MINISTRY OF INDUSTRY, BUSINESS
AND FINANCIAL AFFAIRS

NOTAT

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Danish Government response to the urgent consultation on the 4th 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 4th amendment to the Temporary Framework and to create transparency as to what state aid frame work can be expected in 2021 in respect Covid-19.

The Temporary framework (TF) has been a very helpful and useful tool for Denmark and the EU in order to cope with the negative impact on the economy and undertakings during the Covid-19 out-break and the national restrictions to limit the dispersion of the virus.

Please find below our comments to the draft.

1. **Prolongation**

We support the prolongation of the TF until 30 June 2021. Depending on the development of the Covid-19 - and the continued need for restrictions - we find that it can be necessary to prolong the TF beyond that date. Thus, we recommend that the Commission keeps an open approach to assessing the situation during the summer of 2021 and consider prolonging the TF regime beyond 30 June 2021.

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2. **Section 3.1. – cap of 800.000 EUR**

We urge the Commission to increase the ceiling for liquidity support under TF point 3.1 to more than 800.000 EUR in parallel and in line with the prolongation. If this cap is not increased, the state aid rules will not be able to cope with the need of undertakings that already have received or will receive aid up to the threshold in 2020 or in the beginning of 2021 – 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 cap of 800.000 EUR with at least 800.000 EUR in 2021.

3. New section 3.12 – uncovered fixed costs

We support the proposal for a new point 3.12 in the TF - Aid in the form of support for uncovered fixed costs and the logic behind. The provision is very close to the principle in the Danish scheme for compensation to fixed cost for companies particularly affected by the Covid-19 outbreak. The Danish schemes are primarily state aid approved under article 107(2) b. However, some parts of the scheme are approved under section 3.1. of the TF.

Therefore, we find it necessary, that the Commission clarifies in the recitals that the new section 3.12 of the Temporary Framework does not mean that the approval of such schemes based on article 107(2) b of the TFEU will be excluded if the conditions for applying this legal base are met.

We can accept the conditions that the aid should be granted no later than 30 June 2021 and cover uncovered fixed costs incurred during the period between 1 September 2020 and 30 June 2021, including such costs incurred in part of that period (‘eligibility period’). However, we find that these new rules must only apply to new schemes, and not schemes that have already been established and politically agreed in Member States based on the existing rules.

On the one hand, we can also support, that the aid can be granted on the basis of a scheme to undertakings in specific sectors, regions or of a certain size that suffer a decline in turnover of at least 30 % compared to the same period in 2019.

On the other hand, we find that since section 3.12 contains a mechanism that prevents overcompensation and – like in the Danish schemes – ensures that only documented net losses are covered, we find that both higher amounts and higher aid intensities would be necessary and proportional and should be allowed under section 3.12.

Therefore, we strongly believe, that the proposed aid intensity not exceeding 50 % of the eligible costs, except for small and micro companies, where the aid intensity shall not exceed 70 % of the eligible costs is far too restrictive and conservative. We would urge the commission to consider higher ceilings for compensation of fixed costs going up to e.g. 80 % percent in order to cope with the needs of the undertakings. We also find, that it should be possible to grant a compensation of up to 90 % to undertakings with 5 or less employees.
Furthermore, we find that the overall cap of 2 million EUR pr. undertaking is too low and will not take into account sectors that are particularly economically challenged by the Covid-19 crisis.

4. Section 3.11 – recapitalisation and sale of state equity

The Danish authorities welcomes the clarifications provided by points 29 and 30 in the draft. We find that the impact of the recapitalisation rules in section 3.11 of the TF on existing State ownership of undertakings must be addressed. State ownership of undertakings is protected by the principle of neutrality in Article 345 TFEU and this principle applies in the context of State aid. As a more general comment, the condition that the State must “exit” from beneficiaries of COVID-19 recapitalisation measures seems difficult to reconcile with the principle of neutrality.

As for the scope of applicability of the new redemption rules, the Commission proposes that if Member States applies the proposed additional rules for redemption of Covid-19 recapitalisation, they must inform the Commission thereof. We find that the proposed amendments to the TF, notably point 29 and 30, merely clarify what already applies for recapitalisations approved under section 3.11 of the TF. Therefore, we would urge the Commission to reconsider the need to amend existing Commission approvals in order to obtain the result provided for in points 29 and 30.

In regard to valuation, in point 29 and 30 of the draft, it is stated that a public consultation as mentioned in point 64 of the TF may be replaced by an independent valuation. If the valuation is positive and at the level prescribed in point 63 of the TF, the relevant COVID-19 recapitalisation is considered to be redeemed. The provision is silent with regard to what will apply in a situation where the valuation shows that the market value is zero or negative. This is a situation that might occur in practice and the consequences of a zero or negative valuation should be clear in the framework.

As for the terms Covid-19 recapitalisation versus Covid-19 equity the last sentence of point 30 of the draft states:

“When the redemption of the COVID-19 recapitalisation concerns only a fraction of the COVID-19 equity, letters (a) and (b) above apply to that fraction of the COVID-19 equity.”

The distinction between *“Covid-19 recapitalisation”* and *“Covid-19 equity”* is difficult to determine. We propose that the wording of the last sentence of point 30 is clarified.

5. Section 3.5 – short term export credit

We would like to draw attention to a need to also extend paragraph 33 of the TF regarding Short Term Export Credit Insurance and extend the list of non-marketable countries to all countries until 30 June 2021. We are aware that the Commission has launched a consultation on Communication on short term-export credit (STEC). Should the list of temporary non-marketable countries in the STEC be extended to 30 June 2021, point 33 of section 3.5 should be amended accordingly:

“33. In that context, the Commission considers all commercial and political risks associated with exports to the countries listed in the Annex to STEC as temporarily non-marketable until 30 June 2021.”

Lastly, we encourage the Commission to include in the prolongation measures notified and approved under TFEU Article 107, (e.g. measures such as the Danish SA.57112), and we ask the Commission to actively inform Member States on how these measures will be addressed.