

Covid-19 coronavirus and the EU State aid response

The Covid-19 outbreak is both a serious health emergency and a threat to the global economy. Both the EU and EU Member States are seeking to avert this threat with ambitious aid packages. This creates an unprecedented challenge for the application of EU State aid rules.

The European Commission (**Commission**) has responded to this challenge by adopting a [Communication](#) setting out a temporary framework for State aid measures to support the economy in the current Covid-19 outbreak (the **Temporary Framework**). The Temporary Framework will apply from 19 March 2020 to 31 December 2020. It provides detailed guidance on what aid measures may be taken to remedy a serious disturbance in the economy of a Member

State because of the Covid-19 outbreak, in particular what aid measures Member States can take without requiring prior approval of the Commission and how the Commission will assess measures that do need to be notified. On 3 April 2020, the Commission published an [amendment](#) extending the Temporary Framework to additional aid measures.

KEY INFORMATION

- Temporary Framework applies from 19 March 2020 to 31 December 2020
- Provides guidance on what aid measures can be taken without prior Commission approval and how Commission will assess measures needing to be notified
- Notified aid packages currently being approved very swiftly
- Further measures may be adopted – we will provide updates as the situation develops

The Commission has also acted swiftly to approve Covid-19-related State aid measures notified by Member States. Within a very short period of time, it has adopted a number of decisions under the Temporary Framework, covering a wide geographical spread of Member States. The Commission has also published a [notification template](#) for Member States. In this alert we consider the content of the Temporary Framework and the Commission's recent decisions.

The Temporary Framework covers six types of aid measures

The Temporary Framework outlines six types of measures that Member States can deploy. A broad distinction can be made between (a) measures that do not need to be notified to the Commission for prior approval and (b) measures that do require notification and Commission approval.

The following can be implemented by Member States without prior approval of the Commission:

- *Measures that apply to all companies:* measures such as general wage subsidies, suspension of payments of corporate and value added taxes or social contributions that apply to all companies. These types of measures do not qualify as State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) because they do not confer a selective advantage.
- *Financial support granted directly to consumers:* measures that directly benefit consumers such as for cancelled services or tickets not reimbursed by the operators concerned. These types of measures do not qualify as State aid within the meaning of Article 107(1) TFEU because they do not confer an advantage on undertakings.
- *Measures designed in line with the General Block Exemption Regulation:* aid measures that fall within the scope of the General Block Exemption Regulation qualify as State aid within the meaning of

Article 107(1) TFEU but can be implemented by Member States without prior notification to the Commission.

The following types of State aid measures need to be notified to and approved by the Commission before they can be implemented:

- *Rescue and restructuring aid (Article 107(3)(c) TFEU):* aid measures developed to meet acute liquidity needs and support undertakings facing financial difficulties, also due to or aggravated by the Covid-19 outbreak. These need to be in line with the strict criteria set out in the Restructuring State aid [Guidelines](#).
- *Compensation for damages caused by natural disasters and exceptional occurrences (Article 107(2)(b) TFEU):* Member States can compensate undertakings in sectors that have been particularly affected by the Covid-19 outbreak (eg transport, tourism, culture, hospitality and retail) for damages directly caused by the pandemic. Within 24 hours of notification, for example, the Commission [approved](#) a Danish State aid measure to compensate organisers of large events for damages suffered as a result of the cancellation of these events. The Commission qualified the Covid-19 outbreak as an "exceptional occurrence" and established that there was a direct causal link between this exceptional occurrence and the damages suffered because of the cancellations. The Commission found that the measure was proportionate because the aid did not exceed what is necessary to make good the damages suffered.
- *Measures to remedy a serious disturbance in the economy of a Member State (Article 107(3)(b) TFEU):* Member States can take aid measures to remedy a serious disturbance in their economy if that disturbance affects the whole or an important part of the economy. The Temporary Framework explains that in the context of the Covid-19 outbreak, Member States may invoke this ground

for aid measures granted for a limited period to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the pandemic do not undermine their viability, especially that of small and medium-sized enterprises.

In detail: measures to remedy a serious disturbance in the economy of a Member State

The Temporary Framework provides more detailed guidance on the compatibility conditions the Commission will apply to any aid granted by a Member State to remedy a serious disturbance in its economy. It specifically addresses aid in the form of: (i) direct grants, repayable advances or tax advantages, (ii) guarantees on loans, and (iii) subsidised interest rates for loans. And it sets out additional conditions where aid in the form of guarantees and loans is channelled through credit institutions or other financial institutions. The Temporary Framework also considers an exemption from the rule that marketable risks cannot be covered by export credit insurance with the support of Member States. We consider the main principles below.

Aid in the form of direct grants, repayable advances or tax advantages

The Commission considers this type of aid to be compatible with the internal market if it does not exceed EUR 800,000 per undertaking. It must be granted on the basis of a scheme with an estimated budget and granted no later than 31 December 2020. Aid may not be granted to undertakings that were already in difficulty (within the meaning of the [General Block Exemption Regulation](#)) on 31 December 2019. Specific rules apply for the agricultural, fisheries and aquacultural sectors and undertakings active in the processing and marketing of agricultural products.

Aid in the form of loan guarantees

New public loan guarantees will be compatible with the internal market, says the Commission, provided that the guarantee premiums are set at a minimum level, as defined in the Temporary Framework. The guarantee must be granted by

31 December 2020 at the latest. For loans with a maturity beyond 31 December, the amount of the loan principal may not exceed: (i) double the 2019 annual wage bill of the beneficiary, (ii) 25% of the total 2019 turnover of the beneficiary, or (iii) a higher amount subject to justification and self-certification. For loans with a maturity date up to 31 December 2020, the amount may also be higher subject to justification and proportionality.

The guarantee may not exceed: (i) 90% of the loan principal where losses are sustained proportionally and under the same conditions, by the credit institution and the State, or (ii) 35% of the loan principal, where losses are first attributed to the State and only then to credit institutions. In both cases the guaranteed amount must decrease proportionally with the size of the loan as it starts to be reimbursed. The guarantee shall relate to investment and/or working capital loans. And guarantees may not be granted to undertakings that were in difficulty on 31 December 2019.

Aid in the form of subsidised interest rates for loans

The Commission considers aid in the form of subsidies to public loans to be compatible with the internal market provided that the reduced interest rates are at least equal to 1 year IBOR applicable on 1 January 2020 plus a credit risk margin as specified in the Temporary Framework. Member States may notify alternative schemes whereby maturity, pricing and guarantee coverage can be modulated. The loan contracts must be signed by 31 December 2020 at the latest. As with the conditions for loan guarantees outlined above, for loans with a maturity beyond 31 December 2020, the amount of the loan may not exceed: (i) double the 2019 annual wage bill of the beneficiary, (ii) 25% of the total 2019 turnover of the beneficiary, or (iii) a higher amount subject to justification and self-certification. For loans with a maturity date up to 31 December 2020, the amount may also be higher, subject to justification and proportionality. The loan must relate to investment and/or working capital needs. And as before, the measure may not be granted to undertakings that were in difficulty on 31 December 2019.

Aid in the form of guarantees and loans channelled through credit institutions or other financial institutions

Where aid in the form of public guarantees and reduced interest rates, as described above, is granted through credit institutions and other financial institutions as financial intermediaries, that aid may constitute an indirect advantage to the latter. Therefore the Temporary Framework puts in place safeguards to limit undue distortions to competition. To the extent possible, the credit institutions or other financial institutions must pass on, and must demonstrate that they have passed on, the advantages of the public guarantee or subsidised rates on loans to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or low interest rates.

Short-term export credit insurance

Under the [current State aid rules](#), marketable risks cannot be covered by export credit insurance with the support of Member States. Due to the Covid-19 outbreak, the Commission [announced](#) on 27 March 2020 that it will temporarily remove all countries from the list of "marketable risk" countries under the Short-term export-credit insurance [Communication](#) until 31 December 2020.

Extension of the Temporary Framework

On 3 April 2020, the Commission published an [amendment](#) to the Temporary Framework, expanding its scope to five additional types of aid measures (an informal consolidated version of the Temporary Framework can be found [here](#)). In particular: (i) more support for Covid-19 related R&D, (ii) more support for the construction and upgrading of testing facilities for products relevant to tackle the Covid-19 outbreak, (iii) more support for the production of products relevant to tackle the pandemic, (iv) targeted support in the form of deferral of tax payments and/or suspensions of employers' social security contributions, and (v) targeted support in the form of wage subsidies for employees.

Aid for Covid-19 relevant research and development

The Commission emphasises that it is essential to facilitate Covid-19 relevant research and development (R&D) and describes the conditions under which it will approve aid for such projects. The aid can be granted in the form of direct grants, repayable advances or tax advantages. The aid must have an incentive effect. It will be considered to have such an effect if it is granted: (i) for projects that started as of 1 February 2020 or for projects that have received a Covid-19-specific Seal of Excellence; or (ii) if the project started before 1 February 2020, if the aid is necessary to accelerate or widen the scope of the project. All costs necessary for the R&D project are eligible. The aid intensity may cover 100% of eligible costs for fundamental research and 80% of eligible costs for industrial research and experimental development. The latter may be increased to 95% if more than one Member State supports the project or if it is carried out in cross-border collaboration. The aid beneficiary must further commit to grant non-exclusive licences under non-discriminatory conditions to third parties in the EEA.

Investment aid for testing and upscaling infrastructures

The Commission will consider investment aid for the construction or upgrade of testing infrastructure compatible with the internal market provided certain key conditions are met. The aid must be granted for the construction or upgrade of the type of infrastructures described in the Temporary Framework. The aid will be deemed to have an incentive effect if the project started as of 1 February 2020 or, for projects started earlier, if the aid is necessary to accelerate or widen the scope of the project. The investment project must, in principle, be completed within six months of granting the aid. Where the deadline is respected, aid in the form of repayable advances is transformed into grants. If not, it must be repaid within five years. The aid intensity may not exceed 75% of the eligible costs. This amount may be increased by 15% if the project is completed within two months or if support comes from more than one Member State. A loss cover guarantee may be granted in addition to a

direct grant, tax advantage or repayable advance, or as an independent aid measure.

The prices charged for the services provided by the infrastructure must correspond to the market price and the testing and upscaling infrastructures must be open to several users and granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10% of the investment costs may be granted preferential access.

Investment aid for the production of Covid-19 relevant products

The conditions for considering investment aid for the production of Covid-19 relevant products compatible with the internal market are largely similar to those described above. The aid must be granted for Covid-19 relevant products, such as medicinal products and treatments, active pharmaceutical ingredients and raw materials, medical devices, or hospital and medical equipment. Again, the aid is deemed to have the required incentive effect if the project started as of 1 February 2020 or if the aid is necessary to accelerate or widen the scope of the project. The project must, in principle, be completed within six months of granting the aid. Where the deadline is respected, aid in the form of repayable advances is transformed into grants. If not, the repayable advance is reimbursed in equal annual instalments within five years after the date of granting the aid. The aid intensity may not exceed 80% of the eligible costs. This may be increased to 95% if the investment is concluded within two months or if support comes from more than one Member State. A loss cover guarantee may be granted in addition to a direct grant, tax advantage or repayable advance or as an independent aid measure.

Aid in the form of deferrals of tax and/or of social security contributions

Deferrals of payment of taxes and/or of social security contributions are seen as a valuable tool to reduce undertakings' liquidity constraints and preserve employment. If these measures are of general application they do not fall within the scope of the State aid rules. If they are only available to certain sectors, regions or types of undertakings, however, they must be assessed

and approved by the Commission. The Commission will consider such schemes compatible with the internal market if they are granted to undertakings that are particularly affected by the Covid-19 outbreak. In addition, the aid must be granted before 31 December 2020 and the end date for the deferral may not be later than 31 December 2022.

Aid in the form of wage subsidies for employees to avoid lay-offs

The Commission considers it crucial to preserve employment and will therefore also approve aid in the form of wage subsidies if certain conditions are met. Again, only measures that apply selectively (rather than to the whole economy) require approval from the Commission.

Wage subsidies will be considered compatible with the internal market if they are aimed at avoiding lay-offs during the Covid-19 outbreak and granted to undertakings that are particularly affected by it.

The wage subsidy must be granted over a period of not more than twelve months for employees that would otherwise have been laid off as a consequence of the Covid-19 outbreak. The benefitting personnel must be maintained in continuous employment for the entire period for which the aid is granted. The subsidy may not exceed 80% of monthly gross salary. Alternative calculation methods, such as using the national wage average or minimum wage are also permitted, provided the proportionality of the aid is maintained. Finally, the wage subsidy may be combined with other generally available or selective employment support measures, provided this does not lead to overcompensation of the wage costs.

A rapid response by the Commission, but more to come?

The speed at which the Commission put together, consulted on and adopted the Temporary Framework is impressive. As is the rate of decisions it has adopted to approve aid measures from all corners of the EU, with many approvals granted only a day or two following notification. But some are still urging the Commission to do more (Germany's economy

minister, Peter Altmaier, for example), saying that additional emergency steps may be needed. One of the further measures the Commission is said to be considering would allow Member States to provide further support to undertakings in the form of equity or hybrid capital instruments.

What is in any event clear is that the Commission continues to assess the situation and appears willing to [adapt](#) the State aid rules as the impact of the outbreak unfolds. The Commission's temporary measures were refined and supplemented over the course of the months and years that followed the financial crisis. We may well see something similar happen again.

We are closely monitoring the Commission's decisions approving aid measures under the Temporary Framework, as well as any further amendments/extensions to the Temporary Framework, and will update you as the situation unfolds.

Please get in touch with your usual antitrust contact if you would like to discuss any of these issues further.

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