COVID-19: GOVERNANCE: EUROPEAN COMMISSION EXTENDS THE TEMPORARY FRAMEWORK FOR COVID-19 STATE AID TO COVER ADDITIONAL MEASURES (EUROPE)

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Legal Briefings

On 3 April 2020, the European Commission adopted the first amendment to its Temporary Framework on the application of EU State aid rules in the context of the COVID-19 outbreak (the original version of which is covered in more detail in our previous article.

The amendment allows further liquidity support measures (tax / social security contribution deferrals), additional wage subsidies to protect employment and measures designed to accelerate the R&D, testing and production of products necessary to fight COVID-19 (such as vaccines, medical equipment, protective material, or disinfectants).

As a general point, the Temporary Framework does not provide an exemption from the requirement for Member States to notify State aid measures and obtain Commission approval. It does, however, set out certain types of measures that the Commission will consider as "compatible with the internal market" and should be able to approve very rapidly upon notification. Indeed, since the adoption of the Temporary Framework on 19 March 2020, over 40 "aid schemes" notified by a variety of Member States have been approved by the Commission.

The amendment extends the Temporary Framework by providing for five additional types of aid measures: 2 types of measures that seek to support those businesses that are particularly affected by COVID-19 and 3 types of measures supporting the development of products to fight COVID-19, namely:

- **Targeted deferrals of tax payments / suspensions of social security contributions** – Member States will be able to grant deferrals of payment of taxes and of social security contributions in those sectors, regions or for types of companies that are “particularly affected by the COVID-19 outbreak”. It is not clear from the Temporary Framework how the Commission intends to apply this test but a quick overview of its public statements indicate that sectors such as transport, hospitality, tourism or retail could be covered.

- **Targeted wage subsidies for employees** – Member States will be able to contribute up to 80% of the monthly gross wage costs of companies in those sectors or regions that are “particularly affected” by the COVID-19 outbreak, and would otherwise have to lay off personnel.

- Direct grants, repayable advances and tax advantages for **COVID-19 R&D** – Member States will be able to support COVID-19 and other relevant antiviral R&D. The aid can amount up to 100% of eligible costs in respect of fundamental research and 80% of eligible costs for industrial research and experimental development (i.e. essentially applied research).

- Direct grants, tax advantages, repayable advances and no-loss guarantees for **COVID-19 testing and upscaling infrastructures** – Member States will be able to support the investment of construction or upscaling of infrastructures needed to develop and test products useful to tackle the COVID-19 outbreak, up to first industrial deployment. The aid can cover up to 75% of the project’s eligible costs.

- Direct grants, tax advantages, repayable advances and no-loss guarantees for the **rapid production of COVID-19 products** – Member States will be able to grant aid of up to 80% of eligible costs to support investments enabling the rapid production of COVID-19-relevant products.

In addition to introducing new measures, the amendment also further relaxes / clarifies the liquidity support measures covered in the original Temporary Framework. In particular, the liquidity support aid of up to €800,000 per undertaking can now also be granted in the form of guarantees on loans covering 100% of the risk, zero-interest loans, or equity (in addition to direct grants, tax and payment advantages and repayable advances covered previously).

It should be noted that like the liquidity support measures under the original Temporary Framework, the first two categories of measures above – the tax / social security contribution deferrals and wage subsidies – are approved under the less common legal basis of Article 107(3)(b) TFEU (aid to remedy serious disturbance in the economy of a Member State).

In contrast, the three categories of measures supporting products to combat COVID-19 fall within the much more familiar and orthodox legal basis of Article 107(3)(c) TFEU (aid for development of certain economic activities or areas). In line with how the compatibility assessment is generally approached under Article 107(3)(c), these measures use the well-known concepts of incentive effect, eligible costs and aid intensities. That said, the substance of the measures remains unusual, which is, of course, understandable given the circumstances. In particular:

- The aid intensities for these measures are higher than would normally be the case. For example, under the Temporary Framework the combined aid intensity for industrial research and experimental development is 80% whereas the normal aid intensities for these kinds of research would be 50 % and 25%, respectively (under the General Block Exemption Regulation (GBER) and the Research, Development and Innovation (RD&I) Framework).

- For all these measures, incentive effect is simply deemed to exist provided the project started on or after 1 February 2020. Where the project started before that date, however, the usual incentive effect requirement applies and the aid must be necessary to accelerate or widen the scope of that project.

- In line with the Commission's general approach to "Europeanise" the COVID-19 response, the aid intensity may be increased by 15% where the support comes from more than one Member State (or where the R&D involves a cross-border collaboration).

- To reflect the urgency of the health objective underlying the aid measures for testing and upscaling infrastructures and for production, the aid intensity may be increased by 15% if the project is completed with two months from the grant. If, however, the project is not completed within six months from the grant, the aid beneficiary will be "penalised" by having to reimburse a portion of the aid.

- Moreover, the measures for testing and upscaling infrastructures and production can be supported by a "loss cover guarantee" which effectively guarantees the recovery of project costs (both investment and operational) plus profit margin (10% per annum) over 5 years, thereby significantly reducing the risks involved in these COVID-19-related activities.

More on COVID-19

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.

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