

COVID-19 and State Aid

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As a reaction to the COVID-19 outbreak, on 19 March 2020 the European Commission (“EC”) adopted a *Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak* (“the **Temporary Framework**”). The aim of the Temporary Framework is to allow EU Member States to tackle the difficulties undertakings are currently encountering whilst maintaining the integrity of the EU Internal Market and ensuring a level playing field.

To date, the EC has already declared as compatible State aid a number of measures to address the consequences of the COVID-19 outbreak, notified to it by different Member States.

Below is a summary of the Temporary Framework and the EC decisions on COVID-related State aid, announced until 24 March 2020.

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1. The Temporary Framework

In the Temporary Framework the EC reminds EU Member States that **state support could take the form of measures which do not constitute State aid under EU law** - such as measures applicable to all undertakings regarding 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. Further, the EC reiterates **the possibility to design State aid measures which do not have to be notified to the EC in line with 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 subject matter of the Temporary Framework are State aid measures in the COVID context designed to remedy **a serious disturbance in the economy of a Member State** which the EC may declare compatible with the internal market under Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”). The Temporary Framework sets out the **compatibility conditions which the EC will apply in principle to such State aid measures**. Member States must show that the State aid measures notified to the EC under the Temporary Framework are **necessary, appropriate and proportionate** to remedy a serious disturbance in the economy of the Member State concerned and that all the conditions of the Temporary Framework are fully respected.

The Temporary Framework sets out **the respective specific conditions** under which the EC will find compatible State aid in the form of:

- direct grants, repayable advances or tax advantages;
- guarantees on loans;
- subsidised interest rates for loans;
- guarantees and loans channelled through credit institutions or other financial institutions;
- short-term export credit insurance.

The Temporary Framework will not be applied after 31 December 2020.

The Temporary Framework is an important step by the EC since it clarifies beforehand to EU Member States the conditions under which particular State aid measures in the COVID context will be deemed compatible by the EC under Article 107(3)(b) TFEU. In principle the EC enjoys considerable discretion whether to declare an aid measure compatible under Article 107(3)(b) TFEU. The Temporary Framework therefore provides Member States with greater clarity how to design those measures so that the EC would declare them compatible with the internal market upon notification by the respective Member State.

2. The first EC decision regarding COVID-related State aid

On 11 March 2020, Denmark notified the EC of its intention to set up a DKK 91 million (approx. €12 million) aid scheme to compensate organisers of events with more than 1,000 participants or targeted at designated risk groups, such as the elderly or vulnerable people, irrespective of the number of participants, which had to be cancelled or postponed due to the COVID-19 outbreak. The EC assessed the measure under Art. 107(2)(b) TFEU, which enables the EC to approve State aid measures granted by Member States to compensate specific companies or specific sectors (in the form of schemes) for the damages directly caused by **exceptional occurrences**. To qualify as an exceptional occurrence under Art. 107(2)(b) TFEU, an event must be (i) unforeseeable or difficult to foresee; (ii) of significant scale/economic impact, and (iii) extraordinary.

On 12 March 2020, within 24 hours of receiving the notification from Denmark, by its decision on State aid SA.56685 the EC declared the notified aid as compatible based on the findings that:

- COVID-19 can be considered as an exceptional occurrence;
- there is a causal link between the notified measure and COVID-19; and
- the notified State aid is proportionate to the damage caused by the exceptional occurrence.

3. Subsequent decisions of the EC – under the Temporary Framework

3.1. Danish guarantee scheme for small and medium-sized enterprises

On 13 March 2020, Denmark notified to the EC a guarantee scheme for small and medium-sized enterprises (“SMEs”) affected by the Coronavirus outbreak. The scheme has a budget of DKK 1 billion (approx. €130 million) and aims at limiting the risks associated with issuing operating loans to those companies that are most severely affected by the economic impact of the Coronavirus outbreak.

On 21 March 2020 by its decision on State aid SA.56708 the EC found that the measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the conditions set out in the Temporary Framework.

3.2 French support measures

On 16 March 2020, France notified to the EC three separate support schemes:

- two schemes enabling the French public investment bank Bpifrance to provide State guarantees on commercial loans and credit lines, respectively, for enterprises with up to 5,000 employees, and
- a scheme to provide State guarantees to banks on portfolios of new loans for all types of companies. This is direct aid to the companies that will enable banks to quickly provide liquidity to any company that needs it.

On 21 March 2020, by its decision on State aid SA.56709 the EC found that the notified State aid measures are in line with Article 107(3)(b) TFEU and the Temporary Framework.

3.3 German loan programmes

On 16 March 2020 Germany notified to the EC two separate support measures, implemented through the German promotional bank Kreditanstalt für Wiederaufbau (“KfW”):

- a loan programme covering up to 90% of the risk for loans for companies of all sizes. Eligible loans may have a maturity of up to 5 years and can reach €1 billion per company, depending on the company's liquidity needs.
- a loan programme in which the KfW participates together with private banks to provide larger loans as a consortium. For this scheme, the risk taken by the State may cover up to 80% of a specific loan but not more than 50% of total debt of a company.

On 22 March 2020, by its decision on State aid SA.56714 the EC concluded that the measures are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the Temporary Framework.

3.4 Portuguese guarantee schemes

On 18 March 2020 Portugal notified to the EC four guarantee schemes for SMEs and midcaps affected by the Coronavirus outbreak, active in four different sectors: (i) tourism; (ii) restaurants (and other similar activities); (iii) extractive and Manufacturing industry; and (iv) travel agency activities, touristic animation, event organisation (and similar activities). The four schemes have a total budget of €3 billion.

On 22 March 2020 by its decision on State aid SA.56755 the EC found that the notified State aid measures are in line with Article 107(3)(b) TFEU and the Temporary Framework.

3.5 Italian State aid for production of medical equipment and masks

On 20 March 2020 Italy notified to the EC a €50 million support scheme for the production and supply of medical devices and personal protection equipment under the Temporary Framework. Under the scheme, financial support will be available to companies of all sizes

which (i) set up new facilities for the production of medical devices and personal protection equipment; (ii) expand the production of their existing structures producing such equipment; or (iii) convert their production line to that effect. The beneficiaries of the support will make the products available to the Italian authorities at the market prices applied in December 2019, i.e. prior to the outbreak in Italy. The aid will take the form of direct grants or repayable advances. The repayable grants will be converted into direct grants, if the beneficiaries supply the equipment and devices in an expedited manner to the Italian authorities.

On 22 March 2020 by its decision on State aid SA.56786 the EC concluded that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the conditions set out in the Temporary Framework.

3.6 Latvian State aid

Latvia notified to the EC a subsidised loan scheme and a loan guarantee scheme for companies affected by the coronavirus outbreak under the Temporary Framework. The overall budget for the subsidised loan scheme is €200 million, out of which €50 million is envisaged from the State budget and the rest from the international financial institutions.

On 23 March 2020 the EC announced in a press release that by its decision on State aid SA.56722 it found the notified State aid measures in line with Article 107(3)(b) TFEU and the Temporary Framework.

3.7 German loan guarantee scheme

Germany notified to the EC a scheme which enables the granting of guarantees on loans at favourable terms to help businesses cover immediate working capital and investment needs.

On 24 March 2020 the EC announced in a press release that by its decision on State aid SA.56787 it found the notified State aid measures in line with Article 107(3)(b) TFEU and the Temporary Framework.

3.8 Germany - direct grants, repayable advance or tax and payment advantages

Germany notified to the EC a scheme, called "Bundesregelung Kleinbeihilfen 2020", whereby the aid takes the form of direct grants, repayable advance or tax and payment advantages.

On 24 March 2020 the EC announced in a press release that by its decision on State aid SA.56790 it approved the notified measures under EU State aid rules.

3.9 State aid by Luxembourg

Luxembourg notified to the EC a scheme for companies affected by the coronavirus outbreak under the Temporary Framework. The measure has an estimated budget of €300 million. The scheme aims at supporting companies, as well as liberal professions, affected by the economic impact of the coronavirus outbreak. The support takes the form of a repayable advance granted in one or more instalments to allow beneficiaries to face their operating costs in the difficult situation caused by the coronavirus outbreak.

On 24 March 2020 the EC announced in a press release that by its decision on State aid SA.56742 it concluded that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State, in line with Article 107(3)(b) TFEU and the conditions set out in the Temporary Framework.

3.10 Spanish guarantee schemes

Spain notified to the EC under the Temporary Framework two guarantee schemes on new loans and refinancing operations for (i) self-employed workers and SMEs; and (ii) larger companies, all affected by the coronavirus outbreak. The schemes have a total budget of approximately €20 billion.

On 24 March 2020 the EC announced in a press release that by its decision on State aid SA.56803 it approved the notified measures under EU State aid rules.
