EUROPEAN COMMISSION

Brussels, 24.11.2020
C(2020) 8384 final

SENSITIVE[*]: *COMP Operations*

Subject: **State Aid SA.59449 (2020/N) – Bulgaria**
COVID-19: Amendments to SA.56933 (2020/N) – Intermediated SME loan guarantee program

Excellency,

1. PROCEDURE

(1) By electronic notification of 11 November 2020, Bulgaria notified several amendments to the aid scheme SA.56933 (2020/N), Intermediated SME loan guarantee program ("the notified amendments"), which the Commission approved by Decision of 8 April 2020[1] ("the initial decision") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "Temporary Framework")[2].

[*] Handling instructions for SENSITIVE information are given at https://europa.eu/!db43PX

[1] Commission Decision C(2020)2342 of 8 April 2020 - SA.56933 (2020/N).

[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 Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I , 4.4.2020, p. 1,by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3, by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3 and by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty

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(2) Bulgaria 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,[3] and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

(3) The initial decision concerns an SME guarantee program that provides aid in the form of state funded guarantees for individual SME loans or for SME loan portfolios, channelled through credit institutions and other financial institutions.

(4) With the notified amendments Bulgaria seeks to extend the scope of the beneficiaries for the existing aid scheme both to large companies and to micro and small enterprises that were already in difficulty before the COVID outbreak. The duration of the existing aid scheme will be prolonged to 30 June 2021. The amendment also increases the additional portfolio guarantee cap and prolongs the term of the guarantee from 5 to 6 years. The amendment further seeks to modify the maximum threshold for guaranteed loans. Finally, the conditions to safeguard that the financial advantage is transferred to the largest extent possible by the financial institution to the final beneficiary are streamlined.

(5) The legal basis for the notified amendments to the existing aid scheme is Decision No. 797 of 4 November 2020 to amend Decision No. 310 of the Council of Ministers 2020 approving a Portfolio Guarantees Program to support the liquidity of micro, small and medium-sized enterprises ("SMEs") affected by the emergency situation and the epidemic of COVID-19 and entrust its implementation to the Bulgarian Development Bank AD.

(6) Bulgaria confirmed that the aid under the notified amendments is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of Bulgaria. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(7) The compatibility assessment of the notified amendments is based on Article 107(3)(b) TFEU, in light of sections 2, 3.2 and 3.4 of the Temporary Framework.

2.1. Amendments to the existing aid scheme

(8) The notified amendments seek to modify the following elements of the existing aid scheme:

(a) Recital (11) of the initial decision determines that the final beneficiaries under the existing aid scheme are micro, small and medium-sized enterprises, as defined in the Bulgarian SME Act[4], which suffer from the

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on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

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

[4] As defined in Articles 3 and 4 of the Small and Medium Sized Enterprise Act (Promulgated, State Gazette No. 84/24.09.1999, as subsequently amended). Bulgaria confirmed that that definition is

economic effects of the COVID-19 outbreak. Midcap and large companies are excluded. Aid may be granted under the measure only to undertakings that were not in difficulty within the meaning of the General Block Exemption Regulation ("GBER")[5], the Agricultural Block Exemption Regulation ("ABER")[6] or the Fisheries Block Exemption Regulation ("FBER")[7] on 31 December 2019. It may be granted to undertakings that faced difficulties or entered into difficulty thereafter because of the COVID-19 outbreak.

Under the notified amendments, the scope of beneficiaries will be extended to also include Midcap and large companies. Nevertheless, the aid scheme will continue focusing on SMEs as all partner banks will be required to grant at least 60% of their guaranteed portfolios to SMEs.

The eligibility criteria establishing that a beneficiary has suffered from the economic effects of the COVID-19 outbreak are slightly revised.[8]

Finally, under the notified amendments the scope of beneficiaries will be extended to micro or small enterprises (within the meaning of Annex I of the GBER, Annex I of the ABER and Annex I of the FIBER) including those that were already in difficulty on 31 December 2019, provided that at the moment of the granting, these enterprises are not subject to collective insolvency procedures under national law and that they have not received rescue aid or restructuring aid.[9]

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equivalent to the EU definition for SMEs as included in Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, C(2003) 1422, OJ L 124, 20.5.2003, p. 36–41.

5 As defined in Article 2(18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

6 As defined in Article 2 (14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1.

7 As defined in Article 3 (5) of the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

8 The criteria will be the following: (i) a decline in turnover after Q1 2020 compared to the same period of 2019 (based on the company's financial statements); or (ii) clients receivables not received or amounts due to suppliers not paid, after 1 March 2020 (based on the company's financial statements); or (iii) suspended import deliveries needed for the company's business after 1 January 2020 or cancelled export contracts (based on certification and documents submitted by the company); or (iv) sick-leave and self-isolation of employees, overall decrease in the number of employees, closed production facilities, premises and offices (based on certification and documents submitted by the company); or (v) other circumstances evidencing the situation of company in difficulties due to COVID-19, according to a methodology adopted by the commercial banks, which is provided to the Bulgarian Development Bank AD.

9 Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure and if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

(b) Recital (16) of the initial decision determines that the maximum amount of the guarantee per beneficiary shall be 80% of the guaranteed loan principal. Payments under a portfolio guarantee are additionally capped at 30% of the guaranteed portfolio.[10]

To provide more effective capital relief and credit protection for the credit and financial institutions,[11] under the notified amendments, the additional cap will be increased to 50% of the guaranteed portfolio.

(c) Recital (17) of the initial decision limits the maximum duration of the guarantee to 5 years with no restriction on the maturity of the underlying loan instrument.

Under the notified amendments, the maximum duration of the guarantee is set at 6 years.

(d) Recital (18) of the initial decision determines that the guarantees under the scheme may be granted until 31 December 2020.

Under the notified amendments, the period for granting eligible instruments is extended to 30 June 2021, or such later date stipulated by the Commission in any future amendment of the Temporary Framework.

(e) Recital (15) of the initial decision stipulates that apart from the company specific limitations reflecting the thresholds set in point 25(d) and (e) of the Temporary Framework, the maximum loan amount subject to a guarantee per beneficiary will never exceed BGN 2 million (EUR 1.02 million).

The notified amendments specify that the maximum amount for SMEs will be set at BGN 1 million; the maximum amount for large enterprises will remain at BGN 2 million.

(f) Recital (24) of the initial decision stipulates that loans of up to BGN 1 million (EUR 510,000) will be subject to portfolio guarantees, whereas guarantees on loans above BGN 1 million will be individual.

Under the notified amendments, all loans will be covered by a portfolio guarantee.

(g) Recital (22)(a) of the initial decision determines that for any loan included in the guaranteed portfolio, the credit and financial institutions shall either reduce the required collateral with the amount of the guarantee, reduce the credit risk premium under the loan pro-rata to the Bulgarian Development Bank's coverage of the outstanding principle under the loan or, alternatively, demonstrate in the case of a new loan that the underlying transaction would not have been concluded without the guarantee given the credit institution's current credit policy or practice.

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10 They also may not exceed the budget of the scheme, i.e. BGN 500 million (EUR 255 million).

11 The Bulgarian regulator does not accept the BDB guarantees under the Program as equivalent to central government guarantees with risk weight 0% and provide capital relief based on BDB's rating (Fitch: BBB, corresponding to risk weight of 50% under CRR). A 30% cap therefore resulted in only 12% capital relief under a nominal of 80% guarantee (80% x 30% x 50%).

Under the notified amendments, the first two requirements become cumulative and the third, alternative requirement is removed. It is further specified that the collateral in rem (e.g. fixed assets) shall in any case be limited to 50% and that the reduction of the final applicable interest rate for the beneficiary shall be at least 0.8% (80 basis points) as compared to the credit risk premium for a comparable loan without guarantee. At any time, the partner bank shall retain a risk participation in every loan of at least 20%.

(9) Bulgaria explicitly confirms that all the other characteristics and conditions listed in the existing aid scheme as described in the initial decision remain unchanged.

3. ASSESSMENT

3.1. Lawfulness of the measure

(10) By notifying the measure before putting it into effect, the Bulgarian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(11) Article 107(1) TFEU defines State aid as 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'.

(12) The qualification of the existing aid scheme as State aid was established in the initial decision. The notified amendments do not affect that qualification. The Commission therefore refers to the assessment contained in recital (36) of the initial decision.

(13) The Bulgarian authorities do not contest that conclusion.

3.3. Compatibility

(14) The Commission assessed the notification of the initial aid scheme on the basis of Article 107(3)(b) of the TFEU in light of the Temporary Framework and concluded that it was compliant with the compatibility conditions set out in the Temporary Framework.

(15) The Commission notes that all features of the initial decision which are not amended by the notified amendments remain unchanged, so that all general compatibility conditions, including anti-cumulation rules, continue to remain satisfied. In that regard, the Commission refers to its analysis of compatibility as set out in the initial decision authorising the existing aid scheme, in particular recitals (40) to (42).

(16) As explained in the Temporary Framework, the Commission considers that micro and small undertakings have been particularly affected during the current crisis by the liquidity shortage caused by the economic impact of the COVID-19 outbreak. The unprecedented supply and demand shock due to the crisis has also exacerbated the difficulties such undertakings face to access financing on the

market in general, as compared to medium-sized and large enterprises. Given their limited size and limited involvement in cross-border transactions, it is therefore less likely that State aid granted to these enterprises would distort competition in the Internal Market and affect intra-EU trade than State aid granted to medium-sized and large companies. This holds true even if these enterprises were to fall under the category of an undertaking in financial difficulty already on 31 December 2019, as long as they are not subject to a collective insolvency procedure under national law and have not received rescue aid (which has not been repaid) or restructuring aid (and are still subject to a restructuring plan).

(17) The amendments to the initial decision concerning the scope of beneficiaries (see recital 8(a)) and the amendment to the duration during which the aid may be granted (see recital 8(d)) have no impact on the compatibility of the scheme, in particular in light of sections 3.2, and 3.4 of the Temporary Framework. Theses notified amendments reflect changes made through the fourth amendment of the Temporary Framework of 13 October 2020.

(18) The amendment increasing the additional portfolio cap to 50% (see recital 8(b)) does not affect compliance with the Temporary Framework. Setting the maximum term of the guarantee at 6 instead of 5 years (see recital 8(c)) is explicitly envisaged in and therefore compliant with point 25(f) of the Temporary Framework.

(19) The amendment setting the absolute maximum of a loan to be covered by a guarantee under the scheme at BGN 1 000 000 for SMEs and BGN 2 000 000 for large enterprises (see recital 8(e)) does not affect the company specific limitations reflecting the thresholds set in point 25(d) and (e) of the Temporary Framework and therefore complies with those points. The fact that all guarantees under the scheme will be included on a portfolio basis (see recital 8(f)) does not affect this conclusion since all conditions on the guarantees concerning pricing, maximum loan amount and guarantee coverage continue to apply to each individual loan forming part of the portfolio.

(20) The amendment of the conditions for credit and financial institutions to reduce the collateral requirements and the final applicable interest rate to the final beneficiary (see recital 8(g)) provide more specific safeguards ensuring that these institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries. Moreover, Bulgaria confirmed that credit and financial institution always retain a risk participation in every loan of at least 20%. The measure therefore continues to comply with points 28 to 31 of the Temporary Framework.

(21) Apart from the amendments referred to in recital (8) above, there are no other alterations to the initial decision (see recital (9)).

(22) The Commission therefore considers that the notified amendments do not alter the Commission’s conclusions on the compatibility of the aid scheme as set out in the initial decision. The measure continues to be necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it continues to meet all the relevant conditions of the Temporary Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified amendments on the grounds that they are compatible with the internal market pursuant to Article 107(3)(b) TFEU.

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

CERTIFIED COPY
For the Secretary-General

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