

COVID-19: GOVERNANCE: EUROPEAN COMMISSION ISSUES TEMPORARY STATE AID FRAMEWORK FOR COVID-19 (EUROPE)

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Legal Briefings

On 19 March 2020, the Commission issued a [Temporary Framework](#) setting out how it will apply the EU State aid rules with respect to certain types of liquidity support granted by Member States to businesses in order to preserve the continuity of economic activity during and after the COVID-19 outbreak.

The EU State aid rules essentially regulate interventions by Member States in their national economies that provide selective economic or financial advantages. Where a measure involves State aid, it cannot be implemented unless it is notified by the Member State concerned and approved as “compatible with the internal market” by the Commission. This “standstill” requirement is subject to various “block exemptions”, which in practice enable Member States to grant significant amounts of State aid without individual notification and approval, provided they structure their measures of support in accordance with the parameters prescribed under the block exemptions (which can often be complex to apply).

The Temporary Framework does not provide a further block exemption from the requirement for Member States to notify and obtain Commission approval. It does, however, set out certain types of liquidity support measures that the Commission will consider as compatible with the internal market and would be able to approve very rapidly upon notification. It therefore essentially invites the Member States to put forward “aid schemes” based on these measures, which, once approved, Member States will be able to make extensive use of to grant aid without having to go back each time to the Commission.

These measures are as follows:

- Direct grants, tax advantages and repayable advances up to €800,000 – Member States will be able to set up aid schemes to grant up to €800,000 (gross) to individual companies in these forms. Different levels and requirements apply to companies in the agricultural, fisheries and aquaculture sectors.
- Subsidised public loans – Member State will be able to provide debt finance at specified and reduced interest rate margins, set according to the type of recipient and loan maturity concerned. There are limits on the types of loans that may be provided – for instance, loans with a maturity beyond 31 December 2020 can only be provided, as a general rule, up to an amount double the annual wage bill of the company concerned or 25% of its total turnover in 2019, although additional flexibility may be possible where the need can be demonstrated.
- State guarantees for loans taken by companies from private banks – Member States will be able to provide public guarantees on companies’ loans at specified and low guarantee premiums, which, again, are set according the type of recipient and loan maturity concerned. As with the subsidised public loans, there are similar limits on the types of loans for which guarantees may be provided, as well as the level of guarantee itself.
- Short-term export credit insurance – the Temporary Framework introduces additional flexibility on how to demonstrate that certain countries are not “marketable risks” thereby enabling short-term export credit insurance to be provided by the Member State as needed.

Companies will only be eligible for aid under the Temporary Framework where they were not already a “firm in difficulty” within the meaning of the EU State aid rules, before January 2020, but faced difficulties or entered into difficulty thereafter as a result of the COVID-19 outbreak.

The Temporary Framework also makes clear that where Member States use banks as a channel for support to businesses, this would generally be considered as direct aid to the businesses only, but not as indirect aid to the banks themselves (as the objective is not to benefit the banks). It nonetheless, sets out guidance on how to minimise possible distortions of competition between banks should this channel be used.

The basic idea underlying the Temporary Framework is to enable Member States to provide liquidity support measures applying broadly across companies and sectors, while attempting to standardise the approach taken in order to avoid significant distortions of competition in the EU internal market. While the additional flexibility is significant, the actual support available to an individual company under the Temporary Framework remains relatively circumscribed. Large-scale measures of support to individual companies, e.g. in the aviation sector where a number of airlines have already been calling upon Member State Governments for support, will therefore likely fall outside of the Temporary Framework. Such measures will need to be the subject of an individual and specific assessment by the Commission, which could require significant structural or behavioural measures in order to limit potential distortions of competition. The Commission is likely in any event however, to significantly expedite its assessment in all cases to enable Member States to take rapid measures of intervention, as it did during the financial and economic crisis in 2008-10.

It may also be noted that the EU Treaty provision on which the Temporary Framework is based is Article 107(3)(b) TFEU which allows the Commission to approve aid to “remedy a serious disturbance in the economy of a Member State”. This is the same compatibility basis that was used by the Commission in addressing the large-scale measures of support provided by Member States during the financial and economic crisis. It also represents an evolution of the Commission’s State aid approach to the COVID-19 outbreak, which up until now had been mainly based on Article 107(2)(b) TFEU, which allows the Commission to approve aid “to make good the damage caused by natural disasters or exceptional occurrences”. Article 107(3)(b) TFEU has the potential to provide added flexibility and therefore represents an expansion of the Commission’s approach to approving State aid in response to the COVID-19 outbreak.

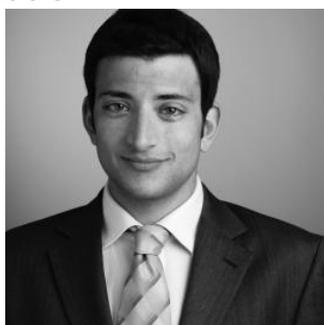
[More on navigating the COVID-19 Outbreak](#)

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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