

19 March 2020

## **Covid-19 outbreak and State aid**

In the wake of the global Covid-19 outbreak and its devastating repercussions for the business community, Member States have announced that they will adopt all necessary measures to help those in difficulty. In this context, for instance, the Italian government has adopted incentives and other economic support measures amounting to 25 billion EUR. Other Member States are expected to take similar measures in the near future.

It is, however, important to note that despite the fact that their sole purpose is to alleviate the severe consequences for companies of the Covid-19 outbreak, such measures are likely to be caught by the general EU **State aid prohibition** set out in Article 107(1) of the Treaty on the Functioning of the European Union (“TFEU”). This provision states that *“any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market”*.

In view of this general prohibition, the Commission explains in its [Communication on the Coordinated Economic Response to the COVID-19 Outbreak](#), that measures to counter the negative impact of Covid-19 on businesses will – as a general rule – have to be **authorised** by the Commission on the basis of the exceptions set out, in particular, in Article 107(2) and (3) TFEU.

In its [first decision](#) concerning Covid-19, the Commission has authorised State aid notified by Denmark aimed at compensating organisers of events for losses suffered following the cancellation of gatherings. This State aid was authorised on the basis of Article 107(2)(b) TFEU, in consideration of the fact that the Covid-19 outbreak constitutes an **exceptional occurrence**. In the past, the Commission has authorised, also on the basis of this provision, State measures aimed at making good damage caused by natural disasters (such as earthquakes) and other exceptional occurrences.

Moreover, as [confirmed](#) by Commissioner for Competition Margrethe Vestager, a Temporary Framework will soon be adopted on the basis of Article 107(3)(b) to remedy the serious disturbance to the Member States’ economies caused by the Covid-19 outbreak. Similar to the Framework adopted in the context of the 2009 financial crisis, the **Covid-19 Temporary Framework** is expected to grant flexibility to Member States to support companies in difficulty.

The Commission has also announced that State aid notifications will be processed as rapidly as possible, and decisions will be adopted within days of a Member State submitting a notification. In the case of the [first decision](#) concerning Covid-19, for instance, Denmark filed a notification on 11 March and the clearance decision was adopted by the Commission within 24 hours.

With all the above in mind, companies hit by the consequences of the COVID-19 crisis, and which intend to seek support from their governments, should be aware of the EU’s rules and act in full compliance with them. In fact, undertakings benefitting from illegal or incompatible State aid run the risk of having to repay the State aid received, possibly increased by interest.

## **VAN BAEL & BELLIS**

If you wish to know more about this topic or would like our assistance with a request for State aid, please feel free to contact us.

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### **Get in touch**

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