20 March 2020

EU State Aid

Temporary Framework for EU State Aid in Response to COVID-19 Outbreak (Update)

SUMMARY

On the evening of 19 March 2020, the European Commission adopted a temporary framework allowing Member States to provide direct grants of €800,000, state guarantees of bank loans, subsidised interest rates and short-term export credit insurance to mitigate the effects of COVID-19. The framework forms part of the Commission's wider readiness efforts in response to the COVID-19 outbreak. This temporary framework will be in place until 31 December 2020, and applies retrospectively to any aid granted by Member States since 1 February 2020.

I. TEMPORARY FRAMEWORK

A. BACKGROUND

The overall response of the European Commission (the "**Commission**") to the COVID-19 outbreak recognises that the main fiscal response to the outbreak inevitably will come from the national budgets of Member States.

The EU's state aid regime normally requires the Commission to be notified of, and to approve in advance, any intervention by Member States conferring an advantage to particular companies. There are exceptions to this general prohibition which allow certain types of aid in certain circumstances. One such exception is that "*aid to make good the damage caused by natural disasters or exceptional occurrences … shall be compatible with the internal market*,"[1] which the Commission has already used for the first time to approve state aid in response to COVID-19.[2] This exception allows, for example, compensation to airlines for losses suffered due to the COVID-19 outbreak. Importantly, aid under this temporary framework may be granted in addition to aid meeting the ordinary *de minimis* thresholds, and the Commission disapplies the principle of "one time last time" to aid granted under this exception, meaning companies may be compensated by Member States under this exception even if they have already received aid under the Rescue and Restructuring Guidelines.[3]

Another exception applies to aid measures intended "*to remedy a serious disturbance in the economy of a Member State*," which "*may be considered to be compatible with the internal market*."[4] This exception is more discretionary ("may") than the first ("shall") and requires the relevant Member State to notify the proposed aid to the Commission and to delay granting of the aid until the Commission has granted approval.

The temporary framework adopted by the Commission uses this second discretionary exception to permit in bulk, for a limited period of time, certain categories of state aid. This exception was last used by the Commission to allow state aid measures in response to the 2008 financial crisis. That experience has allowed the Commission to draft the temporary framework much more quickly this time, though the context now is different: this framework is designed to assist the real economy (for example, as noted below, aid granted by Member States to banks in an effort to deliver the aid to companies indirectly will be viewed by the Commission as aid given *directly* to the companies themselves) and has a specific focus on SMEs, whereas the financial crisis framework was designed specifically for the financial sector. The aim of this temporary framework is to allow Member States to support business liquidity and to harmonise the fiscal response to the outbreak across the EU.

A draft of temporary framework was sent by the Commission to Member States for consultation on 16 March 2020,[5] and was subsequently adopted by the Commission on the evening of 19 March 2020.[6] This delivers a promise made by Executive Vice-President Margrethe Vestager on 13 March 2020 to have the temporary framework ready should the need arise.[7]

In addition to seeing the detail of the temporary framework for the first time, the main substantive differences between the draft and final adopted version are: (i) the Commission increased the amount of permitted direct aid from €500,000 to €800,000; and (ii) the Commission added a new form of aid, short-term credit export insurance.

B. CATEGORIES OF AID

The temporary framework allows the following types of aid to companies that were in difficulty after 31 December 2019.[8] The temporary framework will be in place until 31 December 2020, and applies retrospectively to any aid granted by Member States since 1 February 2020.

1. Direct grant or tax advantage

Member States are able to create aid schemes to grant up to €800,000 gross (approx. $860,000) to individual companies to address urgent liquidity needs. This aid can be delivered in the form of a direct grant, repayable advance or tax advantage. The aid must form part of a scheme notified by Member States to the Commission with an estimated budget, and will not benefit from the temporary framework if it is granted as individual aid.

Lower amounts apply to fishery companies (€120,000) and agricultural companies (€100,000), and further conditions apply to aid given to such companies.

A company may receive this aid in combination with (i) either state guarantees of loans or state subsidised loans, and (ii) short-term export credit insurance.

2. State guarantee of bank loans

Member States are also able to guarantee bank loans to companies, or create a scheme to do so, for both investment and working capital. Similar schemes were set up and permitted under the temporary framework following the 2008 financial crisis. The same underlying loan principal cannot benefit from both a state guarantee *and* subsidised interest rates described further below.

These schemes would have subsidised guarantee premiums, shown in the table below. Member States may also create schemes using the rates below as a basis but where maturity, pricing and guarantee coverage can be modulated (*e.g.*, longer maturity offset by a lower coverage)

Type of recipient	**Credit risk margin for a maturity loan of:**		
	1 year	**2-3 years**	**4-6 years**
SMEs	25bps	50bps	100bps
Large enterprises	50bps	100bps	200bps

Where the maturity of the loan is beyond the expiration of the temporary framework (*i.e.*, 31 December 2020), the value of the loan principal must not exceed a threshold in order for the guarantee to fall within the temporary framework, defined as follows:

1) 200% of the annual wage bill for 2019 of the last available year;

2) 25% of the total turnover for 2019; or,

3) The total liquidity need (with appropriate justification and self-certification by the company) from the date of the loan for 18 months in the case of SMEs, and 12 months for large enterprises.

If the loan matures before the expiry of the temporary framework, the principal may be higher than the threshold defined above, so long as there is an appropriate justification and the aid remains proportionate.

In order to benefit from the framework, the guarantee must last less than six years and may only cover a maximum of 90% of the loan principal where the Member State and creditor bear any losses proportionally and under the same conditions, or 35% of the loan principal where losses are attributed to the Member State first (*i.e.*, a first-loss guarantee).

3. Subsidised interest rates

Similarly, Member States are permitted to enable loans (for investment and working capital) with subsidised interest rates. The same underlying loan principal cannot cumulatively benefit from both a subsidised interest rate *and* a state guarantee described above.

The interest rate must be at least equal to the sum of (i) the base rate (1-year IBOR, or equivalent published by the Commission) fixed as of 1 January 2020; and (ii) the credit risk premium corresponding to the recipient (see the table above for state guarantees). The intention is to use a fixed base rate in order to provide certainty. Like state guarantees, Member States can modulate the margins, and the Commission imposes a maximum loan amount based on the actual liquidity need of the recipient (the same conditions to state guarantees apply) and a maximum duration of six years.

4. Aid delivered via banks

Finally, Member States will be able to direct aid to companies through banks and financial intermediaries. In other words, the Commission will view any aid directed by Member States via the banking sector to the real economy as aid delivered *directly* to the ultimate recipients, rather than the banks themselves.[9]

The framework provides guidance on how Member States should maximise the amount of aid passed through to the final recipients in the form of higher volume of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates. The aim is to leave as little undue and residual aid within the banks as possible.

Direct aid to banks to compensate losses resulting directly from the COVID-19 outbreak will not be assessed under this temporary framework, but rather the separate exception under Article 107(2)(b).

5. Short-term export credit insurance

EU law ordinarily prohibits Member States supporting export credit insurance covering marketable risks.[10] Marketable risk is defined as commercial and political risks on public and non-public debtors established in countries listed in the Annex to the STEC,[10] with a maximum risk period of less than two years.

The Commission recognises that, in the current circumstances, cover may not in fact be available for what would ordinarily be marketable risks. As a result, where a Member State can demonstrate that cover is not available in the private insurance market, it can lend support to providing the necessary cover.

Member States can evidence the non-marketability of the risk if one of the following two conditions is met:

1) A large well-known international private export credit insurer and a national credit insurer produce evidence of the unavailability of such cover; or

2) At least four well-established exporters in the Member State produce evidence of refusal of cover from insurers for specific operations.

C. COMPARISON WITH 2008 FINANCIAL CRISIS

The Commission also adopted a temporary framework for state aid in the aftermath of the 2008 financial crisis (the "**2008 Framework**"). As the Commission itself acknowledges, the process to adopt the 2008

Framework was far longer and took a couple of weeks after the first announcement. The Commission believes this experience has allowed it to draft, consult on and adopt the COVID-19 temporary framework in just a few days.

The 2008 Framework was modified a number of times and was supplemented by other guidelines and communications from the Commission, leading to a package of documentation. For the purposes of this comparison, the first iteration of the 2008 Framework is used.

In terms of substance, the two temporary frameworks share some features and characteristics, shown in the table below:

Measure	2008 Financial Crisis Temporary Framework	2020 COVID-19 Temporary Framework
Direct grant	✔ €500,000 Scheme only No fisheries/agriculture	✔ €800,000 Scheme only Fisheries/agriculture included
State guarantee of loans	✔	✔
	SME: 25% reduction of premium Large companies: 15% reduction	
	Loan principal must be less than 100% total annual wage bill	Loan principal must be less than: (i) 200% total annual wage bill; (ii) 25% of total annual turnover; or (iii) total liquidity demand for next 12 or 18 months
	Maximum duration of 2 years	Maximum duration of 6 years
State subsidies on interest	✔	✔
	Central bank overnight rate + premium (difference between average 1-year interbank rate and average of central overnight rate from 1 January 2007 to 30 June 2008) + credit risk premium corresponding to recipient risk profile	Base rate as of 1 January 2020 (1-year IBOR or rate published by Commission) + credit risk premium corresponding to recipient risk profile
	Loan of any duration	Maximum duration of 6 years
	No limit on loan principal	Loan principal limited as for state guarantee above

Measure	2008 Financial Crisis Temporary Framework	2020 COVID-19 Temporary Framework
Export credit insurance	✔	✔
Production of green products	✔	✕
Risk capital measures	✔	✕
***De minimis* cap**	✔ Annual *de minimis* cap[11] must not be exceeded	✕ Aid under framework may be *in addition* to other *de minimis* aid

II. RAPID RESPONSE

In addition to the temporary framework, the Commission is preparing to respond rapidly to any notifications by Member States of state aid relating to the COVID-19 outbreak. The Commission has also set out a number of options available to Member States that fall outside the EU State Aid regime and can be implemented without involvement of the Commission, such as wage subsidies, suspension of payments of corporate and value-added taxes or social welfare contributions, or financial support directly to consumers for cancelled services or tickets not reimbursed by the concerned operators.[12]

The Commission has already approved one state aid measure in connection with the COVID-19 outbreak: a Danish scheme worth €12m to compensate losses caused by the cancellation of large public events.[13] The Commission issued its approval decision under Article 107(2)(b) within 24 hours of receiving notification of the aid from the Danish government. This is much faster than the ordinary timescale for Commission approval of state aid measures. Note that this aid was granted under the first exception described above relating to compensating losses, and is for a different purpose from that targeted by the temporary framework, which instead focuses on liquidity-enhancing aid.

The Commission has also set up a mailbox and a dedicated phone line for Member States, which is open seven days a week for public authorities to raise questions and to ask for advice. The Commission is working on templates to help design compliant state aid measures. The Commission published the first such template, regarding compensating companies for damages (the first exception described above).[14]

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ENDNOTES

1 Article 107(2)(b), Treaty on the Functioning of the European Union ("**TFEU**"), emphasis added.

2 See Section II below.

3 Guidelines on state aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01), point 71.

4 Article 107(3)(b), TFEU, emphasis added.

5 See https://ec.europa.eu/commission/presscorner/detail/en/statement_20_479.

6 See https://ec.europa.eu/commission/presscorner/detail/en/ip_20_496. The text of the Temporary Framework is available at https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf

7 See https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_467 and https://ec.europa.eu/commission/presscorner/detail/en/ip_20_459.

8 "In difficulty" carries a specific meaning for the purposes of state aid, and is defined by reference to specific metrics. The definition is contained 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 (the "**General Block Exemption Regulation**")

9 Therefore, the Commission does not view this aid as extraordinary public financial support for the purposes of Article 2(1) No 28, Directive 2014/59/EU of the European Parliament and of the Council; and Article 3(1) No 29, Regulation 806/2014 of the European Parliament and of the Council; and should not be assessed under the state aid rules applicable to the banking sector.

10 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, 2012/C 392/01 (the "**STEC**").

11 The *de minimis* state aid rules were changed in January 2014.

12 See Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Investment Bank and the Eurogroup on Coordinated economic response to the COVID-19 Outbreak, COM(2020) 112 final, available at https://ec.europa.eu/info/sites/info/files/communication-coordinated-economic-response-covid19-march-2020_en.pdf

13 State Aid SA.56685 (2020/N) – DK – Compensation scheme for cancellation of events related to COVID-19, https://ec.europa.eu/commission/presscorner/detail/en/IP_20_454.

14 See https://ec.europa.eu/competition/state_aid/what_is_new/Notification_template_107_2_b_PUBLICATION.pdf

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