

20 March 2020

The new EU legal framework for State aid to support the economy in the current COVID-19 outbreak: flexibility and efficiency

Following the publication of the proposal a few days ago, on 19 March the European Commission adopted the communication introducing a new temporary legal framework for State aid measures to support the economy in the current COVID-19 outbreak¹. The last time the Commission had adopted a similar temporary framework was during the global financial crisis in 2008. The new rules allow national authorities to take urgent and effective measures to help citizens and companies, especially SMEs, to cope with the financial difficulties caused by the economic crisis due to the Coronavirus outbreak.

According to the new legal framework, the current crisis can be considered **a serious disturbance in the economy**, which allows the application of **Article 107(3) letter b) of the Treaty** as a legal basis for aid measures. The type of measure listed in the communication are the following²:

- i. Aid schemes for **direct grants, selective tax advantages and advance payments**, up to Euro 800,000 for each company, to address urgent liquidity needs (the Commission increased this ceiling from Euro 500,000 in the earlier proposal).
- ii. **State guarantees** for loans taken by companies from banks, in order to ensure that banks keep providing loans to customers who need them, as long as guarantees fulfil certain criteria based on their duration (maximum 6 years) and amount, which are different for SMEs and non-SMEs (in particular, these limitations are calculated on the amount of the loan, which in turn is also subject to limitations).
- iii. **Subsidized public loans** with favorable interest rates to companies, subject to conditions in terms of time and amount similar to the ones applicable to State guarantees, and which can cover immediate working capital and investment needs.

For each of type of aid, the communication sets out a number of conditions and thresholds for the measure to be deemed compatible.

As these aid measures could also be granted via the banking system, the communication provides for safeguards for **banks that channel State aid to the real economy**, to minimize the distortion of competition among banks, ensuring that the aid is passed on to their customers. Moreover, according to the new legal framework, national authorities can provide **short-term export credit insurance**, also waiving ordinarily applicable rules.

The new legal framework will be in place until and will apply to measures adopted before 31 December 2020. With a view to ensuring legal certainty, the Commission will assess before that date if it needs to be extended in time. National measures designed according to the communication criteria will enjoy a speedy approval path.

Finally, the new legal framework is without prejudice to general principles on State aid, leaving open the possibility for national authorities to adopt measures falling outside State aid control, because, for instance, they favor non-economic activities (such as national funds to support the health system, or for

¹ The text of the communication is available at https://ec.europa.eu/commission/presscorner/detail/en/IP_20_496.

² The rules of the communication apply only to undertakings which are not in difficulty, according to the definition provided by EU law, or to undertakings that faced difficulties or entered in difficulty after 31 December 2019 as a result of the COVID-19 outbreak.

consumers), or because they are available to all companies (such as suspension of fiscal payments or social contributions)³. Also, national authorities can adopt aid measures to compensate the damages directly linked with the outbreak, based on Article 107(2), letter b) of the Treaty⁴.

In conclusion, as Executive Vice President, in charge of competition policy, Margrethe Vestager said, *“this new Temporary Framework enables Member States to use the full flexibility foreseen under State aid rules to support the economy at this difficult time”*.

Gianni, Origoni, Grippo, Cappelli & Partners has set up an in-house **Task Force** to constantly monitor the evolution of legislation in the regions affected by the Coronavirus and is at your entire disposal to support you in defining, drafting and implementing the most advisable strategies to limit the impact of the spread of the Coronavirus on the operations of your business and the management of your existing commercial relations.

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³ This was also specified in the communication of the Commission of 13 March 2020 (see [link](#)).

⁴ For example, on 12 March 2020, the Commission adopted the first decision of this type for a Danish aid scheme that provides for the reimbursement of the tickets for events of major importance that have been cancelled due to COVID-19 (the text of the decision is available at https://ec.europa.eu/competition/state_aid/cases1/202011/285054_2139535_70_2.pdf).