

COVID-19: LAW ON STATE AID MEASURES TO SUPPORT COMPANIES AND SELF-EMPLOYED PROFESSIONALS

Luxembourg Parliament has today passed Bill No. 7532 named, “**Bill regarding the establishment of a scheme of aid to companies in temporary financial difficulties and amending the Law of 19 December 2014, as amended, regarding 1) social measures for independent professional artists, and temporary entertainment industry workers, 2) the promotion of artistic creation**” (hereinafter, the “**Law**”). The Law provides for supplementing aid already in place with new repayable aid aimed at companies, whether they qualify as small and medium companies or as large companies, or as self-employed professionals, when they are facing temporary financial difficulties following an exceptional unforeseeable event of a national and international scale. The Law takes effect retroactively from 1 January 2020.

The key elements of the Law can be summed up as follows:

1) Conditions for the granting of aid

In order to receive the aid provided for, the following cumulative conditions must be met:

- There must be an **unforeseeable event** whose harmful or damaging impact on the economic activities of certain companies over a given period has been retained by Grand Ducal regulation;
- The company in question must **encounter temporary financial difficulties**;
- The company was already conducting its business activities **before the unforeseeable event**; and
- There must be a **causal link** between those financial difficulties and the unforeseeable event in question.

Under the Law, the concept of “company” includes both commercial, industrial, and artisanal companies that have a business licence as well as self-employed professions listed in the Law performed as a legal person or by private persons.

2) Application: terms and conditions

a) Submission of the application

The application must be submitted in writing **at the latest on 15 August 2020** to the Minister for Middle Classes or the Minister for Economic Affairs or the Minister for Tourism.

b) Supporting documentation

The application must contain:

1. The name of the applicant company;
2. Proof of the existence of temporary financial difficulties, being in causal relationship with the unforeseeable event, and that the applicant company was conducting its business before the occurrence of the unforeseeable event;
3. The size of the undertaking in accordance with Annex I of the Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aids compatible with the internal market in application of Articles 107 and 108 of the Treaty;
4. The annual financial statements for the last financial year closed, or, where applicable, all other available financial data, such as the double-entry accounting or income tax return;
5. The list of eligible costs with the relevant amounts;
6. A recovery plan, including documentation demonstrating a causal link between the unforeseeable event and the temporary financial difficulties encountered by the company for the period specified by Grand Ducal regulation; and
7. A statement attesting to the absence of criminal convictions for the crimes listed in the Law.

The application may contain any other relevant document that the applicant company feels would enable the minister to determine that their aid request is justified.

c) Maximum amount of aid

The “eligible costs” are as follows:

1. Staff costs and rental charges for the company accrued during the period of the crisis fixed by Grand Ducal regulation. The annual financial statements for the last closed financial year constitute the basis for determining the eligible costs. If the company does not have annual financial statements for the last closed financial year, the eligible costs may be calculated based on the financial data available, or, if the company is not required to keep double-entry accounting, based on its last tax return.
2. Income from the exercise of a professional activity carried out as a self-employed professional also qualifies as eligible costs as long as the beneficiary of such payment is affiliated as such in accordance with the provisions of the Social Security Code. Such expenses are capped at an amount equivalent to 2.5 times the minimum wage, per person concerned.
3. Also considered as staff expenses are the earnings paid by an association, a company, or other grouping formed by one or more self-employed professionals to persons working for that association, company, or other grouping as self-employed professionals as long as the related persons are affiliated as such in accordance with the provisions of the Social Security Code. Such expenses are capped at an amount equivalent to 2.5 times the minimum wage, per person concerned.
4. The rental costs referred to above are capped at 10,000 euros per month per single company.

5. The maximum of aid will be up to 50% of eligible costs, and the total amount of aid may not exceed the maximum aid amount of 500,000 euros per single company.

The aid provided for in the Law has been approved by the European Commission.

d) Aid repayment

1. **Form and granting of aid:** The aid will only take the form of a reimbursable advance. The aid shall be repaid based on a negotiated repayment plan that takes into account the income generated by the company in the financial year in which the aid was granted and over the following financial years. The advance must be repaid at an interest rate at least equal to the net value rate applicable at the time the aid is granted, as published by the European Commission in the Official Journal of the European Union. The aid repayment will start no earlier than twelve months after the first payment of the repayable advance, unless requested otherwise by the company. The aid must be granted before 1 October 2020.
2. **Cumulative rules:** The aid provided for under the Law may not be cumulated for the same eligible costs with other State aid if such cumulation were to result in exceeding the maximum amount of aid provided for by the applicable schemes.
3. **Restitution:** The company must repay the aid if, after it is granted, it is found to be incompatible. The repayment will cover the amount of the aid paid, plus statutory interest applicable at the time of the grant, before the expiry of a period of three months from the date of the ministerial decision to repay the aid, unless it provides another time limit for such purpose. Any reimbursement of aid already made based on the repayment plan must be deducted from the repayment amount. Only the minister can establish the facts resulting in the loss of aid. Employers who have been found guilty on 2 or more occasions of violations of provisions banning clandestine work or provisions banning the employment of third-country nationals staying unlawfully in the country, over the past 4 years preceding the judgment by the competent court are excluded from receiving aid for a period of 3 years starting from the date of that judgement.

The Law falls under the framework of a series of general measures already in place in the event of a crisis and specific measures relating, amongst others, to employment, social security and tax law already taken by the Government, which are listed below and for which partners of Elvinger Hoss Prussen and their teams are available to assist:

- Measures on partial unemployment aid as well as other employment law matters (exceptions on working time regulations for specific sectors, leave for family reasons, teleworking).
- Funding aid provided by the Ministry for Economic Affairs.
- Non-repayable financial aid for microbusinesses and other financial aid.
- Relaxing measures for repayment on loan and interest schemes.
- Temporary measures relating to social contribution payments and advance tax/VAT payments.