VAN BAEL & BELLIS

SPECIAL ALERT

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European Commission adopts Covid-19 Temporary Framework for State Aid

On 19 March 2020, the Commission adopted a Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the "*Covid-19 Temporary Framework*"). This Temporary Framework complements the Communication on a Coordinated economic response to the COVID-19 outbreak adopted on 13 March 2020.

The Covid-19 Temporary Framework outlines the conditions that the Commission will apply when analysing aid granted by Member States under Article 107(3)(b) Treaty on the Functioning of the European Union ("TFEU").

As a general rule, Member States **must notify** the planned State aid to the Commission and demonstrate that it is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of the Member State concerned, and that it complies with all the conditions set out in the Covid-19 Temporary Framework.

In essence, this Temporary Framework identifies five categories of State aid that can, under certain conditions, be authorised:

1. **Direct grants, selective tax advantages and advance payments**, *i.e.*, "*temporary limited amounts of aid to undertakings that find themselves facing a sudden shortage or even unavailability of liquidity*" of up to EUR 800 000 per undertaking, which should be granted no later than 31 December 2020 (with specific provisions for agricultural, fisheries and aquaculture sectors for which the maximum amount is lower).

2. **State guarantees for loans taken by companies from banks**: this type of State aid is described as "*public guarantees on loans for a limited period and loan amount*", with minimum levels of guarantee premiums and specific limits on the amount of the loan principal for loans with a maturity beyond 31 December 2020. The duration of the guarantee is maximum six years and the guarantee cannot cover the entirety of the loan principal.

3. **Subsidised public loans to companies**: subsidised interest rates for loans of maximum six years, with specific limits on the amount of loans with a maturity beyond 31 December 2020, are authorised, provided that several conditions are met. It should be noted that the same loan cannot benefit from both a State guarantee under point *2* above and a subsidised interest rate.

4. **Guarantees and loans channelled through credit institutions or other financial institutions**: aid that will benefit "*undertakings facing a sudden liquidity shortage* […] *through credit institutions and other financial institutions as financial intermediaries*". In order to limit distortions to competition, Member States must ensure that "[t]*he financial intermediary shall be able to demonstrate that it operates a mechanism that ensures that the advantages are passed on to the largest extent possible to the final beneficiaries in the form of higher volumes of financing, riskier portfolios, lower collateral requirements, lower guarantee premiums or lower interest rates*".

5. **Short-term export credit insurance**: marketable risks (*i.e.*, commercial and political risks on public and non-public debtors established in certain countries) cannot as a general rule be covered by export-credit insurance with the support of Member States. However, due to the current outbreak, "*certain countries' cover for marketable risks could be temporarily unavailable*". In this context, the Covid-19 Temporary Framework gives Member States some flexibility on how to demonstrate that certain countries are non-marketable risks, which will allow them to offer short-term export credit insurance.

The Covid-19 Temporary Framework will be applied by the Commission to all relevant notified measures as of **19 March 2020** (even if the measures were notified prior to that date) and until **31 December 2020**.

As a final remark, we would like to emphasise that the Covid-19 Temporary Framework does not replace existing general State aid rules. Under these rules Member States are, for instance, allowed, **without any prior notification** to the Commission:

- To adopt non-discriminatory general measures applicable to all undertakings, such as suspension of payments of corporate and value-added taxes.

- To grant financial support directly to consumers for cancelled services or tickets not reimbursed by the concerned operators.

- To grant support measures in line with the General Block Exemption Regulation.

Member States are also allowed, after **notification** to and authorisation by the Commission, *inter alia*:

- To grant State aid to meet liquidity needs and support undertakings facing financial difficulties, also due to or aggravated by the COVID-19 outbreak, on the basis of Article 107(3)(c) TFEU and the Rescue and Restructuring State aid Guidelines.

- To grant State aid to compensate undertakings in sectors that have been particularly hit by the outbreak (e.g., transport, tourism) for damages suffered due to and directly caused by the outbreak, on the basis of Article 107(2)(b) TFEU. For instance, in the first decision concerning Covid-19, the Commission has authorised State aid notified by Denmark aimed at compensating the losses suffered by organisers of events as a result of the cancellation of gatherings.

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.

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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