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Temporary framework for state aid measures

European Commission adopts Temporary Framework for State aid measures to support corona pandemic affected economy – first national aid schemes approved

1. Background

On 19 March 2020, the European Commission ("Commission") following consultations with the EU Member States adopted in record time a „Temporary Framework" for State aid measures to support the economy in the current corona pandemic that identifies the scope of far-reaching rescue schemes Member States will implement for distressed companies.

All national rescue schemes that fall under the ambit of the Temporary Framework will have to comply with such framework – otherwise the Commission's approval of deviating or different aid schemes would be required. Member States, therefore, have limited scope to launch national aid schemes that deviate from the Temporary Framework. It follows, that the conditions of the Temporary Framework will, in general, also apply to companies.

Legal basis for the Temporary Framework is Article 107(3) lit b TFEU that provides the competence for the Commission to approve aid to remedy a serious disturbance in the economy of a Member State. Any national aid schemes that are structured within the scope of the Temporary Framework have to be notified to the Commission. The Commission will assess whether the national schemes are in line with the Temporary Framework, and whether they are proportionate. Following the Commission's approval, the national aid schemes can be implemented in order to provide sufficient liquidity for all companies.

We expect that the national aid schemes will be implemented very quickly –, the Commission has already approved aid schemes, including of Germany and France.

2. Compatible aid measures

The following aid measures are compatible with the Temporary Framework:

- **Aid in form of direct grants, repayable advances or tax advantages**: Member States can offer a scheme by which EUR 800.000 per company can be granted in order to address liquidity issues;
- **Aid in the form of guarantees on loans**: Member States can grant guarantees with a maximum duration of six years;
- **Aid in the form of subsidized interest rates for loans**: Member States can grant subsidized interest rates for loans to companies to ensure access to liquidity for working capital and investment requirements.
- **Short-term export credit insurance** for marketable risks.

The Temporary Framework establishes safeguards for banks that provide aid to the real economy, in particular banks that lend to SMEs.

In turn, we describe in more detail the individual aid measures:

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

Companies can receive up to EUR 800,000 in the form of direct grants, repayable advances or tax advantages until 31 December 2020.

Aid can only be granted to companies that were not in difficulty (within the meaning of the General Block Exemption Regulation No 651/2014, e.g. opening of insolvency proceedings, certain financial indicators) on 31 December 2019.

Special provisions and reduced amounts of aid apply to the agricultural, fisheries and aquacultural sectors.

b) State guarantees for loans taken by companies from banks

Member States will be able to provide State guarantees until 31 December 2020. The guarantee premiums are reduced to the following minimum levels:

Type of recipient	Credit risk margin for a 1-year maturity loan	Credit risk margin for a 2-3 years maturity loan	Credit risk margin for a 4-6 years maturity loan
Small and medium-sized enterprises (SMEs)	25 basis points	50 basis points	100 basis points
Large enterprises	50 basis points	100 basis points	200 basis points

As an alternative, Member States may notify schemes, considering the above table as basis, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity).

For loans with a maturity beyond 31 December 2020, the amount of the loan principal must not exceed the following limits:

- the double of the annual wage bill of the beneficiary including social charges as well as the cost of personnel working on the companies site but formally in the payroll of subcontractors (for 2019, or for the last year available). In the case of companies created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or

- 25% of total turnover of the beneficiary in 2019; or

- with appropriate justification and based on a self-certification by the beneficiary of its liquidity needs, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises.

For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher with appropriate justification and provided that proportionality of the aid remains assured.

The duration of the guarantee must be limited to maximum six years and the public guarantee must fulfill the following requirements:

- Guarantee of up to 90% of the loan principal with the proviso that losses are sustained proportionally and under same conditions, by the credit institution and the State; or

- Guarantee of up to 35% of the loan principal with the provison that losses are first attributed to the State and only then to the credit institutions (so called first-loss guarantee).

In both of the above cases, the guaranteed amount has to decrease proportionally to the decrease in the size of the loan over time.

The guarantee may relate to both investment and working capital loans.

Aid can only be granted to companies that were not in difficulty (within the meaning of the General Block Exemption Regulation No 651/2014, e.g. opening of insolvency proceedings, certain financial indicators) on 31 December 2019.

c) Subsidized interest rates for loans

Member States may grant subsidized interest rates for loans. The loans may be granted at reduced interest rates which are at least equal to the base rate (1 year IBOR or equivalent as published by the Commission) applicable on 1 January 2020 plus the credit risk margins as set-out in the table below:

Type of recipient	Credit risk margin for a 1-year maturity loan	Credit risk margin for a 2-3 years maturity loan	Credit risk margin for a 4-6 years maturity loan
Small and medium-sized enterprises (SMEs)	25 basis points The minimum all in interest rate (base rate plus the credit risk margins) should be at least 10bps per year.	50 basis points The minimum all in interest rate (base rate plus the credit risk margins) should be at least 10bps per year.	100 basis points
Large enterprises	50 basis points	100 basis points	200 basis points

As an alternative, Member States may notify schemes, considering the above table as basis, but whereby maturity, pricing and guarantee coverage can be modulated (e.g. lower guarantee coverage offsetting a longer maturity).

The loan contracts have to be signed by 31 December 2020 at the latest and are limited to maximum 6 years.

For loans with a maturity beyond 31 December 2020, the amount of the loan must not exceed the following limits:

- the double of the annual wage bill of the beneficiary including social charges as well as the cost of personnel working on the company site but formally in the payroll of subcontractors (for 2019 or for the last year available). In the case of companies created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
- 25% of the total turnover of the beneficiary in 2019; or
- with appropriate justification and based on self-certification by the beneficiary of its liquidity needs (including working capital and investment cost), the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises.

For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher with appropriate justification and provided that proportionality of the aid remains assured.

The loan may relate to both investment and working capital needs.

Aid can only be granted to companies that were not in difficulty (within the meaning of the General Block Exemption Regulation No 651/2014, e.g. opening of insolvency proceedings, certain financial indicators) on 31 December 2019.

d) Short-term export credit insurance

Under normal circumstances marketable risks cannot be covered by state backed export-credit insurance. As a consequence of the current outbreak, it cannot be excluded that, in certain countries cover for marketable risks could be temporarily unavailable. In these situations Member States can provide coverage under certain conditions.

3. Role of banks

State guarantees or reduced interest rates can be provided directly or through credit institutions and other financial institutions. In the latter case, the aid shall benefit those companies that are immediately affected by the corona pandemic, and not the credit institutions and other financial institutions that facilitate the aid for the beneficiaries.
Therefore, credit institutions and other financial institutions will have to demonstrate that they operate 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. When there is a legal obligation to extend the maturity of existing loans for SMEs no guarantee fee may be charged.

4. Transparency requirements for Member States

Member States must publish each individual aid granted on a dedicated website, and they must submit annual reports to the Commission.

By 31 December 2020, Member States must provide the Commission with a list of measures put in place on the basis of schemes approved by the Commission

5. Period of availability of the Temporary Framework

The Temporary Framework will initially run until the end of December 2020 – the Commission will assess in due time whether it needs to be extended. The Commission will apply the Temporary Framework from 19 March 2020 to all programs and measures, even if Member States have notified them to the Commission in advance.

6. Aid outside the scope of State aid control

Outside the scope of State aid control and approval requirements are, for example, tax deferral, suspension of value-added tax or trade tax, suspension of social security contributions, wage subsidies, subsidies for the health system and other public institutions.

7. Support outside the Temporary Framework/existing support measures

Aid granted under the existing State aid frameworks is not affected by the Temporary Framework and can continue to be granted, as can aid that is in principle allowed under the General Block Exemption Regulation No 651/2014.

In addition, Member States may notify support programs to the Commission under the existing Rescue and Restructuring State aid Guidelines (Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01).

Member States may also grant rescue aid outside the Temporary Framework to companies to bridge liquidity shortfalls to compensate for damage caused directly and immediately by the corona pandemic, including aid that is useful to support sectors particularly affected, such as transport, tourism, culture, hotels and restaurants, commerce and tour operators. The Commission considers the basis for authorizing such rescue aid under Article 107(2) lit. b TFEU for aid to make good the damage caused by natural disasters or exceptional occurrences. It is particularly important for airlines that the "one time, last time" principle applicable to rescue and restructuring aid does not apply to these aid measures.

8. Support for banks

Support measures for banks which are themselves in need of aid because of the corona pandemic will be assessed by the Commission on the basis of Article 107(2) lit. b TFEU, which provides for aid to make good damage caused by natural disasters or exceptional occurrences. Such aid is not covered by the Temporary Framework and other existing aid schemes (with corresponding restrictions) for the banking sector.

If due to the Corona pandemic, banks would need direct support in the form of liquidity recapitalization or impaired asset measure, it will have to be assessed whether the measure meets the conditions of Article 32(4)(d) (i), (ii) or (iii) of the BRRD. Where the latter conditions were to be fulfilled, the bank receiving such direct support would not be deemed to be failing-or-likely-to-fail. To the extent such measures address problems linked to the corona outbreak, they would be deemed to fall under point 45 of the 2013 Banking

Communication, which sets out an exception to the requirement of burden-sharing by shareholders and subordinated creditors.

9. Conclusion

Member States have little room to launch national aid schemes that deviate from the Temporary Framework. The conditions of the Temporary Framework, therefore, will generally apply to the companies that are now advised to consult their banks in order to prepare the documents and information necessary to apply for the national aid measures.

It is problematic that national aid must not be granted to companies that were already in difficulty on 31 December 2019. The intention of the Commission to apply aid only to the negative effects of the corona pandemic will prevent companies that undergo successful restructuring access to urgently needed aid measures. Since those companies have effectively no chance of restructuring under the Temporary Framework it remains to be seen whether the Commission will approve aid schemes based on a different legal basis or, indeed, a great number of insolvencies may occur.

The effects of the guarantees, where the restriction to 90% of the loan principal will inevitably involve another party, could reduce and slow down the impact of the program.

Outside the Temporary Framework, Member States may grant other types of rescue aid to companies, e.g. to the transport, tourism, cultural, hospitality, distributive and tourism-related sectors, in order to bridge liquidity shortages caused by corona. Member States can notify such damage compensation measures and the Commission will assess them. Here, potentially more aid may be approved for which the principle of „one time last time“ would not apply.

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