

State Aid Briefing: Special Edition

Latest Developments in State Aid Legislation: Urgent Measures Relating to Covid-19 Pandemic

This Briefing provides a general overview of the provisions of the State aid Temporary Framework recently issued by the European Commission for the support of the economy of EU Member States in the Covid-19 outbreak.

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States including Greece to ensure that sufficient liquidity remains available to businesses of all types and to preserve the continuity of economic activity during and after the Covid-19 outbreak.

2. Prior to the adoption of the State aid Temporary Framework, the European Commission had set out in its Communication on a Coordinated Economic Response to the Covid-19 outbreak of 13 March 2020 [see COM(2020) 112 final of 13 March 2020] (the Communication of 13 March 2020) the various options available to Member States outside the scope of EU State aid control which Member States may adopt without the involvement of the European Commission. These include measures applicable to all undertakings regarding:
 - a. wage subsidies;
 - b. suspension of payments of corporate and value added taxes;
 - c. social welfare contributions; and
 - d. financial support directly to consumers for cancelled services or tickets not reimbursed by the concerned operators.
3. These are measures that fall outside the scope of State aid control and therefore can be put in place by Member States immediately, without the involvement of the European Commission.
4. In addition, in its Communication of 13 March 2020, the European Commission also noted that Member States can notify aid schemes to it to meet acute liquidity needs and support undertakings facing financial difficulties, also due to or aggravated by the Covid-19 outbreak on the basis of

A. Introduction

1. By means of its Communication of 19 March 2020 [see European Commission, Communication C(2020) 1863 final] (the Communication of 19 March 2020), the European Commission has adopted a Temporary Framework to enable EU Member States to use the full flexibility foreseen under State aid rules to support the economy in view of the Covid-19 outbreak. In particular, the Temporary Framework, to be used under the existing State aid rules, enables Member

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Article 107(3)(c) TFEU¹ and as further specified in the Rescue and Restructuring State aid Guidelines. Furthermore, Member States can also compensate undertakings in sectors that have been particularly hit by the outbreak (eg transport, tourism, culture, hospitality and retail) and/or organisers of cancelled events for damages suffered due to and directly caused by the outbreak on the basis of Article 107(2)(b) TFEU². Member States can notify such damage compensation measures and the European Commission will assess them directly under Article 107(2)(b) TFEU.

5. As part of its aforesaid Communication of 13 March 2020, the European Commission recognized that the spread of Covid-19 in Italy would further allow the use of Article 107(3)(b) TFEU³, to approve additional national support measures to remedy a serious disturbance to the economy of a Member State (as was already present in Italy), stating that it was already preparing a special legal framework under Article 107(3)(b) TFEU to adopt in case of need.
6. Following this, the European Commission issued the Communication of 19 March 2020 in which it has set out additional temporary State aid measures that it considers compatible under Article 107(3)(b) TFEU, which can be approved very rapidly upon notification by the Member State concerned. To remedy the serious disturbance faced by EU Member States, the State aid Temporary Framework provides for the five types of aid set out in B – F below.

B. Direct Grants, Selective Tax Advantages and Advance Payments

1. Member States will be able to set up schemes to grant up to €800,000 to companies to address their urgent liquidity needs.
2. This type of aid shall be addressed to undertakings that find themselves facing a sudden shortage or unavailability of liquidity.

C. State Guarantees for Loans Taken by Companies from Banks

1. Member States will be able to provide State guarantees to ensure that banks keep providing loans to customers who

are facing a sudden shortage, which shall be provided for a limited period and loan amount.

D. Subsidised Public Loans to Companies

1. Member States will be able to grant loans with favourable interest rates to companies.
2. These loans can help businesses cover immediate working capital and investment needs.

E. Safeguards for Banks that Channel State Aid to the Real Economy

1. Some Member States plan to build on banks' existing lending capacities and use them as a channel for support to businesses, in particular for small and medium-sized companies.
2. The State aid Temporary Framework makes clear that such aid is considered as direct aid to the banks' customers and not to the banks themselves, and gives guidance on how to ensure minimal distortion of competition between banks.

F. Short-Term Export Credit Insurance

1. The State aid Temporary Framework introduces additional flexibility on how to clarify that certain countries are not-marketable risks, thereby enabling short-term export credit insurance to be provided by the State where needed.

G. Specific Compatibility Conditions

1. The State aid Temporary Framework sets out specific compatibility conditions per type of aid which must be observed for the aid to be considered as compatible with the internal market by the European Commission. For example, for the first type of aid (ie direct grants, selective advantages and advance payments) the following conditions must be met:
 - a. the aid must not exceed €800,000 per undertaking in the form of direct grants, repayable advances, tax or payments advantages; all figures used must be gross, that is before any deduction of tax or other charge;
 - b. the aid must be granted on the basis of a scheme with an estimated budget;
 - c. the aid may be granted to undertakings that were not in difficulty (within the meaning of the General Block Exemption Regulation) on 31 December 2019, are not in difficulty and/or were not in difficulty on 31 December 2019, but that faced difficulties or entered into difficulty thereafter as a result of the Covid-19 outbreak;
 - d. the aid should be granted no later than 31 December 2020;
 - e. the aid granted to undertakings active in the processing

¹ Concerning aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

² Concerning aid to make good the damage caused by natural disasters or exceptional occurrences.

³ Concerning aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State.

and marketing of agricultural products is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned.

2. Similar conditions are also provided for the other types of aid measures analysed under C to F above.

H. Member States' Obligation to Prove to the Commission the State Aid Necessity

1. The European Commission has set out the compatibility conditions it will apply in principle to each type of aid granted by Member States under Article 107(3)(b) TFEU. Member States must therefore show that the State aid measures notified to the Commission under the Communication of 19 March 2020 are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the

Member State concerned and that all the conditions of such Communication are fully respected.

2. Member States must publish relevant information on each individual aid granted under the Communication on the State aid website within 12 months from the moment of granting and must also submit annual reports to the European Commission. In addition, Member States must provide the European Commission with a list of measures put in place on the basis of schemes approved based on the Communication of 19 March 2020 by 31 December 2020.
3. The European Commission shall apply the provisions of the Communication of 19 March 2020 to all relevant notified measures as of 19 March 2020, even if the measures were notified prior to that date. The State aid Temporary Framework will be in place until the end of December 2020. However, the European Commission will assess before that date if it needs to be extended.

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