



NOTE

7 July 2021

HT.5938 – Danish response to the third survey on the use of State aid in the COVID-19 crisis

The Danish Government welcomes the Commission initiative to consult the authorities of the Member States on the use of the Covid-19 measures and the future of the Temporary Framework.

The Covid-19 situation is constantly evolving and the Danish Authorities appreciate the opportunity to inform of potential challenges in respect of the use of Temporary Framework in the context of the current Covid-19 situation as well as recovery after the Covid-19 pandemic.

The Temporary Framework has in general been a very useful tool in order to cope with the negative impact on the economy and undertakings during the Covid-19 out-break. In particular as a supplement to TFEU article 107(2) b.

Please find below our comments to the Commission's specific questions regarding the current set of COVID-19 related State aid rules.

1. Prolongation

We supported the last prolongation of the Temporary Framework until 31 December 2021, which ensured predictability for undertakings in regards to necessary support in 2021.

It is very difficult to predict the development of the Covid-19 pandemic and the needs of undertakings in the post Covid-19 pandemic recovery.

A need for prolongation of the Temporary Framework would depend e.g. on how the infection rates develop after the summer period and on possible existence Covid-19 variants that may be resistant to the current vaccines. Furthermore, it will depend on whether undertakings and sectors severely affected by the pandemic manage to recover during 2021. E.g. in Denmark

the number of visits to cultural institutions is still below the average for a 'normal' year.

We therefore find that the Commission and the Member States should assess the situation later in 2021, depending on the development of the pandemic and vaccination coverage in the Member States.

2. Adaption of the Temporary Framework and phase out

For the moment, we find that the Temporary Framework should be maintained and in principle remain unaltered. Generally, Denmark finds that the compatibility conditions are well balanced to ensure that the Temporary Covid-19 aid granted is necessary and proportionate. We find that the Temporary Framework, by its nature, should be phased out.

In some cases, Denmark finds that there is a need for the Temporary Framework to be less strict and allow for more flexibility. Namely in regards to the aid ceilings in TF 3.1 and TF 3.12, and in respect to the broad notion of an undertaking, especially in TF 3.12. Furthermore, as regards TF 3.9 the Danish Authorities find it necessary to prolong the deferral deadline to 31 December 2023 to make the phase out as little burdensome as possible for the companies.

Aid ceilings

Denmark welcomed the increase of the aid ceilings in section 3.1 and 3.12 in the 5th amendment of the Temporary Framework. However, we find that the increase in TF 3.1 to 1.8 mil. EUR and TF 3.12 to 10 mil. EUR is insufficient. As aid will still be granted until the end of 2021 or for a longer period if necessary, we find that there is a need to increase the ceiling further. If the ceilings are not increased, it will be very difficult to grant compensation based on the state aid rules to cope with the needs of undertakings. Many undertakings have already received aid up to the ceilings – in some cases already in 2020 – while still facing a shortage of liquidity due to the Covid-19 outbreak. This will especially be the case for sectors that are most affected by Covid-19.

We would propose to increase the overall ceiling in TF 3.1 from 1.8 mil. EUR to at least 5 mil. 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 accordingly. 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.

As for the aid ceiling in section 3.12 we would propose to increase the ceiling from the current 10 mio. EUR per undertaking to 4 mio. EUR pr. month as long as the Temporary Framework is in force.

This is especially important as the notion of an undertaking in the Temporary Framework is broad and includes all companies belonging to a group. The application of such a broad notion of an undertaking in respect to Covid-19 aid means that the several legal entities affected by Covid-19 has to be covered by the same aid ceiling.

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

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. These sectors have been and still are heavily affected by the public Covid-19 measures and halt of tourism since the autumn of 2020. In Denmark, we have already experienced several examples of undertakings that have reached the aid ceilings long before the expiration of the Temporary Framework.

If the aid ceilings are not substantially increased, the Temporary Framework will only reduce the potential negative impact on undertakings.

TF 3.12 and the broad notion of an undertaking

The text of the Temporary Framework does not define the notion of an undertaking. The Danish Authorities understands from DG-Comp that the notion of an undertaking is defined in accordance with Annex 1 in the Commission Regulation (EU) No 651/2014 of 17 June 2014 (General Block Exemption Regulation).

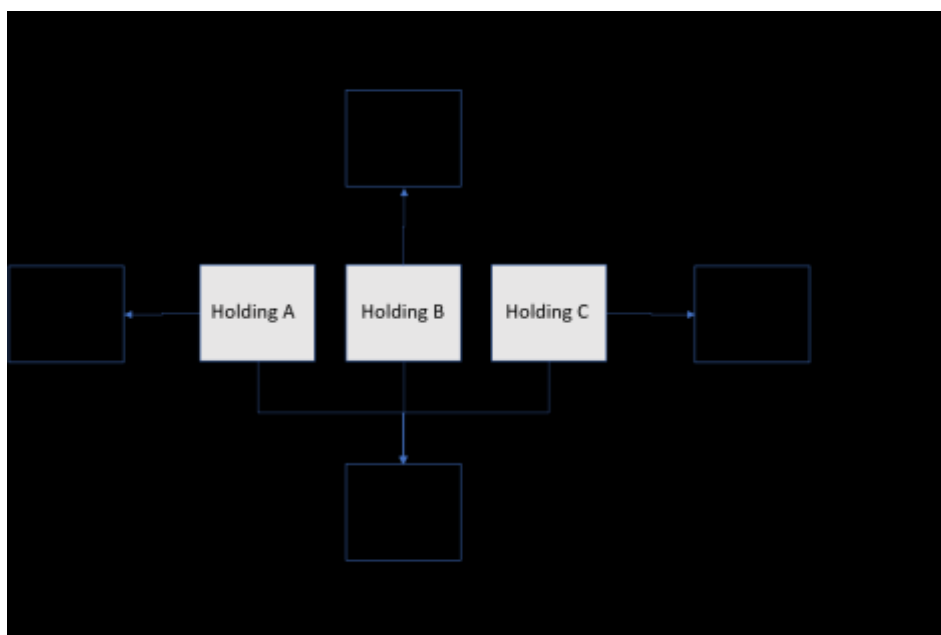
The definition of an undertaking in the broadest possible way, i.e. on the level of an entire group, raises a specific challenge in TF 3.12 when Member States grant compensation for uncovered fixed costs.

Namely, this means that legal entities that can e.g. provide documentation that they are directly affected by Covid-19 measures, cannot receive sufficient compensation – or cannot even enter the 3.12 based scheme. In particular, this will be the case when account is also to be taken to a 30 pct. turnover decline of the group, including also non-linked partner enterprises that holds more than 25 pct. of their capital or voting rights. We find it highly problematic that such ‘partner enterprises’ are included in the notion of undertaking in respect to Covid-19 compensation. Taking into account

that Covid-19 compensation needs to provide for legal certainty and reduce the administrative burden the rules should as a minimum be the same as in the de minimis regulation where only linked ‘linked enterprises’ are taken into account.

This is illustrated from the figure below, which shows a simple example of how common cross-ownership may deter companies (Company 3 and 4 in the example) who 1) have uncovered fixed costs and 2) experience a significant decline in turnover from receiving compensation. In reality, ownership structures are much more complicated than shown in the figure, meaning that companies that are part of the same undertaking will in many instances only have a periphery or no prior connection and no history of cooperation.

Hence, it cannot be expected that individual legal entities with no history of cooperation will opt to cover each others uncovered fixed costs, thereby significantly increasing the risk of companies becoming financially disabled.



Denmark finds that it creates strong difficulties that the broad definition of an undertaking is to be applied in the context of rules that are designed to compensate for losses related to Covid-19 (i.e. uncovered fixed costs). The losses within a group of undertakings can vary much. With the broad definition of an undertaking in respect to Covid-19 compensation, the aid will not be targeted the legal entities in fact affected by the pandemic. Thus, we find that the situation of compensation for losses directly related to Covid-19 is fundamentally different from the “normal” state aid rules, and

therefore the exceptional situation justifies a deviation from the broad definition of an undertaking in TF 3.12.

The Danish Government has put in place two general compensation schemes for fixed costs under TF 3.1 and 3.12 and two compensation schemes under TFEU 107(2)b to cover fixed costs. On a national level, the beneficiaries of these schemes perceive these as one single aid scheme. However, depending on the nature of restrictions imposed to the undertaking, the legal base will be either TFEU article 107(2)b (fully prohibited activities) or Temporary Framework (other restrictions), which creates a paradox:

- The first Danish compensation schemes for fixed costs were introduced in March 2020 and were based on TFEU article 107(2) b. Within this legal base compensation can be granted on the level of legal entity. I.e. when assessing the damage, it is not obligatory to take into account the situation of the whole group, but the assessment can be focused on the outcome of the specific activity of a legal entity which is prohibited by a lockdown.
- When the beneficiary then from the period 1 September (9 July in some cases) and forward had to shift to TF 3.12 as the legal basis for compensation (e.g. for travel restrictions), now the damage/loss, the aid intensity, and the turnover loss of at least 30 pct. is to be decided taking into account the whole group. This is despite that it is in most cases equally required under the Danish scheme that the legal entity can document a decline in turnover related to a specific Covid-19 measure that particular affects the legal entity.

The Temporary Framework has been put in place as a response to the Covid-19 outbreak – i.e. a severe public health emergency.

From a Danish perspective it is highly important that the Temporary Framework takes into consideration the exceptional situation and that the various containment measures adopted by the Member States affect undertakings very differently depending on the sectors and the particular activities of their legal entities.

Therefore, we stress the importance of the need to integrate the principle of compensation to the legal entity/activity affected in respect to all criteria in section 3.12 of the Temporary Framework. Otherwise, we do not find that the Temporary Framework will mitigate the serious disturbance in the European economy sufficiently and it will not be a real alternative to article 107(2) b.

We find that this would indeed be justified in the exceptional Covid-19 situation and the specific safeguards in the individual aid schemes of the member states. Such safeguards are elaborated and exemplified in memo from the Danish Authorities sent to the Commission 27 April 2021.

Prolonged deferral deadline in TF 3.9

According to TF 3.9, aid in the form of deferral of taxes shall be granted before 31 December 2021 and the end date for the deferral shall not be later than 31 December 2022.

The Danish Government has set in place several interest-free credit facilities equivalent to specific VAT rates and specific withholding tax rates in order to alleviate the liquidity crisis for SMEs. Due to the characteristics of the interest-free credit facilities, they are similar to deferrals of the VAT and withholding tax rates, and in its decisions on the compatibility of the measures the Commission has therefore assessed them under TF.3.9. The interest-free credit facilities have been successfully used by undertakings affected by the pandemic – especially by undertakings in the restaurant and hotel sectors. The interest-free credit facilities have different deadlines for (re)payment, as the deadlines have been fixed at different dates between 1 November 2021 and 1 November 2022.

However, there is already a demand for extending (some of) the deadlines for (re)payment beyond 31 December 2022. For sectors severely affected by the pandemic, a period of approximately 18 months from now is unlikely to be sufficiently long to enable all the undertakings – even if their difficulties are only due to the pandemic – to (re)pay the deferred VAT and withholding tax rates while also paying ordinary tax rates. In order to ensure the healthy recovery of such undertakings, the Danish Authorities therefore propose that the deferral deadline is prolonged to 31 December 2023.

In relation to this, it is important for the Danish Authorities to note that the proposition above does not mean that granting of the aid will be possible later than 31 December 2021.

3. Size of the beneficiaries

It is of very high priority for the Danish Government to help small and medium sized enterprises sufficiently through the Covid-19 pandemic. We also find that the Temporary Framework has been - and still is - a very good means to achieve this.

However, in a pandemic, both SMEs and large companies suffer from the various lock downs and restrictions introduced to contain the virus. Therefore, we find that the challenges in respect to the aid ceilings and the notion of an undertaking will be present for undertakings of all sizes.

4. Further adaptation of the Temporary Framework to prevent corporate insolvencies

Denmark has no intention to establish new Covid-19 State aid schemes after the expiration of the current Temporary Framework.

5. Possible need to address specific sectors of the economy and to facilitate their recovery from the COVID-19 outbreak

Denmark supports the general nature of the Temporary Framework and that it applies horizontally to all sectors. However, some sectors are in particular challenged due to Covid-19. This includes e.g. hotels, travel, entertainment, culture, tourism, aviation, and restaurants. The possible need to extend the Temporary Framework and to increase aid ceiling would in particular be related to challenges of these sectors, which includes large undertakings.

6. Possible need for new measures to accompany and speed up recovery

Denmark has no plans of granting aid after the expiration of the current Temporary Framework. We refer to point 1 above about assessing the need for prolongation later in 2021.