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Update on the European Temporary Framework for State Aid to alleviate the effects of Covid-19

Miguel Troncoso Ferrer

Managing Partner of the Brussels office
Gómez-Acebo & Pombo's Competition and European Union Area

In order to alleviate the economic consequences of the COVID-19 pandemic, the Member States of the European Union are adopting urgent public aid schemes. This aid could have distorting effects on competition. Therefore, the European Commission has adopted and modified in one week, also as a matter of urgency, a framework defining the limits of these public interventions in order for these to be compatible with the internal market.

1. General prohibition of State aid and possibility of exceptional authorisation

Art. 107(1) of the Treaty on the Functioning of the European Union (TFEU) provides, as a general rule, for the prohibition of State aid where such aid is liable to affect trade between Member States. This prohibition applies to any grant, deduction or exemption from taxes or social security contributions, loan or guarantee granted by public authorities or charged to public funds. Such aid may be granted only with the prior authorisation of the European Commission.

However, by way of exception, the Treaty on the Functioning of the European Union provides for the compatibility with the internal market of aid intended to make good the damage caused by "natural disasters or exceptional occurrences" (Article 107(2)(b)). Aid to remedy a serious disturbance in the economy may also be compatible (Article 107(3)(b)).

On the legal basis of these two Treaty provisions, and in particular the second, the Commission adopted a communication on 19 March last setting out a temporary framework defining the conditions under which the Member States of the Union may help businesses in dealing with the economic consequences of COVID-19 (hereinafter the "Communication" and "the Temporary Framework"). On 3 April, the Commission extended and amended the Temporary Framework, including five additional temporary measures related to R&D and the maintenance of employment, and allowing for an increase in the intensity of aid provided for in the Communication.

2. The time frame adopted by the Commission

2.1. *Aid to make good the damage caused by an exceptional occurrence (Art. 107(2b) TFEU)*

The European Commission recalls in the Communication that this Treaty provision may be used to compensate companies for the economic consequences of COVID-19 in those sectors that are particularly affected by the outbreak of the pandemic, e.g. tourism, culture, hospitality or retail. In the case of Spain, the hospitality sector comes to mind following the adoption of Order SND/257/2020 of 19 March.

These compensation measures should be notified to the European Commission for urgent consideration. This has been done, in record time, in order to analyse the Danish compensation mechanism to event organisers (Decision SA 56685).

In addition to these specific measures, the Communication sets out the conditions under which various types of aid to alleviate liquidity problems in the business community may be approved. These are examined in section 2.2 below.

2.2. *Aid to remedy a serious disturbance in the economy (Art. 107(3b) TFEU)*

This is the most important chapter of the framework adopted by the European Commission. In its Communication it sets out a number of conditions for aid granted by Member States to fall within the scope of the exemption provided for by Art. 107(3)(b) of the Treaty on the Functioning of the European Union:

– Aid in the form of direct grants or tax advantages

  Member States may establish grants or tax advantages or exemption schemes, provided that such aid: (*a)* does not exceed EUR 800,000 per company; (*b)* is granted on the basis of a scheme with an estimated budget; and (*c)* is granted no later than 31 December 2020.

  The Communication also sets out special rules for the agricultural, fishery and aquaculture sectors, with lower thresholds (EUR 100,000 for the agricultural sector and EUR 120,000 for the fishery and aquaculture sector).

— Aid in the form of guarantees on loans

State guarantees may also be granted or guarantee schemes set up for bank loans granted to companies facing sudden liquidity problems.

These companies may benefit from guarantee premiums, the amount of which varies according to the type of company (SME or large enterprise) and the loan maturity.

Similarly, the possibility of establishing general guarantee schemes (applicable generally or to a wide sector of the economy) is envisaged, which will apply to loans limited in amount according to parameters such as the wage bill or turnover of the beneficiary in 2019. Thus, for loans maturing after 31 December 2020, the loan may not exceed twice the wage bill or 25% of the turnover.

Guarantees can be applied to both investment and working capital loans. Guarantees may not be applied to loans with a maturity of more than six years and may not exceed 90% of the principal of the loan.

— Aid in the form of subsidised interest rates for loans

Member States may authorise public loans at subsidised rates to companies facing a sudden liquidity shortage. The interest rate applicable to such loans must be at most identical to the 1-year IBOR rate (base rate) plus a spread depending on the duration of the loan and the type of beneficiary (SME or large enterprise), which may vary from 25 to 200 basis points.

There are also limits on the maximum amount of the loans, also based on the beneficiary's wage bill or turnover in 2019 or on the beneficiary's liquidity needs, provided that the loan matures after 31 December 2020. If the maturity is earlier, the amount of the loan may be higher.

The loans can be used to cover both investment and working capital needs. The maturity of the loans may not exceed six years.

— Aid channelled through banks or other financial institutions

The framework approved by the European Commission contains safeguards to prevent measures that may be approved by Member States from being turned into support for financial institutions involved in the system. The Commission states that these institutions must ensure, as far as possible, that the aid is passed on to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates.

— Short-term export credit insurance

Finally, the European Commission envisages a relaxation of the short-term export credit insurance limits set in the 2012 Communication from the Commission to the

Member States on the application of Arts. 107 and 108 of the Treaty if Member States demonstrate that certain risks are temporarily no longer marketable for exporters.

- Support for research and development related to the Covid-19

  Member States may provide support in the form of direct grants, repayable advances or tax advantages for R&D on COVID-19 and other anti-virals. All costs allocated to R&D activity, such as personnel costs or the purchase of research equipment or medical devices, are eligible and may cover up to 100% of expenditure in the case of fundamental research and 80% in the case of industrial research and experimental development. They can only be approved if the beneficiaries undertake to grant non-exclusive licences under non-discriminatory market conditions of the result of their research in the European Economic Area.

- Investment aid for the construction or upgrade of testing laboratories

  Aid may also be granted in the form of direct grants, tax advantages, repayable advances and no-loss guarantees to support investments to build or upgrade laboratories to develop and test products to deal with the outbreak of COVID-19 up to their first industrial deployment. These include products such as medicines (including vaccines) and treatments; medical devices and equipment (including ventilators and protective clothing, as well as diagnostic tools); disinfectants; data collection and processing tools useful in combating the spread of the virus. The aid may not exceed 75% of the eligible costs and the investment project must be completed within six months of the date on which the aid is granted, otherwise 25% of the amount must be reimbursed for each month of delay.

- Investment aid for the production of COVID-19 related products

  In order to support investments allowing the rapid production of products to combat the outbreak of COVID-19, Member States may grant aid in the form of direct grants, tax advantages, repayable advances and no-loss guarantees. This concerns products such as medicines (including vaccines), hospital and medical treatments and equipment such as ventilators and diagnostic tools. The aid may not exceed 80 % of the eligible costs.

These three types of aid may be increased by 15 percentage points if the projects are developed through cross-border cooperation between Member States. In the case of the latter two, they shall be increased by the same amount if the projects concerned are completed within two months of the date on which the aid is granted.

- Aid in the form of deferrals of payment of taxes or social security contributions

  Member States may grant tax and social security contribution deferrals to companies in specific sectors, regions or of a specific size most affected by the outbreak.

- Aid in the form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak

Member States may contribute to the wage costs of these companies in sectors or regions most affected by the coronavirus outbreak and which would otherwise have to lay off personnel. In this case, the wage subsidy is granted for a maximum period of 12 months and on condition that the benefitted personnel is maintained in continuous employment for the duration of the subsidy. The subsidy cannot exceed 80% of the gross monthly salary, including the employer's social security contributions.

For these last two measures, the Commission insists that they do not concern those which could be applied generally to all companies in a Member State, since in that case their general scope would exclude the application of the condition of selectivity, and they would not constitute State aid.

In order to avoid granting aid to companies which were in difficulty before the current health crisis, all these measures should be applied to companies which have faced financial problems after 31 December 2019 due to the COVID-19 outbreak.

The Communication also sets out general transparency obligations. Thus, Member States must send to the European Commission a list of measures taken pursuant to the Communication by 31 December 2020.

The Communication started to be implemented on 19 March 2020, given the need for rapid action in view of the possible economic impact of the COVID-19 outbreak. As of 25 March 2029, 37 different national measures have been approved and are listed in the annex.

LIST OF MEASURES APPROVED BY THE COMMISSION

Measures adopted under Art. 107(2) TFEU:

- EUR 12 million Danish aid scheme to compensate for damage caused by the cancellation of public events due to the COVID-19 outbreak.
- 25 March: Danish aid scheme worth EUR 1.3 billion to compensate the self-employed.
- 31 March: French scheme deferring payment by airlines of certain taxes to mitigate the economic impact of the coronavirus outbreak.

Measures adopted under the Temporary Framework

- 21 March: Three French measures mobilising EUR 300 billion of liquidity support for companies.
- 21 March: Danish guarantee scheme worth EUR 130 million to support SMEs.
- 22 March: two German liquidity schemes in the form of subsidised loans for all types of companies, with a limit of EUR 1 million per company
- 22 March: Italian scheme worth EUR 50 million to support the production and supply of medical equipment such as ventilator masks and goggles.
- 22 March: four Portuguese guarantee schemes with a budget of EUR 3 billion for SMEs particularly affected by the coronavirus outbreak.
- 23 March: two Latvian schemes worth EUR 250 million in the form of subsidised loans
- 24 March: Luxembourg scheme worth EUR 300 million to support companies and liberal professions.
- 24 March: German guarantee scheme to support the economy in the COVID-19 outbreak.
- 24 March: German grant scheme to support companies affected by the COVID-19 outbreak.
- 24 March: Spanish guarantee schemes worth EUR 20 billion for companies and self-employed workers affected by the outbreak.
- 25 March: two UK schemes to support SMEs affected by the coronavirus outbreak.
- 25 March: Italian State guarantee scheme to support SMEs affected by the coronavirus outbreak.
- 27 March: Luxembourg guarantee measure to support the economy.
- 30 March: French solidarity fund scheme of EUR 1.2 billion for SMEs.
- 30 March: Danish guarantee system worth EUR130 million for SMEs whose exports have been affected by the coronavirus outbreak.
- 30 March: Estonian schemes worth EUR 175 billion to support companies affected by the coronavirus outbreak.
- 31 March: Irish scheme worth EUR 200 million to help companies affected by the coronavirus.
- 1 April: EUR 200 million for loans to support the Danish travel guarantee fund.
- 2 April: extension of the German scheme for subsidised loans.
- 2 April: Maltese guarantee scheme worth EUR 350 million.
- 2 April: Spanish "umbrella" scheme to support the economy in the coronavirus outbreak.
- 2 April: Swedish guarantee scheme worth EUR 9.1 billion.
- 3 April: Danish scheme worth EUR 23 million.
- 4 April: Polish public guarantee scheme worth EUR 22 billion.
- 6 April: UK "umbrella" scheme worth GBP 50 billion.
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