Denmark COVID-19

COVID-19 Measures Adopted by Denmark

Denmark was the first Member State to have an aid scheme approved (on 12 March 2020 - see SA.56685 below). Since then, two other aid schemes have been notified and approved, one of them under the Temporary Framework adopted by the Commission on 19 March 2020.

Moreover, a series of other support measures have been adopted and/or envisaged by the Danish State. At least two of these measures are expected to be notified to the Commission before their adoption. Other support measures have already been adopted without notification to the Commission.

The list of cases summarized below is structured as follows:

1. Aid measures approved by the Commission
2. New measures not yet approved by the Commission

3. Already adopted measures not notified to the Commission

I. Aid Measures Approved by the Commission (as of 29 March 2020)

Three Danish schemes have thus far been approved by the Commission. Two were approved under Article 107(2)(b). The third was approved under Article 107(3)(b), cf. the Commission's Temporary Framework.

1. *State Aid SA.56685 – Compensation Scheme for Cancellation of Events*

This measure involves compensation to organisers of major events planned in the period 6-31 March 2020.¹

It was approved on 12 March 2020 on the basis of Article 107(2)(b) allowing aid 'to make good damage caused by natural

disasters or exceptional occurrences'.

The scheme entails compensation for income loss and additional costs due to cancellation, deferral or change in the conditions of the event organization. Compensation could cover up to 100% of the eligible costs, provided they are not covered by the organiser's insurance.

The Commission held that the measure satisfied Article 107(2)(b) TFEU, which allows aid 'to make good damage caused by natural disasters or exceptional occurrences'. According to the Commission, COVID-19 can be considered as an exceptional occurrence and it satisfies all the following indicators relating to the event: (i) unforeseeable or difficult to foresee, (ii) significant scale/economic impact and (iii) extraordinary. The Commission was also satisfied with (iv) the causal link existing between the notified scheme and COVID-19 as well as (v) the proportionality of the aid measure (as the aid would not result in overcompensation of the damage suffered). Also, the aid cannot be cumulated with other State aid granted for the same costs.

The measure was the first aid measure to be approved by the Commission. It was handled by the Commission at an impressive

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¹ Link to decision text in English: <https://ec.europa.eu/competition/state_aid/cases1/202011/285054_2139535_70_2.pdf>.

speed. It was notified on 11 March and approved already the next day, on 12 March 2020.

2. SA.56791 - Temporary Compensation Scheme for Self-Employed

The measure involves compensation to self-employed persons for their losses of turnover.²

It was approved on 25 March 2020 on the basis of Article 107(2)(b) allowing aid 'to make good damage caused by natural disasters or exceptional occurrences'.

The compensation takes the form of grants and will cover 75% of the expected loss of turnover for a period of three months, calculated on the basis of the average monthly turnover in 2019. The maximum compensation will be DKK 23,000 (€3000) per month and per person. The scheme runs until 9 June 2020. The amount of the aid scheme is DKK 10 billion (approximately €1.3 billion).

It was notified to the Commission on 21 March 2020 and approved on 25 March 2020.

3. State Aid SA.56708 – Danish Guarantee Scheme for SMEs

The measure is a loan guarantee scheme open to all SMEs.³

It was approved on 21 March 2020 on the basis of Article 107(3)(b), following the Commission's 'COVID-19 Temporary Framework' of 19 March 2020.

The measure will take the form of a risk sharing facility with banks to issue loans. The measure can cover revenue losses experienced during the period 1 March 2020 to 30 September 2020.

The beneficiaries are all SMEs that were not in difficulty on 31 December 2019. The company must

be registered in the Danish CVR register, which is open to all undertakings. The measure is open to all sectors.

The measure involves a State guarantee that covers 70% of the losses incurred on new operating loans to the concerned SME. The measure will be operated in cooperation between *Vækstfonden* and private credit institutions and other financial institutions. Those institutions will cover 30% of the losses and are in charge of the credit assessments, the selection of companies, and the issuance of new operating credit to the companies selected. *Vækstfonden* and the private banks will cover losses *pari passu*.

The SMEs must pay an administration fee of DKK 2 500 for every guarantee issued and a yearly guarantee premium of 100bps (1%), regardless of the maturity of the guaranteed loan. The maximum duration (maturity) of the guarantee is seven years.

The measure involves eligibility criteria that are stricter than foreseen in the Temporary Framework. In particular, the measure is only available to companies experiencing or expecting to experience a decline in revenue of at least 30% (compared to the pre-COVID-19 situation). Moreover, the new credit cannot be used to amortise other debt.

The Commission found that the measure complied with the Temporary Framework (point 25) gov-

erning aid in the form of guarantees on loans.

As regards the duration of seven years, which goes beyond the 6 years stated in point 25(f) of the Temporary Framework (TF), the Commission noted that TF point 25 (b) also allows maturities beyond a six year period, provided that the longer duration is off-set by either a higher compensation for the guarantee or lower coverage ratios. In this case, the maximum duration of guarantees allowed under the measure is seven years with linear amortisation. The maximum coverage ratio under the measure of 70% is below the maximum 90% allowed under TF point 25 (f). According to the Commission, this increased risk-sharing would ensure 'a sufficient incentive for intermediary banks to assess adequately the risk of providing a loan and to decide whether the maturity of the guaranteed loan is not longer than what is necessary to ensure the survival and continued growth prospects of the company.'

Finally, the Commission was satisfied that the advantages would be passed on, to the largest extent possible, from the private credit institutions to the final beneficiaries (cf TF point 31). The Commission noted that banks must take on three times as much risk as required under the Temporary Framework (30% instead of 10%). The relatively high exposure means that the banks have an in-

2 Case SA.56791. The decision is not yet published, but see Commission Press Release IP/20/515 (<https://ec.europa.eu/commission/presscorner/detail/en/ip_20_515>).

3 Full English text available: <https://ec.europa.eu/competition/state_aid/cases1/202013/285084_2142369_67_2.pdf>; Link to the most recent version of the Executive Order No 299 of 27 March 2020 in Danish: <<https://www.retsinformation.dk/Forms/R0710.aspx?id=213752>>.

centive to offer loans on the most favourable conditions possible to avoid the undertaking from defaulting, both on the new credit and any other, older credits granted earlier. The Commission also took into account the fact that, in principle, all commercial banks have access to the guarantee scheme, creating competition between the banks.

The measure was notified on 13 March and approved on 21 March, only two days after the adoption of the TF.

A market-based loan guarantee scheme open only to large companies (non-SMEs) was adopted in parallel with the SME guarantee scheme. See the description in Section III.3 below.

II. New Measures Not Yet

Approved by the Commission
(as of 29 March 2020)

On 27 March 2020, the Danish Parliament gave its support to two types of supportive measures which are likely to be considered State aid and to be approved by the Commission before their entry into force. They involve (1) compensation to companies having suffered more than 40% loss of turnover over a three-month period and (2) compensation for self-employed persons having suffered more than a 30% loss of turnover over a three-month period.

1. Temporary Compensation for Companies' Fixed Costs

The compensation scheme targets companies having suffered more than a 40% loss of turnover compared with the pre-COVID 19 situation.⁴ The regime applies from 9 March until 9 June 2020. Budget size: DKK 40 billion (some €5.3 billion). The compensation covers a proportion of the companies' fixed costs and varies from a 25% cost coverage (for companies having suffered a 40-60% loss of turnover) to 80% (for companies having suffered a 80-100% loss of turnover). Certain companies that are required by law to shut down their business due to the COVID-19 situation can require a 100% cost coverage.

The fixed cost must amount to at least DKK 25,000 per company. The compensation is capped at 60 MDKK per company and can never exceed the loss of turnover. Further details are to be provided by the responsible authority in an Executive Order that has not yet been adopted.

Based on the preparatory acts it is expected that the regime will be notified to the Commission before its adoption.

2. Temporary Compensation for Small Self-Employed Persons and Very Small Companies

The scheme targets self-employed persons and companies with max-

imum 10 full time employees who expect to experience a decline of at least 30% turnover compared to the same period in 2019.⁵ The compensation will amount to 75% of the expected loss of turnover, but not exceeding DKK 23,000 per month. The total turnover in 2020 must not exceed DKK 800,000. The regime applies from 9 March until 9 June 2020. Further details are to be provided by the responsible authority in an Executive Order that has not yet been adopted.

Based on the preparatory acts it is expected that the regime will be notified to the Commission before its adoption.

III. Already Adopted Measures Not Notified to the Commission (as of 29 March 2020)

A series of further measures have been adopted without their prior notification to the Commission. The reason may be that they are either considered existing aid (ie building upon existing aid measures) and/or not aid measures falling under Article 107(1) TFEU. Three examples of such measures are given below. The list is non-exhaustive.⁶

1. Wage Compensation to Avoid Mass Firing (from 9 March until 9 June 2020)

The compensation is granted to companies that abstain from laying off their employees as a result of the COVID-19 crisis.⁷

The scheme is open for the period 9 March until 9 June 2020. It is open to all types of companies and across all sectors. Companies are eligible for the compensation if they send home but refrain from laying off either (i) more than 30%

4 Aktstykke 124 of 27 March 2020: <https://www.folketingstidende.dk/samling/20191/aktstykke/Aktstk124/20191_aktstk124_afgjort.pdf>.

5 Aktstykke 122 af 27 March 2020: <https://www.folketingstidende.dk/samling/20191/aktstykke/Aktstk122/20191_aktstk122_afgjort.pdf>.

6 For further examples of measures aimed towards companies, visit : <https://virksomhedsguiden.dk/erhvervsfremme/content/temaer/coronavirus_og_kompensation/>.

7 Act: <https://www.folketingstidende.dk/samling/20191/aktstykke/Aktstk117/20191_aktstk117_afgjort.pdf>; Executive Order No 267 of 25 March 2020: <<https://www.retsinformation.dk/Forms/R0710.aspx?id=213612>>; <<https://www.ft.dk/samling/20191/lovforslag/L141/bilag/1/2165659/index.htm>>.

of their employees or (ii) more than 50 employees. The compensation amounts to 75% of the wage costs, but not exceeding a fixed threshold of approx. €3,000 or €3,500 (DKK 23,000 or DKK 26,000) per month. A number of further conditions apply.

The regime was enacted on 25 March 2020. According to the preparatory works it is not considered selective and hence not constitutive of State aid.⁸

2. *Deferred Payment of A-Taxes and B-Taxes and VAT*

The measure entails a four-month extension of businesses' payment deadline for withheld A-tax (tax deducted at source) and labour market contributions (*am-bidrag*) for the settlement months of April, May and June 2020.⁹ The payment deadline is also extended for B-tax (tax not deducted from income at source) for April and May 2020. In addition, the payment deadline is extended by 30 days for three months (March, April and May 2020) for businesses which settle VAT monthly.

Finally, businesses may have a tax account balance of up to DKK 10 million for a temporary period if they adjust the amount limit by or after 25 March 2020.

The regime was adopted on 17 March 2020.

3. *Market-Based Guarantee*

Scheme for Large Companies

The regime is a market-based loan guarantee scheme open only to large companies (non-SMEs).¹⁰ It will be operated in cooperation between *Vækstfonden* and private credit institutions and other financial institutions.

In many respects, it resembles the SME regime approved by the

Commission on 21 March 2020 (SA.56708) described in section I.3 above. As with the SME-regime, the guarantee can only cover 70% of the losses as private credit institutions and other financial institutions must cover the remaining 30%.

The main difference between the two regimes is that, contrary to the SME-regime which fixed a flat rate guarantee premium of 1% per year, the non-SMEs must pay a guarantee premium reflecting market conditions as the regime must be self-financing. The maximum maturation of the underlying loan is 6 years.

*Michael Honoré and
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8 Aktstykke 117 decided on 25 March 2020: <https://www.folketingstidende.dk/samling/20191/aktstykke/Aktstk117/20191_aktstk117_afgjort.pdf>.

9 For further info in English: <<https://skat.dk/skat.aspx?oid=16900&lang=us>>.

10 Executive Order of 26 March 2020: <<https://www.retsinformation.dk/Forms/R0710.aspx?id=213715>>.

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