further increase is necessary in parallel and in line with the prolongation until the end of 2021. As aid can now be granted for a longer period, where necessary, we find that there is also a need to increase the ceiling further. If this ceiling is not increased, the state aid rules will not be able to cope with the need of undertakings that already have received aid up to the threshold of 800.000 EUR in 2020 – and who are still facing a shortage of liquidity due to the Covid-19 impact. This will especially be the case for sectors that are most affected by Covid-19.

We would propose to increase the overall ceiling of 800.000 EUR to at least 5 mio. EUR from March 2020 to 31 December 2021. Furthermore, we find that the ceilings for aid under this section to fishery and agriculture should be increased correspondingly. In particular, we believe that the ceiling for agriculture due to the actual impact of COVID 19 on e.g. mink farms should be considered increased to around [600.000 EUR] pr. undertaking.

3. Section 3.12 – increased ceiling

We highly support the proposal for an increase of the aid ceiling in section 3.12 from the current 3 mio. EUR. However, we find the proposed increase to 5 - 10 mio. EUR insufficient.

Until September 2020 Denmark has been able to help companies severely affected by Covid-19 by covering their net losses under TFEU article 107(2) b in which no specific aid cap is provided other than our national cap of 4. mio. EUR pr. month, which several companies have reached in that period. These same companies are continuously affected by the "exceptional circumstances" required in article 107(2) b, as different containment and lock down measures have applied since then.

The sole purpose of the aid to these companies is to help them through the Covid-19 crisis preventing them from bankruptcy and to preserve workplaces.

Since this aid, as of 1 September 2020, is unable to be approved under the exceptional circumstance measure in article 107(2) b, it is of utmost importance that the needs of these undertakings are met under section 3.12 in the Temporary Framework. Neither the current nor the proposed new ceiling is sufficient to meet the needs of all the companies affected.

Denmark would urge the Commission to increase the ceilings to meet the actual needs of sectors that since September have been - and well into 2021 will be - severely affected by continuous containment and lock down

measures. Denmark finds that it should be possible to provide aid corresponding to DKK 4 mio. EUR pr. undertaking per month from September 2020 and until the need for Covid-19 restrictions ceases.

The provision in Temporary Framework 3.12 has to some extent matched the principle in the Danish compensation scheme for fixed cost for companies particularly affected by the Covid-19 outbreak. The Danish compensation scheme for fixed costs was from April-July 2020 state aid approved under article 107(2) b, with a nationally decided ceiling for compensation for net losses.

As the Commission's decision practice on article 107(2) b has been narrowed since April 2020 the companies are in dire need for an alternative provision that can grant the support. With the current ceiling of 3 mio. EUR per undertaking Temporary Framework 3.12 is, however, not a real alternative. It will only be so if the aid ceiling of the provision is substantially increased.

The main sectors that will be severely affected by a ceiling under Temporary Framework 3.12 compared to TFEU article 107 (2) b are entertainment, retail, hotels and travels, aviation all heavily affected by the public Covid-19 measures and halt of tourism since the autumn of 2020.

If the Temporary Framework 3.12 ceiling is not substantially increased it will only reduce the potential effect for undertakings. The longer lockdown periods – either fully or partially – the more the companies will be affected by the ceiling in Temporary Framework 3.12.

Some undertakings in severely affected businesses will be in need of compensation for a long period, e.g. September 2020 – June 2021, considering the extended lockdown we are facing now during the current Covid-19 surge and even more exacerbated by the B.1.1.7. cluster. In such case (10 months) with an increased ceiling of 10 mio. EUR, the monthly compensation would amount to 1 mio. EUR pr. undertaking per month. This will just be 1/4 of the ceiling allowed in the Danish scheme from the spring that was state aid approved under article 107(2) b. The proposed increase will therefore not sufficiently take into account the economic challenges some sectors are facing due to the Covid-19 crisis.

Since section 3.12 contains a mechanism that prevents overcompensation and ensures that only part of the documented net losses are covered, we find, that a substantially increased ceiling would be proportional under section 3.12.

In order to meet the requirements of the companies particularly affected by Covid-19 and the long duration of restrictions and lockdowns Denmark advocates for a substantial increase of the Temporary Framework 3.12 ceiling as proposed above.

We find that the economic situation caused by Covid-19 should be monitored carefully throughout 2021, and that an open approach should be kept as to further increases of the thresholds – both in section 3.1 and 3.12 – if needed also beyond this proposed 5th amendment.

4. Application of article 107(2) b

We appreciate the Commission's proposal to clarify - in the recitals - the scope of TFEU article 107(2) b. We find that there is a need for a more flexible application of this legal base.

We find it highly important that the scope is not further limited as we do not find that the Temporary Framework can in any way replace this provision in case of restrictive measures that prevents undertakings to conduct their activities. The Temporary Framework should never exclude the approval of schemes based on TFEU article 107(2) b if the conditions for applying this legal base are met.

We find that the Commission should provide further guidance as to which extent TFEU article 107(2) b can apply to situations where restrictive measures are precluding the beneficiary *de facto*, from operating its economic activity.

5. Conversion on loans into grants

We support the proposal to allow Member States prior to the expiry of the Temporary Framework, to convert repayable forms of aid granted under section 3.1 into grants based on transparent and non-discriminatory conditions.