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Subject: State Aid SA.57678 (2020/N) – Denmark - COVID-19: Danish recapitalisation scheme

Excellency,

1. PROCEDURE

(1) Following prenotification contacts[1], by electronic notification of 27 October 2020, completed on 19 November 2020, Denmark notified an aid scheme to be implemented through a Fund for investments "Danmarks Genopretningsfond" ("the Fund") under the Temporary Framework for State aid Measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework")[2].

[1] The prenotification contacts started on 14 June 2020. The exchanges with the Danish authorities were conducted in the form of emails and conference calls to discuss draft submissions of the Danish authorities, notably working documents, calculations, follow-up e-mails, etc. The exchanges took place until 26 October 2020.

[2] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020 (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 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

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The notified aid scheme is a recapitalisation measure under which the Fund will invest in equity by acquiring preferred shares of the beneficiaries ("the Measure").

(2) Denmark 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 MEASURE

2.1 Impact of the COVID-19 outbreak on Danish economy

(3) The Danish authorities submit that, according to the Danish National Bank, the growth in the Danish economy ended abruptly in early 2020. The Danish National Bank estimated in the report issued on 1 April 2020 that the gross domestic product (GDP) of that Member State would contract by 4.1% in 2020. According to data published by the Danish National Bank in September 2020, Danish GDP is forecasted to decrease by 3.6% in 2020 as a result of the heavy economic downturn in spring 2020. The recovery of economic activity is expected to continue, but at a slower pace. GDP is forecasted to increase by 3.6% in 2021 and by 2.3% in 2022. However, there is great uncertainty about the economic development, which will be strongly influenced by how the spread of the COVID-19 develops in the coming months.[4]

(4) The COVID-19 outbreak[5] and the measures implemented by the Danish authorities to contain its spread have led to a sharp contraction in economic activity. The Measure is part of a wider recovery package to tackle the consequences of the COVID-19 outbreak on the Danish economy.

2.2 The nature and form of aid

(5) The Measure is a recapitalisation scheme under which the Danish State will contribute as an investor of last resort with the objective of restoring the capital structure of undertakings that are affected by the COVID-19 outbreak and are of substantial importance to Danish society.

(6) The Measure foresees a recapitalisation instrument through which the Fund will acquire new preferred shares of the beneficiary with a supplementary upside

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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 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 https://www.nationalbanken.dk/en/pressroom/Pages/2020/09/DNN202009989.aspx

5 The first case of the coronavirus (COVID-19) in Denmark was confirmed on 27 February 2020. See https://www.ssi.dk/aktuelt/sygdomsudbrud/coronavirus (in Danish).

element consisting of new warrants carrying a right to subscribe for ordinary shares of the beneficiary.

(7) In the majority of cases, Denmark considers the investments made by the Fund to be State aid under the Measure. However, in parallel, the Fund may also invest in eligible undertakings in connection with a co-investment made by one or more private investors. Those co-investments fall outside the scope of the Measure where they do not involve aid and are therefore not covered by the present decision. The Fund will at the time of an investment decision record in a list whether the respective investment falls under the Measure or the investment is made under the market economy operator principles and therefore constitutes no aid. This exhaustive list of investments classified at the time of an investment decision will be accessible to the Commission at any point in time until 10 years after the final investment by the Fund.

(8) Denmark considers the Measure to be compatible with the internal market on the basis of Article 107(3)(b) TFEU, in light of section 3.11 “Recapitalisation measures” of the Temporary Framework.

2.3 Legal basis

(9) The legal basis for the Measure is the ministerial decree approved by the Parliament’s Finance Committee on 22 October 2020[6] as well as the implementing rules[7] that will be adopted on the basis of the decree.

2.4 Administration of the Measure

(10) The Measure will be implemented by the Fund as a granting authority. The intention is that the Fund will operate until 31 December 2023, while investments can be made by the Fund no later than by 30 September 2021. The Fund will only cease its operations when it has no more investments to administer, i.e. all preferred shares in beneficiary companies are either sold or redeemed and all warrants issued as part of the investments are sold or settled against cash. Denmark plans for the Fund to administer the investments until the end of 2023. After the Fund has ceased its operations, detailed records regarding the granting of aid will be maintained either by the Ministry of Finance or by the Administrator (see recital (12)) or another third party who is suitable to comply with the obligation in point 89 of the Temporary Framework.

(11) The Fund will be organized in the form of a newly established State-owned private limited company with the Danish Ministry of Finance as a sole shareholder. The aim of the Fund is to act only as an investor of last resort.

(12) The Fund will enter into an administration agreement with a newly-established, wholly-owned, subsidiary of Arbejdsmarkedets Tillægspension (ATP)[8], a State-

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[6] Folketinget 2020-21, Aktstykke nr. 6, Finansministeriet. København, den 7. oktober 2020.

[7] The implementing rules will address questions on the investment policy, tax policy, ESG policy, the assessment of eligibility and the maximum amount of the investment from a State aid perspective, standard term sheet for the investments and remuneration adjustments to account for warrants.

owned entity, as a managing authority ("the Administrator"). The Administrator will be appointed by the Danish Government.

(13) The structure of the Fund will consist of a board of directors and an executive board. Where outsourcing of the services concerning the administration of the Measure to the Administrator is not practicable or otherwise not possible in whole or in part, the Fund will employ relevant personnel to provide those services internally or the Ministry of Finance will carry out some or all of the management tasks and administrative tasks for the Fund.

(14) Under the administration agreement, the Administrator will handle applications from eligible companies, complete relevant due diligence on eligible companies, negotiate recapitalisation measures with eligible companies and their shareholders, prepare investment decisions, and carry out portfolio management, risk management, and certain other administrative tasks for the Fund.

(15) The Administrator is entitled to a fee under the administration agreement concluded with the Fund. The fee covers the Administrator's costs needed for handling of the investment files. The fee may potentially include a reserve to cover potential third-party claims or similar loss absorbing mechanisms. The Administrator will return the remainder of any reserve to the Fund at the end of the administration agreement. The administration fee will be borne by the Fund. The beneficiaries will only pay transaction costs.

(16) All investment decisions, exit decisions, restructuring decisions etc. are expected to be made by an Investment Committee of the Fund based on recommendations prepared by the Administrator. The board of directors of the Fund will decide whether to form the Investment Committee and, if it does so, it will appoint the members of that committee. The members of the Investment Committee are expected to be composed of some or all of the members of the Fund's board of directors.

(17) When making the investment decisions the Investment Committee exercises its powers with a commercial margin of discretion taking into consideration all of the relevant facts presented to it.

(18) The Investment Committee (or the board of directors, if no committee is formed) will only be allowed to make an investment decision if the proposed investment comes within the scope of the Guiding Selection Criteria (see recital (26)). Within that scope, the Investment Committee (or the board of directors, if no committee is formed) has full discretion to decide in which companies the Fund will invest.

(19) The undertakings applying for State aid under the Measure have to apply in writing, by submitting a standard application form, including a business plan, budget, relevant valuations and explanations and other required documentation. If the Fund decides to grant aid under the Measure, the Fund will conclude an

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[8] ATP is a self-governing institution, established by the Danish Parliament by law in 1964. Today, the ATP Group is Denmark's largest pension and processing company and has around 3,000 employees working across three areas: managing pensions, investment and administration.

agreement with the beneficiary undertaking setting out all the specific terms and conditions of the aid and the obligations of the beneficiary.

2.5 Budget and duration of the Measure

(20) The share capital of the Fund will be up to DKK 10,000,000,000 (approximately EUR 1.34 billion[9]) at a subscription price of DKK 10 (approximately EUR 1.34) per share of nominally DKK 1 (approximately EUR 0.13). The shares will be paid in cash leaving the Fund with an equity base in cash of up to DKK 10,000,000,000. That equity base of up to DKK 10,000,000,000 (approximately EUR 1.34 billion) will be the budget of the Measure. The Danish authorities commit to submit a separate notification for individual aid above the threshold of EUR 250 million, including when a beneficiary receives successive investments from the Fund that total over EUR 250 million.

(21) The Fund may grant aid under the Measure until 30 September 2021. Written applications may be submitted under the scheme until 29 September 2021 in order to allow for sufficient processing time prior to 30 September 2021.

2.6 Basic elements of the Measure

2.6.1 Eligibility criteria for the beneficiaries

(22) The Fund may grant aid in the form of investments into the newly issued preferred shares of companies and thus ensure a sufficient capital base in larger, otherwise healthy, socially responsible companies that face serious difficulties to maintain operations due to the COVID-19 outbreak.

(23) The Fund will only make COVID-19 recapitalisation investments in companies that would otherwise go out of business or would face serious difficulties to maintain their operations. The Fund will base its assessment on a deterioration of the company’s debt to equity ratio or similar indicators taking into account, in particular, the relevant industry and available historical data.

(24) In that regard, an individual assessment with different weighting of criteria in each case will be performed. The Measure targets companies with a significant presence in Denmark. Therefore, as a first general screening of possibly eligible companies, the elements which will be considered when deciding on the possibility to apply for aid under the Measure before assessing the eligibility under the Temporary Framework will include a significant number of employees in Denmark, a Danish establishment, a Danish branch, and other similar considerations. According to Danish authorities, these criteria are designed to target systemically important companies and businesses linked with a risk of disruption of the provision of goods and services of substantial importance to the Danish economy.

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[9] 1 EUR = 7.4406 DKK on 27 October 2020; https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-dkk.en.html

(25) The Investment Committee will decide when a company is considered to have a significant presence in Denmark and therefore is eligible for aid under the Measure. Within that scope, the Investment Committee, or the board of directors if no committee is formed, has full discretion to decide which companies the Fund will invest in.

(26) Once it is established that a company has a significant presence in Denmark, an eligibility selection according to the Temporary Framework will be made on the basis of two groups of criteria. The eligible companies under the scheme are to be selected on the basis of criteria based on (A) industry characteristics and on (B) an individual assessment of the applicant's financial situation on a group-wide level.

(27) The first group (A) consists of criteria based on industry characteristics and they will result in an industry score attributed to the applicant undertaking. The other group of criteria (B) will be applied in an individual assessment of the applicant's financial situation on a group-wide level. Together those two groups of criteria form the "Guiding Selection Criteria" to be applied by the Investment Commitee.

(28) The first group (A) of the "Guiding Selection Criteria" is based on industry characteristics and reflects the industries that (i) are hit by extraordinary economic shock due to the COVID-19 outbreak and (ii) are of substantial importance to the Danish economy.

(29) For the purpose of meeting the extraordinary economic shock criterion due to the COVID-19 outbreak, the Fund will not be allowed to invest in a company that has not been hit by extraordinary economic shock due to the COVID-19 outbreak. The Fund will therefore be required to always make the assessment prior to an investment by making sure that the following factors are present:

a) a challenged capital base of the company caused by a reduced turnover or a loss of equity caused by the COVID-19 outbreak;
b) a general challenge for the industry caused by reduced demand/supply that has a negative influence on the company which in turn entails a risk of further negative influence on the industry in general; and
c) inability of the company to find financing on the markets at affordable terms. The application to the Fund will include a description by the company of the efforts performed to find affordable financing on the markets. Further, the Fund will only invest in companies that, based on an individual assessment, could not ensure its viability by the horizontal measures existing in Denmark to cover liquidity. That assessment will be based upon a description by the applicant of the insufficiency of the horizontal measures.

(30) For the purpose of meeting the requirement of substantial importance to the Danish economy the Fund will look at the following elements:

a) companies that play a central part in Denmark e.g. by being of a great importance in a certain geographical area or by being part of an important infrastructure;
b) companies that are difficult to replace e.g. due to high barriers of entry and complex value chains;

c) companies with high productivity that deliver a strategic important contribution to the relevant Danish industry, e.g. as industry leader; and/or

d) companies with a significant export activity that would be difficult to regain if the export activity is lost.

(31) The criteria based on industry characteristics will be marked as industry scores from 1 to 5. An industry score of 4 or 5 will generally be regarded as a fulfilment of the criteria of being hit by extraordinary economic shock due to the COVID-19 outbreak and of substantial importance to the Danish economy. There is a list of industries which have been attributed an industry score 4 or 5, namely the industries of machines, equipment, vehicles, metal, toys, clothing, transport and logistics (freight, shipping, aviation, passengers), engineering and R&D, medico technology industry, consumer goods industries, chemicals, ingredients and building material industries.

(32) For companies with an industry score below 4, the Fund will, in general, only invest if the company fulfils the main criteria of being hit by extraordinary economic shock due to the COVID-19 outbreak and is of substantial importance to the Danish economy, even though the industry it belongs does not have a score of 4 or 5.

(33) The second group of the Guiding Selection Criteria (B) is based on the individual assessment of the applicant, and it will reflect a selection based upon company's (i) significance and (ii) viability prior to the COVID-19 outbreak and in the expected future.

- A company will be considered significant if its difficulties stemming from COVID-19 outbreak would have a material negative impact on employment, business and the Danish economy. A company with an annual group turnover exceeding DKK 500 million (approximately EUR 67 million) in the latest audited financial year will fulfil that criterion. The Investment Committee (or the board of directors if no committee is formed) may, as a way of exception and based on concrete circumstances, decide that a company with a turnover in the latest audited financial year that was up to five percent less than DKK 500 million (approximately EUR 67 million) is also to be considered significant.

- A company is considered to have been viable prior to the COVID-19 outbreak and in the expected future if the company historically and under normal market conditions has shown to be viable and if the company is expected to generate value when the economy returns to normal provided that the capital structure of the company returns to normal. The Fund will assess the viability prior to the COVID-19 outbreak and in the expected future of an individual company and on a group-wide level if the company belongs to a group.

(34) Aid may not be granted under the Measure to undertakings that were already in difficulty within the meaning of relevant Block Exemption Regulations[10] on 31 December 2019.

(35) The Danish authorities explain that the Fund will not invest in companies where the State was already an existing shareholder before the COVID-19 recapitalisation investment and that State-owned companies are not eligible for aid under the Measure.

(36) SMEs as defined in Annex I to the General Block Exemption Regulation[11] are not eligible for aid under the Measure.

2.6.2 Instruments under the Measure

(37) Denmark considers that the Measure envisages one recapitalisation instrument in the form of preferred shares that should be considered a hybrid capital instrument under the Temporary Framework. Attached to those preferred shares may be a right to subscription of warrants as part of the remuneration for the State whereby the pricing of the warrant has an impact on the remuneration of the recapitalisation instrument. The characteristics for both are explained below.

a) Preferred shares as the recapitalisation instrument

(38) Under the Measure, the Fund will make an investment in X amount in preferred shares whereby X is the required and agreed recapitalisation amount determined in accordance with the principles of the Temporary Framework.

(39) That instrument in the form of the preferred shares is accounted under the Danish national accounting rules (as set out in the Danish commercial code) and under International Financial Reporting Standards (IFRS) as equity.

(40) Nonetheless, Denmark describes the preferred shares as a hybrid rather than an equity instrument for the purposes of the Temprary Framework, due to their characteristics. Those characteristics concern the features described below.

(41) The State does not participate either in upside or downside of its investment[12] as the number of the preferred shares has no financial impact since the financial entitlement pertaining to the preferred shares is defined as the investment amount

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10 As defined in Article 2(18) of 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), in Article 2(14) of 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 on the Functioning of the European Union (OJ L 193, 1.7.2014, p. 1), and Article 3(5) of Commission Regulation (EU) 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 on the Functioning of the European Union (OJ L 369, 24.12.2014, p. 37).

11 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, 26.6.2014, p. 1.

12 Except in case of warrants described below (recital 51).

plus interest. In other words, the State is providing the recapitalisation amount, but that amount bears no entitlement for either profit or loss participation.

(42) The preferred shares do not carry voting rights. At the same time, the preferred shares are a perpetual instrument, i.e., they have no maturity date and are callable by the issuer only. The preferred shares will not be entitled to any dividend in excess of the defined financial entitlements. Any dividend distributed to the holder of the preferred shares will be a *de facto* repayment of the investment amount and interest. Any dividend paid on the preferred shares will first serve to repay the interest (including compound interest) and then secondly to repay the principal investment amount.

(43) The preferred shares cannot be converted to ordinary equity. They are freely transferable without any restrictions but the existing shareholders may have a preemptive right to buy the warrants.

(44) The number of the preferred shares will be determined based on the independent valuation of the beneficiary but it will not have an actual impact on the defined financial entitlements. The only entitlement is interest, which is based on the nominal value of the investment amount (recital (41)).

(45) The preferred shares are senior only to ordinary shares. They cannot be written down, therefore they do not need to be replenished. Their nominal value, meaning the total principal investment amount as well as the accrued interest has to be repaid and partial repayment before maturity is possible. The preferred shares do not absorb losses.

(46) The beneficiary may, at any time and at its sole discretion, choose to defer any payment of coupon, in whole or in part. If coupons are deferred, they are capitalized.

(47) The right to receive payment follows the preferred shares, and any deferred coupon shall be paid to the holder of the preferred shares at the time of payment.

(48) The issuer may redeem the preferred shares in full or in part at an amount per preferred share equal to 100 percent of the outstanding nominal amount together with any deferred coupon and any other accrued and unpaid interest up to (and including) the redemption date. In the event of redemption, the outstanding nominal amount (plus accrued interest) must be paid to the holders of the preferred shares. The application of the governance restrictions required by the Temporary Framework is triggered by the issuance of the preferred shares. The governance restrictions as defined in section 3.11.6 of the Temporary Framework will apply until the preferred shares are fully redeemed. However, if the outstanding (i.e. non-redeemed) shares are sold to a third party, meaning entities other than the beneficiary that are neither public authorities nor public undertakings within the meaning of Article 2 of Directive 2006/111/EC[13], at par

[13] Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (Codified version), OJ L 318, 17.11.2006, p. 175.

value or above, including accrued interest, the governance restrictions would no longer apply.

(49) With reference to point 78 of the Temporary Framework, Denmark indicates that the respective conditions and restrictions with regard to the remuneration of each member of the beneficiaries' management will not be lifted unless at least 75% of the total amount of the Measure has been redeemed.

b) Warrants as a financial instrument and upside to the State

(50) The Fund will be entitled to a number of warrants as a financial instrument to ensure an upside mechanism for the State with regard to the preferred shares. The warrants bear the right for their holder, except the State which will not be entitled to exercise the warrants, to subscribe for up to 10% of the required and agreed recapitalisation amount (see recital (38)) in the form of ordinary shares. The ratio between the number of warrants and the company's ordinary shares may be any amount between 0% and 100% while the ratio between the number of warrants and the preferred shares injected into the company can be at most 10%. The acquired warrants will bear an entitlement to subscribe for 1 common share at a fixed price corresponding to the market value at the time of the initial investment or lower. The warrants are exercisable at any point in time for a period of up to 10 years.

(51) The warrants allow for an upside to the State for its investment, if the profitability of the company turns out to be better than expected. Denmark considers the warrants not to be a separate recapitalisation measure under the Temporary Framework. The warrants are coupled with preferred shares at the time they are issued and therefore they form a part of the recapitalisation instrument. However, the warrants as such do not contribute to the capital structure of the beneficiary and they have their own separate existence aside the preferred shares. The Danish authorities confirm that the Fund will not exercise the warrants to subscribe for new common shares or other shares of the beneficiary. The Fund may, however, either sell the warrants to third parties or request that warrants are settled against cash payment from the beneficiary of the difference between the market value of the ordinary shares and warrant fixed exercise price, if positive.

(52) The value of the warrant will be subtracted from the remuneration of the preferred shares but it never goes below the minimum remuneration required by point 66 of the Temporary Framework. Therefore, the State pays the warrants through an ex-ante defined discount on the remuneration on the preferred shares, but gets a share of the increase in the equity value of the beneficiary in case it materializes.

(53) Denmark puts forward that it is only for the Fund to decide on the issuance of warrants which may amount up to 10% of the total recapitalisation investment amount. The Fund's decision will be a decision based on commercial considerations at the benefit of the Fund and the Fund will have discretionary commercial powers in this regard. This decision will be based on an individual commercial assessment of the beneficiary's circumstances.

(54) In effect, this means a decision made by the Fund may result in several scenarios: (i) the investment will not include warrants if the Fund considers the issuance of warrants will not make sense from a commercial point of view e.g. a small

investment where the transaction costs will be disproportionate to the value of the warrants; (ii) the investment will only include warrants of less than 10% of preferred shares; or (iii) the warrants issued will be exercisable in a shorter period of time than 10 years e.g. if so required by a co-investor of the Fund.

(55) Only the Fund has the right to decide on the issuance of the warrants. The Danish authorities commit that the Fund’s decision on the issuance of warrants will be based on commercial considerations and that the decision in each case will be made in the Fund’s best commercial interest.

(56) If the Fund sells the warrants, the sale price must be at market price of the warrant. The non-State holders of the warrants that buy the warrants from the Fund can exercise them and subscribe for new common shares or other shares.

(57) The warrants will have provisions that compensate the holder of the warrants for the loss of value arising from the payment of any dividend by the beneficiary company. However, such compensation will not be provided in the case of repayment of the investment amount with interest that may take place as a dividend payment on the preferred shares. Compensation will be in the form of (i) amendments to the exercise price of the warrants and/or (ii) the issuance of additional warrants.

(58) The Fund will only request cash settlement if this is commercially attractive for it to do so, that is, if the value of the beneficiary company exceeds the fixed exercise price of the warrants, except in case of certain exit events, described in recital (59).

(59) In case of an exit event, the holder of the warrants will be forced to either exercise the warrants or otherwise they will expire. An exit event is defined as i) a listing of the beneficiary; ii) a sale of the majority of the shares of the beneficiary at a price per share of at least two times the exercise price of the warrants; or iii) merger with independent companies. However, if the Fund is the holder of the warrants when an exit event occurs and since the Fund will be restricted from exercising the warrants, the Fund will require that the warrants are settled against cash payment from the beneficiary in the amount which is the difference between the fixed exercise price and the market value of the warrant. In case of an exit event of listing ((i) above) or merger ((iii) above) the Fund will further receive a compensation for the loss of the option value whereby the compensation is equal to the value of the warrants as calculated on the basis of the methodology in recitals (70)-(72).

(60) The Fund may offer the existing shareholders a preemptive right to buy the warrants in case the Fund considers a sale. In that case and if the Fund considers a sale, the warrants will be sold at market price. The Fund will procure an independent valuation of the warrants and the existing shareholders will have fourteen days to consider whether to buy the warrants at that valuation and a certain number of days to complete the purchase. If the existing shareholders choose not to buy the warrants, the Fund will be free to sell the warrants at market price.

2.7 Non-share-based entities

(61) Some companies which may be eligible for aid under the Measure may not be incorporated as share-based entities under Danish corporate law. Instead they may be incorporated as partnerships, co-operations etc. In those situations, and where it is not feasible for a share-based entity to issue preferred shares due to obstacles under Danish corporate law or existing financial terms, the investment will be made in the form of an unsecured subordinated loan.

(62) All commercial and financial terms and conditions of such subordinated loan, including the restrictions, will be identical with those applicable to preferred shares issued under the Measure.

(63) Given that the issuance of the warrants is possible only for the companies with a share capital structure as they carry with them a right to subscribe to a number of new ordinary shares, in case of an investment in non-share-based companies, the Fund will instead receive synthetic warrants. The only purpose of synthetic warrants is to be able to invest in companies for which it is not feasible to issue warrants while still applying the same general approach and principles as applied to other investments. The commercial/financial terms and conditions and restrictions of the synthetic warrants will be identical with those applicable to ordinary warrants issued under the Measure. A precondition for the Fund's investments is that a valuation of the beneficiary company has been made. Correspondingly, it is also a precondition for using synthetic warrants that a valuation of the beneficiary company is in place.

(64) The synthetic warrants will not be defined as a specific number of shares but as a percentage-based ownership of the beneficiary company (likewise ordinary warrants based on a specific number of shares will also represent a percentage ownership of the beneficiary company). The percentage-based (potential) ownership of the beneficiary company is calculated based on the valuation of the beneficiary company. According to Danish authorities, that method ensures that there is no financial difference between ordinary warrants and synthetic warrants.

2.8 Remuneration of preferred shares

(65) The value of the warrant is taken into account in the remuneration of the preferred shares. The preferred shares will carry a right to receive payment according to rates from the Table in point 66 of the Temporary Framework plus a top up of 90 basis points for hybrid instruments reflecting the riskier nature of prefered shares in comparison with a standard hybrid instrument.

(66) The minimum remuneration is defined as follows: (i) 1-year CIBOR plus (ii) 90 basis points (subject to potential reduction depending on level of warrants as explained in the following recitals) plus (iii) the interest rates of point 66 of the Temporary Framework as set out below.

(67) There is a step up for coupons and the levels of coupons are in compliance with the minimum set out in the Temporary Framework. The margin step-up will take place on each relevant anniversary of the issuance of the preferred shares:

Minimum margins, Table 1

1st year	2nd and 3rd year	4th and 5th year	6th and 7th year	8th year and after
250 bps	350 bps	500 bps	700 bps	950 bps

(68) The payment of coupons is not mandatory. The company may, at any time and at its sole discretion, elect to defer any payment of coupon, in whole or in part. If coupons are not paid in year X, the coupons are deferred. In case the coupons are deferred, they are capitalised.

(69) If the COVID-19 recapitalisation investment consists of the issuance of both preferred shares and warrants, Denmark will waive the 90 basis points risk premium on the preferred shares for a time period such that the present value of the foregone remuneration does not exceed the value of the warrants issued with the preferred shares. Table 2 shows the foregone remuneration (in days) as a function of the maturity of the warrants, in the scenario where warrants amount to 10% of the preferred shares.[14] For example, if preferred shares are issued together with a five-year maturity warrant, Denmark will forego 1 year and 328 days worth of 90 basis points risk premiums:

Table 2

Maturity of the warrant (years)	**Period with no 90 basis points additional remuneration**
1	316 days
2	1 year 77 days
3	1 year 182 days
4	1 year 259 days
5	1 year 328 days
6	2 years 36 days
7	2 years 105 days
8	2 years 162 days
9	2 years 223 days
10	2 years 275 days

[14] Denmark submitted a methodology to calculate the appropriate coupon reduction for any possible amount of warrants relative to preferred shares, which ranges between 0% and 10%.

(70) Denmark calculates the value of the warrants issued with the preferred shares, and hence the present value of the foregone remuneration, as the product of the value of a single warrant and the number of issued warrants, divided by the amount of preferred shares issued. To calculate the value of a warrant, Denmark employs the standard Black and Scholes model, adjusted for the dilution effect of the warrants. That adjustment is necessary because, while the settlement of options occurs in existing shares, the one of warrants is in the form of newly issued shares. As such, the issuance of warrants has a negative effect on the value of the existing beneficiary's shares, implying the warrant would be overvalued if priced through the Black and Scholes formula. The Commission, in recitals (71) and (72), will first describe the Black and Scholes formula and then its adjustment.

(71) With regard to the pricing of the option through the Black-Scholes model[15], Denmark assumes: (i) a strike price equal to the current market price of the beneficiary's shares, (ii) a zero dividend yield, (iii) the relevant time to expiry, which can take values from 1 to 10, depending on the choice of the Fund, (iv) risk-free rates based on the swap rate with the same duration as the warrant, (v) an implied volatility equal to the current implied volatility of the OMX Copenhagen 25 index. In addition, Denmark also commits that the warrants will have provisions that compensate the holder of the warrants for the loss of value arising from the payment of any dividend by the beneficiary company (except in the case of repayment of the investment amount with interest that may take place as a dividend payment on the preferred shares). That compensation is in the form of (i) amendments to the exercise price of the warrants and/or (ii) the issuance of additional warrants to compensate for dividends.

(72) With regard to the dilution effect, Denmark proposes to offset it with a reduction in the exercise price of the warrants, which increases their value, ceteris paribus. Denmark calculates that reduction by using the Hull[16] adjustment and ensuring that, for each relevant level of dilution, the resulting value of the warrant remains the same.[17] Table 3 shows the proposed reduction of the exercise price of the warrants as a function of their dilutive effect, expressed in terms of number of new ordinary shares upon exercise relative to the beneficiary's outstanding ordinary shares. For example, for a 10 year maturity warrant entitling to 5% of the beneficiary's outstanding ordinary shares, the proposed reduction of the exercise price is 1 percentage point.

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15 The Black-Scholes (or Black–Scholes–Merton) model is a mathematical model that describes the dynamics of financial derivative instruments. It was first published in the Journal of Political Economy (Vol. 81, No. 3 (May - Jun., 1973), pp. 637-654). A derivative instrument is a contract between two or more parties whose value is based on the dynamics of a third underlying financial asset.

16 Hull John C. (2018), "Options, Futures, and Other Derivatives", Ninth edition.

17 The proposed adjustment does not ensure a constant value of the warrant across all the possible dilution levels. Denmark commits to use the lowest among those warrant values in order to determined the time period when beneficiaries are exempted from paying the 90 basis points risk premium.

Table 3

Maturity of the warrant (years)	Reduction to strike price per 1 percentage point of warrants to ordinary outstanding shares
1	0.07%
2	0.11%
3	0.12%
4	0.12%
5	0.12%
6	0.15%
7	0.17%
8	0.18%
9	0.20%
10	0.20%

2.9 Maximum amount of the recapitalisation

(73) The amount of the recapitalisation will be limited to the amount necessary and proportionate to ensure the viability of the beneficiary. On the one hand, the investment should not go beyond restoring the capital structure of the beneficiary to the one predating the COVID-19 outbreak, i.e. the situation on 31 December 2019. The investment will not result in the beneficiary company's capital structure having a ratio of net debt to equity below the level which prevailed at 31 December 2019, by comparing the ratio of net debt to equity at 31 December 2019 with the ratio of net debt to equity at 31 December 2021.

(74) On the other hand, the investment should not exceed the minimum needed to ensure the viability of the beneficiary. To respect that limit, Denmark will determine the maximum amount of aid by applying one of the two possible procedures under the Measure leading to the lowest amount.

(75) First, under the standard procedure, which is a main procedure and a first option to ensure the proportionality of the aid amount, the necessary amount will be determined by using financial indicators calculated on the basis of business forecasts. The decisive indicator here is net debt/earnings before interest, taxes, depreciation and amortisation (EBITDA) ratio[18].

(76) The conditions to assess the maximum amount of the investment under the standard procedure are:

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[18] EBITDA is an indicator of the performance of a company.

- The investment will not result in the beneficiary company having a ratio of net debt to EBITDA at 31 December 2021 below the following:

a) For a beneficiary company with a turnover of more than DKK ten billion
   i. 3.50x if the beneficiary company operates in a more leveraged[19] sector;
   ii. 3.25x if the beneficiary company operates in a sector with average leverage;
   iii. 3.00x if the beneficiary company operates in a less leveraged sector.

b) For a beneficiary company with a turnover between DKK two point five billion and DKK 10 billlion
   i. 3.00x if the beneficiary company operates in a more leveraged sector;
   ii. 2.75x if the beneficiary company operates in a sector with average leverage;
   iii. 2.50x if the beneficiary company operates in a less leveraged sector;

c) For a beneficiary company with a turnover of less than DKK two point five billion
   i. 2.50x irrespective of the sector.

If 31 December 2021 is inappropriate as reference date whatever the cause for the net debt/EBITDA threshold, the assessment may be made at 31 December 2022 as an alternative reference date.

(77) In cases where the maximum amount of the investment that is allowed based on the net debt to EBITDA ratio is insufficient to ensure the viability of the beneficiary due to exceptional circumstances, Denmark proposes a procedure which would allow for the additional investment amount. Any use of that alternative procedure requires the following safeguards to be met:

a) After thorough examination and based on an opinion of an independent expert, the management of the Fund and the management of the beneficiary conclude that the beneficiary would not be viable at the reference date if the investment is limited by the net debt/EBITDA thresholds.

b) The beneficiary has obtained opinions from two financial institutions, both of which conclude that the beneficiary would not, as of today, be able to obtain unsecured debt if the investment is limited by the net debt/EBITDA thresholds. At least one of those financial institutions must be independent from the beneficiary in the sense that it should not have any claim of significant value towards the beneficiary.

[19] In order to make the determination of whether a sector is more, less or medium leveraged, the Fund will examine the average level of leverage in the Danish and European markets for different corporate sectors. It is anticipated that the distribution should be symmetrical overall on a sector basis i.e. the total income of less levered companies would be about a third of the total and the same for more and medium levered.

(78) Furthermore, if the above procedural conditions are met, the investment amount may be increased by an additional amount, refered to as an additional investment, within the following limits:

a) Under no circumstances can the additional investment be expected to result in a net debt/EBITDA below 2.0x on 31 December 2021[20].

b) Under no circumstances can the additional investment result in a net debt/EBITDA ratio after the investment below the net debt/EBITDA ratio pre-COVID-19, i.e. on 31 December 2019.

(79) The additional investment will be granted as a subordinated debt. The Danish authorities commit that all conditions of the additional investment will be the same as of the preferred shares.

(80) For the additional investment the following conditions will apply:

a) The beneficiary's capital expenditure in 2021 may not exceed the lower of (i) the beneficiary's average expenditure three years up to and including 2019; (ii) the beneficiary's capital expenditure in 2019 reduced by the nominal reduction in economy-wide gross fixed capital formation reported by Statistics Denmark for the most recently available quarter at the time of application compared with the equivalent quarter in 2019; and (iii) the amount that it had budgeted for 2020 and 2021 taken together, less amounts actually spent in 2020, unless:

i. it was contractually committed to make such expenditures as at 31 December 2019, in which case such committed expenditures can be disregarded from the calculation of permitted expenditure, or

ii. The Fund is satisfied that greater expenditure is necessary to ensure the viability of the beneficiary, and has been provided with independent advice from financial institutions conducting the assessment of the potential beneficiary that this is the case (recital (77)).

b) The beneficiary must pay back the additional investment with accrued interest on 31 January 2022 at the latest. However, by way of exception, if the beneficiary is unable to repay the additional investment with accrued interest on 31 January 2022 as a result of (i) having insufficient liquid resources to repay the additional investment with accrued interest, while retaining amounts sufficient for day to day operations and liquidity management, (ii) being unable to raise the required amount in debt finance, and (iii) having obtained statements from two or more financial institutions, of which at least one should be independent, that they will not advance or underwrite sufficient financing to repay the additional investment with accrued interest on 31 January 2022, the additional investment will remain outstanding on the same terms as the preferred shares.

[20] The reference date could be also 31 December 2022 as explained in recital (76).

c) The beneficiary will grant warrants to the Fund on the additional investment on the same basis as for the investment received under the standard procedure.

(81) Denmark confirms that all other COVID-19 measures granted or planned will be taken into account in the calculation of the maximum amount of aid.

2.10 Governance, avoidance of undue distortions of competition and exceptions

(82) The Danish authorities confirm that as long as the beneficiary has not definitively reimbursed the temporary public support received from the Fund to strengthen its solvency, the beneficiaries must comply *inter alia* with the following restrictions:

a) in order to prevent undue distortions of competition beneficiaries must not engage in aggressive commercial expansion financed by State aid or beneficiaries taking excessive risks;

b) beneficiaries of the Measure will not advertise these for commercial purposes;

c) until the volume of the Measure has been reduced by at least 75%, beneficiaries will not acquire a stake of more than 10% in competitors or other operators in the same line of business, including upstream and downstream operations. In exceptional circumstances, and without prejudice to merger control, such beneficiary undertakings may acquire a stake of more than 10% in operators upstream or downstream in their area of operation if the acquisition is necessary to maintain the viability of the beneficiary, and provided that no other purchaser can be found. Such acquisitions are contingent on the Commission’s authorisation and cannot be implemented before the approval of the Commission.

(83) State aid under the Measure will not be used to cross-subsidise economic activities of integrated undertakings that were already in economic difficulties on 31 December 2019. A clear account separation will be put in place in integrated companies to ensure that the Measure does not benefit such activities.

(84) If the beneficiary undertaking has a significant market power on at least one of the relevant markets in which it operates, and if the Measure exceeds EUR 250 million, additional measures to preserve effective competition in those markets will be proposed by Denmark to the Commission under the auspices of the formal notification of the individual measure exceeding EUR 250 million. In particular, those conditions may cover structural or behavioural commitments envisaged in Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

(85) As long as the beneficiary undertaking is making use of the Measure from the Fund, members of the governing bodies and directors will not be granted any bonuses, other variable remuneration components or similar payments, including any payments from group undertakings. Similarly, special payments in the form of blocks of shares, gratuities or other remuneration in addition to the fixed salary, other remuneration components that are at the discretion of the undertaking or severance payments that are not required by law will not be granted.

(86) Until the volume of the Measure has been reduced by at least 75%, no member of the undertaking's management may receive total remuneration exceeding his/her basic remuneration on 31 December 2019. In the case of persons who become members of the management at or after the time when the Measure is taken, the ceiling is the lowest basic remuneration of any member of the management on 31 December 2019.

(87) For the duration of the Measure, no dividends, nor non-mandatory coupon payments, nor buy back shares will be paid to shareholders other than the Fund. Furthermore, the undertaking will not repurchase any shares or other components of its liable capital, or make any other payments not owed under contract or law to shareholders or their affiliated undertakings.

2.11 Transparency, monitoring and reporting obligations

2.11.1 Reporting obligation for the beneficiaries under the obligation to submit an exit strategy

(88) The Danish authorities confirm that the beneficiaries required to demonstrate a credible exit strategy will report to the Fund on the progress in the implementation of the repayment schedule and the compliance with the conditions of section 3.11.6 of the Temporary Framework within 12 months of the schedule's presentation, and thereafter periodically every 12 months until the COVID-19 recapitalisation investment is fully redeemed or sold.

(89) The Danish authorities confirm in line with point 83 of the Temporary Framework that as long as the Fund still owns any part of the COVID-19 recapitalisation investment the beneficiaries will publish within 12 months from the date of the granting of the aid and thereafter periodically every 12 months, information on the use of the aid received. In particular, this publication will include information on how their use of the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation, including the EU objective of climate neutrality by 2050.

2.11.2 Reporting obligation for the State

(90) The Danish authorities commit to report to the Commission annually on the implementation of the repayment schedule and compliance with the conditions in section 3.11.6 of the Temporary Framework, including the obligation to publish relevant information on each individual aid granted under the Measure on the comprehensive State aid website or Commission's IT tool within 12 months from the moment of granting.[21]

2.11.3 Restructuring plan

(91) The Danish authorities confirm that if six years after the COVID-19 recapitalisation investment (or seven years in case of companies not publicly

[21] Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014.

listed) the Fund still owns instruments resulting from its intervention representing 15% or more of the beneficiary's equity, a restructuring plan in accordance with the Rescue and Restructuring Guidelines will be notified to the Commission for approval. The Danish authorities commit that the actions envisaged by the restructuring plan will ensure the beneficiary's viability in accordance with the Rescue and Restructuring Guidelines and with a view of EU objectives and national obligations linked to the green and digital transformation; and the exit of the Fund without adversely affecting trade to an extent contrary to the common interest.

2.11.4 Publication obligation

(92) The Danish authorities confirm that the beneficiaries will undertake to publish within 12 months from the date of the granting of the aid and thereafter periodically every 12 months until the COVID-19 recapitalisation investment is fully redeemed or sold, information on the use of the aid received. In particular, this should include information on how their use of the aid received supports their activities in line with EU objectives and national obligations linked to the green and digital transformation, including the EU objective of climate neutrality by 2050.

(93) The obligation to publish relevant information on individual aid above EUR 100,000 and EUR 10,000 for agricultural and fisheries sector granted under the measure on the comprehensive national State aid website or Commission's IT tool within 3 months from the moment of recapitalisation; the nominal value of the Measure shall be published per undertaking.

2.12 Sectoral and territorial scope of the aid Measure

(94) The Measure is open to all sectors and activities of the Danish economy, with the exception of the credit and financial institutions, and applies to the whole territory of Denmark. Nonetheless, the application of the ex-ante assessment enshrined in the "Guiding Selection Criteria" as described in recitals (26) et seq. takes into account the industry characteristics and companies of substantial importance to the Danish economy thereby ensuring that the Measure applies to the companies most affected by by extraordinary economic shock due to the COVID-19 outbreak in an objective way.

(95) The Danish authorities confirm that the Measure 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 the Member State granting the aid, irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

2.13 Exit of the State

(96) The Danish authorities confirm that beneficiaries that receive a COVID-19 recapitalisation investment of more than 25% of their equity at the moment of intervention will undertake to demonstrate a credible exit strategy for the Fund, unless the COVID-19 recapitalisation investment is reduced below the level of

25% of the beneficiary's equity within 12 months from the date of the granting of the aid.

(97) The exit strategy, which has to be endorsed by the Fund, will contain:

a) a plan of the beneficiary on the continuation of its activity and the use of the COVID-19 recapitalisation investment, including a payment schedule of the remuneration and of the redemption of the State investment (together 'the repayment schedule'); and

b) the measures that the beneficiary and the Fund will take to abide by the repayment schedule.

2.14 Cumulation

(98) The Danish authorities confirm that aid granted under the Measure may be cumulated with aid under De Minimis Regulations[22] or under the General Block Exemption Regulation,[23] the Agricultural Block Exemption Regulation[24] and the Fisheries Block Exemption Regulation[25], provided the provisions and cumulation rules of those Regulations are respected.

(99) The Danish authorities also confirm that aid granted under the Measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.

3. ASSESSMENT

3.1 Lawfulness of the Measure

(100) By notifying the Measure before putting it into effect, the Danish authorities have respected their obligations under Article 108(3) TFEU.

3.2 Existence of State aid

(101) For a measure to be categorised as State aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the

[22] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p.1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

[23] 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.

[24] Commission Regulation (EU) No 702/2014 of 25 June 2014, OJ L 193, 1.7.2014, p. 1.

[25] Commission Regulation (EU) No 1388/2014 of 16 December 2014, OJ L 369, 24.12.2014, p. 37.

measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(102) The Measure is channelled by the Fund, a newly established State-owned private limited company with the Danish Ministry of Finance as a sole shareholder. The aim of the Fund is to act only as an investor of last resort, both when it is not in line with market conditions to do so and when it is. It acts on the basis of a ministerial decree approved by the Parliament's Finance Committee on 22 October 2020 as well as the implementing rules relating to that ministerial decree. The Fund is therefore created to pursue a public policy goal under a mandate set by the Member State. The Measure is thus imputable to the State.

(103) The Measure is financed through State resources, since it is financed by public funds.

(104) The Measure confers an advantage on its beneficiaries in the form of preferred shares as hybrid capital instruments at preferential terms compared to market terms, meaning at terms that they would not have otherwise been able to secure on the market (see recital (29)c)). The Measure thus relieves those beneficiaries of costs that they would have had to bear under normal market conditions.

(105) The advantage granted by the Measure is selective since it is awarded only to certain undertakings, namely large enterprises which as a result of the COVID-19 outbreak require more liquidity to ensure its viability and that were not in difficulty on 31 December 2019, and excludes credit and financial institutions (see recitals (34), (36) and (94)).

(106) The Measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. The aid Measure also affects trade between Member States, since the eligible beneficiaries may be active in sectors in which intra-Union trade exists.

(107) In view of the above, the Commission concludes that the Measure constitutes State aid within the meaning of Article 107(1) TFEU. The Danish authorities do not contest that conclusion.

3.3 Compatibility

(108) Since the aid Measure involves State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether this aid Measure is compatible with the internal market.

(109) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid "to remedy a serious disturbance in the economy of a Member State".

(110) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that "*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*". The Commission concluded that "*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b)*

TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs".

(111) The Measure aims at facilitating the access of undertakings to external finance and restoring their capital at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak which is affecting the wider economy and is leading to severe disturbances of the real economy of Member States.

(112) The Measure is part of a package of measures conceived at national level by the Danish authorities to remedy a serious disturbance in Danish economy. The importance of the Measure to preserve employment and economic continuity is widely accepted and the Measure is of a scale which can be reasonably anticipated to produce effects across the entire Danish economy. Furthermore, the Measure has been designed to meet the requirements of specific categories of aid "Recapitalisation measures for non-financial undertakings" described in section 3.11 of the Temporary Framework.

(113) The Commission also notes that, in line with point 16ter of the Temporary Framework, the Measure 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 Denmark (see recital (95)). In that respect, the eligibility criteria applied by the Fund, especially as concerns enterprises with a strategic or systemic importance to the Danish economy (see recital (30)), cannot be construed or applied so as to make conditional the granting of aid on the relocation of activities to Denmark.

(114) The overall specific characteristics of the preferred shares described in recitals (41) to (48), notably the facts that the State participates neither in the upside nor the downside of its investment, that coupons are deferred and never waived, that the preferred shares do not carry voting rights and do not provide for a right to dividends, trigger the assessment under the rules for the hybrid recapitalisation instrument of the Temporary Framework. The Commission assesses the Measure under section 3.11 Temporary Framework as follows:

3.3.1 Entry conditions

(115) Denmark committed the Fund will make investments under the Measure at the latest by 30 September 2021 (recital (21). The Measure therefore complies with point 48 of the Temporary Framework.

(116) The hybrid capital instrument in the form of the preferred shares is only provided to undertakings that would otherwise go out of business or would face serious difficulties to maintain their operations (recitals (23) et seq.). The Measure therefore complies with point 49(a) of the Temporary Framework.

(117) The hybrid capital instrument in the form of the preferred shares will only be provided where there exists a common interest to intervene, as investments are only provided to undertakings whose failure would likely involve social hardship or market failure due to significant loss of employment, the exit of an innovative company, the exit of a systemically important company or the risk of disruption to

an important service. As described in recital (24), in order to establish the social hardship or the market failure, the Fund will assess the significance of the undertaking (including absolute number of employees, importance of the applicant in the supply chain, or research and development expenditure). The Measure therefore complies with point 49(b) of the Temporary Framework.

(118) The hybrid capital instrument is provided to undertakings that are not able to find financing on the markets at affordable terms, but only if the horizontal measures existing in Denmark to cover liquidity needs are insufficient to ensure the viability of such undertakings (recital (29)c)). The Measure therefore complies with point 49(c) of the Temporary Framework.

(119) Undertakings already in difficulty on 31 December 2019 are excluded from the Measure (recital (34)). The Measure therefore complies with point 49(d) of the Temporary Framework.

(120) The investment will be provided only following a written request to the Fund by the beneficiary resulting in a positive conclusion that the eligibility conditions are met (recital (19)). The Measure therefore complies with point 50 of the Temporary Framework.

(121) Denmark commits to submit a separate notification for individual aid above the threshold of EUR 250 million (recital (20)). The Measure therefore complies with point 51 of the Temporary Framework.

3.3.2 Proportionality of the aid

(122) The financing under the Measure will not exceed the minimum needed to ensure the viability of the beneficiary, and will not go beyond restoring the capital structure of the beneficiary to that predating the COVID-19 outbreak. The viability of the beneficiary and the restoration without improvement of the capital structure of the beneficiary will be assessed through precise and overall relevant indicators described in recitals (75) to (81). Both the standard as well as the alternative procedures set out caps (net debt/EBITDA) as well as additional safeguards to ensure the aid does not exceed the minimum necessary to enable the access of beneficiaries to financial markets in the beginning of 2022. Moreover, in assessing the proportionality of the aid, State aid received or planned in the context of the COVID-19 outbreak will be taken into account (recital (81)). Therefore, the Measure complies with point 54 of the Temporary Framework.

3.3.3 Remuneration of the hybrid capital instrument and exit of the State

(123) According to the general principles of the remuneration and exit of the State outlined in points 55 to 59 of the Temporary Framework, the Member State concerned must receive appropriate remuneration for the investment and must put mechanisms in place that gradually incentivise redemption. With particular regard to the remuneration, point 59 of the Temporary Framework allows Member States to "notify schemes or individual measures where the remuneration methodology is adapted in accordance with the features and seniority of the capital instrument provided they overall lead to a similar outcome with regard to the incentive effects on the exit of the State and a similar overall impact on the State's remuneration".

(124) According to point 66 of the Temporary Framework, hybrid capital instruments, until they are converted into equity-like instruments, must bear a minimum remuneration at least equal to the base rate (1-year IBOR or equivalent as published by the Commission)[26] plus the premium as set out in Table :

Table 4: Remuneration of hybrid capital instruments: 1-year IBOR or equivalent +

Type of recipient	**1st year**	**2nd year**	**3rd year**	**4th year**	**5th year**	**6th year**	**7th year**	**8th year and after**
Large enterprises	250 bps	350 bps	350 bps	500 bps	500 bps	700 bps	700 bps	950 bps

(125) The Commission notes that the conditions of the hybrid capital instrument notified by Denmark, i.e. the preferred shares, embed a very high risk. This is because the instrument embeds some equity characteristics e.g. no maturity, coupon payment at the discretion of the issuer. However, deferred coupons are capitalised. The Commission considers that it is therefore appropriate to require additional extra margins above the minimum rates reflected in the table included in point 66 of the Temporary Framework, in line with point 65 of the Temporary Framework which specifies that the overall remuneration of hybrid instrument must adequately factor in the characteristics of the instrument chosen, including its level of subordination, risk and all modalities of payment.

(126) Comparing the remuneration of the hybrid capital instrument notified by Denmark to the minimum remuneration set out in the Temporary Framework the Commission notes that the remuneration is 90 basis points higher than the minimum required under the Temporary Framework. Therefore, the proper remuneration of the Fund is ensured through the remuneration of the preferred shares equal to 1 year CIBOR plus a premium set out in the Table in point 66 of Temporary Framework plus a risk premium of 90 basis points.

(127) The Commission also notes that this hybrid instrument is treated as equity under IFRS rules, as it has many equity-like characteristics, which make the instrument riskier for investors. Therefore, its higher remunerations above the minimum required under point 66 of the Temporary Framework (90 basis points) takes into account the additional risk borne by the State as investor due to three factors. These factors are: i)this hybrid instrument is close to equity in terms of seniority, ii) it is not convertible into shares, iii) it bears coupons only payable at beneficiary's discretion. The preferred shares are perpetual instruments whose coupons can be deferred.

(128) To ensure there are sufficient incentives to repay the instrument, the Commission notes the beneficiaries have sufficient incentives to ensure timely payment of the

[26] Base rates calculated in accordance with the Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.01.2008, p. 6.), published on the website of DG Competition at https://ec.europa.eu/competition/state_aid/legislation/reference_rates.html.

minimum remuneration since until that remuneration is paid the governance conditions would apply for the company. As explained above, the governance restrictions as defined in section 3.11.6 of the Temporary Framework will apply until the preferred shares are fully redeemed. The governance restrictions required by the Temporary Framework are triggered by the issuance of the preferred shares and will follow the preferred shares. It is only if the outstanding (i.e. non-redeemed) shares are sold to a third party at par value or above, including accrued interest, that the governance restrictions would no longer apply (recital (48)). Moreover, in accordance with the Temporary Framework, this hybrid instrument needs to be redeemed in order for the behavioural commitments imposed on the beneficiaries to end.

(129) To ensure that the coupons are ultimately paid, especially given that the beneficiaries have the option not to do so, there are several incentivising mechanisms: (i) interest on unpaid (deferred) coupons is compounded; (ii) coupons always accrue to the initial nominal amount of the preferred shares; and (iii) the obligations and requirements in section 3.11.6 of the Temporary Framework will apply until the nominal amount of the preferred shares and their claims have been fully repaid irrespective of a potential sale of claims, unless all the preferred shares are sold at par value or above, also taking into account all the coupon payments (including compound interest) corresponding to the years until the date of sale.

(130) As regards the exit incentives for the State's participation, the instrument includes a yearly increasing interest rate (together with compound interests in case of unpaid coupons) that makes it an increasingly costly source of funding for the company. All those elements create strong incentives for the beneficiaries to repay or to refinance the notified hybrid capital instrument as soon as possible.

(131) In addition, the preferred shares will include also warrants which provide an upside potential. The Commission notes Denmark's commitment for the State not to exercise the warrant. For this reason, the warrants are not an additional recapitalisation instrument and solely provide a financial upside for the State which can be taken into account in the calculation of the remuneration.

(132) Even though it will not be exercised directly by the Fund, the value of the warrants is an additional remuneration for the Fund (e.g. since payment in cash or sale of the warrant is envisaged). By estimating their value, this upside from the warrants can be used to reduce the additional risk premium of 90 basis points for some period and therefore the impact on the proper remuneration depends on the value of the warrants.

(133) Denmark provided a calculation according to the recognised methodology using conservative assumptions (recitals (68) to (72) above). The Commission has assessed this methodology and considers that it is reasonable and based on conservative assumptions, taking also into account possible dilution effects and dividend payments through an adjustment on the strike price. In addition, the Commission notes that using the volatility of the OMX Copenhagen 25 index when valuing the warrant on the individual beneficiaries is conservative, because the diversification effect tends to lower the volatility of a portfolio compared to its single components.

(134) The Commission also notes that the decision on how many warrants to be issued will depend on the Fund which will take this decision in order to maximise its return in the context of the investments it makes when granting State aid (recitals (53) and (55)).

(135) If the recapitalisation investment consists of the issuance of both preferred shares and warrants, based on the maturity of the warrants there will potentially be no risk premium for a certain period after the date at which the investment is made (recitals (70) et seq.).

(136) The Commission therefore, considers that the Measure complies with points 65 and 66 of the Temporary Framework.

3.3.4 Governance, planning and reporting

(137) Beneficiaries are not allowed to take excessive risks and to engage in aggressive commercial expansion financed by State aid granted by the Fund (recital (82)a)). Therefore, the Measure complies with point 71 of the Temporary Framework.

(138) Beneficiaries are not allowed to advertise the investment by the Fund for commercial purposes (recital (82)b)). Therefore, the Measure complies with point 73 of the Temporary Framework.

(139) Beneficiaries of the recapitalisation will be prohibited from carrying out mergers or acquisitions until the redemption of at least 75% the the Fund's recapitalisation. In exceptional circumstances, and without prejudice to merger control, beneficiaries may acquire a more than 10% stake in operators upstream or downstream in their area of operation or even competitors, only if the acquisition is necessary to maintain the beneficiary's viability and upon Commission's prior approval (recital (82)c)). Therefore, the Measure complies with points 74 and 75 of the Temporary Framework.

(140) Beneficiaries are prohibited from using the funds received via the recapitalisation to cross-subsidise other economic activities of integrated undertakings that were already in economic difficulties on 31 December 2019 and will introduce clear account separation to ensure no cross-subsidisation (recital (83)). Therefore, the Measure complies with point 76 of the Temporary Framework.

(141) As long as the investment of the Fund has not been fully repaid, beneficiaries cannot make dividend payments, or non-mandatory coupon payments, or buy back shares, other than in relation to the Fund (recital (87)). Therefore, the Measure complies with point 77 of the Temporary Framework.

(142) As long as the investment of the Fund has not been fully repaid, a cap on the remuneration of management is applied as envisaged in point 78 of the Temporary Framework (recital (86)). Therefore, the Measure complies with point 78 of the Temporary Framework.

(143) The exit incentive is driven by the margin step-up mechanism, the governance restrictions on the issuer until redemptions of the instrument, the fact that in the event of a redemption, the outstanding nominal amount (plus accrued interest) needs to be paid to the holders of the preferred shares as well as the requirement for a submission of a restructuring plan in accordance with point 85 of the

Temporary Framework (recital (91)). The issuer's ability to redeem all or parts of preferred shares at any time will enhance the exit possibilities.

(144) The exit strategy will be contained in the aid agreement between the Fund and every beneficiary of the Measure, earlier than the twelve months referred to in point 79 of the Temporary Framework and irrespective of whether the State provides equity instruments or of the percentage of recapitalisation through equity. The exit strategy will lay out (i) the plan of the beneficiary on the continuation of its activity and the use of the funds invested by the State, including the repayment schedule, and (ii) the measures that the beneficiary and the Fund will take to abide by the repayment schedule (recitals (96)-(97)). Therefore, the Measure complies with points 79 to 81 of the Temporary Framework.

(145) Large enterprises that have received recapitalisation from the Fund of more than 25% of their equity under the Measure have to demonstrate a credible exit strategy for the participation of the Fund within 12 months after receiving the investment (recital (96)). The Measure therefore complies with points 79 to 81 of the Temporary Framework.

(146) The Danish authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recitals (88)-(90)).

(147) Beneficiaries of the recapitalisation will have to report to the Fund on the progress in the implementation of the repayment schedule as well as compliance with the other obligations to which the recapitalisation is subject (recital (90)). Therefore, the Measure complies with point 82 of the Temporary Framework.

(148) As long as the recapitalisation by the Fund has not been fully redeemed, beneficiaries of the recapitalisation will, within 12 months from the date of the granting of the aid and thereafter periodically every 12 months, publish information on the use of the aid received. In particular, such publications will include information on how their use of the aid received supports their activities in line with Union objectives and national obligations linked to the green and digital transformation, including the Union objective of climate neutrality by 2050 (recital (89). Therefore, the Measure complies with point 83 of the Temporary Framework.

(149) Denmark will report annually to the Commission regarding the Fund's activities, the implementation of the repayment schedules and compliance with the obligations described in recital (90). Therefore, the Measure complies with point 84 of the Temporary Framework.

(150) If after six years from a capital injection, the State's intervention has not been reduced below 15% of beneficiary's equity, the beneficiary will have to submit a restructuring plan to the Management Board of the Fund, which will be submitted to the Commission for approval, in accordance with the Rescue and Restructuring Guidelines (recital (91). Therefore, the Measure complies with point 85 of the Temporary Framework.

3.3.5 Cumulation with other aid

(151) The Danish authorities further confirm that the aid under the aid measure may only be cumulated with other aid approved under the Temporary Framework, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant block exemption Regulations are respected (recitals (98)-(99)).

3.3.6 Final assessment

(152) The Commission therefore considers that the aid Measure is 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 meets all the relevant conditions of the Temporary Framework.

4. CONCLUSION

(153) The Commission has accordingly decided not to raise objections to the Measure on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

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

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION