17 March 2020

EU State Aid

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

SUMMARY

The European Commission has sent a draft temporary framework to Member States for consultation, which would allow them to provide direct grants of €500,000, state guarantees of bank loans, and subsidised interest rates to mitigate the effects of COVID-19. The Commission expects the framework to be "*in place in the next few days,*" and it forms part of the Commission's wider readiness efforts in response to the COVID-19 outbreak.

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.

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*."[3] 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 being drafted 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.

The draft temporary framework was sent by the Commission to Member States for consultation on 16 March 2020, and is subject to change. The Commission's aim is to have the temporary framework "*in place in the next few days*." 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.[4]

B. CATEGORIES OF AID

The draft temporary framework will allow the following types of aid to companies that have suffered financial distress after 31 December 2019:[5]

1. Direct grant or tax advantage

Member States would be able to create aid schemes to grant up to €500,000 (approx. $550,000) to individual companies to address urgent liquidity needs. This aid can be delivered in the form of a direct grant or tax advantage.

2. State guarantee of bank loans

Member States would also be 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. These schemes would have subsidised premiums. The Commission may impose a maximum loan amount based on the actual liquidity need of the companies.

3. Subsidised interest rates

Similarly, Member States would be permitted to enable loans (for investment and working capital) with subsidised interest rates. The interest rate must be at least equal to the sum of (i) the base rate fixed as of 1 January 2020; and (ii) the credit risk premium corresponding to the recipient. Different rates can be established for SMEs and non-SMEs. The intention is to use a fixed base rate in order to provide certainty. Like the state guarantees, the Commission may impose a maximum loan amount based on the actual liquidity need of the recipient.

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. The framework will provide 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).

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 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.[6] 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 will publish shortly the first such template, regarding compensating companies for damages (the first exception described above).

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

[4] See https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_467 and https://ec.europa.eu/commission/presscorner/detail/en/ip_20_459.

[5] There is currently no indication as to how long the temporary framework will be in effect. By comparison, the temporary framework introduced in January 2009 for the 2008 financial crisis remained in effect until December 2011.

[6] 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.

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