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State Aid in Times of COVID-19: Hard Times Call for a Soft(er) Approach

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Given the major impact of COVID-19 on the European economy, a reaction from the European Commission on the state aid front was expected. On March 19, the European Commission adopted a Temporary Framework to enable Member States to support the economy in the COVID-19 outbreak. These measures complement many other possibilities under the existing state aid rules as outlined by the Commission in its Communication on a coordinated economic response to the COVID-19 outbreak. To date the Commission already approved over fifty state aid measures in almost every Member State in record time.

Temporary Framework for State Aid Measures in Light of the COVID-19 Outbreak

On March 19, 2020, the European Commission announced that the COVID-19 outbreak resulted in the entire economy experiencing a serious disturbance which allows for a relaxation of the state aid rules. To remedy the disturbance, a Temporary Framework was put in place which provided for five types of state aid. An extension of this Framework was adopted on April 3, 2020. Besides providing for additional types of aid (which we discuss here), the scope of the existing aid measures was extended:

- **Direct grants, selective tax advantages and advance payments** allowing Member States to set up schemes and grant up to €800.000 to companies with urgent liquidity needs (up from €500.000). Since April 3, Member States can also grant repayable advances, guarantees, loans and equity up to €800.000. So far, the Commission approved the following direct grants:
    - Austria: a €15 billion liquidity scheme, including direct grants, repayable advances and guarantees.
    - Belgium: a €200,000 direct grant scheme to support agricultural and aquaculture sectors in Brussels-Capital region following the COVID-19 outbreak.
    - Bulgaria: a €150 million of equity and quasi-equity investments open to SMEs in all sectors hit particularly hard by the COVID-19 outbreak.
    - Croatia: a €4 million scheme to support the Croatian fishery and aquaculture sector during the COVID-19 crisis.
    - Finland: a €3 billion scheme including direct grants, equity injections, tax and payment advances.
    - France: a €1.2 billion scheme to support small and micro-enterprises and self-employed people in temporary financial difficulties.
    - Estonia: eight schemes of €75.5 million to support companies affected by COVID-19, open to SMEs, companies in the tourism sector, and companies in the culture and sports sectors.
    - Germany: a direct grant scheme to support companies affected by COVID-19.
    - Greece: (i) a €1 billion scheme of repayable advances open to companies facing financial difficulties due to the COVID-19 outbreak; and (ii) a €1.2 billion scheme to cover interest on existing debt obligations open to SMEs in all sectors.
    - Hungary: (i) a €140 million scheme open to SMEs and large companies particularly affected by the COVID-19 outbreak; and (ii) one of three measures (in total €1 billion) to support companies affected by COVID-19, funded by the EU structural funds.

- Ireland: (i) a €200 million scheme in the form of repayable advances, open to all companies with at least a 15% decline in turnover; and (ii) a €200 million scheme to support companies in the manufacturing and internationally traded service sectors.
- Italy: a €50 million scheme to support the production and supply of medical devices and personal protection equipment.
- Latvia: a €35.5 million scheme to support agricultural, fishery, food and school catering sectors during the COVID-19 outbreak.
- Lithuania: a €5 million direct grant scheme to support SMEs active in road freight transport.
- Luxembourg: a €300 million scheme to support companies and liberal professions to cover their operating costs.
- The Netherlands: a €23 million scheme to support providers of social support services, healthcare and youth care who offer services at home during the COVID-19 crisis.
- Poland: (i) 11 schemes (in total €7.8 billion), including direct grants, repayable advances, tax and payment advantages open to all companies facing economic difficulties and liquidity shortages; (ii) a €700 million scheme to support companies in all sectors (including agriculture and fishery), co-financed by the European structural funds; and (iii) a €16.6 billion scheme of repayable advances for micro companies and SMEs.
- Portugal: one of two schemes (in total €13 billion) for SMEs and large companies facing difficulties due to the COVID-19 outbreak.
- Romania: one of two schemes (in total €3.3 billion) to support SMEs affected by COVID-19.
- Sweden: a €453 million rent rebate scheme to support tenants of hotels, restaurants, retail and certain other sectors with a focus on customer relations.
- UK: a €654 million scheme to support SMEs affected by COVID-19.

- **State guarantees for loans taken by companies from banks** to ensure banks can keep providing loans. Since the extension of April 3, minimum guarantee premiums are set per individual loan and have to increase progressively. So far, the Commission approved the following guarantees:
  - Austria: (i) a guarantee scheme to support SMEs affected by COVID-19; and (ii) one of three schemes (in total €15 billion), with guarantees open to all companies in Austria.
  - Belgium: a €3 billion guarantee scheme for working capital and investment loans, financed by the Flemish region for companies most affected by COVID-19.
  - Bulgaria: a €255 million scheme on existing or new loans to SMEs affected by COVID-19.
  - Croatia: a €790 million scheme for export companies affected by COVID-19.
  - Denmark: a €130 million guarantee scheme for SMEs with export activities affected by COVID-19.
  - Estonia: two schemes with a total budget of €1.75 billion consisting in the provision of public guarantees on existing or new loans and the granting of loans at favourable terms.
  - Finland: (i) one of two schemes (in total €2 billion) for guarantees on new investment and working capital loans; and (ii) a €3 billion scheme including guarantees.
  - France: (i) three schemes mobilizing €300 billion of liquidity support for companies, and (ii) a €150 guarantee scheme for small and midsize companies with export activities.
  - Germany: a loan guarantee scheme for all companies active in Germany (excluding financial institutions), amended under the extended Framework.

- Greece: a €2 billion guarantee scheme, open to all Greek companies except for financial intermediaries, companies active in agriculture and aquaculture and sectors which are not eligible by the European Regional Development Fund.
- Italy: (i) a State guarantee supporting a debt moratorium from banks to SMEs; (ii) a guarantee scheme to support self-employed workers and companies with up to 499 employees; (iii) a €200 billion guarantee scheme for new working capital and investment loans granted by banks; and (iii) a €100 million guarantee scheme for SMEs in the agricultural, forestry, fishery and aquaculture sectors affected by the COVID-19 outbreak, granted through the state-owned ISMEA guarantee fund.
- Latvia: a €50 million loan guarantee scheme for companies affected by COVID-19.
- Lithuania: a €110 million scheme open to companies facing difficulties due to COVID-19.
- Luxembourg: a €2.500 million loan guarantee scheme for all companies except real estate companies and investment holdings.
- Malta: a €350 million scheme to support the Maltese economy in the outbreak.
- The Netherlands: a €10 billion scheme for working capital and investment loans.
- Portugal: (i) four guarantee schemes with a total budget of €3 billion for SMEs and midcaps active in sectors such as tourism, restaurants, manufacturing industry, or event organization; and (ii) one of two schemes (in total €13 billion) for SMEs and large companies facing difficulties due to the COVID-19 outbreak.
- Poland: (i) a €22 billion scheme on loans provided by the Polish National Development Bank to SMEs; (ii) a €115 million scheme to cover interest on loans; (iii) one of two schemes (in total €700 million) to support Polish companies affected by COVID-19, co-financed by EU funds; and (iv) one of two schemes for loans and guarantees (in total €110 million).
- Romania: one of two schemes (in total €3.3 billion) to support affected SMEs.
- Spain: €20 billion guarantee scheme for companies and self-employed affected by COVID-19.
- Sweden: (i) a €9.1 billion scheme on new loans granted by commercial banks to support companies (mainly SMEs); and (ii) a €455 million scheme to support airlines affected by the COVID-19 outbreak.
- UK: guarantees covering 80% of loan facilities for SMEs to cover their capital needs.

* **Subsidised public loans to companies** with favourable interest rates, so companies can cover immediate working capital and investment needs. Since the extension of April 3, zero-interest loans are now possible. So far, the following loan programmes have been approved:
    - Austria: one of three schemes (in total €15 billion) including subsidized loans.
    - Croatia: two schemes of €1 billion covering zero-interest loans and subsidized interest rates for loans to support companies affected by COVID-19.
    - Denmark: a €200 million state loan to support the Travel Guarantee Fund to reimburse travelers for cancellations.
    - Estonia: two schemes with a total budget of €1.75 billion consisting in the provision of public guarantees on existing or new loans and the granting of loans at favourable terms.
    - Finland: (i) one of two schemes (in total €2 billion) for subsidies for investments and working capital loans; and (ii) a €3 billion scheme including loans.
    - Germany: two loan programmes providing liquidity to companies of all sizes up to €1 billion per company.
    - Hungary: one of three measures (in total €1 billion) to support companies affected by COVID-19, funded by the EU structural funds.

  - Latvia: a €200 million subsidized loan scheme for companies affected by COVID-19.
  - Lithuania: two schemes of €150 million in total consisting of subsidized loans for SMEs via financial intermediaries and loans for outstanding invoices, directly provided to companies.
  - The Netherlands: a €100 million scheme to support SMEs financed primarily by external equity, venture capital or microcredit.
  - Poland: (i) one of two schemes (in total €700 million) to support Polish companies affected by COVID-19, co-financed by EU funds; and (ii) one of two schemes for loans and guarantees (in total €110 million).
  - Portugal: a €20 million credit line scheme for SMEs in the sectors of fishery and aquaculture which are affect by the COVID-19 outbreak.
- **Safeguards for banks that channel State aid to the real economy.** As some Member States will build on the existing lending capacity of banks to support SMEs, the Framework makes clear that such aid is not to be considered as aid to the banks but to the banks' customers.
- **Short-term export credit insurance** The 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 State where needed.

In addition to these specific aid measures, the European Commission has also approved "umbrella" schemes in Spain, France and Slovenia. These schemes entail a National Temporary Framework under which different types of aid can be granted by the national, regional and local authorities.

The Framework applies to all aid schemes notified as of February 1 and will be in place at least until December 31. The Commission provided a notification template and established a dedicated contact point for Member States to ensure that national measures can be put in place in a timely manner.

Several state aid measures which do not fall within the Temporary Framework have been adopted under Article 107(3)(b) TFEU, which provides for the possibility to grant aid in cases where there is a serious disturbance in the economy of a Member State. So far, the following measures have been approved:

- A Belgian guarantee scheme of €502 billion to support companies (including SMEs and self-employed traders) affected by the outbreak;
- A French guarantee scheme of €10 billion to support the domestic credit insurance market; and
- A German guarantee scheme to stabilize the trade credit insurance market, ensuring risk sharing between insurers and the state up to €5 billion, with a safety-net to cover up to €30 billion.

Communication on a Coordinated Response to Counter the Economic Impact of the COVID-19 Outbreak

Apart from the specific instruments set out above, the existing state aid rules also provide for ways to counteract the negative economic impact of the COVID-19 crisis. On March 13, 2020, the European Commission issued a Communication on a Coordinated economic response to the COVID-19 outbreak setting out these instruments, which include:

- Measures generally applicable to all businesses, e.g. wage subsidies, suspending payments of corporate and value added taxes or social contributions. Belgium already adopted several measures including deferral and exemption from payment of social contributions, extension of temporary unemployment.
- Measures which grant financial support directly to consumers, e.g. reimbursement of tickets for cancelled events or services.
- Member States can support companies with liquidity shortages in need of urgent rescue aid.
- Member States can compensate companies for the damage directly caused by exceptional occurrences, including measures in sectors such as tourism and aviation.

In this respect, the Commission approved four Danish schemes: (i) a € 12 million scheme to compensate organizers for damages caused by cancellation of large public events; (ii) a €1.3 billion scheme to compensate the self-employed for loss of turnover in the next 3 months; (iii) a €5.4 billion scheme compensating companies which are particularly affected by the outbreak; and (iv) a €137 million public guarantee scheme to compensate damage suffered by airline SAS. Also approved is a French scheme deferring payment of certain aeronautical taxes by airlines. In Sweden, two schemes were approved: (i) a €38 million scheme to compensate operators in the cultural sector for cancelled events; (ii) and a €137 million public guarantee to compensate airline SAS for damage caused by the outbreak. Most recently, a state-guaranteed €550 million public loan was granted to partly compensate German charter airline Condor for the damage caused by the cancellation or rescheduling of flights.

Crowell & Moring will continue monitoring developments in this area and provide regular updates.

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