



# Possibilities under State aid rules to respond to the economic impact of COVID-19 outbreak

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# Different possibilities to tackle the economic impact of COVID-19

- General measures that do not constitute aid (e.g. deferral of payments of VAT or social security contributions).
- Article 107(2)(b) TFEU: aid to make good the damage caused by exceptional occurrences.
- Article 107(3)(b) TFEU: aid to remedy a serious disturbance in the economy of a Member State.
  - Aid under Temporary Framework aimed to remedy the liquidity shortage faced by undertakings and ensure that the disruptions cause by COVID-19 do not undermine their viability.
  - Temporary Framework provides some limiting principles, establishing the temporary nature of public interventions, and to favour their effectiveness and their incentivising nature.
- Article 107(3)(c) TFEU: aid to facilitate the development of certain economic activities.
  - E.g. Rescue and Restructuring Guidelines: guarantees and loans to cover urgent liquidity needs of companies in difficulty or not yet in difficulty.
- See [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html)

# Aid aimed to cover the damage caused by COVID-19 (Art.107(2)(b) TFEU)

- COVID-19 outbreak recognised as an exceptional occurrence.
- Aid may cover the damage suffered as a direct consequence of COVID-19:
  - Causal link between the damage and the COVID-19 outbreak.
  - Aid limited to the damage, no overcompensation.
  - Aid is limited to the damage not covered by an insurance.
- Aid may be cumulated with other forms of aid (e.g. aid under Temporary Framework) provided there are different eligible costs.

# Temporary Framework

- Commission Communication of 19 March 2020, amended on 3 April and 8 May 2020.
- Applicable until 31.12.2020 [exception: recapitalisations until 30.06.2021] to all sectors and to all companies except those that were already in difficulty by 31.12.2019.
- Covers direct aid to companies (except financial services) in various forms and for various objectives.
- Covers possible indirect aid to financial institutions channelling public guarantees or loans, provided the aid is passed through.
- Short term export credit insurance: on 27 March 2020 the Commission declared all countries in the Annex of Short-term Export Credit Communication as non-marketable and thus Member States may grant export insurances to exports to all these countries.
- Aid under Temporary Framework may be cumulated with each other except guarantees with subsidised loans and productive and research aid for the same eligible costs.

# Section 3.1 of TF: 800k measure

- Aid shall be granted in form of schemes.
- Overall aid amount per undertaking is capped to EUR 800,000 (120,000 for fisheries and 100,000 for agriculture).
- Aid may be granted in different forms: direct grants, tax and payment advantages, repayable advances, guarantees, loans and equity, provided the nominal value of these forms remains below the cap.

## Section 3.2: Aid in form of public guarantees

- Guarantee of up to 90% for loans for period of up to 6 years with minimum premium levels laid down in the TF.
  - Guarantee up to 35% of the loan principal, where losses are first attributed to the State and only then to the credit institutions (i.e. a first-loss guarantee)
- Guarantee coverage, duration and premiums may be modulated (e.g. lower guarantee coverage may justify a longer guarantee duration or lower premiums).
- Guaranteed loans may refer to working capital or investment loans.
- For loans with a maturity beyond 31.12.2020, the overall amount of the loans per beneficiary is capped to double the annual wage bill of the beneficiary for 2019, 25% of the beneficiary's total turnover of 2019, or with appropriate justification, the liquidity needs for the coming 18 months for SMEs (12 months for large enterprises).

## Section 3.3: Aid in form of public loans

- Public loans up to 6 years may be granted at reduced interest rates: base rate (1 year IBOR or equivalent on 1 January 2020) plus minimum credit risk margins laid down in TF.
- As for guarantees, the terms can be modulated.
- As for guarantees, loans may relate to investment and working capital needs.
- Amounts can be determined as for guarantees.
- For the same underlying loan principal, aid in form of guarantees shall not be cumulated with aid in form of loans. However, a beneficiary can receive a guarantee and a different subsidised public loan up to the overall cap per beneficiary.

## Section 3.6: R&D aid for COVID products

- Eligible for aid: R&D projects carrying out COVID-19 and other antiviral relevant research.
- Projects started after 1.2.2020 are deemed to have an incentive effect; projects started before 1.2.2020 if the aid is necessary to accelerate or widen the scope of the project.
- Aid up to 100% for fundamental research, 80% for industrial research and industrial development; bonus of 15%-points if more than one Member States supports the projects or there is cross-border collaboration.
- Eligible costs related to all necessary costs for R&D (including trial testing, personnel costs, costs for digital and computing equipment, costs for IPR and conformity authorisations, etc.).
- Aid may be granted in form of direct grant, tax advantages or repayable advance.
- Aid beneficiary shall commit to grant non-exclusive licences under non-discriminatory market conditions to third parties in the EEA.



# Section 3.7: Aid for testing and upscaling infrastructure for COVID-19 products

- Eligible for aid: construction or upgrade of testing and upscaling infrastructures required to develop, test and upscale COVID-19 relevant medicinal products and treatments, medical devices and equipment, etc.
- Incentive effect and aid instruments as for research projects.
- Aid up to 75% of eligible costs; bonus of 15%-points if project finishes within 2 months from the moment of aid granting or if more than one Member States supports the projects. Also loss cover guarantee may be granted.
- Eligible costs are all costs necessary for setting up the testing and upscaling infrastructure.
- If project is not completed within six months a penalty of 25% of the aid amount is due per month of delay, unless the delay is due to factors outside the control of the beneficiary.
- Access to the infrastructure is granted on the basis of market prices, in a transparent and non-discriminatory way to all users.

## Section 3.8: Investment aid for COVID-19 products

- Investment aid granted for production of COVID-19 relevant products, such as medicinal products and treatments, medical devices and equipment, etc.
- Incentive effect and aid instruments as for research projects.
- Aid up to 80% of eligible costs; bonus of 15%-points if project finishes within 2 months from the moment of aid granting or if more than one Member States supports the project.
- Eligible costs are all investment costs necessary for the production of COVID-19 relevant products and the costs of trial runs of the new production facilities.
- If project is not completed within six months a penalty of 25% of the aid amount is due per month of delay, unless the delay is due to factors outside the control of the beneficiary.
- Aid shall not be cumulated with other investment aid for the same eligible costs;
- Loss cover guarantee may be also granted.

# Section 3.9: Selective tax and social security contributions deferrals

- To recall: schemes applicable to all undertakings in the same way are of general nature and do not fall under State aid rules.
- Section covers selective aid schemes that consist in temporary deferrals of taxes or of social security contributions which apply to undertakings (including self-employed individuals) that are particularly affected by the COVID-19 outbreak, for example in specific sectors, regions or of a certain size.
- Covers also deferral of payments due in instalments, easier access to tax debt payment plans and of the granting of interest free periods, suspension of tax debt recovery, and expedited tax refunds will be also declared compatible with the Treaty.
- Deferral shall not end later than 31.12.2022.

## Section 3.10: Selective wage subsidies

- To recall: schemes applicable to all undertakings in the same way are of general nature and do not fall under State aid rules.
- Section covers support schemes that provide undertakings with a selective advantage, for example, if they are restricted to certain sectors, regions or types of undertakings.
- Wage subsidy is granted over a period of not more than twelve months, for employees that would otherwise have been laid off as a consequence of COVID-19.
- The monthly wage subsidy shall not exceed 80% of the monthly gross salary of the benefitting personnel. However, alternative calculation methods are possible.
- Wage subsidies may further be combined with tax deferrals and deferrals of social security payments and also with generally available or selective employment support measures, provided the combined support does not lead to overcompensation of the wage costs of the personnel concerned.

## Section 3.11: Recapitalisations - overview

- A new Section covers recapitalisations of companies aiming at the avoidance of an unnecessary exit of companies that were viable before the COVID outbreak.
- Recapitalisations may take the form of equity and/or hybrid capital, or any variation of the above instruments, including a combination of equity and hybrid capital instruments or the underwriting of the above instruments in the context of a market offering.
- The measure should be a last resort and has some eligibility conditions.
- The amount is limited to the minimum necessary to ensure viability and should not go beyond restoring the capital structure pre COVID 19 outbreak.
- The measures come with conditions as regards the States exit, which imply an adequate remuneration and an exit strategy depending on the instrument.
- In addition, the measures, depending on size and repayment schedule, are tied to certain governance measures, reporting obligations and require the presentation of a restructuring plan if the exit strategy fails after six years.

## Section 3.11: Eligibility

- (a) without the State intervention the beneficiary would go out of business or would face serious difficulties to maintain its operations. Such difficulties may be shown by the deterioration of, in particular, the beneficiary's debt to equity ratio or similar indicators;
- (b) it is in the common interest to intervene. This may relate to avoiding social hardship and market failure due to significant loss of employment, the exit of an innovative company, the exit of a systemically important company, the risk of disruption to an important service, or similar situations duly substantiated by the Member State concerned;
- (c) the beneficiary is not able to find financing on the markets at affordable terms and the horizontal measures existing in the Member State concerned to cover liquidity needs are insufficient to ensure its viability

# Section 3.11: Schemes / individual notification

When approving a scheme, the Commission will request the separate notification of individual aid above the threshold of EUR 250 million.

Individual notifications:

- The Commission will assess whether existing financing in the market or horizontal measures to cover liquidity needs are insufficient to ensure the viability of the beneficiary; that the selected recapitalisation instruments and the conditions attached to them are appropriate to address the beneficiary's serious difficulties; that the aid is proportionate; and that the conditions notably addressing exit and competition distortions are complied with.
- An undertaking with significant market power on at least one of the relevant markets in which it operates, Member States must propose additional measures to preserve effective competition in those markets. In proposing such measures, Member States may in particular offer structural or behavioural commitments.

# Section 3.11: Governance

- Dividend ban
- Remuneration cap (as long as 75 % of the measure has not been redeemed)
- Acquisition ban (as long as 75 % of the measure has not been redeemed), with qualifications
- Structural measures in exceptional individual cases where beneficiary has significant market power on at least one relevant market.



## Section 3.11: Exit strategy

- Required for large enterprises (outside SME definition) if recap measure is bigger than 25 % of equity
- Submitted to MS within 12 months for endorsement by MS
- Reporting obligations to the Commission: annually on repayment schedule and competition measures
- Public reporting (except SMEs) on use of aid (incl. green economy)
- Restructuring plan to the Commission after 6 years if intervention has not been reduced to 15 % of equity, more time for SMEs and unlisted companies

# Overview of Italian decisions adopted (26/05/2020)

- SA 56786 - 22/03/2020: Support to production and supply of medical devices
- SA 56690 - 25/03/2020: Moratorium to relieve SMEs from bank debts
- SA 56963 - 13/04/2020: SACE guarantees on new loans and refinancing
- SA 56966 - 13/04/2020: Fondo Garanzia guarantees
- SA 57068 - 21/04/2020: ISMEA guarantees for the agricultural sector
- SA.57005 – 21/04/2020: Anti-crisis program of the regional law n. 5/2020 (FVG)
- SA.57185 - 04/05/2020: ISMEA loans in favour of agricultural and fishery sector
- SA.57349 – 19/05/2020: Campania region – Aid measures in agricultural, fishery and aquaculture sector
- SA.57021 – 21/05/2020: Regime Quadro – COVID 19

# Overview of decisions adopted (status: 26.05.2020)

- 136 decisions and 123 measures in 26 MS and UK
- List of all press releases and adopted decisions can be found here:  
[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/State\\_aid\\_decisions\\_TF\\_and\\_107\\_2\\_b\\_and\\_107\\_3\\_b.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/State_aid_decisions_TF_and_107_2_b_and_107_3_b.pdf)