



Antitrust and State Aid

Covid-19 | Legal Alert no. 2

Covid-19 emergency: State aid measures approved by the EU Commission for the economic support to Member States' undertakings

On March 19, 2020, the EU Commission published the European Temporary Framework, which indicates state aid measures that Member States can adopt in order to support their economies in the current COVID-19 emergency. The Temporary Framework allows Member States to take a wide range of actions in order to ensure sufficient liquidity to national companies and to preserve their economic activity during and after the emergency outbreak.

THE TEMPORARY FRAMEWORK ON STATE AID

The Temporary Framework is based on article 107, par. 3, letter b), of the Treaty on the Functioning of the European Union (TFEU), dealing with aids to remedy serious disturbance in a Member State's economy.

The Temporary Framework leaves to Member States the necessary room to adopt temporary support measures to national companies that are deemed necessary to face the economic impacts of the epidemic. Under the Temporary Framework, extraordinary support measures for national companies can be approved according to a fast track procedure. This, in any case, within the limits of the rules protecting the EU internal market and at the same time ensuring a level playing field between economic operators.

In particular, under the Temporary Framework, Member States are allowed to provide aid:

- through direct grants, repayable advances or tax advantages;
- in the form of loan guarantees for both SMEs and big companies;
- in the form of subsidized interest rates for loans;
- in the form of guarantees and loans channelled through credit institutions or other financial institutions (so-called indirect aid);
- through short-term export credit insurance.

It is important to note that these measures have a temporary character, with a timeframe of application limited to 31st December 2020.

In addition to what is now allowed under the Temporary Framework, Member States can still implement support measures within the already existing state aid rules, such as those concerning aid to face damage resulting from natural disasters or exceptional circumstances (pursuant to art. 107, par. 2, b) TFEU)).

FIRST APPLICATIONS OF THE TEMPORARY FRAMEWORK AND OTHER AID MEASURES RELATED TO THE EPIDEMIC APPROVED BY THE COMMISSION

Some Member States have already taken action and have already notified various support measures to the European Commission, both within the framework of the Temporary Framework and under art. 107, paragraph 2, b) TFEU.

The state aid measures notified by Member States and approved by the EU Commission have as a common basis the economic impacts of the state of emergency caused by COVID-19. The specific reasons behind the aids are various, ranging from liquidity supports in the form of subsidized loans, to support of the production of medicals necessary for infected people and for the protection of doctors and citizens, to public loans guaranteed free of charge by government agencies.

In each of the cases listed below, the Commission concluded that the measures would somehow contribute to the management of the negative impacts on the economy due to the coronavirus, considering the public intervention necessary, adequate and proportionate in the current exceptional state of emergency.

Below is a summary of the first cases decided by the Commission, approved under Article 107 (2) (b) TFEU and under the Temporary Framework:

DENMARK

- On March 12, a 12 million state aid scheme was approved to compensate organizers for damages suffered due to the cancellation of large events with over 1,000 participants due to the COVID-19 epidemic. Denmark was the first to request the Commission to approve the regime under EU state aid rules and the decision arrived only after the next 24 hours after receiving the notification. (SA56685).
- On March 22, another state aid support measure was approved, in the form of a public guarantee amounting to approx. 130 million in favor of SMEs affected by the emergency state. (SA 56708).
- On March 25 a state aid support of DKK 10 billion (approximately € 1.3 billion) was approved to compensate self-employed workers impacted by the coronavirus epidemic. The introduced measure, which will last until 9 June 2020, provides for self-employed workers enrolled in the Danish civil registration system the right to partial compensation for the turnover losses suffered, in the form of direct subsidies of up to 75% of the expected quarterly loss. (SA.56791).

FRANCE

- On March 21, three separate French support schemes were approved under the temporary framework worth € 300 billion. More specifically, the French measure is divided into (i) two schemes that allow the French public investment bank Bpifrance to provide state guarantees on commercial loans and credit lines; (ii) a system to provide state guarantees to banks on new loan portfolios for all types of companies. This measure was considered a direct aid to companies and not to banks, as it simply allows liquidity to be supplied more quickly to any type of company. Loan guarantees have limited duration and amounts, and cover a risk of up to a maximum of 90%. (SA 56709).

GERMANY

- On March 22, two measures were approved, which provide liquidity (up to a maximum of 1 billion for each company) in the form of subsidized loans. These are in particular two separate support measures within the temporary framework, implemented through the credit institution for reconstruction Kreditanstalt für Wiederaufbau ("KfW"), mainly consisting of: (i) a loan program covering up to 90% risk for companies of all sizes for a maximum duration of 6 years and for an amount that can reach 1 billion euros for each company, depending on the liquidity needs, and (ii) a financing program, in which KfW participates together with private banks, which can cover up to 80% of a specific loan but not more than 50% of the total debt of a beneficiary company. (SA.56714).
- On 24 March, the Commission approved a further support measure, implemented through the German federal and regional authorities, as well as government banking bodies, which allows guarantees to be granted on loans at favourable conditions to help companies of any size, both with immediate circulation and for investment needs. (SA.56787).
- On March 24, a regime called the "Bundesregelung Kleinbeihilfen 2020" was approved, which aims to remedy the difficulties encountered by companies due to the state of emergency and to help ensure their profitability. The aid takes the form of a direct grant, through repayable advance or tax relief, up to (i) € 120,000 per company active in the fisheries and aquaculture sector (ii) € 100,000 for primary agricultural enterprises, as well as (iii) € 800,000 for all other companies involved in the aid. (SA.56790).

ITALY

- On March 22, a state aid measure - with a total budget of € 50 million - was approved to support the production and supply of medical devices, such as fans and personal protective

equipment, masks, glasses, clothes and safety suits. (SA 56786).

- On March 25, the Commission approved a state guarantee to support a debt moratorium for SMEs, which includes the postponement or repayments overdraft facilities, bank advances, bullet loans, mortgages and leasing operations. The objective of the aid scheme is to ensure that SMEs have the necessary liquidity to safeguard jobs and continue their activities facing the difficult situation caused by the epidemic. In particular, the guarantee will cover a well-defined series of financial exposures and is limited to 30 September 2020, providing for an extension of 18 months at the end of the moratorium. (SA.56690).

PORTUGAL

- On 22 March four guarantee schemes for small and medium-sized enterprises (SMEs) were approved. In particular, the sectors that will benefit from the guarantee will be: (i) tourism; (ii) catering; (iii) extractive and manufacturing industries; and (iv) travel agency activities, tourist entertainment, event organization, for a total budget of 3 billion euros and are intended to offset the risks associated with the issue of loans to companies seriously affected by the economic repercussions of the epidemic. (SA.56755).

LUXEMBURG

- On March 24, the Commission approved a regime aimed at supporting companies, as well as the liberal professions, with an estimated budget of 300 million. The support measure takes the form of a repayable advance granted in one or more instalments to allow beneficiaries to meet their operating costs in the current emergency situation. (SA.56742).
- On 27 March a support measure was approved in the form of a loan guarantee with favorable terms, open to all companies, with

the exception of those active in the real estate and financial sector. In particular, (i) the amount of the underlying loan is intended to cover the liquidity needs, (ii) the guarantee will be provided for loans until the end of this year, (iii) and limited to a maximum of six years. (SA.56805).

SPAIN

- On March 24, two guarantee schemes were approved, for an amount of 20 billion euro, envisaged on new loans and refinancing operations for: (i) self-employed workers and small and medium-sized enterprises (SMEs); and (ii) and larger companies. The measures cover the risk up to a maximum of 80% for self-employed workers and SMEs and 70% for large companies. (SA.56803).

UK

- On 25 March, the Commission approved two separate aid schemes to support SMEs. The United Kingdom will establish the so-called "Coronavirus business interruption loan scheme" (CBILS) which will respectively provide: (i) guarantees covering up to 80% of the SME loan with a turnover of up to EUR 49 million, both for working capital and that for investment needs - implemented through the British Business Bank and (ii), direct grants to support SMEs affected by the epidemic. (SA.56792 e SA.56794).

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CONCLUSIONS

From a preliminary analysis of the measures already adopted by Member States and approved by the Commission, a scenario of large-scale granting and approving of aid stands out. The Commission is called to face a long-standing challenge, which has never occurred before in the EU's history, being entitled not only to approve the



notified measures in a very short time, but also to adopt all the necessary European measures to support Member States in facing likely huge impacts on their national economies.

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The team of experts of Pavia e Ansaldo Studio Legale has solid experience in providing assistance on all matters relating to state aid, both to public and private entities, including their effectiveness and feasibility, as well as in all phases of the related procedures.

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