

# COVID-19: Luxembourg's Aid Scheme and Loan Guarantee Scheme

## Executive Summary

- Like many other European states, Luxembourg took many unprecedented support measures for the real economy strongly affected by COVID-19, which were implemented very quickly.
- Both Luxembourg's aid scheme and loan guarantee scheme however required prior clearance from the EU Commission and had to undergo a full legislative procedure.
- The EUR 300 million financial aid scheme makes directly available repayable financial aid of up to EUR 500,000 per undertaking active in trade, craft or industry as well as for liberal professionals.
- The EUR 2.5 billion loan guarantee scheme provides guarantees for bank loans lent by Luxembourg credit institutions to companies of all sectors, except holding and real estate companies.
- Large parts of the financial industry that are neither in the sectorial scope nor have an establishment permit, such as holding structures and funds, cannot benefit from these schemes.

## I. Luxembourg's economic response to COVID-19

Luxembourg declared on 17 March 2020 a state of crisis on the national territory due to the ongoing pandemic of the coronavirus disease 2019 (COVID-19). All non-essential activities were suspended and restrictions of movement imposed. The economic consequences for Luxembourg were immediate and severe. To mitigate

the economic repercussions various measures were put in place<sup>1</sup>, but two central legislative measures stand out:

1. The scheme for enterprises in temporary financial difficulties due to COVID-19 (the "Aid Scheme")<sup>2</sup>; and
2. the guarantee scheme to support the Luxembourg economy in the current COVID-19 pandemic (the "Loan Guarantee Scheme")<sup>3</sup>.

The Aid Scheme was adopted on 30 March 2020 and came into force with retroactive effect as of 1 January 2020 (the "Aid Law"). The Loan Guarantee Scheme was adopted on 18 April 2020 and came into force on 18 April 2020 (the "Guarantee Law").

<sup>1</sup> Our GSK update is explicitly non-exhaustive and there are many more, also significant, support measures in place, such as the Special Anti-Crisis Financing via companies' banks and the *Société Nationale de Crédit et d'Investissement* (SNCI), the SNCI's financing over a 5 year period to the *Mutualité des PME* and the *Mutualité de cautionnement* or the SNCI's SME Guarantee. The website of the Luxembourg government [guichet.lu](https://guichet.public.lu/en.html) has a special coronavirus section listing all procedures in place for citizens, self-employed persons, SMEs and large businesses: <https://guichet.public.lu/en.html>; also the Chamber of Commerce Luxembourg has a dedicated website listing measures, information and programmes for businesses: <https://www.cc.lu/en/coronavirus-precautions/>

<sup>2</sup> *Loi du 3 avril 2020 relative à la mise en place d'aides en faveur des entreprises en difficulté financière temporaire et modifiant la loi modifiée du 19 décembre 2014 relative 1) aux mesures sociales au bénéfice des artistes professionnels indépendants et des intermittents du spectacle 2) à la promotion de la création artistique*, Journal officiel du Grand-Duché de Luxembourg, Mémorial A230, 3 April 2020.

<sup>3</sup> *Loi du 18 avril 2020 visant à mettre en place un régime de garantie en faveur de l'économie luxembourgeoise dans le cadre de la pandémie Covid-19*, Journal officiel du Grand-Duché de Luxembourg, Mémorial A307, 18 April 2020.



Both schemes were already authorised by the European Commission, DG Competition, end of March 2020<sup>4</sup> and are in compliance with the temporary framework for state aid measures to support the economy in the current COVID-19 outbreak (the “EC-TF”)<sup>5</sup>.

## II. The Aid Scheme

The Aid Scheme supports any undertaking and liberal professional that has temporary financial difficulties due to the economic repercussions of COVID-19.

### a. Beneficiaries

The beneficiaries are (i) undertakings, including small, medium-sized and large undertakings<sup>6</sup> and (ii) liberal professionals<sup>7</sup>. Regarding undertakings, the following sectors fall into the scope of the Aid Scheme:

- trade;
- craft; and
- industry.

<sup>4</sup> State Aid SA.56742 Scheme for enterprises in temporary financial difficulties due to COVID-19, C(2020) 1913 final, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_56742](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_56742) and State Aid SA.56805 Loan guarantee scheme of Luxembourg under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, C(2020) 2045 final, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_56805](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_56805).

<sup>5</sup> Communication from the Commission - Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak of 20 March 2020, C(2020) 1863 final, OJ C 911.

<sup>6</sup> Art. 2 (3) of the Aid Law; the commercial, craft or industrial undertaking that have an authorisation of establishment in Luxembourg, in the meaning of the law of 2 September 2011 regulating the access to the professions of craft, trade, industry as well as certain liberal professions.

<sup>7</sup> Natural or legal persons carrying out on a principal basis and in an independent manner the activities listed in article 91(1) LIR, e.g. scientific, artistic, literary, teacher, doctors, etc.

These undertakings need to have an establishment permit and must have already been active before the COVID-19 pandemic. In line with the EC-TF, undertakings active in the fishing and aquaculture sector, primary production of agricultural products and processing and marketing of agricultural products are excluded<sup>8</sup>. Undertakings that were in difficulty already before 1 January 2020 are also explicitly excluded.

### b. Type of financial aid

The aid consists of a repayable advance (*avance remboursable*) to the beneficiary paid in one or more instalments. The aid per beneficiary is capped at 50% of the eligible costs. Eligible costs are the beneficiary’s staff and rent costs for the time period from 15 March until 15 May 2020<sup>9</sup>. Rent costs are capped at EUR 10,000 per month. The total amount of the aid may not exceed EUR 500,000. Income arising from a professional activity carried out as a self-employed person is equivalent to staff costs, but capped at 2.5 times of the minimum wage in Luxembourg<sup>10</sup>. The eligible costs are calculated on the basis of the last annual accounts or the financial data available, if no annual accounts for the last financial year exist.

<sup>8</sup> Furthermore, financial aid is also not granted for activities linked to exports to third countries or Member States, activities to finance the establishment and operation of a distribution network or other current expenditure linked to the export activity, activities contingent upon the use of domestic products in preference to imported products.

<sup>9</sup> The period is set by art. 2 of the *Règlement grand-ducal du 3 avril 2020 portant exécution de l'article 3 de la loi du 3 avril 2020 relative à la mise en place d'un régime d'aides en faveur des entreprises en difficulté financière temporaire et modifiant la loi modifiée du 19 décembre 2014 relative 1) aux mesures sociales au bénéfice des artistes professionnels indépendants et des intermittents du spectacle 2) à la promotion de la création artistique* (the “GDR”), Journal officiel du Grand-Duché de Luxembourg, Mémorial A231, 3 April 2020.

<sup>10</sup> The person in question must be affiliated as self-employed person with the Social Security.



## c. Conditions

In order to benefit from the financial aid, the following conditions must be fulfilled:

1. a Grand Ducal regulation recognised that an unforeseeable event, i.e. COVID-19, has a detrimental impact on a certain type of economic activity during a specified period<sup>11</sup>;
2. the applicant is experiencing temporary financial difficulties;
3. the applicant was carrying out its economic activity even before the unforeseeable event; and
4. there exists a direct causal link between the unforeseeable event and the undertaking's temporary financial difficulties.

## d. Cumulation

This aid may be cumulated with other state aid, provided that such cumulation does not result in exceeding the most favourable maximum aid amount under the applicable schemes.

## e. Procedure and Deadlines

In order to receive financial aid, the applicant must submit a written request for assistance to the Minister of

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<sup>11</sup> This condition is fulfilled by the entry into force of the GDR. Art. 1 GDR determines the activities on which COVID-19 had a detrimental impact, which are: extractive industries; manufacturing industry; production and distribution of electricity, gas, steam and air conditioning; water production and supply, sanitation, waste management and depollution; construction; commerce, repair of automobiles and motorcycles; transportation and storage; accommodation and catering; information and communication; real estate activities; professional, scientific and technical activities; administrative and support service activities; education; human health and social work; arts, entertainment and recreation; and other service activities.

Economy no later than by 15 August 2020<sup>12</sup>. The last day until the aid can be granted is 30 September 2020.

The application must contain:

- the name and contact details of the applicant;
- information about the concerned undertaking;
- a short recovery plan (plan de redressement), demonstrating the direct causal link between the unforeseeable event and the temporary financial hardship suffered between 15 March 2020 and 15 May 2020;
- a list of the eligible costs;
- a declaration of honor, stating that there has been no conviction on at least two occasions of contravening against illegal employment or the employment of illegally staying third-country nationals; and
- the application must be accompanied by supporting documentation such as the annual accounts of the last financial year or other available financial data, such as double entry bookkeeping or income tax declaration.

## f. Reimbursement

The granted aid, plus interest, shall be reimbursed by the beneficiary on the basis of a negotiated repayment plan which takes into account the results achieved by the beneficiary in the fiscal year in which the aid was granted and the subsequent fiscal years. Repayment shall start at

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<sup>12</sup> The request can be done by post and online. The person making the application online needs a Luxtrust certificate or an electronic identity card. More information and instructions can be found under the following link: <https://guichet.public.lu/en/entreprises/financement-aides/coronavirus/aides-difficultes-financieres-temporaires.html>.



the earliest 12 months after the first payment of the repayable advance. Thus, there is no legally set maturity date for the repayment. The interest rate for the granted aid is set at 0.5% p.a.

#### g. Assessment

With view to the maximum financial aid amount of EUR 500,000 per beneficiary and the eligible businesses, the Aid Scheme is mainly intended for small and medium-sized businesses as well as self-employed persons, such as shop owners, craftspersons and artists. Therefore, the majority of actors and vehicles of the financial industry are out of scope.

Since the financial aid must be repaid plus interest, it is not a gift. Compared to the option of extending an existing bank loan, the financial aid provides however clear benefits, such as a very low interest rate, flexible maturity and no need to provide any collateral. Beneficiaries who obtained financial aid based on inaccurate or incomplete disclosures may face imprisonment from four months to five years, and fines ranging from EUR 251 to EUR 30,000<sup>13</sup>.

Whether the Aid Scheme will prove itself in practice depends on how efficiently and fast the financial aid will be paid to eligible beneficiaries. However, due to the fact that the application form is kept simple and the monies will be paid directly without any intermediate facilitator, the aid should arrive rather quickly on the bank accounts of legitimate beneficiaries. Also, putting together a re-

<sup>13</sup> As set out by article 496 Code Pénal Luxembourgeois. The prohibition of the exercise of the following rights may further be faced, for a duration of five to ten years: (i) to hold public offices, jobs or offices; (ii) to vote, to be elected, to stand for election; (iii) to wear any decorations; (iv) to be an expert, an instrumental witness or a certifying officer in documents; to give evidence in court other than for the purpose of giving information; (v) to be a member of any family council, to perform any function in a regime for the protection of incapable persons of minor or adult age, except in respect of their children and with the assent of the family court judge, if there is one; (vi) to carry or possess weapons; (vii) to hold school or to teach or be employed in an educational institution.

covery plan will not be as burdensome as may have been expected from the outset given that the application form even provides for examples. In case beneficiaries already have bank loans in place, they are well advised to synchronise the repayment of their secured bank loan with the financial aid.

### III. The Loan Guarantee Scheme

The Loan Guarantee Scheme indirectly supports undertakings that have financial difficulties due to the economic repercussions of COVID-19 by providing state guarantees to new investment loans granted by Luxembourg credit institutions. The aim is to ensure that sufficient liquidity is in the market and to preserve the continuity of economic activity. The Loan Guarantee Scheme has an aggregate limit of EUR 2.5 billion for new loans granted by credit institutions between 18 March 2020 and 31 December 2020.

#### a. Beneficiaries

Beneficiaries of the Loan Guarantee Scheme are:

- undertakings that have an authorisation of establishment in Luxembourg<sup>14</sup>;
- liberal professionals<sup>15</sup>.

Explicitly excluded from the Loan Guarantee Scheme are undertakings:

- that were already in difficulty before 1 January 2020;
- whose principal activity is the holding of participations in other companies; or

<sup>14</sup> In the meaning of the law of 2 September 2011 regulating the access to the professions of craft, trade, industry as well as certain liberal professions.

<sup>15</sup> Natural or legal persons carrying out on a principal basis and in an independent manner the activities listed in article 91(1) LIR, e.g. scientific, artistic, literary, teacher, doctors, etc.



- whose principal activity is the promotion, holding, renting and trading of real estate<sup>16</sup>.

#### b. Type of guarantee

The Loan Guarantee Scheme provides for the issuance of state guarantees to credit lines, investment loans and cash credit granted by Luxembourg credit institutions to beneficiaries between 18 March 2020 and 31 December 2020 and having a maximum duration of 6 years (the “Eligible Instruments”). The guarantee covers 85% of the principal amount and due interest of the Eligible Instrument until maturity. While the exact legal nature of the guarantee remains unclear, it is however definite that all losses must be sustained under the same conditions and proportionally by the credit institution and the State. By way of example, from the first Euro of loss, the State bears 85 cents and the credit institution 15 cents. Consequently, if the size of the Eligible Instrument decreases over time due to reimbursement, the guarantee also decreases proportionally.

#### c. Conditions

The following conditions must be met for the guarantee to be granted:

- the guarantee is only available for Eligible Instruments and to borrowers who fall into the scope of the Loan Guarantee Scheme;
- the maximum amount of the underlying Eligible Instrument, i.e. the principal loan amount, cannot exceed 25% of the total turnover of the beneficiary in 2019<sup>17</sup>; and

<sup>16</sup> Also excluded from the Loan Guarantee Scheme for three years are employers who were convicted twice for contravening against illegal employment or provisions prohibiting the employment of illegally staying third-country nationals over the last three years.

<sup>17</sup> For young, innovative enterprises, the maximum amount may not exceed twice the total annual wage cost of the beneficiary, including social security charges and the cost of staff working on the firm's site but officially considered as subcon-

- the loan contract between the lender and the borrower must provide for an immediate reimbursement in case pre-conditions for the guarantee were not fulfilled.

#### d. Cumulation

According to the Luxembourg government the guaranteed loans shall work as a complementary, not a supplementary support instrument for the economy. Potential beneficiaries are supposed to have resorted first, where possible, to the financial aid instruments of the *Société nationale de crédit et d'investissement* (SNCI), the *Office du Ducroire* or the European Investment Bank. However, this aim is only set out in the *exposé des motifs*<sup>18</sup>, but not in the text of the Guarantee Law itself. Therefore borrowers are not legally required to resort first to other financial aid instruments before they can use guaranteed loans. Also the lending credit institutions do not have a duty to check whether other financial aid was exhausted by the borrower first, before they grant a guaranteed loan.

In terms of cumulation, the Guarantee Law only requires that the same loan cannot be guaranteed by the Loan Guarantee Scheme and at the same time by another guarantee measure granted by the Luxembourg State<sup>19</sup>. This means that lending credit institutions and borrowers cannot rely on additional concurrent guarantees for the identical loan in case of default. However, beneficiaries can of course cumulate a guaranteed loan with other financial aid and are thus not excluded to resort to other

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tractors for 2019 or the last fiscal year available. For undertakings established after 31 December 2019, the maximum amount of the outstanding balance of the loan must not exceed the estimated annual wage cost for the first two years of operation.

<sup>18</sup> *Projet de loi 7545/00 visant à mettre en place un régime de garantie en faveur de l'économie luxembourgeoise dans le cadre de la pandémie Covid-19, page 1.*

<sup>19</sup> This includes those pursuant 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.



financial aid in addition, if they take advantage of a guaranteed loan.

#### e. Process

The participating credit institutions under the Loan Guarantee Scheme, which currently are BCEE, BIL, Banque de Luxembourg, Banque Raiffeisen, BGL BNP Paribas and ING<sup>20</sup> are taking care of the notification to the State Treasury, once contacted by a beneficiary for a loan. A credit institution that wishes to grant a loan benefiting from the state guarantee notifies the State Treasury<sup>21</sup> via a single dedicated system made available to it. The credit institution bears the responsibility whether the conditions for the guarantee are fulfilled. Guarantees can be granted until 31 December 2020. The guarantee bears fees depending on the size of the undertaking and the maturity of the loan. The fees are progressive and range from a 25 basis points guarantee premium for the first year in case of an SME to a maximum of 200 basis points from the fourth to the sixth year in case of a large undertaking.

#### f. Activation of Guarantee

The state guarantee cannot be called upon by the credit institution in the event of a credit event occurring within two months of the loan disbursement. After these two months, if a credit institution requests for the activation of the guarantee, it must demonstrate that the total exposure to the borrower is higher than it was on 18 March 2020<sup>22</sup>. In order to activate the guarantee, the credit institute must have first resorted to all recovery

<sup>20</sup> <https://guichet.public.lu/en/entreprises/financement-aides/coronavirus/garantie-etatique-credits-bancaires.html>, consulted on 20 April 2020.

<sup>21</sup> If the State Treasury receives notification of several loans granted to the same company, the State guarantee shall be acquired in the chronological order in which these loans were granted, and up to the limit that their cumulative amount remains below the ceiling provided by the Guarantee Law.

<sup>22</sup> This amount can be adjusted in case there was a decrease due to a contractual schedule prior to 18 March 2020 or a decision by the borrower. The reason for this requirement is that credit institutions must demonstrate that they supported

measures, including legal action, against the borrower, which it usually takes. The recoverable amounts under the guarantee are calculated according to whether the borrower became subject to a restructuring or insolvency proceeding.

#### g. Assessment

The Loan Guarantee Scheme is very comprehensive in terms of size, duration and potential scheme beneficiaries. However, the Loan Guarantee Scheme can only show any effect if fully supported and endorsed by the Luxembourg credit institutions. In case of an event of default, a credit institution still bears a 15% risk of loss and has to go to all lengths to recover the loan before the 85% guarantee benefits will finally kick in for it. Credit institutions involved will thus not considerably modify their credit lending proceedings and risk assessment in case of a loan under the Loan Guarantee Scheme. The credit institutions are free to determine the interest rates for guaranteed loans and it is expected that the interest rates will range between 2.00% p.a. and 3.00% p.a. In terms of timing, undertakings may in some cases prefer to tap existing revolving credit facilities to get their hands on cash even quicker.

#### IV. Final remarks

Luxembourg has taken strong support measures consisting of direct financial help, subsidies, repayable advances, guaranties as well as indirect and direct tax payment reliefs. The real economy finds itself strongly affected by COVID-19 and is consequently in the main focus of these aids. Many of the COVID-19 measures were quickly implemented by the Luxembourg government. The Aid Scheme and the Loan Guarantee Scheme however required not only prior clearance from the EU Commission under the EC-TF, but also underwent a full legislative procedure. Despite some overlapping in terms of beneficiaries, both schemes provide completely different fi-

new liquidity needs of the market and increased their exposure to the benefiting borrower under the loan guarantee scheme and did not abuse the Loan Guarantee Scheme in order to increase the quality of their existing loan portfolio.



financial support. The Aid Scheme is a payment supposed to be paid out quickly and directly, but is capped at EUR 500,000 per beneficiary. The Loan Guarantee Scheme however is supporting the economy indirectly, with the aim to incentivise credit institutions to continue to grant loans to Luxembourg borrowers.

Whether the schemes will have been sufficient to prevent economic damage following the COVID-19 pandemic can only be assessed retroactively.

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